HAWKINS ADVISORY

TEMPORARY REGULATORY RELIEF MEASURES RE: TELECONFERENCE TEFRA PUBLIC HEARINGS AND ALLOWING GOVERNMENTAL ISSUERS TO PURCHASE AND HOLD CERTAIN OF THEIR OWN TAX-EXEMPT OBLIGATIONS

On May 4, 2020, Treasury and the Internal Revenue Service released guidance to address two of the problems arising from the COVID 19 pandemic. Rev. Proc. 2020-21 (the "Rev. Proc.") sets forth guidelines for holding TEFRA hearings by teleconference without requiring the physical presence of issuer officials or members of the public. Notice 2020-25 (the "Notice") allows state and local governmental issuers to purchase and hold their own qualified tender bonds or commercial paper without such obligations being considered extinguished for federal income tax purposes.

Rev. Proc. 2020-21 - Temporary TEFRA Public Hearing Guidelines

Under § 147(f) of the Internal Revenue Code (the "Code), TEFRA hearings provide interested individuals with the opportunity to express their views, orally or in writing, on the proposed issue of bonds and the location and nature of the proposed project to be financed. Under federal tax law, the hearing must be held in a location that, based on the facts and circumstances, is convenient for residents of the approving governmental unit to attend. Under the current circumstances, in-person hearings are not "convenient" for either issuers or interested members of the public, as social distancing and other sheltering-in-place mandates have been implemented in an effort to address the effects of the COVID-19 pandemic.

The Rev. Proc. states that during the period beginning on May 4, 2020 and ending December 31, 2020, a hearing held by teleconference that is accessible to the residents of the approving governmental unit by calling **a toll-free telephone number** will be treated as complying with the location requirements of the Code and applicable Treasury Regulations. In addition, if a toll-free number for the hearing has been established, governmental units may offer additional access to the hearing by other telephone numbers or by internet-based meeting technology.

While the Rev. Proc. is effective May 4, 2020, issuers are permitted to apply these guidelines to public hearings held telephonically before May 4, 2020, in response to the COVID-19 pandemic.

Issuers that may have properly given notice of a TEFRA hearing on or before May 11, 2020, which notice did not contemplate a teleconference, are permitted to hold a teleconference hearing, as described above, if the toll-free telephone number for such hearing is provided at least 48 hours prior to the hearing by a governmental website posting that meets the requirements of § 1.147(f)-1(d)(4)(iii).

Notice 2020-25 - Temporary Relief for Governmental Issuers Purchasing and Holding Certain of Their Own Tax-Exempt Debt

The COVID 19 pandemic has, among other things, significantly disrupted the financial markets. In recognition of the need for market liquidity and stability, the Notice temporarily expands the circumstances and time periods during which governmental issuers may purchase and hold (on an interim basis) their own tax-exempt qualified tender bonds and tax-exempt commercial paper without such obligations being treated as reissued or retired for federal income tax purposes. This guidance applies only for provisions of the Code applicable to tax-exempt bonds; i.e., § 103 and §§ 141 through 150 of the Code.

Effective May 4, 2020, and retroactive to purchases made on or after January 1, 2020, the Notice allows a governmental issuer to purchase and hold its own tax-exempt qualified tender bond or tax-exempt commercial paper during calendar year 2020 (the "permitted holding period"), without causing such obligation to be considered reissued or retired, provided that the bond is held no later than December 31, 2020. Conduit borrowers are not subject to such limitations in respect of their bonds, and consequently are not affected by this provision.

As the purchased bond is not considered to have been extinguished during the permitted holding period, a governmental issuer may refund the purchased bond with a refunding bond, tender the purchased bond for purchase in a qualified tender right in its capacity as a bondholder, or otherwise resell the purchased bond during this permitted holding period. In addition, the Notice provides that refunding of tax-exempt commercial paper, including commercial paper that was purchased at maturity, with tax-exempt commercial paper during the permitted holding period will be treated as part of the same issue as the purchased tax-exempt commercial paper.

The Notice modifies and supplements Notice 2008-41 (regarding operating rules for purchases pursuant to a qualified tender right) by the 90-day period during which qualified tender bonds may be held without causing such bonds to be extinguished is extended to 180 days with respect to any purchase by or on behalf of a governmental issuer during the permitted holding period.

Certain proposed Treasury Regulations addressing the reissuance of tax-exempt obligations are set forth in § 1.150-3. The Notice clarifies that issuers seeking to apply the proposed regulations to a bond may apply § 1.150-3 (c)(2) of the proposed regulations by extending the 90-day period referenced therein to 180 days, provided that the acquisition of the qualified tender bond occurs within the permitted holding period.

The Notice further provides that qualified hedges with respect to bonds will not be deemed terminated as a result of the governmental issuer's holding of the hedged bonds during the permitted periods described above.

The Notice cautions that "[e]xcept with respect to the administrative relief expressly provided in this notice, no inference should be drawn from this notice regarding any other federal tax issues affecting tax-exempt bonds or any other security. In addition, this notice is not intended to address any other federal tax issue implicated in the transactions described in this notice allowing governmental issuers to purchase their own tax-exempt bonds on a temporary basis in prescribed circumstances."

Any questions regarding the foregoing may be directed to a member of the Hawkins Delafield & Wood LLP Tax Department.

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