

Bond Case Briefs

Municipal Finance Law Since 1971

Finding More Clarity in State Blue Sky Laws: Shedding Light on Exclusions from Municipal Bond Exemptions

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:

One state allows for the municipal exemption to apply to municipal securities that paid from revenues derived from a non-governmental industrial or commercial enterprise if the securities being offered obtain a rating high enough so as to not require any registration or notice filing. However, the guidance is ambiguous, which can cause differences in interpretation.

For example, in Washington, a regulation indicates that an exemption from registration for bonds payable from a non-governmental industrial or commercial enterprise is available if either:

- the security receives a rating of “AA” or better from S&P or an equivalent rating from Moody’s,
- the security is issued to fund a single-family mortgage program established and operated by a state housing finance agency and the security receives a rating of at least “A+” from S&P or an equivalent rating from Moody’s

The problem is that there is no guidance as to what constitutes an “equivalent” rating from Moody’s (or any other rating agency for that matter). Though it might seem obvious that a Moody’s rating of Aa2 would be an equivalent rating to an S&P rating of AA, the lack of formal guidance means that one is forced to make an assumption that Securities Division has not commented on; and if that assumption is incorrect, the issuance of the securities may be subject to an enforcement action.

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

June 8, 2022

Harris Beach PLLC

