Expanded Temporary Rule Allowing Governmental Issuers to Purchase Certain of Their Own Tax-Exempt Bonds

Notice 2020-25

SECTION 1. PURPOSE

This notice temporarily expands the circumstances and time periods in which a tax-exempt bond that is purchased by its state or local governmental issuer is treated as continuing in effect without resulting in a reissuance or retirement of the purchased tax-exempt bond solely for purposes of § 103 and §§ 141 through 150 of the Internal Revenue Code (Code).

SECTION 2. BACKGROUND

Notice 2008-41, 2008-15 I.R.B. 742, and proposed regulations regarding reissuance of state or local bonds (83 F.R. 67701, December 31, 2018) (proposed regulations) provide rules that allow governmental issuers to purchase their own tax-exempt qualified tender bonds on a temporary basis without resulting in a reissuance or retirement of the purchased tax-exempt bonds solely for purposes of § 103 and §§ 141 to 150. Pursuant to the preamble to the proposed regulations, issuers may apply proposed § 1.150-3 to events and actions taken with respect to bonds that occur before the date that is 90 days after the date of publication of the Treasury decision adopting those rules as final regulations in the Federal Register. 83 F.R. at 67703.

In recognition of the need for liquidity and stability in the markets, including the short-term tax-exempt bond market, during the current period of economic disruption, this notice provides expanded time periods during which governmental issuers may purchase and hold their own tax-exempt qualified tender bonds and tax-exempt commercial paper. For purposes of this notice, the term "tax-exempt commercial paper" means tax-exempt bonds issued pursuant to the same commercial paper program that are treated as a single issue under § 1.150-1(c)(4)(ii) of the Income Tax Regulations.

SECTION 3. SCOPE AND APPLICATION

3.1. Permitted holding period. For purposes of this notice, the term “permitted holding period” means calendar year 2020.

3.2. Expanded temporary rule allowing governmental issuers to purchase their own tax-exempt bonds. Solely for purposes of § 103 and §§ 141 through 150, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) will treat a tax-exempt qualified tender bond or tax-exempt commercial paper that is purchased by its governmental issuer on a temporary basis as continuing in effect without resulting in a reissuance or retirement of the purchased tax-exempt bond if the governmental issuer purchases the tax-exempt qualified tender bond or tax-exempt commercial paper during the permitted holding period and holds the bond no later than the end of the permitted holding period.

Thus, recognizing that the purchased bond is treated as continuing in effect without resulting in a reissuance or retirement of that bond solely for purposes of § 103 and §§ 141 through 150 during the permitted holding period, the governmental issuer may refund the purchased bond with a refunding bond, tender the purchased bond for purchase in a qualified tender right in its capacity as a bondholder, or otherwise resell the purchased bond during this permitted holding period. Further, in the case of the purchase of any particular obligation of tax-exempt commercial paper, including a purchase of such a particular obligation at maturity, a refinancing of that purchased tax-exempt commercial paper with tax-exempt commercial paper during the permitted holding period will be treated as part of the same issue as the issue of which the purchased tax-exempt commercial paper was a part.

3.3. Extension of purchase date for the 180-day holding period. Section 3.2(3)(b) of Notice 2008-41 (regarding operating rules for purchases pursuant to a qualified tender right) is supplemented to provide that the 90-day period is extended to 180 days with respect to any purchase by or on behalf of a governmental issuer pursuant to a qualified tender right as long as such purchase occurs during the permitted holding period.

3.4. No terminations of qualified hedges. For arbitrage purposes under § 148, a qualified hedge with respect to bonds is not deemed terminated under § 1.148-4(h) as a result of the governmental issuer's holding of the hedged bonds during the periods described in sections 3.2 and 3.3 of this notice.

3.5. Coordination with proposed reissuance regulations. Issuers that apply the proposed regulations to a bond may apply sections 3.2 and 3.4 of this notice to that bond. In addition, issuers that apply the proposed regulations to a bond may apply § 1.150-3(c)(2) of the proposed regulations by extending the 90-day period referenced therein to 180 days, provided that the acquisition of the qualified tender bond occurs within the permitted holding period.

3.6. No inferences on law. This notice provides administrative relief in furtherance of public policy to promote liquidity and stability in the short-term tax-exempt bond market. Except with respect to the administrative relief expressly provided in this notice, no inference should be drawn from this notice regarding any other Federal tax issues affecting tax-exempt bonds or any other security. In addition, this notice is not intended to address any other Federal tax issue implicated in the transactions described in this notice allowing governmental issuers to purchase their own tax-exempt bonds on a temporary basis in prescribed circumstances.

SECTION 4. EFFECT ON OTHER DOCUMENTS

This notice modifies and supplements Notice 2008-41.

SECTION 5. EFFECTIVE DATE

This notice is effective May 4, 2020. Issuers may apply this notice retroactively to purchases on or after January 1, 2020.

SECTION 6. DRAFTING INFORMATION

The principal authors of this notice are Johanna Som de Cerff and Zoran Stojanovic of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this notice, contact Mr. Stojanovic at (202) 317-6980 (not a toll-free call).