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IRS Compliance Check on Governmental Bond Financings & Implementation of Post-Issuance Compliance Procedures

On January 28, 2009, the Internal Revenue Service Tax-Exempt Bond Office initiated a project to evaluate the post-issuance and record retention policies of governmental issuers relating to their tax-exempt bonds. Compliance check questionnaires were sent to 200 governmental entities that had issued bonds during calendar year 2005. Governmental entities have up to 90 days to respond.

In order to measure the post-issuance compliance practices of the issuers of governmental bonds, the questionnaire makes inquiry regarding the post-issuance record keeping practices of governmental issuers with sections focusing on identification of personnel with responsibility for such record keeping, investments and arbitrage compliance, tracking of bond proceed expenditures and of assets financed with bond proceeds, and monitoring of private business use of bond-financed facilities. A theme that runs throughout the questionnaire is whether an issuer has in place written procedures that ensure the maintenance of the various records discussed in the questionnaire.

The questionnaire is the latest initiative in the IRS's on-going efforts to make issuers aware of their obligations under federal income tax law to maintain records and have in place monitoring procedures that enable an issuer to demonstrate the on-going compliance of its tax-exempt debt with the requirements applicable for the interest payable on the debt to attain and maintain its tax-exempt status for federal income tax purposes.

What You Should Do Now

Whether or not a governmental issuer has received a questionnaire, Venable strongly recommends that governmental issuers move promptly to adopt a written statement of procedures and responsibilities that will supplement the issuer's historical use of its tax certificates as a guide to monitor tax issues relating to outstanding tax-exempt debt. Venable's Public Finance Group has developed a basic model of procedures which can be customized for each issuer. Venable's Public Finance Group has also prepared a tax diligence questionnaire that an issuer can use to obtain information from its departments, agencies and other users of the tax-exempt financed facilities and a spreadsheet to monitor post-issuance facility usage.

For additional information, please feel free to contact any of the attorneys in Venable's [Public Finance Group](#).

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