

Publication P 1 TEB

Understanding the Tax Exempt Bonds Examination Process



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The Taxpayer Bill of Rights

The first part of this publication explains your rights as a taxpayer. The second part explains the Tax Exempt Bonds examination, appeal and compliance resolution processes.

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the

Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not

be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial

difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Useful IRS Publications

556 Examination of Returns, Appeal Rights, and Claims for Refund

4077 Tax-Exempt Bonds for 501(c)(3) Charitable Organizations

4078 Tax-Exempt Private Activity Bonds

4079 Tax-Exempt Governmental Bonds

5005 Your Responsibilities as a Conduit Issuer of Tax-Exempt Bonds

5091 Voluntary Compliance for Tax-Exempt and Tax-Credit Bonds

Introduction

The primary objective of an examination is to determine if a municipal debt issuance complies with Internal Revenue Code provisions.

This document discusses general rules and procedures that we follow in examinations and how certain compliance problems can be corrected.

Selection of Returns

There are several ways a municipal debt issuance is selected for examination. It may be selected as a part of an initiative, project or referral, due to a questionable or unusual item on the return, or as a random selection. We use a centralized case selection and review process to enhance consistency of enforcement activities and to focus resources on the areas that will have the most positive impact on municipal debt issuances. Our tasks include identifying areas of noncompliance, developing corrective strategies, and assisting with those strategies.

Your Role in the Process

The issuer of the municipal debt is treated as the “taxpayer” throughout the examination process. You, any conduit borrower and any other party to the transaction, have the responsibility of maintaining and producing adequate records to substantiate the tax-exempt status of the bonds. If the requested information is organized and complete, we can conduct the examination in a timely and efficient manner. For certain tax credit bonds where direct payment of the allowable credit has been elected, the issuer of the debt is the party subject to taxation. As the actual taxpayer, the general provisions of Publication 556, including those dealing with assessments, collections, and appeals, apply to you. Because qualified tax credit bonds are similar in many respects to tax-exempt bonds, the remainder of this publication may be useful in understanding the examination process of such bonds. See your examiner regarding questions about the difference between tax-exempt and tax credit bond examination processes.

The Examination

A Tax Exempt Bonds (TEB) examiner notifies you by phone or letter that a municipal debt issuance has been selected for examination. If the initial contact is by phone, a confirmation letter will follow. The letter may indicate how the return was selected for examination and will detail the required items for the examination. We may, however, request additional items at a later date.

The examination may include a comprehensive review of the municipal debt issuance, or focus on specific aspects. The examination continues until the examiner is reasonably certain that the municipal debt issuance has met the applicable requirements.

You can authorize someone to represent you if they are eligible to practice before the IRS. If you have someone represent you in your absence, you must furnish written authorization. See Form 2848, *Power of Attorney and Declaration of Representative*, for more information.

Your representative may have a conflict of interest if they had a role in the issuance of your municipal debt, such as providing the approving opinion as to the qualifications of the municipal debt issuance, or representing other parties to the transaction, such as the conduit borrower. A representative with a conflict of interest may not represent a client before the IRS unless: (1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client; (2) The representation is not prohibited by law; and (3) Each affected client gives informed consent, confirmed in writing.

You may deem it appropriate to permit direct communication between the examiner and any conduit borrower. If the examiner agrees to conduct the examination in that manner, you must provide us with a Form 8821, *Tax Information Authorization*. This form permits the examiner to discuss your tax matter with the conduit borrower.

During the examination, we may need to contact various third parties including

underwriters, financial advisors, bond counsel, and any other parties, as well as their counsel, with a transactional relationship to the municipal debt issue.

If the examiner identifies a potential problem, this problem will be discussed with you or your representative. In some instances, Form(s) 5701-TEB, *Notice of Proposed Issue*, and Form(s) 886-A, *Explanation of Items*, may be issued to identify any areas of noncompliance. Upon completion of the examination, all unresolved issues will be included in a *Notice of Proposed Adverse Determination Letter* and Form(s) 886-A, *Explanation of Items*.

Resolving Qualification Issues— The Closing Agreement Process

With respect to tax-exempt bonds, a failure to comply with the federal tax laws that govern municipal debt issuances may result in the loss of the tax-exempt status of the bonds under examination. With respect to tax credit bonds, a failure to comply with the federal tax laws that govern municipal debt issuances

may result in the loss of the tax credit status of the bonds under examination. As a result, holders of bonds issued as tax-exempt bonds would be taxed on the interest they received and holders of bonds issued as tax credit bonds would lose the ability to claim tax credits with respect to the bonds. In most situations, however, the IRS will, as an alternative, allow the issuer to enter into a closing agreement where you agree to correct the compliance failures and pay a settlement amount to the US Treasury. As a result, the corrected violation will not cause the bond interest payable to the holders of tax exempt bonds to lose its tax-exempt treatment or the holders of tax credit bonds to lose the ability to claim tax credits.

Closing Letter

The final step in the examination process is a letter explaining the examiner's conclusions. Sometimes the conclusion results in a tax liability for related entities and/or individuals; and may require coordination with other business units within the IRS.

Appeal Rights

The Office of Appeals settles unresolved issues. Your appeal rights are explained in detail in Publication 5, *Your Appeal Rights and How to Prepare a Protest if You Don't Agree*. Appeal requests must be in writing and timely. If not, we will issue a Notice of Final Adverse Determination. In certain situations, Fast Track Mediation, an expedited appeals process, is used. You should discuss this with your examiner. For more information about the appeals process, see Rev. Proc. 2006-40, *Administrative Appeal of Proposed Adverse Determination of Tax-Exempt Status of Bond Issue*.

Post-issuance Compliance and the TEB Voluntary Closing Agreement Program

In furtherance of its mission, TEB promotes post-issuance compliance with federal tax requirements applicable to tax-exempt and tax credit bonds in order to prevent or correct violations before they are discovered during an examination. Issuers should understand

and refer to their bond documents. Additionally, TEB encourages issuers to adopt and follow procedures for monitoring and achieving post-issuance compliance with federal tax requirements applicable to their tax-exempt and/or tax credit bonds.

TEB has a Voluntary Closing Agreement Program (TEB VCAP) available to issuers who are not under exam and who have discovered a violation of the law associated with the issuance of tax-exempt or tax credit bonds. TEB VCAP is intended to encourage issuers and other parties involved in bond transactions to exercise due diligence in complying with applicable federal tax laws and to provide a vehicle to correct violations as expeditiously as possible before the violations are discovered during an examination. You can find additional information regarding TEB VCAP on the TEB website and in Notice 2008-31, *Voluntary Closing Agreement Program for Tax-Exempt Bonds and Tax Credit Bonds*.

Tax Information

The IRS provides the following sources for forms, publications, educational resources and additional information.

Internet: www.irs.gov/bonds

Bond Questions: tege.teb.questions@irs.gov

Forms and Publications: 800-829-3676

Treasury Inspector General for Tax

Administration: If you want to confidentially report misconduct, waste, fraud, or abuse by an IRS employee, call 1-800-366-4484 (1-800-877-8339 for TTY/TDD).

You can remain anonymous.

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