
IRS Notice 2019-39: Perpetuating the Gift of Targeted Bond Programs, but Creating Confusion about the Tax-Exempt Current Refunding of Build America Bonds.

To promote the provision of disaster relief and the development (or redevelopment) of economically distressed areas, Congress will at times enact targeted bond programs that authorize the issuance of specialized tax-exempt bonds. Tax-exempt targeted bond programs frequently contain both a cap on the amount of tax-exempt bonds that can be issued under the program and an expiration date. For example, in response to Hurricane Katrina, Congress permitted the issuance of tax-exempt Gulf Opportunity Zone Bonds, which were subject to an aggregate volume cap of about $14.8 billion and which had to be issued before January 1, 2012.

Where a tax-exempt targeted bond program features volume cap limitations or issuance deadlines (or both) and is silent about whether bonds issued under the program can be currently refunded on a tax-exempt basis, uncertainty might exist as to whether program bonds can be currently refunded by tax-exempt bonds issued after the expiration of the program and, if such refunding bonds can be issued, whether they require additional volume cap. The IRS has previously rendered guidance on specific targeted bond programs to address these questions. To achieve efficiency and uniformity in this guidance for existing and future tax-exempt targeted bond programs that are silent regarding refunding matters, the IRS yesterday released Notice 2019-39. This Notice sets forth helpful guidance on the tax-exempt current refunding of bonds issued under a targeted bond program, but it also creates unwarranted confusion regarding the tax-exempt current refunding of Build America Bonds. For more on both of these aspects of the Notice, read on.

Continue reading.

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