

KROKIDAS & BLUESTEIN
ATTORNEYS

CLIENT ALERT

ORGANIZATIONS WITH TAX EXEMPT BOND FINANCING

ARE YOU AT RISK FOR AN AUDIT?

The IRS has focused recently on nonprofit organizations' responses on Schedule K of Form 990 in selecting audit targets. Schedule K requires nonprofit organizations with tax exempt bond financing to confirm each year that their bond issuances comply with post-issuance requirements including private business use limitations. While recent audit targets have been nonprofit hospitals, a compliance official at the IRS Tax Exempt Bonds division has suggested that universities and research centers may be next on the IRS's list.

If your organization has tax-exempt bond financing, we suggest that you take the following steps to ensure that you are maintaining the bonds' tax-exempt status and complying with the IRS's requirements:

- Appoint a compliance coordinator from within your organization,
- Adopt a written compliance plan, and
- Review contracts with third parties at three points in time:
 - bond issuance;
 - initiation of any third party contract, lease or other arrangement; and
 - annually, in connection with preparation of the IRS Form 990.

In entering into new third party contracts and reviewing existing contracts, you should ensure that any potential private business use of your organization's bond-financed facilities does not threaten the bonds' tax exempt status. Counsel can assist you in reviewing (and if necessary modifying) third party contracts such as leases, management and service contracts, and research sponsorship agreements to make sure that these arrangements fit within a safe harbor or other exception.

For assistance in crafting written compliance plans or reviewing third party contracts, please contact Elka Sachs at ESachs@kb-law.com or (617) 482-7211 or Sheryl Howard SHoward@kb-law.com.

Links

A copy of Schedule K for 2012 can be found at: <http://www.irs.gov/pub/irs-pdf/f990sk.pdf>.