Bond Case Briefs

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When Overburdening isn't a Burden: Squire Patton Boggs

Cindy Mog recently reacquainted us with abusive arbitrage devices, including the factors that evidence overburdening of the tax-exempt bond market (issuing bonds too early, issuing too many bonds, and issuing bonds with an excessive weighted average maturity) and factors that countervail what would otherwise constitute overburdening (bona fide cost underruns, bona fide need to finance extraordinary working capital items, and an issuer's long-term financial distress).

The IRS released a timely private letter ruling (PLR 202309014) on March 3 that analyzes the foregoing factors. This private letter ruling deals with whether an issue of long-term working capital (re)financing bonds was subject to the proceeds-spent-last rule and whether the issue overburdened the tax-exempt bond market. The IRS concluded that the issue was not subject to the proceeds-spent-last rule and did not overburden the tax-exempt bond market, because the issue refinanced extraordinary, nonrecurring working capital expenditures that were not covered by insurance or a reserve fund.

Perhaps if Cindy writes a post on tax-exempt advance refunding bonds, Congress will enact a law that restores them.

By Michael Cullers on March 16, 2023

The Public Finance Tax Blog

Squire Patton Boggs