



Voluntary Compliance and VCAP

Phone Forum Presented by
IRS Office of Tax Exempt Bonds
September 17, 2013



Topics

- Compliance overview for tax-advantaged bonds
- Voluntary Closing Agreement Program (“VCAP”) Overview
- Identified Violations and Resolution Standards



Speakers

- **Debbie Cho**, Tax Law Specialist
- **George Gurrola**, Tax Law Specialist
- **Antoine Zemor**, Tax Law Specialist



Disclaimer

- The information contained in this presentation is current as of the date it was presented. It should not be considered official guidance.
- The information contained in this presentation is a summary of key points. Reference should be made to Sections 7.2.3 and 4.81.6 of the Internal Revenue Manual (IRM) and Notice 2008-31.



Compliance Overview for Tax-Advantaged Bonds

Presented by:

Debbie Cho, Tax Law Specialist



Tax-Advantaged Bonds

- Receive preferential tax treatment
 - Tax exempt
 - Tax credit
 - Direct pay credit subsidy
- Subject to federal tax law
 - At time of issuance
 - Generally, as long as the bonds remain outstanding



Compliance at Issuance

- Form 8038 series information return
 - 8038, 8038-G, 8038-GC, 8038-TC
- Reasonable expectations
- May also include, if appropriate:
 - Volume cap allocation
 - Public approval



Post-Issuance Compliance Areas

- Qualified use
 - Qualified use of bond-financed property
 - Private or non-qualified activity
 - Sources of debt service payment
- Arbitrage
 - Rebate
 - Yield restriction



Post-Issuance Compliance Areas (cont'd)

- Record retention
 - Retain records necessary to establish continued tax-advantaged status
 - Initial transaction documentation
 - Expenditures of bond proceeds
 - Use of bond financed property
 - Management contracts, research agreements
 - Sources of bond payment and security
 - Investment records of bond proceeds



Written Procedures

- Promote post-issuance compliance
- Help maintain preferential tax status of bonds
- Important components include:
 - Periodic due diligence reviews
 - Identification/training of responsible personnel
 - Timely identification of non-compliance
 - Timely steps for remediation
- Considered as an equitable factor in determining resolution terms



Issuer Actions Related to Post-Issuance Compliance

- Issuer actions
 - Monitoring to prevent potential violations before they occur
 - Computation and payment of rebate / yield reduction payments
 - Remedial actions under regulations
 - Filing Form 8038-CP for credit payments
- If violations occur
 - Voluntary Closing Agreement Program (“VCAP”)



TEB Compliance Resources

- New Publication 5091
 - Overview of voluntary compliance for tax-exempt and tax-credit bonds
- TEB Website: www.irs.gov/bonds
 - Contains links to articles on post-issuance and voluntary compliance
- Website link to TEB Forms & Pubs
 - Links to all TEB Forms for information returns
 - Links to TEB Publications for tax-advantaged bonds



Tax-Advantaged Bonds Compliance

Recap of Key Points

- Post-issuance compliance is an ongoing responsibility of the issuer
- Written procedures can help issuers identify and prevent or resolve noncompliance
- Compliance information and resources available on TEB website
 - www.irs.gov/bonds



TEB VCAP: Program Overview

Presented by:

Antoine Zemor, Tax Law Specialist



Voluntary Closing Agreement Program

- VCAP program designed for tax-advantaged bonds
- Provides process for issuers to resolve compliance violations
- Voluntary requests for resolutions
- See Notice 2008-31 and IRM Sections 7.2.3 and 4.81.6
- VCAP information on TEB website
 - www.irs.gov/bonds



VCAP Objective and Policy

- Encourage issuers to timely identify and correct violations
- Policy considerations
 - Resolve violations with issuers at transaction level
 - Resolution terms generally more favorable than examination



VCAP Program Considerations

- Available to issuers who have discovered violation of federal tax requirements
- Advantage to permanently resolve specific matters, no disadvantage to US Government
- VCAP closing agreements resolve specific matters that have occurred
 - Private letter rulings address matters of law to determine whether future events or actions comply with the bond requirements



VCAP – Eligibility

- VCAP generally available to resolve compliance violations
- VCAP is not available when:
 - Violation can be remediated under existing remedial action provisions
 - Bond issue is under examination
 - Tax-favored status is at issue in any federal court, the IRS Office of Appeals, or any other proceeding
 - Violation was due to willful neglect



Scope of VCAP - Finality

- VCAP closing agreements are final and conclusive as to matters agreed upon, absent fraud, malfeasance, or misrepresentation of a material fact
- Bond issues accepted into VCAP are not selected for examination
 - Anonymous requests may be selected for exam
- Bond issues may be selected for examination after a VCAP case is resolved
 - However, resolution of the specific violation under VCAP remains final and conclusive



VCAP – Submitting a Request

- New Form 14429
 - Comprehensive form for all VCAP requests
 - Released Spring 2013
 - Assists issuers in organizing required information
 - Ensures requests are complete
 - Available for download on TEB website
 - www.irs.gov/bonds
 - Submit requests via e-mail: tebvcap@irs.gov



VCAP – Information Required

- Description of violation
- Proposed settlement terms
- Statements of good faith
- Statement as to whether or not issuer has adopted written post-issuance compliance procedures
- See IRM Section 7.2.3.2.1



VCAP - Representations

- CPM relies on factual representation by issuer as true and accurate
 - Generally not reviewed independently by CPM
 - Additional information may be requested if circumstances warrant
- Information submitted under penalty of perjury
 - Issuer representation that all facts are true, correct and complete to the best of issuer's knowledge



VCAP - Example

- Excessive Nonqualified Use
 - Violation occurs when issuer allocates proceeds to nonqualified purposes
 - Lease or management contract resulting in private use
 - Standard resolution in VCAP
 - Submission of request within 6 months of violation: payment of 100% of taxpayer exposure on nonqualified bonds plus redemption
 - Submission of request 6 to 12 months after violation, 110% of taxpayer exposure plus redemption



VCAP – Anonymous Requests

- Help issuers identify appropriate resolution methods
 - Novel or unique matters
 - Significant uncertainty regarding appropriate settlement terms
- Limited to general matter, question or factual scenario
 - Response will only provide general settlement approach, not specific terms
- Not used to determine resolution for violations involving detailed facts and circumstances
- Bonds remain subject to examination



VCAP Process

- Review of requests
 - Consider issuer proposal and develop recommendation
- Violations covered by IRM resolution standards
 - Streamlined processing
 - Resolution terms indicated in IRM
- Violations not covered by IRM resolution standards
 - Submit recommended resolution terms to TEB closing agreement committee
 - Resolution terms require approval of TEB closing agreement committee



VCAP – Resources and Contacts

- VCAP resources on TEB website
 - www.irs.gov/bonds
 - Dedicated section for VCAP
 - Form 14429 for submission of requests
 - IRM 7.2.3 – VCAP Program
 - Notice 2008-31 – VCAP Program
 - IRM 4.81.6 – Closing Agreements
- VCAP requests may be submitted by e-mail:
 - TEBVCAP@irs.gov
- Informal verbal inquiries regarding VCAP
 - Procedural questions



TEB VCAP: Identified Violations and Resolution Standards

Presented by:

George Gurrola, Tax Law Specialist



VCAP – Resolution Standards

- Streamlined standards for resolutions
- Used for certain identified violations
- Expedited process
- Address common problems and violations
 - Provide consistent resolution methodology
 - May serve as guide to less common violations
- Identified violations described in IRM
 - Section 7.2.3.4.2 for Tax-Exempt Bonds
 - Section 7.2.3.4.3 for Certain Direct Pay Bonds
- Calculation methodologies in IRM 4.81.6



Resolution Standards - Modification Based on Timing of Discovery

- Resolution standards: improved if written compliance procedures adopted prior to date of violation
 - Procedures must specify:
 - Responsible personnel
 - Training required
 - Timing and nature of compliance reviews
 - Procedures for identification and elevation of violation
 - Record retention procedures
 - Awareness of VCAP



Identified Violations

Tax-Exempt Bonds Resolution Standards

- Excessive Nonqualified use
- Ownership of Qualified 501(c)(3) Bond-Financed Property
- Failure to Provide Notice of Defeasance
- Failure to Call Defeased Bonds within 10.5 Years of Issuance
- Alternative Minimum Tax Adjustment
- Capital Expenditure Limitation Failure
- Maturity Exceeding 120% of Economic Life
- Impermissible Advance Refunding
- Failure to Timely Reinvest Proceeds into 0% SLGS
- Extinguishment / Merger



Identified Violations

Tax-Exempt Bonds – New Categories

- Failure to Satisfy Public Approval (TEFRA) requirements for certain categories
 - Certain Qualified 501(c)(3) Advance Refunding Bonds
 - In Connection with status of Applicable Elected Representative
- Certain Small Issue Bonds Issued as Draw Down Bonds in an Amount that Exceeds Volume Cap
- Failure to Satisfy Information Reporting Requirements After Remedial Action



Identified Violations

Tax-Exempt Bonds – New

- Failure to Satisfy TEFRA Public Approval requirement for Certain Qualified 501(c)(3) Advance Refunding Bonds
- Failure to Satisfy TEFRA Public Approval requirement in Connection with status of Applicable Elected Representative



Identified Violations

Tax-Exempt Bonds – New

- Certain Small Issue Bonds Issued as Draw Down Bonds in an Amount that Exceeds Volume Cap
 - Aggregate face amount of bonds exceeds issuing authority volume cap
 - Related Notices 2010-81 and 2011-63



Identified Violations

Tax-Exempt Bonds – New

- Failure to Satisfy Information Reporting Requirements After Remedial Action – key aspects
 - Information reporting form (series 8038) not filed following attempted remediation
 - Issuer to file a completed information reporting form prior to VCAP closing



Identified Violations – Direct Pay Bonds

- General resolution framework
- Credit maintenance amount
 - Credit adjustment period
 - Past and future components
 - Modification of debt service schedule (optional)



Identified Violations

Certain Direct Pay Bonds – Revisions

- De Minimis Premium Violation
 - Split into two separate categories
 - Certain Build America Bonds and Recovery Zone Economic Development Bonds; and
 - Certain Specified Tax Credit Bonds
 - Covers only bonds for which actual interest amount paid is less than or equal to the maximum permitted subsidy rate.

VCAP – General Resolution Terms

- Issuers can propose alternative resolution approaches
 - Based on unique facts and circumstances
 - Factors include due diligence of parties, nature of compliance failure, implementation of procedures, economic impact



Recap of Key Points

- Compliance is required generally over the life of the bonds
- Post-issuance compliance monitoring helps maintain tax-advantaged status
 - Written procedures facilitate monitoring and remediation
- VCAP is available to issuers for resolution of violations
 - Submit requests using Form 14429
 - Certain identified violations are covered by resolution standards
 - Closing agreement conclusively resolves matter



More Information on irs.gov

- At www.irs.gov/bonds, click “TEB Forms & Pubs” for:
 - Links to Form 8038 series returns/instructions
 - Link to Form 14429 for VCAP requests
 - Publication 5091 discussing post-issuance compliance and other publications
- At www.irs.gov/bonds, click “TEB Voluntary Compliance” for links to articles on post-issuance compliance and information about VCAP



TEB Outreach Events

- Watch TEB website for announcements
- Sign up for Tax Exempt Community Updates
 - Click link “Contact TEB” on www.irs.gov/bonds
- Past TEB events have included
 - Arbitrage and Rebate Compliance
 - Examination Process
 - Qualified 501(c)(3) Bonds and Form 990 Schedule K
 - Post-Issuance Compliance



TaxExemptBondQuestions@irs.gov

Contact us with your questions by e-mail

- tege.teb.questions@irs.gov
- Include contact information

Department of the Treasury
Internal Revenue Service

www.irs.gov