

Voluntary Closing Agreement Program for Tax-Exempt Bonds

Notice 2001-60

SECTION 1. PURPOSE

This Notice provides information about a voluntary closing agreement program for tax-exempt bonds (“TEB VCAP”). In particular, the Notice sets forth procedures whereby issuers of tax-exempt bonds can resolve violations of the Internal Revenue Code through closing agreements with the Internal Revenue Service. The Tax Exempt Bonds Outreach, Planning and Review (“TEB OPR”) function of Tax Exempt and Government Entities (TE/GE) is developing new outreach and education initiatives to insure compliance by issuers of tax-exempt bonds with applicable provisions of the Code. TEB VCAP is part of the TEB OPR outreach and education initiatives and provides appropriate remedies when issuers voluntarily come forward and express a desire to resolve violations of the Code. TEB VCAP is intended to encourage issuers and conduit borrowers to exercise due diligence in complying with the Code and to provide a vehicle to correct violations of the Code. It is the continuing policy of the Internal Revenue Service to attempt to resolve violations of the Code without taxing bondholders. TEB VCAP reflects this policy.

The Service anticipates that more detailed procedures about the program will be provided as the program is refined and comments are received. For example, standardized closing agreement terms and amounts may be specified for particular violations. Accordingly, this Notice requests comments on TEB VCAP as well as comments on how the Service can expand its efforts to encourage compliance with the Code.

SECTION 2. BACKGROUND

Gross income does not include interest on any state or local bond that meets the requirements of section 103 and related provisions of the Code. Under certain circumstances, an issuer may take remedial action under provisions such as sections 1.141-12, 1.142-2, 1.144-2, 1.145-2, and

1.147-2 of the Income Tax Regulations in order to cure a violation of the Code and to prevent interest on a bond from becoming includible in gross income.

The Service has previously provided formal tax-exempt bond closing agreement programs such as the program described in Rev. Proc. 97-15 (1997-1 C.B. 635). Violations of section 103 and related provisions of the Code that cannot be remediated under existing remedial action provisions or other tax-exempt bond closing agreement programs contained in regulations or other published guidance may be resolved by entering into a closing agreement under TEB VCAP.

Section 7121 of the Code and the regulations thereunder authorize the Commissioner to enter into written closing agreements with any person in connection with the tax liability of such person (or of the person or estate for whom he acts). Section 301.7121-1 of the Income Tax Regulations provides, in part, that a closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of such an agreement.

SECTION 3. SCOPE OF TEB VCAP

Under TEB VCAP, an issuer or its authorized representative may request a closing agreement with respect to violations of section 103 and related provisions of the Code. TEB VCAP is not available when:

- (a) Absent extraordinary circumstances, the violation can be remediated under existing remedial action provisions or tax-exempt bond closing agreement programs contained in regulations or other published guidance.
- (b) The bond issue is under examination. A bond issue is generally treated as under examination on the date a letter opening an examination on the bond issue is sent.
- (c) The tax-exempt status of the bonds is at issue in any court proceeding or is being considered by the IRS Office of Appeals.

(d) The Service determines that the violation was due to willful neglect.

SECTION 4. PROCEDURES FOR REQUESTING A CLOSING AGREEMENT UNDER TEB VCAP

(a) Information Required in Requests. An issuer or its authorized representative requesting a closing agreement must submit the following information relating to the issue:

(i) A statement, or statements, under penalty of perjury, certifying:

- a. A description of the violation, including its nature, when it occurred and the events surrounding it, and a statement about when and how the issuer discovered the violation;
- b. The procedures and policies which will be instituted to assure future compliance with the Code;
- c. That the bond issue is not under examination;
- d. That the tax-exempt status of the bond issue is not at issue in any court proceeding and is not being considered by the IRS Office of Appeals;
- e. That, on the issue date, the issuer reasonably expected to comply with section 103 and related provisions of the Code;
- f. That the violation was not due to willful neglect;
- g. That the request for a closing agreement was promptly undertaken upon discovery of the violation by the issuer or the conduit borrower; and
- h. That the payment of the closing agreement amount, if any, will not be made with proceeds of bonds described in section 103(a).

(ii) A statement setting forth proposed closing agreement terms based on the model closing agreement language contained in IRM 7.6.2 and, if applicable, a computation of the proposed closing agreement amount.

(iii) The name and phone number of a person to contact for additional information.

(b) Additional Information for Requests. Additional information may be required depending on the facts and circumstances.

(c) Penalty of Perjury Statement. The following declaration, signed by the party making the submission, must accompany a TEB VCAP submission and any factual information submitted after the original submission or any change in the submission at a later time: "Under penalties of perjury, I declare that I have examined this submission, including accompanying documents and statements, and to the best of my knowledge and belief, the submission contains all the relevant facts relating to the request, and such facts are true, correct, and complete."

(d) Anonymous Closing Agreement Requests. An issuer or its authorized representative may initiate discussions regarding the appropriate terms of a closing agreement on an anonymous basis. An anonymous request may be made on behalf of a group of similarly situated issuers, but the execution of the closing agreement and all terms therein must be consistent with section 7121 of the Code. Until the name of the bond issue is disclosed to the Service, a request for a closing agreement under TEB VCAP will not prevent the Service from beginning an examination of the bond issue. An issue for which a request has been submitted under this paragraph (d) that has been placed under examination prior to the date the issue is identified to the Service will no longer be eligible for TEB VCAP.

(e) TEB VCAP Mailing Address. TEB VCAP submissions should be mailed to:

Internal Revenue Service
Attn: T:GE:TEB:O, Rm. 5T2
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

SECTION 5. CLOSING AGREEMENT TERMS

Closing agreements under TEB VCAP will generally follow the model closing agreement in IRM 7.6.2. Specific closing agreement terms will depend on the facts and circumstances of the case, including

the degree of diligence exercised by the issuer and any conduit borrower. Any standardized closing agreement terms that are developed for TEB VCAP will be set forth in the Internal Revenue Manual and/or other published guidance.

SECTION 6. EFFECT OF CLOSING AGREEMENT EXECUTED UNDER TEB VCAP

The closing agreement will protect bondholders from including in their gross income any interest on the bonds during a period specified in the agreement for any violation described in the agreement. A closing agreement executed under section 7121 of the Code shall be final and conclusive except that 1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact, 2) it is subject to the sections of the Code that expressly provide that effect be given to their provisions (including any stated exception for section 7122 of the Code) notwithstanding any other law or rule of law, and 3) it is subject to any law, enacted after the date of the agreement, that applies to a tax period ending after the date of the agreement covered by the agreement.

SECTION 7. REQUESTS FOR COMMENTS

We anticipate that TEB VCAP will be expanded and refined over time based on experience and public comment. The Service welcomes comments regarding the format and operation of TEB VCAP. The Service requests comments on the existing remedial action provisions and existing closing agreement programs and procedures contained in regulations and other published guidance. The Service welcomes suggestions with regard to the general framework of closing agreement terms including whether standardized closing agreement terms and amounts should be specified for particular violations. The Service also requests comments regarding whether any of the provisions of the model closing agreement set forth in IRM 7.6.2 should be changed.

Comments should be submitted in writing within six months from the date this Notice appears in the Internal Revenue Bulletin. Comments should be sent to the following address:

Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224
Attn: Susan D. Ruth T:GE:TEB:O,
Rm. 5T2.

Comments may also be sent electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, by submitting comments directly to the IRS Internet site at http://www.irs.gov/prod/tax_regs/comments.html, or by e-mailing them to notice.comments@m1.irs.counsel.gov.

SECTION 8. EFFECTIVE DATE

TEB VCAP is effective immediately.

SECTION 9. DRAFTING INFORMATION

The principal author of this Notice is Cliff Gannett of Tax Exempt Bonds Outreach, Planning and Review of the Office of the Director, Tax Exempt Bonds, Tax Exempt/Government Entities. For further information regarding this Notice, contact Mr. Gannett at (202) 283-2999 (not a toll-free call).
