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IRS Issues Final Regulations Regarding Allocation of Bond Proceeds to Mixed-Use Projects; SLGS Window Reopens

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On October 26, 2015, the IRS released final regulations (the "Final Regulations") regarding allocation and accounting rules for purposes of the private activity bond restrictions applicable to tax-exempt bonds issued by state and local governments and, for certain purposes, other non-profit borrowers. Applicable generally to bonds sold on or after January 25, 2016 (with certain exceptions for electing in for earlier bonds), the Final Regulations provide that governmental and private use be applied on a pro rata basis throughout a "project," offering a flexible approach that allows for the areas subject to private business use to change (i.e., "float") over time so long as the overall percentage of use does not exceed the applicable limit. This is in contrast to the regulations proposed in 2006 that would have required issuers, under certain situations, to allocate private business use to a discrete portion of a facility. The Final Regulations also set forth helpful (and issuer-friendly) guidance regarding the allocation of tax-exempt bond proceeds in connection with public-private partnerships, which make it easier to finance the governmental (or 501(c)(3)) portion of a joint venture with tax-exempt bonds. Finally, the Final Regulations provide guidance regarding an issuer's ability to take "anticipatory remedial actions" in advance of a deliberate action that would create private business use in excess of the permitted amounts. As with any new set of Treasury regulations, there are interpretive hurdles. While leaving some issues unaddressed, the Final Regulations nonetheless provide much helpful guidance for issuers of tax-exempt bonds the proceeds of which might be used to finance property with a private business use component.

Also, note that on November 3, 2015, the Treasury Department began accepting orders for United States Treasury Obligations – State and Local Securities (i.e., SLGS). As is well known, the SLGS window had been closed since March as one of the "extraordinary measures" the Treasury Department took to preserve the federal government's borrowing capacity in light of the debt limit.

*For more information regarding the Final Regulations and their impact on specific situations, as well as the SLGS window reopening, contact **Brian Teaff**.*