

Table of Contents

CHAPTER 1

General Explanation of Tax-Exempt Bonds	1
1.01 Overview	1
1.02 Economics of Tax-Exempt Bonds	2
1.03 The Players	12
1.04 How to Choose a Bond Financing Structure	13
1.05 Sources and Uses of Cash	16
1.06 Closing Tax-Exempt Bond Transactions: A Chronology	17
1.07 Property Compliance	19
1.08 Rental Assistance Demonstration Program	26
1.09 ‘Recycled’ Bonds	27
1.10 Indian Tribal Bonds	28
1.11 Surge in Rental Housing Bonds	28

CHAPTER 2

Types of Tax-Exempt Bonds and Qualifying Developments	31
2.01 Private Activity Bonds	31
2.02 Exempt Facility Bonds	33
2.03 Choosing an Issuer of Multifamily Housing Revenue Bonds	45
2.04 Qualified IRC Section 501(c)(3) Bond	48
2.05 Promise Zones, Choice Neighborhoods and other programs	53
2.06 Consequences of Disregarding the Qualified Private Activity Bond Rules	54
2.07 Suspension of Requirements for Qualified Residential Rental Developments Providing Emergency Housing	54
2.08 Change in Veterans Housing’s Bond Financing Eligibility	55

CHAPTER 3

Technical Income Tax Aspects of Tax-Exempt Bonds	57
3.01 Introduction	57
3.02 Private Business Use Test	58

3.03 Private Loan Financing Test	62
3.04 Refunding Issues and Private Activity Bonds	62
3.05 Safe Harbor for Property Converted to Non-Output Use	63
3.06 Proposed Measurement and Allocation Rules	64
3.07 Consequences of Not Adhering to Private Activity Bond Rules	64
3.08 Volume Cap	64
3.09 Registration Requirement	73
3.10 Federally Guaranteed Bonds, Not Tax-Exempt Rule	74
3.11 Tax-Exemption Must be Specifically Derived	75
3.12 Advance Refunding of Bonds and Redemptions	75
3.13 Information Reporting	76
3.14 Treatment of Pooled Financing Bonds	78
3.15 Non-Substantial User Requirement	80
3.16 Public Approval Requirement (TEFRA Hearing)	80
3.17 Limitations on Issuance Costs	81
3.18 Economic Life Limitations	81
3.19 Adverse Determinations	83
3.20 Reissuance of Tax-Exempt Bonds	83
3.21 Voluntary Closing Agreement Program	84

CHAPTER 4

Arbitrage Bonds 87

4.01 Overview	87
4.02 Effective Dates and Related Elections	87
4.03 General Arbitrage Bond Rules and Definitions	87
4.04 Arbitrage Yield Restriction Rules	89
4.05 Issuer's Reasonable Expectations	90
4.06 Exceptions to Arbitrage Yield Restriction Rules	91
4.07 Arbitrage Rebate Requirements	94
4.08 Spending Exceptions	95
4.09 Computation of Future Value of a Payment or Receipt	101

4.10 Yield on a Bond Issue	103
4.11 Anti-Abuse Rules and the Authority of the IRS	104
4.12 Arbitrage Rules for Refunding Issues	105
4.13 Negative Arbitrage Bond Transactions	106

CHAPTER 5

Combining Tax-Exempt Housing Bonds with Tax Credits 109

5.01 Introduction	109
5.02 Qualifying for Low-Income Housing Tax Credits	109
5.03 Depreciation for Tax-Exempt Use Property	126
5.04 Sample List of Closing Documents for LIHTC Bond Transactions	127

CHAPTER 6

Use of Interest Rate Hedging Instruments on Multifamily Transactions 131

6.01 Background	131
6.02 Interest Rate Caps	131
6.03 Fannie Mae Interest Rate Cap Criteria	132
6.04 Freddie Mac's Interest Rate Cap Requirements	135
6.05 Interest Rate Swaps	138
6.06 Swap Risks	139
6.07 Fannie Mae Interest Rate Swap Requirements	141
6.08 Freddie Mac Interest Rate Swap Requirements	143
6.09 Documentation	144

APPENDIX A

Internal Revenue Code Sections 147

Internal Revenue Code Section 42(h) — Limitation on aggregate credit allowable with respect to projects located in a State	148
Internal Revenue Code Section 103 — Interest on state and local bonds	157
Internal Revenue Code Section 141 — Private activity bond; qualified bond	188
Internal Revenue Code Section 142 — Exempt facility bond	193

§145. Qualified 501(c)(3) bond	217
§146. Volume cap	220
§147. Other requirements applicable to certain private activity bonds	226
§501. Exemption from tax on corporations, certain trusts, etc.	233

Tax-Exempt Bonds

IRS Letter, Compliance Check Questionnaire for Exempt Organizations on Post-Issue Bond Compliance, Record Retention	254
---	-----

Tax-Exempt Bond Financings Compliance Check Questionnaire	257
---	-----

APPENDIX B

Treasury Regulations 263

§1.103–1 Interest upon obligations of a State, territory, etc.	265
--	-----

§5f.103–1 Obligations issued after December 31, 1982, required to be in registered form	265
---	-----

§1.103–2 Dividends from shares and stock of Federal agencies or instrumentalities	267
---	-----

§1.103–4 Interest upon United States obligations	269
--	-----

§1.103–5 Treasury bond exemption in the case of trusts or partnerships	270
--	-----

§1.103–6 Interest upon United States obligations in the case of nonresident aliens and foreign corporations, not engaged in business in the United States	270
---	-----

§1.103–8 Interest on bonds to finance certain exempt facilities	270
---	-----

§13.4 Arbitrage bonds; temporary rules	291
--	-----

§1.103A–2 Qualified mortgage bond	298
-----------------------------------	-----

§6a.103A–2 Qualified mortgage bond	311
------------------------------------	-----

§1.141–1 Definitions and rules of general application	335
---	-----

§1.141–2 Private activity bond tests	336
--------------------------------------	-----

§1.141–3 Definition of private business use	340
---	-----

§1.141–4 Private security or payment test	352
---	-----

§1.141–5 Private loan financing test	361
--------------------------------------	-----

§1.141–9 Unrelated or disproportionate use test	364
---	-----

§1.141–10 Coordination with volume cap. [Reserved]	367
--	-----

§1.141–11 Acquisition of nongovernmental output property. [Reserved]	367
--	-----

§1.141–12 Remedial actions	367
§1.141–13 Refunding issues. [Reserved]	372
§1.141–14 Anti-abuse rules	372
§1.141–15 Effective dates	374
§1.141–16 Effective dates for qualified private activity bond provisions	376
§1.145–0 Table of contents	377
§1.145–1 Qualified 501(c)(3) bonds	377
§1.145–2 Application of private activity bond regulations	377
§1.147–0 Table of contents	378
§1.147–1 Other requirements applicable to certain private activity bonds	378
§1.147–2 Remedial actions	379
§1.147(b)–1 Bond maturity limitation treatment of working capital	379
§1.149(e)–1 Information reporting requirements for tax-exempt bonds	379
§1.149(g)–1 Hedge bonds	382
§1.150–1 Definitions	383
§1.150–1A Definitions	389
§1.42-18 Qualified contracts.	390

APPENDIX C

Other Guidance 397

PLR 200738002 - Section 142 - Exempt Facility Bond	433
PLR 200725004 - Extension of Time Granted for Filing Carryforward Election for Unused Private Activity Bond	437
PLR 201440013	440
PLR 201515007	445
RAD Notice of Increase in Cap and Rent Setting	458

APPENDIX D

Tax Credit Percentages 485

APPENDIX E

Internal Revenue Service Forms 499

Form 8038—Information Return for Tax-Exempt Private Activity Bond Issues	501
Form 8038-G—Information Return for Tax-Exempt Governmental Obligations	504
Instructions for Form 8038-G—Information Return for Tax-Exempt Governmental Obligations	506
Form 8038-GC—Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales	510
Form 8038-R—Request for Recovery of Overpayments Under Arbitrage Rebate Provisions	513
Form 8038-T—Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate	516
Instructions for Form 8038-T—Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate	517
Form 8328—Carryforward Election of Unused Private Activity Bond Volume Cap	521
Form 8609—Low-Income Housing Credit Allocation Certification	522
Instructions for Form 8609—Low-Income Housing Credit Allocation Certification	523
Form 8609-A—Annual Statement for Low-Income Housing Credit	524
Instructions for Form 8609-A—Annual Statement for Low-Income Housing Credit	525
Form 8703—Annual Certification of a Residential Rental Project	526
Form 8821—Tax Information Authorization	530
Form 13907—Tax-Exempt Bond Financings Compliance Check Questionnaire	534

APPENDIX F

Tax Exempt Bonds Filing Requirements 539

APPENDIX G

State Allocation Information 549

State Bond Allocating Agencies' Contact Information	550
State Bond Allocation List	552

APPENDIX H	
TEFRA Requirements (California)	555
APPENDIX I	
Sample Calculation of the 50% Test	559
APPENDIX J	
Sample Financial Model	561
GLOSSARY	605
INDEX	613