

# PUBLIC FINANCE LAW

## *Update*

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

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## Internal Revenue Service: Post-Issuance Compliance

**October 8, 2008**

The Internal Revenue Service has recently increased its scrutiny of whether tax-exempt bond issuers and borrowers properly monitor their compliance with federal tax laws following the issuance of tax-exempt bonds. In connection with this post-issuance compliance initiative, the IRS plans to distribute a tax compliance questionnaire to between 200 and 500 state and local governments in the coming months. The questionnaire is designed to assess several aspects of post-issuance compliance knowledge and practices. The IRS has yet to release a copy of the questionnaire, but it has indicated that the questionnaire will be similar in form and content to a questionnaire that was sent to certain nonprofit organizations last fall. We have attached to this letter a copy of the nonprofit questionnaire and the IRS cover letter that accompanied it.

As with the nonprofit questionnaire, the state and local government questionnaire is likely to consist mostly of yes/no and multiple choice questions, covering five different areas of post-issuance compliance:

- general post-issuance compliance
  - do you have written procedures in place regarding post-issuance compliance?
  - have you identified specific individuals to be responsible for post-issuance compliance?
- general record keeping
  - what records do you keep?
  - how long do you keep them?
- investments and arbitrage compliance
  - do you monitor investments and earnings on bond proceeds?
  - do you compute any rebate owed to the IRS?
- expenditures and assets
  - do you allocate the bond proceeds to expenditures?
- private business use
  - do you monitor the ownership and disposition of bond financed property?
  - do you monitor operating, management and lease arrangements with respect to bond financed property?

Although the IRS has indicated that it will use the information obtained from the questionnaire to develop a profile of post-issuance tax compliance by state and local governmental borrowers, it is possible that a state or local government's responses to the questionnaire will dictate whether the IRS will seek further information or possibly initiate an audit. Accordingly, if you receive a Questionnaire from the IRS, we encourage you to contact qualified bond counsel to obtain assistance in properly and adequately addressing the inquiry.

Whether or not you receive a questionnaire, given the IRS's increased focus on post-issuance compliance, we strongly encourage you to take this opportunity to review and refine your post-issuance compliance procedures. The IRS has indicated that it recognizes that bond issuers and borrowers vary widely with respect to their size, their resources and the number and complexity of their bond transactions, and that there is not a one-size-fits-all set of procedures. Nonetheless, the IRS's new initiative makes clear that the IRS expects state and local governments to take seriously their post-issuance compliance obligations. That likely means having in place written compliance policies and procedures and identifying an individual or individual responsible for the oversight of various aspects of compliance.

If you have any questions about post-issuance compliance issues you may contact any of the individuals listed below.

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