

TAX-EXEMPT BOND COMPLIANCE

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I. INTRODUCTION

This paper is a summary of basic tax law principles relating to tax-exempt bond compliance for colleges and universities. It is adapted from the Ropes & Gray manual entitled *Post-Issuance Bond Compliance: A Guide to Practical Strategies and Procedures for 501(c)(3) Borrowers*. Like the Ropes & Gray manual, **this summary focuses on 501(c)(3) bonds**, not governmental bonds, and in some respects the rules for governmental bonds and 501(c)(3) bonds are different. Nevertheless, there are more similarities than differences between the two types of bonds, and a majority of the summary should be relevant for public institutions whose bonds are of the governmental rather than 501(c)(3) variety.

The following briefly outlines the most important differences between governmental and 501(c)(3) bonds from a post-issuance compliance standpoint:

- Use by a 501(c)(3) institution. For 501(c)(3) bonds, private business use does not arise from the use of bond-financed property by a 501(c)(3) institution (unless that use is considered an unrelated trade or business for the institution). For governmental bonds, however, use of bond-financed property by a 501(c)(3) institution, whether or not an unrelated trade or business, is considered private business use.
- Limit on amount of private business use. For 501(c)(3) bonds, in general, there is a 5% limit on private business use in a given bond issue. For governmental bonds, in general, the limit is 10% of the bond issue, although a 5% limit applies to use that is considered unrelated to any government use of bond proceeds, and use that is considered disproportionate to government use of bond proceeds, as described more specifically in I.R.C. section 141(b)(3). (As with 501(c)(3) bonds, a 25% limit on private business use and the \$15 million effective cap on private business use can apply in some circumstances, as explained in the summary.)
- Costs of issuance. For 501(c)(3) bonds, bond proceeds spent on issuance costs (including underwriter's discount) are treated as subject to 100% private business use. For governmental bonds, they are treated as common costs, and therefore generally have a private business use percentage equal to the weighted average private business use percentage of the projects financed by the issue.
- Reserve fund. For 501(c)(3) bonds, bond proceeds deposited into a reserve fund for the issue are excluded from the calculation of private business use; that is, they are not taken into account in either the numerator or denominator of the private business use fraction.

Tax Policy And Administration Improvements For More Effective Tax Exempt Bond Oversight

J Elliott



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