

26 CFR 601.105: Rulings and determination letters.
(Also Part I, §§ 103, 7478.)

Rev. Proc. 96-16

SECTION 1. BACKGROUND AND PURPOSE

A prospective issuer of bonds, the interest on which is intended to be excludable from gross income under § 103(a) of the Internal Revenue Code, can request a ruling that is subject to the declaratory judgment procedures of § 7478. Section 7478 provides the United States Tax Court with jurisdiction to issue declaratory judgments with respect to certain governmental obligations. A prospective issuer can file a petition under § 7478 if the Service determines that the interest on bonds will not be excludable from gross income under § 103(a) or if the Service fails to make a determination with respect to the excludability of the interest within 180 days from the time the request for a determination is made. In a declaratory judgment case, the Tax Court determines whether the interest on the bonds will be excludable under § 103 and thus must consider all of the requirements for the exclusion.

A prospective issuer or holder of bonds may also request a ruling that is not subject to the declaratory judgment provisions of § 7478. For example, the request may ask for a ruling about one or more of the various requirements for excludability under § 103(a) rather than excludability in general under § 103(a). Alternatively, the request may relate to the effect of a proposed transaction on an outstanding issue of bonds.

This revenue procedure updates existing procedures with respect to both reviewable and nonreviewable rulings. Thus, Rev. Proc. 88-32, 1988-1 C.B. 833, relating to reviewable rulings, and Rev. Proc. 88-33, 1988-1 C.B. 835, relating to nonreviewable rulings, are obsolete as provided in section 7 of this revenue procedure.

This revenue procedure provides definitions of the two types of ruling

requests and procedures for each. The procedures are designed to make it clear to both the requesting party and the Service whether a ruling request is reviewable under § 7478. For a request that is reviewable, the procedures are designed to ensure that the administrative record is fully developed with respect to each requirement for exclusion of interest under § 103(a). In addition, for a request that is reviewable, the procedures are designed to ensure that all necessary information with respect to the proposed issue of bonds is provided in a timely manner that will allow the Service to make its determination within 180 days from the date the request for a ruling is filed.

SECTION 2. SCOPE

This revenue procedure applies to any request for a letter ruling under §§ 103, 141 through 150, 1394, and 7871(c) of the Code. This revenue procedure does not apply to a request for a determination that an organization meets the requirements of § 501(c)(3) as a condition to the issuance of qualified 501(c)(3) bonds under § 145.

SECTION 3. COORDINATION WITH REV. PROC. 96-1

Unless otherwise specifically stated in this revenue procedure, the definitions and requirements set forth in Rev. Proc. 96-1, 1996-1 I.R.B. 8, apply. Any reference to Rev. Proc. 96-1 is also a reference to any successor of Rev. Proc. 96-1.

SECTION 4. PROCEDURE FOR REVIEWABLE RULINGS

.01 *Issuer Must Submit Request.* A request for a reviewable ruling must be submitted by the prospective issuer. The term "issuer" includes any state, any political subdivision of a state, and any corporation described in § 150(d). It also includes any "on-behalf-of" issuer described in Rev. Rul. 63-20, 1963-1 C.B. 24, and any constituted authority described in Rev. Rul. 57-187, 1957-1 C.B. 65, if the on-behalf-of issuer or constituted authority has been designated by a state or political subdivision to issue the prospective obligations. It does not include a conduit borrower of the proceeds of the prospective obligations.

.02 *Specific Prospective Issuance of Obligations.* A request for a reviewable

ruling must address a specific, prospective issuance of obligations. A resolution must have been adopted before the request is submitted, in accordance with state or local law authorizing the issuance of a specific issue of obligations. The resolution may state that the issuance of obligations is contingent upon a favorable ruling by the Service or a favorable decision by the Tax Court.

.03 *Statement of Facts.* The statement of facts in a request for a reviewable ruling must be complete, accurate, and detailed. Each request must contain all relevant facts. These facts include but are not limited to the following:

(1) the name, address, and taxpayer identification number of the issuer, each underwriter, and each conduit borrower (except conduit borrowers of the proceeds of bonds such as qualified mortgage bonds, qualified veterans' mortgage bonds, and qualified student loan bonds);

(2) a description of all uses and users of proceeds of the obligations;

(3) a description of the accounting method or methods that will be used to account for investments and expenditures of gross proceeds of the obligations;

(4) an estimate of all fees that will be paid in connection with the issuance of the obligations;

(5) a description of any elections made pursuant to the regulations under § 148 including elections on the application of the various versions of the those regulations;

(6) the expected principal amount, expected yield, expected issue price, and expected issue date of the prospective obligations and of the expected investments to be acquired with bond proceeds;

(7) a statement whether proceeds are expected to be invested at a yield that exceeds the yield on the issue of obligations by more than the amount permitted in § 1.148-2(d)(2) of the Income Tax Regulations (definition of materially higher yield) and a statement indicating which definition the issuer expects will apply;

(8) descriptions of any obligations that are to be refunded by the prospective obligations and representations whether the interest on each obligation that is to be refunded has been treated by the issuer as excludable from gross income under § 103; and

(9) a representation whether the issuer has received an appropriate allocation of volume cap under § 146 for the prospective obligations.

.04 *Supporting Documentation.* Rulings are based on the documents that are submitted. The initial request for a reviewable ruling, and any additional submission at a later date, must be accompanied by copies of all documentation that is relevant to the determination whether interest on the prospective obligations will be excludable from gross income under § 103. If the prospective obligations are refunding obligations, the documentation must also include the relevant documents underlying the refunded obligations. The request must include a representation that each document accompanying the request is a complete and accurate copy of the original document. The documents to be submitted include—

(1) the resolution for the issuance of the obligations;

(2) management and service contracts, leases, output contracts, and agreements that affect any facility financed with the proceeds from the obligations;

(3) the official statement and trust indenture;

(4) the arbitrage certificate and other documents containing covenants about arbitrage rebate and about subsequent intentional acts to earn arbitrage; and

(5) any relevant provision of state or local law.

.05 *Cross-references.* Relevant provisions in submitted documents must be appropriately described, analyzed, and cross-referenced in the request for a reviewable ruling.

.06 *Legal Analysis.* A request for a reviewable ruling must set forth a complete and detailed analysis of the rationale on which the requester relies to support its request for a determination that each condition for exclusion of interest on the prospective obligations under § 103 will be satisfied. The analysis submitted must include citations to the Code, regulations, revenue rulings, revenue procedures, judicial authority, and any other authority relevant to the issues raised by the request. A simple statement that a provision of the Code is satisfied is insufficient. The request must also describe in detail any relevant provision of state or local law. The following is a recommended format for the legal analysis:

(1) Whether the obligations will be issued by or on behalf of a state or political subdivision of a state;

(2) Whether the obligations will be private activity bonds under § 141;

(3) Whether the obligations will satisfy each of the provisions of §§ 142 through 147;

(4) Whether the obligations will be arbitrage bonds under § 148;

(5) Whether the obligations will satisfy the requirements of § 149;

(6) Whether the obligations will satisfy the requirements of § 150;

(7) Whether the obligations satisfy any other requirements for the exclusion of interest under § 103.

.07 *Acknowledgement.* The request for a ruling must be accompanied by a statement, signed by the issuer, acknowledging that the issuer is aware that it cannot exhaust its administrative remedies unless it complies with section 4 of this revenue procedure. Appendix A sets forth a form for this acknowledgement.

.08 *Number of Copies.* Three copies must be submitted of the initial submission and of each additional submission, including the statement of facts, legal analysis, supporting documents, cross-referenced documents, and acknowledgement.

.09 *Time Periods.* The 180-day period specified in § 7478 begins as of the date the Service receives the initial request for a ruling. To ensure a sufficient amount of time to properly process a ruling request within this 180-day period, all time periods specified by Rev. Proc. 96-1 for processing a ruling request are 14 days for purposes of processing a ruling request under this procedure. The Service may grant extensions of these 14-day periods in accordance with the procedures set forth in Rev. Proc. 96-1 for extending the time period for additional information.

.10 *Substantial compliance of initial request.* If the initial request for a reviewable ruling substantially complies with section 4 of this revenue procedure, the Service will send a written notice of initial compliance. If a request for a reviewable ruling has only minor deficiencies, the deficiencies may be corrected in the same manner that additional information is provided under section 4.11 of this revenue procedure. If the initial request for a reviewable ruling does not

substantially comply with section 4 of this revenue procedure, the Service will immediately close the request. The Service will also send written notice to the issuer, or its authorized representative, stating that the request has been closed and stating the specific nature of the defects. If a request for a reviewable ruling is closed because it does not substantially comply with section 4 of this revenue procedure, the issuer has failed to have timely taken all reasonable steps to secure a ruling subject to review by the Tax Court.

.11 *Additional information.* If additional information is not received within 14 days of the date the Service requests it, the request will be closed, and the issuer will have failed to have timely taken all reasonable steps to secure a ruling subject to review by the Tax Court. Once a request is closed, the issuer must submit a new request, and pay an additional fee, if it wishes to request a reviewable or nonreviewable ruling. If the new request is submitted not later than 30 days after the request is closed, the new request may incorporate the information and documents already submitted. To do so, the issuer must clearly state in writing that it is submitting a new request and incorporating by reference previously submitted materials.

.12 *Taxpayer conferences.*

(1) *Taxpayer conference is a step in securing a ruling.* Taxpayer conferences ensure that the requester fully participates in the processing of a request for a ruling and that the Service fully understands the requester's position. Thus, if an issuer has been notified of a tentative adverse position by the Service and does not participate in the conference, the issuer has failed to have timely taken all reasonable steps to secure a ruling subject to review by the Tax Court. After the first conference, the issuer need not participate in any additional conference offered by the Service under Rev. Proc. 96-1.

(2) *Location of conference.* The conference generally will be held at the National Office. The issuer, however, may request in writing that the conference be held by telephone.

(3) *Conference report.* If the Service prepares a conference report, a copy will be sent to the issuer. The issuer will have 14 calendar days to correct any factual errors made in the report. If the Service does not receive corrections

within the 14-day period, it may base its ruling on the facts stated in the report. The Service may grant extensions of the 14-day period in accordance with the procedures set forth in Rev. Proc. 96-1 for extending the scheduling of conferences. The conference report may be included in the administrative record filed with the Tax Court.

.13 *Withdrawal of Requests.* Any withdrawal of a request for a reviewable ruling must be made in a written statement signed by the issuer. The statement must contain an acknowledgment that the issuer has not taken all reasonable steps to secure a reviewable ruling. If a request is not withdrawn in the manner described in this paragraph, the Service will continue to process the request and may issue a ruling.

.14 *Exhaustion of Administrative Remedies.*

(1) *Compliance With Procedures Required.* The issuer must comply with the procedures described in Rev. Proc. 96-1 and in section 4 of this revenue procedure in order to have reasonably taken all steps necessary to obtain a ruling that is subject to review by the Tax Court.

(2) *Each Issuer Must Exhaust Its Remedies.* An issuer that petitions the Tax Court must itself have exhausted administrative remedies for each request for a ruling. It may not base its petition on the response to any other request for a letter ruling that it submits or that is submitted by another issuer or other person.

SECTION 5. PROCEDURE FOR NONREVIEWABLE RULINGS

.01 *Issuer or Holder Must Submit Request.* A request for a nonreviewable ruling must be submitted by an issuer or holder. The term "issuer" includes any state, any political subdivision of a state, and any corporation described in § 150(d). It also includes any "on-behalf-of" issuer described in Rev. Rul. 63-20, 1963-1 C.B. 24, and any constituted authority described in Rev. Rul. 57-187, 1957-1 C.B. 65, if the on-behalf-of issuer or constituted authority has been designated by a state or political subdivision to issue the prospective obligations. It does not include a conduit borrower of the proceeds of the prospective obligations.

Other parties may join an issuer or holder in requesting a ruling. For example, an underwriter that is not a holder may join an issuer in requesting a nonreviewable ruling but may not by itself request a ruling. However, the Service may rule in accordance with the methodology and procedure indicated in § 9(f) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839).

.02 *Specific Transaction.* The Service generally rules only on specific transactions. Thus, a request for a nonreviewable ruling must address a specific proposal to issue obligations or a specific proposed transaction that may affect the application of §§ 103, 141 through 150, 1394, or 7871(c) to obligations already issued.

.03 *Prospective Obligations.* The Service may issue a nonreviewable ruling on whether a proposed obligation meets one or more conditions for the exclusion of interest on the obligation from gross income under § 103. Before the request is submitted, a resolution must have been adopted in accordance with state or local law authorizing the issuance of the obligation that is the subject of the ruling request. Among other things, the resolution may state that the issuance of obligations is contingent upon a favorable ruling by the Service.

.04 *Outstanding Obligations.*

(1) *Whether an outstanding obligation meets conditions under § 103.* The Service will not issue a nonreviewable ruling on whether an issued and outstanding obligation that is part of an issue of obligations meets one or more conditions for the exclusion of interest on the obligation from gross income under § 103 unless the request is received by the Service before interest on any obligation in that issue is required to be reported by a holder.

(2) *Transactions affecting outstanding obligations.* The Service may issue a nonreviewable ruling on the effect of a proposed act or transaction on one or more conditions for the exclusion from gross income under § 103 of interest on an issued and outstanding obligation. The request, however, must contain a statement by the issuer that the outstanding obligation has met the conditions for the exclusion of interest under § 103 from the issue date to the date the request is submitted.

.05 *Status Rulings.* The Service will not issue a nonreviewable ruling under this procedure on the status or classification of an issuer of obligations unless the status or classification of the issuer affects the exclusion of interest under § 103 on a specific, prospective issue of obligations.

.06 *Statement of Facts.* Although a request for a nonreviewable ruling may address only one or a few of the conditions for exclusion under § 103, the requester should describe the entire transaction in the request. The requester should consider submitting the following information in complying with the procedures set forth in Rev. Proc. 96-1 for submitting requests:

(1) the name, address, and taxpayer identification number of the issuer, each underwriter, each conduit borrower (except conduit borrowers of the proceeds of bonds such as qualified mortgage bonds, qualified veterans' mortgage bonds, and qualified student loan bonds);

(2) a description of all uses and users of proceeds of the obligations;

(3) a description of the accounting method or methods that have been or will be used to account for investments and expenditures of gross proceeds of the obligations, including refunding obligations;

(4) an accounting of all fees that will be paid in connection with the issuance of the obligations;

(5) for outstanding obligations, including refunded obligations, the actual principal amount, actual issue price, actual issue date, and actual yield of the obligations and investments;

(6) for prospective obligations, the expected principal amount, expected yield, expected issue price, and expected issue date of the prospective obligations and of the expected investments to be acquired with bond proceeds;

(7) descriptions of any obligations that have been or will be refunded and representations whether the interest on each obligation that has been or will be refunded has been treated by the issuer as excludable from gross income under § 103;

