Bond Case Briefs

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State Blue Sky Laws: Shedding Light on Exclusions from Municipal Bond Exemptions

We continue our series exploring the lack of uniformity – and sometimes lack of guidance – that makes it challenging to interpret state Blue Sky laws. Today's example addresses the exclusion from the use of the municipal issuer exemption if the securities being issued are paid from a non-governmental source.

Summary:

Some states exclude from the municipal exemption the registration of municipal securities that are paid from a non-governmental industrial or commercial enterprise, unless the payments and insured are guaranteed by a person whose securities are exempt from registration under certain other enumerated sections of the law.

Issue:

There is substantial disagreement among these states as to whether conduit 501(c)(3) bonds, student loan bonds and single family mortgage revenue bonds constitute bonds payable from revenues to be received from a non-governmental industrial or commercial enterprise.

Sub-Issue:

What is a non-governmental industrial or commercial enterprise? Most states do not include a formal definition, leaving practitioners having to interpret those state's laws with little or no guidance. One state that does define non-governmental industrial or commercial enterprise includes non-profit corporations in the definition, but another state excludes non-profit corporations within the definition of what is a non-governmental industrial or commercial enterprise. This is confusing to say the least – making one struggle to reconcile these polar opposite approaches.

Bottom line:

State opinions can sharply differ regarding exclusions from municipal bond exemptions. The lack of guidance and uniformity can make practicing in this area confusing, which is why it's key to rely on experienced consultants.

by Christopher Andreucci

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Harris Beach PLLC