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## Your 2024 Election Guide – Separate Issue Election and/or Multipurpose Issue Allocation (an Election of Sorts)? - Squire Patton Boggs

While probably not the most consequential election in 2024, a bond issuer might need to decide whether to make a separate issue election under Reg. §1.150-1(c)(3) and/or a multipurpose issue allocation under Reg. §§1.148-9(h) and 1.141-13(d).[1] To ensure that issuers (and conduit borrowers)[2] are a fully informed electorate, this 2024 Election Guide will explain the who, what and why of each type of election or allocation (but not necessarily in that order).

**Separate Issue Election**

*Who qualifies?* An issuer issuing tax-exempt bonds that have more than one purpose (e.g., new money and refunding) – but only if the proceeds, investments and bonds of the aggregate issue are allocated between each of the separate purposes using a reasonable, consistently applied method. It should be noted, however, that if a refunding is one of the separate purposes, certain multipurpose issue allocation criteria (discussed below) must also be met.

*Why make a separate issue election?* An issuer will frequently make the separate issue election when governmental use bonds and tax-exempt qualified private activity bonds would otherwise be part of a single issue for federal income tax purposes (because the governmental use bonds and qualified private activity bonds will be payable from the same source of funds and will be sold at substantially the same time (i.e., within 14 days of each other) pursuant to the same plan of financing). For example, a state university may be selling governmental use bonds and qualified 501(c)(3) bonds at substantially the same time pursuant to the same plan of financing, and these bonds are payable from the same source of funds. Also, some airport financings involve both governmental use bonds and exempt facility bonds. Both qualified 501(c)(3) bonds and exempt facility bonds are subject to more stringent rules than governmental use bonds. Thus, it is often beneficial for the issuer to separate the governmental use bonds from the other more highly regulated qualified private activity bonds.

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**The Public Finance Tax Blog**

**By Cynthia Mog on July 10, 2024**

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