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IRS Says Special Program Bonds Including Tribal Development Bonds May Be Current Refunded.

While the advance refunding of tax-advantaged bonds remains a thing of the past, the Internal Revenue Service (IRS) issued guidance on May 22, [Notice 2019-39](#), expanding the realm of current refundings to permit the current refunding of all existing and future tax-exempt bond programs that impose bond volume cap, issuance time deadlines, or both, for which the statute under which such programs operate does not address the permissibility of current refunding bonds.

Background

Over the years, Congress has enacted several targeted tax-exempt bond programs, often to provide disaster relief or promote economic development in underserved areas. Such bonds include “GO Zone Bonds” under former Section 1400N of the Internal Revenue Code of 1986, as amended (the Code), Midwest Disaster and Hurricane Ike Disaster Bonds under Code Sections 702(d)(1) and 704(a) of the Heartland Disaster Relief Act, Recovery Zone Facility Bonds under former Code Section 1400U-3, and Tribal Economic Development Bonds issued under Code Section 7871(f).

Unlike other tax-advantaged bonds, these targeted programs were authorized under statutory provisions that did not address whether an issuer could current refund such bonds. The Treasury and IRS have addressed on a piecemeal basis the ability to current refund certain of these programs. See, e.g., Notice 2012-3, 2012-3 I.R.B. 289 (GO Zone, Midwest, and Hurricane Ike Disaster Bonds); Notice 2014-39, 2014-5 I.R.B. 455 (Recovery Zone Facility Bonds); and Notice 2003-40, 2003-2 C.B. 20 (New York Liberty Bonds).

Notice 2019-39

Notice 2019-39 provides uniform guidance allowing the current refunding (directly or indirectly in a series of current refunding issues) of original bonds in existing and future tax-exempt bond programs that impose volume caps, issuance time deadlines, or both, on the original bonds and operate under statutory parameters that do not address the ability to current refund such bonds. The Notice uses the term “Qualified Bonds” to refer to bonds issued in these tax-exempt bond programs. The Notice, as corrected on May 31, provides that the phrase “original bonds” or “original Qualified Bonds” includes Tribal Economic Development Bonds issued as tax-advantaged build America bonds under former Code Section 54AA.

Notice 2019-39 permits current refunding (including indirect refunding in a series of current refunding issues) of the original Qualified Bonds without regard to bond volume cap or issuance time deadline requirements if the following conditions are met:

1. The original Qualified Bonds met any volume cap and deadline for issuance requirement;
2. The issue price of the current refunding issue is not greater than the outstanding stated principal amount of the original Qualified Bonds (with a special rule for refunded bonds issued with more than a de minimis amount of original issue discount or premium); and
3. The refunding bonds meet all applicable requirements for the Qualified Bonds.

Effective Date

Notice 2019-39 applies to current refunding issues issued on or after May 22, 2019, and may be applied to current refunding issues issued before that date.

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