Bond Case Briefs

Municipal Finance Law Since 1971

IRS Notice 2019-39: Corrected!

On May 22, 2019, the IRS issued IRS Notice 2019-39 (the "Original Notice"), which sought to bring efficiency and uniformity to guidance on the current refunding of certain bonds issued under current and future "targeted" tax-exempt bond programs. While the Original Notice set forth helpful guidance on the tax-exempt current refunding of bonds issued under a targeted bond program, it also created some confusion regarding the tax-exempt current refunding of build America bonds (which everyone was already doing), as Mike and Cindy noted last week.

The Original Notice included build America bonds within the scope of its guidance, which seemed odd because build America bonds were not subject to volume cap, although similar to the targeted bond programs, there was a deadline for issuing build America bonds on December 31, 2010. Additionally, because build America bonds already were required to satisfy the requirements for issuance of tax-exempt bonds, no ambiguity existed regarding the ability to currently refund build America bonds with tax-exempt bonds. This guidance seemed unnecessary and, if read in a certain light, could have led to absurd results.

After what the author suspects to be mild bond community uproar (comparatively mild, that is; even the most uproarious bond community uproar might seem tame to the layperson), the IRS went back, double-checked its answers, and corrected the Original Notice (as corrected, the "Corrected Notice") found here. The IRS revised the sentence that mentions build America bonds to include the bracketed phrase as follows:

> "In addition, the references in this notice to "original bonds" or "original Qualified Bonds" include [Tribal Economic Development Bonds[1] issued as] tax-advantaged build America bonds under former § 54AA."

This change makes it clear(er) that the reference to build America bonds in the Original Notice was not intended to refer to build America bonds generally, but rather to Tribal Economic Development Bonds that happened to have been issued under Section 7871(f) as build America bonds. You may recall that the American Recovery and Reinvestment Act (P.L. 111-5) created the Tribal Economic Development Bond as a type of bond that relaxed some of the restrictions that normally apply to Native American tribal governments when they want to issue tax-exempt bonds. Tribal Economic Development Bonds could also be issued as build America bonds as long as they met the additional requirements in Section 54AA. Tribal Economic Development Bonds issued as build America bonds were subject to volume cap and there was a deadline for this type of issuance (December 31, 2010), so the current refunding guidance in the Corrected Notice is helpful for these bonds.

Now that the IRS has corrected this notice, all can be right enough with the bond universe for the time being – although more guidance on spiking the subsidy on build America bonds and other direct pay bonds would always be welcome.

[1] It is interesting to note that in using initial capitals for "Tribal Economic Development Bonds" in

the Notice the IRS did not hew to the capitalization convention in the statute, which they've religiously done in spelling out BABs as "build America bonds" and not "Build America Bonds."

By Taylor Klavan on June 3, 2019

The Public Finance Tax Blog

Squire Patton Boggs

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com