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## Bonds

### **IRS Private Activity Rules Aim to Ease Public Approval Process (1)**

The IRS issued final regulations streamlining the public approval process for tax-exempt private activity bonds, in an attempt to reduce the burdens on issuers.

The regulations (T.D. 9845) released Dec. 28 “generally would streamline and simplify the Existing Regulations in various respects to reduce the administrative burdens of meeting the statutory public approval requirement,” the Internal Revenue Service said.

Private activity bonds are municipal securities where the proceeds are used to finance the project of a private user. The interest on the bonds is exempt from federal income tax if certain requirements are met.

The final IRS regulations largely reflect proposed regulations (REG-128841-07) released Sept. 27, 2017. The regulations include special rules for public approval of mortgage revenue bonds, qualified student loan bonds, and qualified tax code Section 501(c)(3) bonds issued for pooled financings.

The National Council of State Housing Agencies said it appreciates that the IRS has recognized the “unique nature” of mortgage revenue bonds, which fund state housing finance agencies’ affordable homeownership programs, and exempted them from certain requirements.

“The final rule will allow HFAs to more efficiently utilize their bond resources while still allowing for robust public input in the bond issuance process,” the group told Bloomberg Tax in an email Dec. 28.

State and local governments that issue tax-exempt private activity bonds are generally required to obtain public approval under tax code Section 147(f) before issuing the bonds.

**‘Mixed Bag’** In the 2017 proposed regulations the IRS said it was aware that advances in technology and electronic communication may facilitate more streamlined procedures and that its rules sought to incorporate those improvements.

On this front, the final rules are a “mixed bag” for issuers, said Charles A. Samuels, a member at Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., who submitted a letter on the proposed regulations on behalf of the National Association of Health and Educational Facilities Finance Authorities.

The new policies improve upon the status quo but they “didn’t go as far as many people would like,” Samuels said.

The IRS in several instances said it couldn’t take certain actions due to constraints in the law. Had the agency determined it had more flexibility, it could have done more to optimize technology and minimize the waste of state and local resources, Samuels told Bloomberg Tax.

**Comments Adopted, Rejected** The IRS received a handful of comments on its 2017 proposal. It adopted some suggestions while rejecting others.

The regulations generally provide that a qualifying elected representative of the state or local government issuer must approve an exempt private activity bond issue following a public hearing for which there was reasonable public notice.

The IRS proposal said 14 days was a reasonable notice period, but the agency reduced that period to seven days in its final rule. The IRS received comments that technological advances that have sped the spread of information to the public warranted a shorter notice period.

The agency rejected a request that it expand the definition of a qualifying elected representative to include individuals appointed by the elected official.

The IRS also rejected recommendations to allow issuers to cancel hearings if they don’t receive timely requests from members of the public to participate, and to hold public hearings via teleconference or webinar.

“A high percentage of these hearings occur with nobody showing up. And so a room is rented, facilities are set up, and nobody shows up,” Samuels said. Denying issuers the ability to cancel hearings can result in a huge waste of resources, he said.

Allowing issuers to hold hearings via webinar or teleconference could make the public hearings more accessible to people who can’t attend in person, Samuels added.

The IRS argued the opposite saying those technologies can’t “replace a conventional public hearing conducted in-person because they are not sufficiently reliable, publicly available, susceptible to public response, or uniform in their features and operation.”

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