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Regulations: Tax-exempt bonds, "issue price" and other definitions

The U.S. Treasury Department and IRS today released for publication in the Federal Register final regulations (T.D. 9801) concerning the issue price for purposes of the arbitrage investment restrictions that apply to tax-exempt bonds and tax-advantaged bonds.

The **final regulations** [PDF 213 KB] concern state and local governments that issue tax-exempt bonds, and adopt with revisions regulations that were proposed in June 2015. In general, the final regulations provide:

- A general rule that, for bonds issued for money, the issue price is the first price at which a substantial amount of the bonds is sold to the public, and for these purposes, a "substantial amount" is 10%

- A modified hold-the-offering-price requirement that requires underwriters to hold the price for offering and selling unsold bonds at a price that is no greater than the initial offering price to the public for a shorter time period that ends on the earlier of (1) the close of the date that is the fifth business day after the sale date, or (2) the date on which the underwriters have sold a substantial amount of the bonds to the public

- A definition of "competitive sale" to mean a sale of bonds by an issuer to an underwriter that is the winning bidder in a bidding process in which the issuer offers the bonds for sale to the underwriters at specified written terms and when certain other requirements are satisfied

- A definition of "underwriter"

- The existing due diligence standard under existing regulations will apply to any certification

The final regulations apply to bonds that are sold on or after a date that is 180 days after December 9, 2016—which is the date when the final regulations will be published in the Federal Register.