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What Does “Control” Mean in the Context of Affiliated 501(c)(3) Organizations?

The IRS recently issued [Private Letter Ruling 201811009](#), which provides helpful insight into how the IRS construes the term “control” for purposes of determining whether two affiliated 501(c)(3) organizations are “related” for purposes of the definition of “refunding issue.”

The ruling involved a 501(c)(3) university (“Seller”) that sold its medical center to another 501(c)(3) organization (“Buyer”). The Buyer was operationally independent of the Seller, but the Seller could appoint 30% of the Buyer’s board and the Seller also had approval rights over certain major Buyer decisions, such as major transactions and changes to the mission of the Buyer. If the Buyer and the Seller were treated as related, the proposed bonds (“Proposed Bonds”) to be issued for the Buyer to finance the purchase of the Seller’s medical center would be treated as refunding bonds, and they therefore could not qualify as tax-exempt bonds. This was because the Seller had previously used part of the proceeds of prior bonds to finance the medical center, and those bonds had previously been advance refunded. As readers of this blog know, post-1985 qualified 501(c)(3) bonds could be advance refunded once and only once until tax-exempt advance refundings were repealed last year. Read below to see how the IRS tackled the analysis of control, which is still relevant even though tax-exempt advance refundings aren’t permitted anymore.

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The Public Finance Tax Blog

By Alexios Hadji on March 30, 2018

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