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When does 10% PBU really mean 5% PBU? - Squire Patton Boggs

When the Internal Revenue Code ("IRC") says it does. (For those of you that want to remind yourselves of how a bill becomes a law, such as the IRC, see this video from Schoolhouse Rock).

As you may know, issuers of governmental-use bonds are generally permitted to use up to 10% of the tax-exempt bond proceeds of an issue for private business use ("PBU") before the tax-exempt bonds run the risk of being characterized as taxable private-activity bonds ("PABs"). If the PBU exceeds 10%, then the issuer will also need to determine whether the private security or payment ("Private Payment") test is met in order to determine if the bonds are PABs. (Remember, meeting the 10% PBU and Private Payment tests is generally a bad thing). However, because nothing is simple in the tax world, there is a second PBU/Private Payment threshold that you may not be as familiar with – the 5% unrelated or disproportionate test.[1]

The first step in applying the 5% unrelated/disproportionate test is to determine if the identified PBU is related to a governmental use.

Continue reading.

By Cynthia Mog on February 20, 2024

The Public Finance Tax Blog

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