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Understanding Proposed IRS Rules on Issue Price and the Industry Impact

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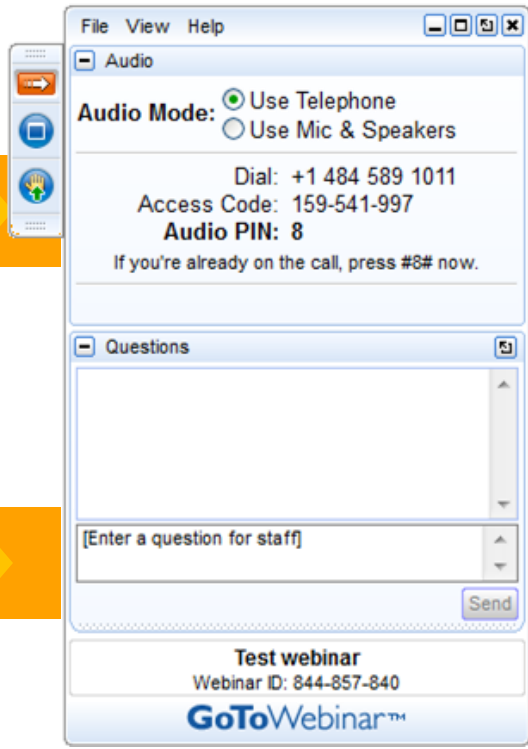
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Understanding Proposed IRS Rules on Issue Price and the Industry Impact

Intro Brownfields Finance Course



November 4, 2015
Charleston, SC

Panelists

Rena Nakashima, *Moderator*

Senior Project Manager
BNY Mellon

John Vahey

Director, Federal Policy
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Matthias Edrich

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Understanding Proposed IRS Rules on Issue Price and the Industry Impact

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Why is Issue Price Important?

- What is issue price?
 - Issue price is the price at which the issuer sells a new obligation to the public or the initial holder before the obligation trades in the secondary market. Sometimes referred to as offering price.
- Why should you care about issue price?
 - Purchasers care about issue price because issue price is needed to determine gains and losses from sales or exchanges of obligations.
 - Issuers care about issue price because issue price is needed to determine whether the obligations satisfy tax rules (e.g., are tax-exempt)

What are the Existing Rules?

- Issue price for taxable and tax-exempt obligations:
 - First price at which “substantial amount” of obligations is sold to public.
 - Usually determined for each maturity of obligations. Issue price of an “issue” of obligations is sum of issue prices of each obligation maturity.
- Special additional rules for tax-exempt obligations:
 - “Substantial amount” means ten percent.
 - Issue price is based on reasonable expectations on sale date of obligations.
- If obligation is sold to a bank (sometimes called a “direct placement” or “bank purchase”), issue price is the negotiated purchase price.

What are the Proposed Rules?

- Treasury Department is concerned that the 10-percent test does not always produce a representative price. Treasury Department has proposed new “issue price” regulations to improve the determination of issue price.
- 2013 Proposed Regulations:
 - Would remove the “reasonable expectations” test.
 - Issue price would be the first price at which a minimum of 25 percent of the bonds in an issue is actually sold to the “public.”
 - Sales to underwriters would not be counted towards the 25 percent requirement.
 - Much criticism of the 2013 proposed regulations followed.
- 2015 Proposed Regulations
 - In June, Treasury Department withdrew 2013 proposed regulations and proposed new regulations.
 - The 2015 proposed regulations revive the “reasonable expectations” test, but provide that the “reasonable expectations” test may be used only in certain circumstances.
 - If the issuer cannot satisfy the requirements of the proposed “reasonable expectations” test, the issue price would be determined based on the existing actual sales test.

How will the Proposed Rules Affect You?

- Proposed definition is significant improvement over 2013 proposal.
 - Definition of “public” is much improved.
 - The 10 percent actual sales approach is more realistic than 2013 proposal.
- Remember, however, that these are proposed (not final) regulations.
- Election to use proposed issue price definition is permitted, but election might not be recommended.

Should You Elect to Use the Proposed Rules?

- Improvements to the General Rule are needed
- Clarifications of the Alternative Rule are needed

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November 4, 2015
Charleston, SC

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Tuesday, November 17 @ 1:00 pm EST

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