

Client Alert

Current Issues Relevant to Our Clients

December 3, 2014

IRS Releases Guidance Expanding Management Contract Safe Harbors

Generally, federal tax laws restrict the use of tax-exempt governmental use bonds by nongovernmental, non-public users, which is referred to as “private business use.” The tax laws do allow for a de minimis amount of private business use of tax-exempt bond financed property. However, if there is private business use of bond-financed property in excess of the de minimis allowance, tax-exempt governmental use bonds may lose their tax-exempt status.

Private business use can result from actions such as leasing bond-financed property to nongovernmental entities and selling bond-financed property, but can also result from a governmental entity entering into a management or service agreement with a nongovernmental service provider to manage, or provide services with respect to or at, a bond-financed facility. For example, a school district may hire a third party to manage its food service in a cafeteria that was financed with tax-exempt bonds, or a park district or municipality may hire a third party to manage its golf course or clubhouse that was financed with tax-exempt bonds. Such arrangements are likely to be management contracts.

In Revenue Procedure 97-13, the IRS provided written guidance on management contracts and set forth certain safe harbors for management contracts that will not be considered to result in private business use. The safe harbors that a management contract may fit within depend upon the compensation arrangements, term and cancellation provisions in the management contract. In November 2014, the IRS released additional guidance in Notice 2014-67 that modified Revenue Procedure 97-13. Notice 2014-67 expands the management contract safe harbor guidelines to permit certain productivity awards and certain additional types of 5-year contracts that will not result in private business use. A detailed discussion of the new guidance in Notice 2014-67 is available [here](#).

An issuer should review its management or service contracts relating to its tax-exempt bond financed property on an annual basis as part of its post-issuance compliance policies and contact bond counsel with any questions on whether a management contract meets the safe harbors.

For More Information

To discuss any of the topics covered in this alert, please contact a member of our Public Finance Group or visit us online at chapman.com.

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

To the extent that any part of this summary is interpreted to provide tax advice, (i) no taxpayer may rely upon this summary for the purposes of avoiding penalties, (ii) this summary may be interpreted for tax purposes as being prepared in connection with the promotion of the transactions described, and (iii) taxpayers should consult independent tax advisors.

© 2014 Chapman and Cutler LLP. All rights reserved.

Attorney Advertising Material.