

Public Finance Alert: Post Issuance Compliance and Reporting for Qualified 501(c)(3) Bonds

3/20/2008

There have been two major developments in the tax exempt bond area warranting your attention and follow-up action. The first involves a Compliance Check Questionnaire that was randomly sent out in August 2007 to 209 Section 501(c)(3) organizations with tax-exempt debt outstanding. (See Compliance Check Questionnaire.) This initiative signaled the IRS' concern with the compliance practices of nonprofits.

The second, announced in December 2007, requires expanded Form 990 disclosure for tax-exempt bond issues on a new Schedule K beginning in 2009. Although this may seem a long way off, it is not too early to begin the development of practices and procedures to establish and maintain compliance with the federal tax-exempt bond rules for each of your bond issues.

Based upon our review of the questionnaire and the new Schedule K, a compliant system will:

- formally adopt record-retention and record-keeping practices that comport with IRS regulations;
- establish written monitoring procedures to ensure compliance;
- assign officials responsibility for compliance with bond tax-exemption requirements;
- incorporate education and training practices;
- maintain key organizational documents;
- assemble and maintain expenditure allocation documentation;
- accumulate and properly maintain investment records;
- monitor arbitrage and rebate compliance; and
- monitor private use and unrelated trade or business activities.

We have worked with Section 501(c)(3) organizations who are under audit or have received the Compliance Check Questionnaire, and there are steps you can take to be better prepared in this new enforcement environment. We recommend starting now to develop the systems you will need in place by 2009 to generate the information required by the new Schedule K and avoid adverse impact on your operations and staffing levels. (See Schedule K.)

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To discuss a proposed action plan or any of these requirements in further detail, you are invited to call your regular contact at Mintz Levin or any of the following members of the Public Finance Section.

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