

MODULE 2

Bond Compliance Review Tax Credit Bonds

LEARNING OBJECTIVE

Module 2 – Bonds Compliance Review Tax Credit Bonds is part two of a three-part review module series. The series has been designed to provide the listener a comprehensive review of IRS and SEC compliance related to tax-advantaged bonds.

Type of Program: Basic review
Designed for: Tax Credit Bond Issuers and Professionals
Prerequisites: None

AUTHOR – DOUG PAHNKE, CPA, MANAGING DIRECTOR



Mr. Doug Pahnke has over seventeen years of experience as a project manager for many of ACS' municipal clients across the nation and currently completes projects for over seventy five hundred debt issues. Mr. Pahnke provides ongoing support to our firm's clients and oversees the entire calculation process from pre-issuance to post-issuance compliance. To aid in the monitoring of ACS' client debt portfolios and applicable IRS deadlines, Mr. Pahnke developed a sophisticated bond management system software program which is used by over sixteen hundred ACS' municipal clients. Mr. Pahnke is a highly regarded instructor on the topic of arbitrage rebate compliance to government agencies, bond counsel and accounting firms.

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LEAD CONTRIBUTOR – STEPHEN H. BRODEN, VICE PRESIDENT



Mr. Stephen Broden's experience includes four years of management at a Colorado special district, six years of management at First Bank of Colorado and Wachovia Bank as well as seven years of arbitrage rebate management at ACS. Mr. Broden's knowledge of banking regulations, investment structure and strategies provide invaluable insight when analyzing issuer debt portfolios for compliance with IRS arbitrage rebate regulations. While at ACS, Mr. Broden has specialized in the intricacies of all types of tax credit bonds and regularly instructs on these complicated debt structures and related bond compliance requirements to organizations across the country. Mr. Broden also has extensive experience with continuing disclosure and compliance concerning private business use.

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LEARNING CHECKLIST

- What are Tax Credit Bonds?
- Internal Revenue Service Compliance
- Securities and Exchange Commission Compliance
- IRS and SEC Compliance Procedures
- Module 2 Test

WHAT ARE TAX CREDIT BONDS?

TAX CREDIT BONDS DEFINED

A type of bond financings in which the interest income is not exempt from federal income tax, though in many cases, exempt from state and local taxes.

- ✓ Typically issued as either general obligation or revenue bonds.
- ✓ Mostly for energy and education.



BRIEF TAX CREDIT BONDS HISTORY

The Taxpayer Relief Act of 1997 allowed for the sale of the first tax credit bonds, Qualified Zone Academy Bonds, related to educational projects.

The Energy Tax Incentives Act of 2005 allowed for the sale of Clean Renewable Energy Bonds related to clean energy projects.

The American Recovery and Reinvestment Act of 2009 (“ARRA”) expanded the programs to include recovery zone, general purpose, additional energy and education needs.



INTERNAL REVENUE SERVICE COMPLIANCE

KEY CONCEPTS

- Private Business Use
- Arbitrage Rebate
- Yield Restriction
- IRS Record Retention

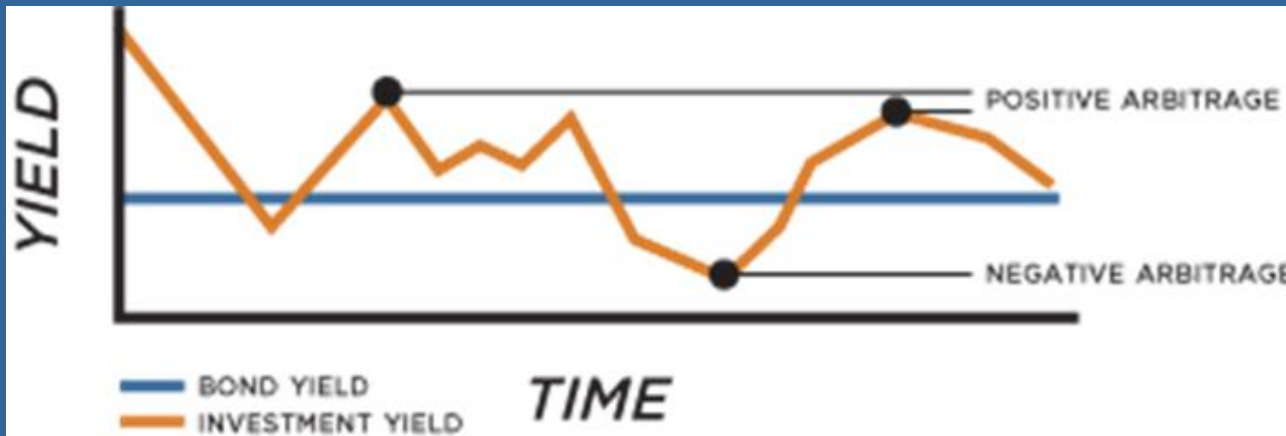
PRIVATE BUSINESS USE DEFINED

Use of a facility or bond proceeds in a trade or business carried on by a nonqualified user.

Tax credit bonds are subject to private business use rules even though they are taxable.



ARBITRAGE DEFINED



Arbitrage is the profit made from investing inherently lower yielding tax credit debt proceeds in higher yielding taxable investments.

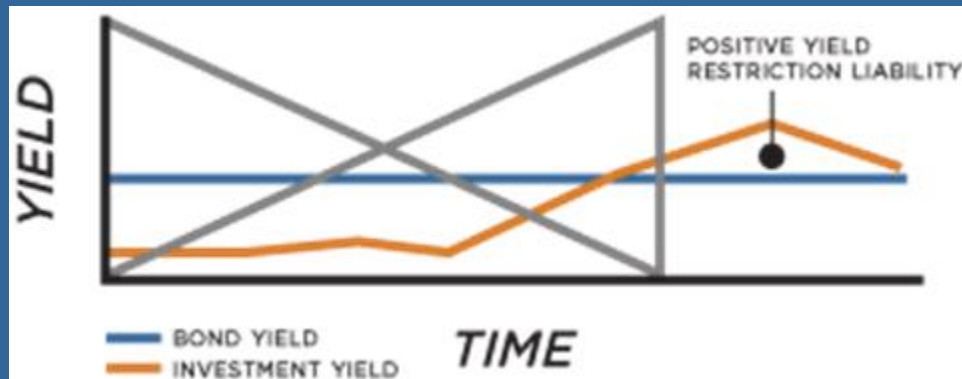
ARBITRAGE REBATE DEFINED

As of any computation date, the arbitrage rebate amount for an issue is the excess of the future value of all receipts on non-purpose investments over the future value of all payments on non-purpose investments.

Tax credit bonds are subject to the arbitrage rebate rules even though they are taxable.



YIELD RESTRICTION DEFINED



Yield restriction is the profit made from investing tax credit debt proceeds in higher yielding taxable investments, above a specific materially higher yield, after a designated temporary period and above the minor portion.

Tax credit bonds are subject to the yield restriction rules even though they are taxable.

IRS RECORD RETENTION

IRC Section 6001 provides record retention requirements for federal tax purposes necessary for maintaining the applicable tax credit status.



SECURITIES AND EXCHANGE COMMISSION COMPLIANCE

KEY CONCEPTS

- Continuing Disclosure
- Municipal Advisor

CONTINUING DISCLOSURE DEFINED

Section 15c2-12 of the Securities Exchange Act prohibits any underwriters from underwriting municipal financings (most types) unless the Issuer has agreed to provide continuing information on the Municipal Securities Rulemaking Board's EMMA website.

To learn more about continuing disclosure, complete Module 3.



MUNICIPAL ADVISOR DEFINED

Section 15B of the Securities Exchange Act defines the term "municipal advisor" to mean a person that (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (ii) undertakes a solicitation of a municipal entity. The definition includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors that engage in municipal advisory activities.

IRS AND SEC COMPLIANCE PROCEDURES

IRS POST ISSUANCE COMPLIANCE PROCEDURE

KEY CHARACTERISTICS

- ✓ Due diligence review at regular intervals;
- ✓ Identifying the official or employee responsible for review;
- ✓ Training of responsible officials/employees;
- ✓ Retention of adequate records which substantiate compliance (e.g., records relating to expenditure/investment of proceeds, use of debt financed property and related contracts);
- ✓ Procedures reasonably expected to timely identify noncompliance; and
- ✓ Procedures ensuring that the issuer will take steps to timely correct identified noncompliance.

SEC CONTINUING DISCLOSURE PROCEDURE

KEY CHARACTERISTICS

- ✓ Identify the information that is obligated to be submitted in an annual filing;
- ✓ Disclose the dates on which filings are to be made;
- ✓ List the required reporting events as stated by the SEC and your Continuing Disclosure Agreement;
- ✓ Ensure accuracy and timeliness of reported information; and
- ✓ Identify the person who is designated to be responsible for making the filings.

To learn more about IRS and SEC compliance procedures, complete Module 3.

MODULE 2 TEST

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1. The Taxpayer Relief Act of _____ introduced the first type of tax credit bond.
2. Which of the following entities does not need to review private business use ?
 - A. State Government
 - B. Local Government
 - C. Non-Profit Corporation
 - D. For Profit Corporation
 - E. None of the above
3. True or False: Tax credit bonds are exempt from arbitrage rebate as a result of their taxable status?

MODULE 2 TEST

4. True or False: Yield restriction occurs during a designated temporary period.
5. Which section of the IRS code is associated with record retention?
 - A. 6001
 - B. 6431
 - C. 6501
 - D. None of the above
6. What primary information must be uploaded for continuing disclosure?

LEARNING CHECKLIST RECAP

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BOND COMPLIANCE RULES ARE COMPLEX AND DETAILED, THEREFORE IT IS IMPORTANT TO REVIEW THE SPECIFIC GUIDANCE PROVIDED BY THE REQUIREMENTS OF THE INTERNAL REVENUE SERVICE AND THE SECURITIES AND EXCHANGE COMMISSION.

Revised in 2016 by Arbitrage Compliance Specialists, Inc.

For questions regarding ACS' training program and to sign up, please contact Mr. Stephen H. Broden at: (303) 867-7530 or stephen@rebatebyacs.com.

