MAY 24, 2019 HAWKINS DELAFIELD & WOOD LLP

HAWKINS ADVISORY

CURRENT REFUNDINGS FOR CERTAIN TARGETED STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENT BOND PROGRAMS

On May 22, 2019, the Internal Revenue Service released Notice 2019-39 (the "Notice"). The Notice provides guidance on the issuance of tax-exempt state and local bonds and tax-exempt Indian tribal government bonds in current refunding issues (as defined in the Internal Revenue Code (the "Code")) to refund (directly or indirectly in a series of current refunding issues) original bonds issued pursuant to targeted bond programs ("Targeted Bond Programs"). Targeted Bond Programs often involve incentives to provide disaster relief or to promote economic development or redevelopment in underserved areas in targeted circumstances. Statutory provisions authorizing Targeted Bond Programs do not address the permissibility of issuing current refunding bonds; therefore, questions have arisen regarding whether current refunding issues of bonds issued under Targeted Bond Programs ("Qualified Bonds") may be issued without the need for additional volume cap and whether such current refunding issues may be issued after an issuance time deadline for the original bonds.

Examples of Targeted Bond Programs include the following:

1) certain tax-exempt exempt facility bonds and qualified mortgage bonds known as "GO Zone Bonds" for a defined portion of the Hurricane Katrina disaster area known as the "Gulf Opportunity Zone;"
2) tax-exempt bonds issued under the Heartland Disaster Tax Relief Act of 2008 to provide relief in the Midwestern and Hurricane Ike Disaster Areas;
3) certain tax-exempt exempt facility bonds known as "Recovery Zone Facility Bonds" issued for projects in certain defined "Recovery Zones;"
4) Tribal Economic Development Bonds issued by Indian tribal governments to finance eligible projects on Indian reservations under program qualification parameters comparable to those that apply to state and local governments under section 103; and
5) certain tax exempt bonds known as New York Liberty Bonds issued to provide tax benefits for the area of New York City damaged or affected by the terrorist attack on September 11, 2001.

The Notice provides that in order for any current refunding issue the proceeds of which are used (directly or indirectly in a series of current refunding issues) to refund original Qualified Bonds to qualify as an issue of tax-exempt Qualified Bonds, without regard to any bond volume cap or issuance time deadline, the following requirements must be met:

(1) The original Qualified Bonds were issued with any required bond volume cap allocation and before any applicable time deadline for issuance of the original Qualified Bonds;

(2) Except as provided herein, the issue price of the current refunding issue is no greater than the outstanding stated principal amount of the refunded bonds of the prior Qualified Bonds (the refunded bonds). For refunded bonds originally issued with more than a de minimis amount of original issue discount or premium, the present value of the refunded bonds must be used in lieu of the outstanding stated principal amount to determine the maximum issue price of the current refunding issue that may qualify as tax-exempt Qualified Bonds; and

(3) The current refunding issue meets all applicable requirements for the issuance of Qualified Bonds (excluding any bond volume cap or original issuance time deadline), including, without limitation, the requirements under section 149(g) applicable to hedge bonds, and, in the case of private activity bonds to which section 147(b) applies, that the average bond maturity be no longer than 120% of the average reasonably expected economic life of the facilities financed or refinanced with the net proceeds of such issue.

The Notice supersedes previously published guidance and applies to current refunding issues that are issued on or after May 22, 2019. The Notice also provides that issuers may apply this guidance to current refunding issues issued before May 22, 2019. A copy of the Notice can be found at the following web address: https://www.irs.gov/pub/irs-drop/n-19-39.pdf

Please contact a member of the Hawkins Delafield & Wood LLP Tax Department if you have any questions about the Notice.

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[1] Note: for Original Bonds issued with more than a de minimis amount of original issue discount, this rule may require the contribution of an amount equal to the difference between the redemption price of the Original Bonds and the present value thereof to effect the current refunding.

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