

Part IV - Items of General Interest

TEB Voluntary Closing Agreement Program: Relief from Debt Extinguishment for Certain Issuers Purchasing and Holding Their Own Tax-Exempt Bonds

Announcement 2011-19

SECTION 1. BACKGROUND

The Treasury Department and the Internal Revenue Service (“IRS”) issued Notice 2008-41, 2008-15 I.R.B. 742 (April 14, 2008), as modified by Notice 2008-88, 2008-42 I.R.B. 933 (October 20, 2008), and Notice 2010-7, 2010-3 I.R.B. 296 (January 19, 2010), to provide relief from liquidity constraints in the tax-exempt bond market during the financial crisis. The Notices provided certain temporary rules that allowed state and local governmental issuers to purchase and hold their own tax-exempt bonds for temporary holding periods without resulting in a retirement of the purchased tax-exempt bonds solely for the purposes of §103 and §§ 141-150 of the Internal Revenue Code, as amended (“Code”). Section 3.2 of Notice 2010-7 provides in relevant part that the permitted holding period during which a state or local governmental issuer may hold its own tax-exempt bonds under the special rules in § 3.1 of Notice 2008-88 expires on

December 31, 2010. Separately, certain special rules of continuing application allow state and local governmental issuers to hold their own “qualified tender bonds” for a temporary period pursuant to the exercise of a “qualified tender right” (as defined in § 3.2 of Notice 2008-41) without causing a reissuance or retirement of those bonds. After December 31, 2010, except for tax-exempt bonds held pursuant to rules of continuing application for qualified tender bonds, a state or local governmental issuer generally may not purchase and hold its own tax-exempt bonds without causing a retirement or extinguishment of such bonds (any such bonds so held are referred to as “extinguished bonds”).

For various reasons beyond their control, some issuers that previously purchased their own tax-exempt bonds in the financial crisis pursuant to Notices 2008-41, 2008-88, and 2010-7 were unable to resell the bonds by December 31, 2010. In addition, other issuers may currently need to purchase and hold their own tax-exempt bonds due to certain current market challenges. Some of these issuers have approached the IRS about the possibility of entering into a voluntary closing agreement that would allow them to continue to purchase or hold their own tax-exempt bonds under § 103 of the Code after December 31, 2010.

SECTION 2. TAX EXEMPT BONDS VOLUNTARY CLOSING AGREEMENT PROGRAM (TEB VCAP)

.01 Pursuant to the TEB VCAP program set forth in Notice 2008-31, 2008-11 I.R.B. 592 (March 17, 2008), the IRS will consider requests from issuers of extinguished bonds for a voluntary closing agreement.

.02 The closing agreement will provide that the extinguished bonds will be treated as remaining outstanding for purposes of § 103 and §§ 141-150 during the period beginning on the later of January 1, 2011 or the date the issuer purchases its own bonds and ending on the earlier of: (1) the date that is 180 days after the execution of the closing agreement by the IRS and the issuer or such earlier date as requested by the issuer (the “Closing Date”); (2) the date that the bonds are successfully resold to a third party; (3) the date that the bonds are successfully currently refunded for purposes of §§ 103 and 141-150; or (4) the date that the bonds are cancelled on the books and records of the issuer.

.03 The closing agreement will be conditioned on:

(A) The authorizing body of the issuer submitting its adopted resolution (the “Authorizing Resolution”) of its intent to resell or currently refund the extinguished bonds as tax-exempt bonds within the relevant period described in section 2.02 above. Such resolution shall be based on the opinion of its financial advisor or other expert that the resale or refunding of the bonds is likely to be successful within such period.

(B) The issuer’s representations that the bonds to be resold or currently refunded by the issuer: (1) are outstanding for purposes of State law and constitute legal, valid, and binding obligations of the issuer under applicable State law; and (2) assuming that the bonds are treated as remaining outstanding for purposes of § 103 and §§ 141-150, qualify as tax-exempt obligations of the issuer under § 103 of the Code. The issuer may make these representations

itself or the issuer may satisfy the requirement for these representations through submission of an unqualified bond counsel opinion from a nationally recognized public finance attorney or law firm that addresses these representations.

(C) The payment of a fee by the issuer equal to the par value of the outstanding bonds to be held by the issuer multiplied by one thirty-fifth of one percent (.029%) for each month from the later of January 1, 2011 or the date of purchase of the extinguished bonds and continuing through the Closing Date.

.04 The TEB VCAP request must be submitted no later than December 31, 2012 under the operating procedures described in section 7.2.3 of the Internal Revenue Manual.

.05 Generally, a complete VCAP request will be processed and a closing agreement will be sent to the issuer for its execution within 45 days of the receipt of the complete submission. An issuer must submit payment, in accordance with the closing agreement, prior to returning the executed closing agreement to the IRS for its subsequent execution.

SECTION 3. DRAFTING INFORMATION

The principal author of this announcement is Sandra H. Westin of the IRS Office of Tax Exempt Bonds. For further information regarding this announcement contact Sandra Westin at (415) 522-6065 (not a toll-free call).