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Tax-Exempt Advance Refunding of Taxable Bonds (Including BABs)? A Report from the Tax and Securities Law Institute.

Last week's NABL Tax and Securities Law Institute included a discussion featuring John Cross (Associate Tax Legislative Counsel – Treasury) and Vicky Tsilas (Chief Branch 5 — IRS General Counsel's Office) of whether tax-exempt bonds can be issued to advance refund taxable bonds, including build America bonds (BABs) despite the prohibition of tax-exempt advance refundings by the 2017 tax legislation. The prohibition, set forth in Internal Revenue Code (Code) section 149(d)(1), states: "Nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued to advance refund another bond." The Code provides that "[t]he term 'bond' includes any obligation." Code section 150(a)(1). Thus the question is whether a taxable bond is a "bond" as that term is used in the advance refunding prohibition. BABs are included in the question because interest on BABs is included in gross income under Code section §54AA(f)(1). So with this statutory backdrop, can tax-exempt bonds be issued to advance refund taxable bonds?

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The Public Finance Tax Blog

By Bob Eidnier on February 28, 2018

Squire Patton Boggs

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