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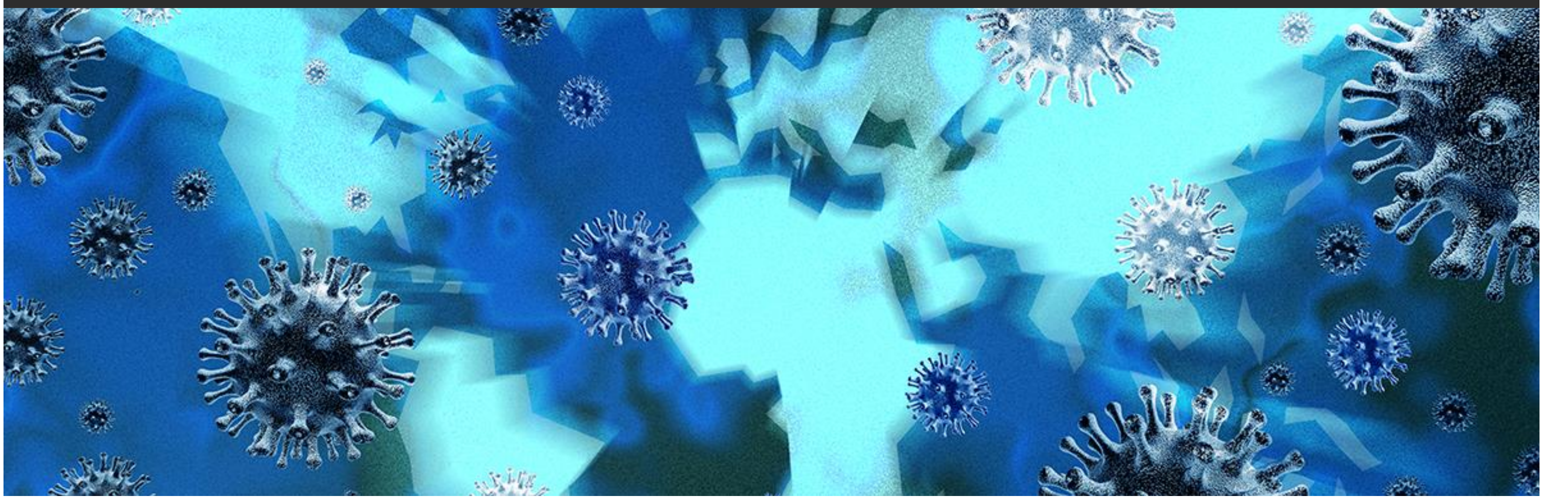
Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019



May 2020

Issuers of Tax-Exempt Bonds Get Additional Tax Relief from Impact of COVID-19

With state and local government issuers (Issuers) of tax-exempt obligations facing numerous issues relating to their obligations resulting from the Coronavirus Disease 2019 (COVID-19), industry organizations have sought guidance and relief on these issues. On May 4, 2020, the IRS responded to two of these requests. The first, Revenue Procedure 2020-21, favorably addresses whether an Issuer may hold a public hearing by teleconference. The second, Notice 2020-25, provides additional relief to Issuers that purchase certain of their obligations and, due to current economic conditions, hold that obligation for a period of time longer than permitted under current guidance.

Public Hearing-Revenue Procedure 2020-21

Background

Issuers of certain obligations issued to benefit nongovernmental borrowers are required to meet public hearing and approval (TEFRA) requirements before issuing those obligations for interest paid on those obligations to be tax exempt. The public hearing and approval requirements generally require providing notice to the public of the hearing (Notice), holding a public hearing (Hearing) in a place that is reasonably convenient to, based on the facts and circumstances, residents of the approving governmental unit, and receiving governmental approval by the appropriate governmental official (Approval). In light of various governmental orders encouraging or mandating citizens to stay at home, Issuers have questioned whether the Hearing had to be in person or whether it could be held by teleconference. Revenue Procedure 2020-21, issued on May 4, 2020, provides clarity on this point.

Relief

Under the Revenue Procedure, the Hearing may be held by teleconference if residents of the governmental unit providing Approval may call into a Hearing through a toll-free phone number (and if all other requirements for the Notice, Hearing, and Approval are met). The Issuer may provide the residents with other methods to access the Hearing, such as internet meeting technology, in addition to the toll-free number. If an Issuer posts the Notice before May 11, 2020 without provision for a toll-free number, it is permitted to notify the public of the toll-free number through a supplemental notice on the Issuer's website, in accordance with the general rules for posting Notice on the website – provided that supplemental notice is given at least 48 hours prior to the Hearing.

The relief provided by the Revenue Procedure applies to Hearings held between May 4, 2020 and December 31, 2020, however, it may be applied to any Hearing that was held by teleconference due to COVID-19 before May 4, 2020.

Temporary Holding by Issuer of its Own Obligations-Notice 2020-25

Background

Certain types of bonds, qualified tender bonds, provide a tender right under which the bond may be purchased by or on behalf of the Issuer, with the Issuer or its agent subsequently remarketing the bonds. There may be a period between the purchase and remarketing of the bond when the Issuer is holding its own obligation, which may cause the debt to be viewed as extinguished under general tax rules. Because of that, the IRS and the Treasury have provided guidance and proposed guidance that, for the tax-exempt bond rules, allow Issuers to purchase and hold their own qualified tender bonds for a 90-day period (as provided in most recent guidance) while using best efforts to resell those bonds without causing those bonds to be treated as retired and then reissued upon remarketing. *See* Notice 2008-41, 2008-15 I.R.B. 742, and proposed regulations regarding reissuance (83 F.R 67701, December 31, 2018) which are discussed in a prior GT Alert.

A commercial paper program is a program for short-term lending in which the obligation is refinanced with – or rolled into— a new short-term obligation under the same program. Commercial paper with a maturity of not more than 270 days that is issued under the same commercial paper program may be treated as single issue. As with qualified tender bonds, an Issuer of commercial paper may have difficulty due to current economic conditions rolling that commercial paper.

With the current liquidity and stability issues that the market is facing, Issuers may be pressed for financial reasons to hold their obligations for periods beyond those permitted under the current guidance.

Relief

Only for purposes of Code Section 103 and 141-150, a qualified tender bond or commercial paper that an Issuer purchases will be treated as continuing in effect, without a reissuance or retirement, if the Issuer purchases and holds that obligation within the Holding Period, which is defined as calendar year 2020. For example, a qualified tender bond purchased on January 1, 2020, and remarketed on December 31, 2020, will not be treated as retired and reissued as a result of that purchase. For commercial paper, including the purchase of the paper at maturity, the paper may be refinanced with commercial paper during calendar year 2020, and will be treated as part of the same issue as the purchased commercial paper. For this purpose, commercial paper means tax-exempt bonds issued pursuant to the same commercial paper program that are treated as single issue under the Regulations section 1.150-(c)(4)(ii).

Other relief that the Notice provides is:

- As noted above, for qualified tender bonds, existing guidance permits the Issuer is to hold those bonds for a period of 90 days provided it uses best efforts to remarket those bonds. The Notice extends this period to 180 days as long as the purchase pursuant to a qualified tender right occurs at any point during the Holding Period. For example, if the Issuer purchase its qualified tender bond on December 31, 2020, the last day of the Holding Period, it would be permitted to hold that bond for 180 days without causing a retirement of that bond as long as it otherwise meets existing guidance (including using best efforts to remarket the bond); whereas that same bond purchased on January 1, 2021 could (without further guidance) be held for only 90 days without causing a retirement.
- For bonds that are hedged with a qualified hedge, a termination of the bonds may cause a termination of the hedge. The Notice provides that a qualified hedge with respect to bonds is not deemed terminated because of the Issuer holding its obligations during the periods permitted in the Notice.

The Notice cautions that the relief it provides is for only the purposes described therein.

The Notice is effective on May 4, 2020, but may be applied to purchases on or after January 1, 2020.

For more information and updates on the developing situation, visit GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019.

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