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IRS Sets Releases New Rules For Private Activity Municipal Bonds.

On November 10, 2021, the IRS released Rev. Proc. 2021-45 setting forth calendar year 2022 methodologies for establishing private activity bonds volume cap (state ceiling) as well as brokerage commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrows, such as those often used in housing and other community-oriented private activity bonds.

For calendar year 2022, the amounts used under § 146(d) of the Internal Revenue Code to calculate the state ceiling for the volume cap for private activity bonds is the greater of (1) \$110 multiplied by the State population, or (2) \$335,115,000. In addition, Rev. Proc. 2021-45 places limits on the issuance of agricultural bonds. For calendar year 2022, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is \$575,400.

Rev. Proc. 2021-45 also set forth safe harbor rules for brokerage commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow. For calendar year 2022, under § 1.148-5(e)(2)(iii)(B)(1), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) \$43,000, and (B) 0.2 percent of the computational base (as defined in § 1.148-5(e)(2)(iii)(B)(2)) or, if more, \$4,000; and (2) for any issue, the issuer does not treat more than \$122,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

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