

IRS Tax-Exempt Bond Compliance Questionnaires Expected in Late July

We reported last fall that the Internal Revenue Service was contemplating the wide-scale distribution to 501(c)(3) borrowers of a questionnaire focusing on tax compliance issues with respect to tax-exempt debt (see prior [Client Alert](#)). The IRS indicated last week that it is trying to distribute the questionnaires by the end of July 2007. Although the survey questions have not yet been released, in public comments, the IRS has indicated that the survey will be sent to a “very broad” sample of 501(c)(3) borrowers and will focus on a variety of issues, including both private use and arbitrage. The IRS’s most recent comments have emphasized, in particular, record retention, which is likely to be a primary focus of the questionnaire.

Prepare Ahead of Time

We encourage our 501(c)(3) borrower clients to prepare for the possibility that they will receive a questionnaire. Given the focus in the IRS’s recent comments on record retention, it is particularly important for 501(c)(3) borrowers to determine the extent to which records relating to the use of proceeds, private use and arbitrage with respect to outstanding issues have been maintained and could be retrieved, if necessary. Such records would include copies of current and prior leases, management contracts, and research agreements relating to bond-financed space, requisitions or other records of the expenditure of bond proceeds, and investment records.

Adopt a Bond-Specific Record Retention Policy

Furthermore, we highly recommend that all 501(c)(3) borrowers be sure that, before the end of July, they have in place a formal records retention policy relating to tax-exempt debt. Such a policy should provide that the borrower will maintain all records for the period of time required to comply with applicable tax law relating to tax-exempt debt (current IRS policy is that records should generally be maintained until the final maturity of the debt plus three years, or in the case of an issue refunded by a subsequent issue, for the entire term of the combined issues plus three years). This includes records relating to the original debt transaction, the expenditure and investment of proceeds, and the use of debt-financed property.

For other steps that would be prudent to take now in advance of receipt of a questionnaire, please see our prior [Client Alert](#) described above. Please contact any of the lawyers listed below or your usual Ropes & Gray contact if you have any questions.

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