

Post Issuance Compliance



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IRS – Best Practices – Written Procedures

- Due diligence review at regular intervals;
- Identifying the official or employee responsible for review;
- Training of the responsible official/employee;
- Retention of adequate records to substantiate compliance;
- Procedures reasonably expected to timely identify noncompliance; and
- Procedures ensuring that the issuer will take steps to timely correct noncompliance.

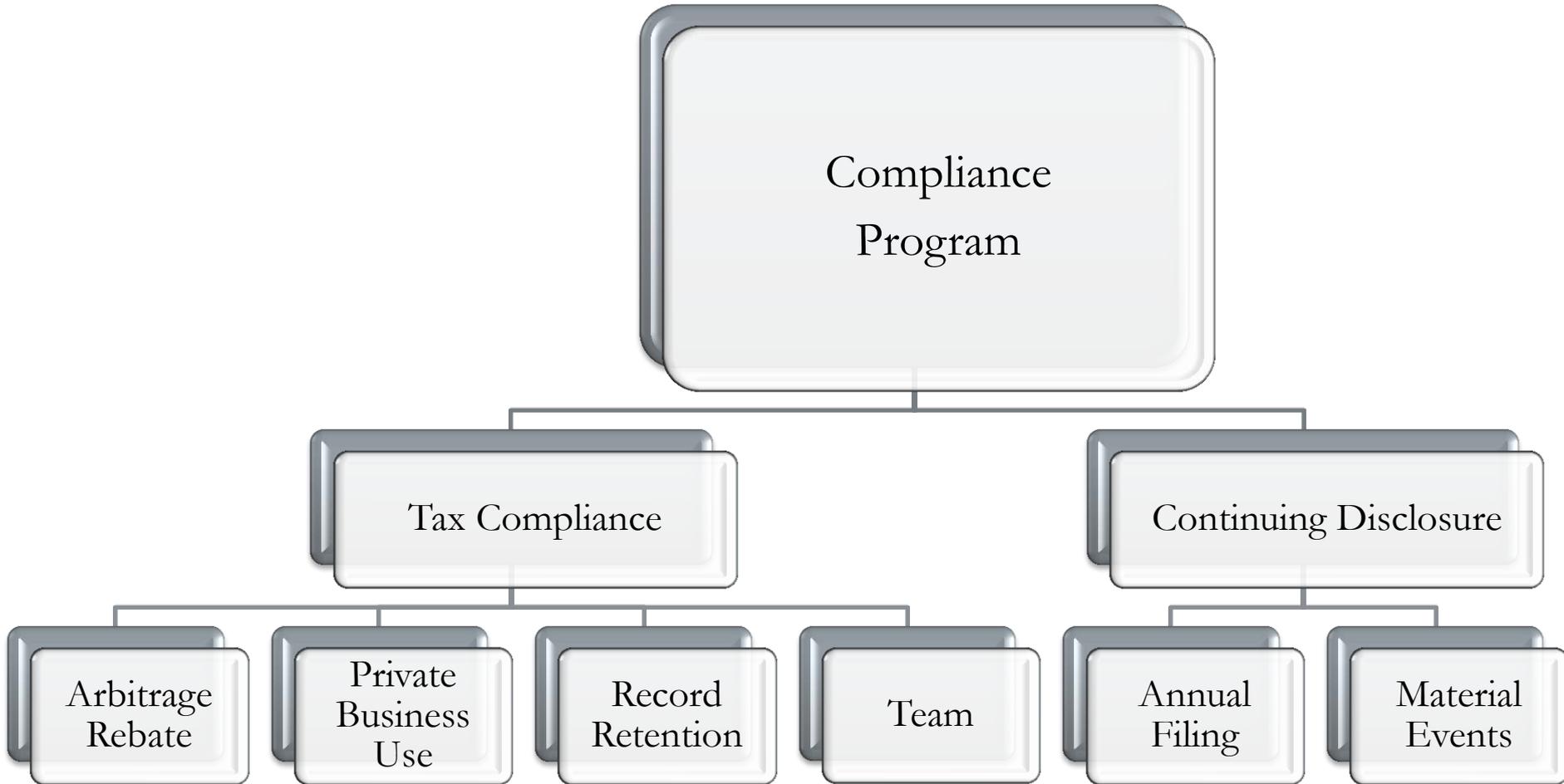
Golden Rule: add on to IRS best practices is to have processes, procedures and internal controls that prevent failures



Best Practices

- Maintain complete inventory of bonds
- Bond policies and procedures integrated with organizational policies and procedures
- Processes and internal controls underpin compliance system
- Job descriptions include bond responsibilities
- Creates a bond compliance officer / compliance team
- Annual certification checklists from key reporters and bond compliance officer (preserved)
- Internal audit includes bond compliance review periodically
- Process in place to alert responsible personnel to changes in requirements (training, contractors, or annual bond counsel meeting)
- Periodic training of personnel responsible for compliance efforts

Components of a Compliance Program



Record Retention Requirements

- Requirements are burdensome and may not be consistent with document destruction policies
 - Life of the Bonds + 3 years
 - If the Bonds are refunded, life of refunding bonds + 3 years
- Consider separate document collection, storage and destruction policies for bond related records
- Consider electronic storage systems



When Systems Break Down-Arbitrage Rebate

- There may not be any anticipated liability
- You must complete and keep even if the liability is \$0
- Bond covenants and IRS regulations are not predicated on completion only when you anticipate a liability
- REALLY IMPORTANT: the arbitrage rebate computation is the financial roadmap that an IRS uses to trace the expenditure of proceeds and by extension, the facilities financed.
- IRS Consistency Requirement for Sections 141-150 of the Code
- Failures: leaving out replacement proceeds, not doing yield restriction, transferred proceeds incorrect or ignored, debt service funds not meeting bona fide exclusions, inappropriately excluding covered debt e.g. notes, COPs, capitalized leases that are tax advantaged

When Systems Break Down – Post Issuance beyond rebate

- Representing that organization has written policies and procedures and not following them.
- Recent IRS emphasis- not just procedures but effective procedures. Too many boiler plates don't fit organization, raising risk of non compliance
- Compliance team too narrowly defined and does not include all constituencies that can cause failures, e.g. facilities management, engineering, easements
- Records never created, destroyed, or can't locate

When Systems Break Down – Continuing Disclosure

- Unconfirmed – person submitting not authorized
- Use of dissemination agent but not checking- posting failures
- All cusips not accounted for
- Never reviewing pages – unrelated entities posting to your pages
- Date hard stops: 180 days is less than six months
- Material event postings not timely