

# **Bond Case Briefs**

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## **Recent Favorable IRS Guidance for Tax-Exempt Bond Financed Facilities: Ballard Spahr.**

The IRS has released guidance in three areas of interest to entities that benefit from tax-exempt bond financings, particularly hospitals and educational institutions. This guidance creates new rules related to management contracts and participation by a nonprofit entity in an accountable care organization (ACO), final rules addressing requirements for charitable hospital organizations added by the Patient Protection and Affordable Care Act (ACA), and the creation of a standardized voluntary closing agreement program (VCAP) for issuers of 501(c)(3) bonds for the benefit of a 501(c)(3) organization that had its tax-exempt status reinstated after having it revoked for failure to file returns for three consecutive years. Highlights of the guidance are summarized below.

### **New Five-Year Safe Harbor for Management Contracts**

For the first time in 18 years, the IRS made a significant change to existing IRS safe harbors under which management contracts do not result in private business use of tax-exempt bond financed facilities. Notice 2014-67, which was released on October 24, 2014, provides a new favorable five-year safe harbor from private business use for management contracts and expands the types of productivity awards that are permitted. The changes apply to contracts entered into or materially modified on or after January 22, 2015, but may be applied to contracts entered into before that date. The new management contract safe harbor has important immediate implications for borrowers or issuers of bonds who have entered into management contracts with service providers for their bond financed facilities.

### **New Bond Guidance on Accountable Care Organizations**

Notice 2014-67 also is the first step taken by the IRS in addressing the tax issues raised by nonprofit organizations with tax-exempt bond financing participating in ACOs. According to the Notice, the participation of a 501(c)(3) hospital organization (or governmental entity) in the Medicare Shared Savings Program through an ACO will not result in private business use of the tax-exempt bond financed facility if certain conditions are met. The conditions set forth in Notice 2014-67 parallel the conditions in Notice 2011-20, which provided guidance related to the tax treatment for exempt organizations seeking participation in ACOs. These provisions apply to bonds sold on or after January 22, 2015, but may be applied to bonds sold before that date.

### **Final Section 501(r) Regulations for Charitable Hospitals**

In December 2014, Treasury and the IRS released final regulations regarding the requirements charitable hospital organizations must meet under new section 501(r) of the Internal Revenue Code added by the ACA. Under section 501(r), charitable hospital organizations or entities seeking 501(c)(3) status face additional requirements to maintain their tax-exempt status. These requirements include conducting a community health needs assessment at least once every three years. The final regulations provide needed guidance regarding the potential effects on tax-exempt bonds in the event the charitable hospital organizations do not meet the requirements.

## **Voluntary Closing Agreement Program for 501(c)(3) Organizations**

The IRS announced a simplified process for issuers of 501(c)(3) bonds to request a closing agreement in situations where the borrower received prospective reinstatement after its tax-exempt status was automatically revoked for failure to file an annual return for three consecutive years. The closing agreement amount for each bond issue covered by an agreement is equal to \$500 for each calendar month or portion thereof in the period, starting with the month of revocation and ending in the month when the organization's exempt status was reinstated.

Ballard Spahr will host a webinar on Friday, February 27, from 12:00 p.m. to 1:00 p.m. ET, on the recent IRS developments affecting tax-exempt bond financed educational institutions, which will include a detailed discussion of the new management contract safe harbor. Register for this webinar [here](#).

The firm will also be hosting a webinar on recent health care developments on Thursday, April 16. Registration details will be distributed as soon as they are available.

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Attorneys in Ballard Spahr's Public Finance Department have participated in every kind of tax-exempt bond financing. These financings include bond issues for hospitals and health care institutions, as well as universities, colleges, and student housing. For more information, please contact Vicky Tsilas at 202.661.2283 or [tsilas@ballardspahr.com](mailto:tsilas@ballardspahr.com), or Linda B. Schakel at 202.661.2228 or [schakel@ballardspahr.com](mailto:schakel@ballardspahr.com).

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