



Tax Exempt Bonds Teleconference

on

The TEB Examination Process

Presented by

IRS Office of Tax Exempt Bonds

on

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Topics & Speakers

- Examination Selection Process
 - Janae Lemley
- Examination Opening & Development Process
 - Cathy Webster
- Examination Issue Resolution & Closing Process
 - Marie Sullivan
- Moderator
 - Steven Chamberlin



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 section 7121 of the Internal Revenue Code, Revenue Procedure 2006-40, and sections 4.81.5, 4.81.6 and 8.7.8.13 of the Internal Revenue Manual in their entirety.



The TEB Examination Process

Examination Selection Process

Presented by:

Janae Lemley, Tax Law Specialist



TEB Overview

- Field Operations (FO) – Manager, Robert Henn
 - Conducts limited and full scope examinations
 - Reviews rebate refund claims
- Compliance & Program Management (CPM) – Manager, Steven Chamberlin
 - Coordinates the process for selecting returns for examination
 - Conducts market segment risk assessment and penalty determination examinations
 - Coordinates the mandatory and quality review of examination cases
 - Provides technical support for FO examinations



Examinations vs. Compliance Check Questionnaires

- Examinations
 - Forms 8038, 8038-G, 8038-GC, 8038-B, 8038-TC, 8038-CP, 8038-T, 8328, 8703
 - Information related to a specific bond issue and return
 - Example: 2007 City A, Revenue Bonds, Series B
- Compliance Check Questionnaires
 - Information about compliance practices and post-issuance monitoring procedures related to all of an issuer's bond transactions within a market segment
 - Example: All qualified school construction bonds issued by City A



TEB Annual Work Plan

- General Program Examinations
 - Full scope, limited scope or market segment risk assessment
 - Based on a combination of factors including:
 - Workload needs
 - Market segment coverage
 - Geographic coverage
 - Identified risk of potential noncompliance
- Project Examinations
- Referral Examinations



General Program Examinations

- TEB annual work plan
- Full scope examinations or market segment risk assessment examinations
- Random selection
 - Form 8038, 8038-G, 8038-B or 8038-TC examinations
 - Based on:
 - Market segment coverage
 - Geographic coverage
 - Workload needs
 - Full scope examinations



Projects & Other Examinations

- Project examinations
 - Planned projects identified in the annual work plan
 - Projects are generally focused on arbitrage compliance though can also include private use and other requirements
 - Projects focused on particular geographic area
 - Projects developed by a TEB team
- Other on-going sources of examinations
 - Requests for recovery of overpayment of rebate
 - Willful neglect determinations for late filed returns
 - Rebate verification examinations of Form 8038-T



Referrals

- Possible sources of referral information
 - TEB analysis
 - Informants or whistleblowers
 - Other IRS operating divisions
 - Outside sources such as other federal or state agencies
- TEB Referral Committee
 - Approves the opening of an exam based upon referral information
 - Comprised of CPM and FO senior managers



Examination Selection Process – Recap of Key Points

- TEB annual work plan
 - Describes areas of focus for general program examinations
 - Describes planned project examinations
 - Identifies other types of on-going exam work
- Case selection process
 - Identify population of returns meeting selection criteria
 - Random selection
- Referrals



The TEB Examination Process

Examination Opening & Development Process

Presented by:

Cathy Webster, Tax Law Specialist



Exam Objectives

- Conduct exams to ensure compliance with all applicable federal tax requirements
- Establish an exam presence across the municipal bond market
- Follow established exam procedures to ensure consistency

Exam Process

- Assigning the exam
- Planning the exam
- Scope of the exam
- Opening the exam



Assigning the Exam

- Assignment of exams by management
- Review of case file information by examiner
- Determine the appropriate opening letter



Planning the Exam

- Analysis of Form 8038
- Review various sources of information
 - Official statement on EMMA
 - Material event notices posted on EMMA
 - Preliminary review of internet information (issuer and, if applicable, conduit borrower)
 - IRS business systems
 - Sections of the Code & Regulations
 - Revenue Rulings & Revenue Procedures



Scope of the Exam

- Exams assigned with pre-identified issues and recommended exam scope
- Examiner with managerial concurrence determines whether or not to expand the exam scope



Scope of the Exam (continued)

- Each individual Form 8038 series return is considered a separate exam
- The examination of a reissuance or refunding issue requires review of appropriate documents pertaining to the prior issue
- Previously examined Form 8038 series returns can be reopened when warranted
 - The scope would generally focus on new information suggesting potential noncompliance
 - The scope would generally not include specific matters conclusively resolved during the prior exam



Opening the Exam

- Examination begins by contacting the issuer
 - Examiner may first contact the issuer by telephone
 - Examiner will send opening letter
- Examination begins when the examiner sends the opening letter
 - Four different types of opening letters
 - Form 4564, *Information Document Request*
 - Publication 1, *Your Rights as a Taxpayer*



Examiner Contact

- Reform & Restructuring Act of 1998
 - Section 3705
- Employee information required for telephone calls and all correspondence
- E-mail communication



Disclosure

- Section 6103 of the Code prohibits unauthorized disclosure of taxpayer information
- Safeguarding tax information is a top priority
- Issuer can authorize disclosure through a Form 2848, *Power of Attorney & Declaration of Representative*, or a Form 8821, *Tax Information Authorization*



Authorized Communications

- Form 2848 authorizing an issuer representative
- Form 8821 authorizing disclosure of issuer tax information to the conduit borrower
- Form 8821 authorizing disclosure of conduit borrower tax information to the issuer
- Form 8821 authorizing disclosure of issuer tax information to other parties with information relevant to the examination



Exam Techniques

- Interviews
- Reviewing taxpayer information
- Site visits
- Third party contacts
- Record review and sampling techniques
- Documenting examiner findings in workpapers



Identified Issue

- Identified issue discussed with issuer
- Issuer provides additional information indicating there is no issue
- Issuer agrees and requests closing agreement
- Issuer does not agree with examiner



Form 5701 Notice of Proposed Issue

- If the taxpayer does not concur with the examiner concerning a violation, the examiner will provide the issuer with a written summary of potential issues on Form 5701-TEB
- The Form 5701-TEB will include the issues, facts, law, and examiner's position
- The taxpayer will be provided 30 days to respond
- Lack of response will be treated as non-concurrence



Exam Opening & Development Process – Recap of Key Points

- Committed to ensuring a high quality exam process
- Forms 2848 and 8821 must be properly completed to authorize the intended disclosure of tax information
- On-going communication between the issuer and examiner is critical



The TEB Examination Process

Examination Issue Resolution & Closing Process

Presented by:

Marie Sullivan, Tax Law Specialist



Exam Closings

- No Change Letter – facts and circumstances reveal that a violation has not occurred
- Advisory Letter – facts and circumstances suggest there is potential for a future violation even though one has not yet occurred *or* the issuer would benefit from information on how to avoid a future violation
- Closing Agreement – the issuer and IRS agree to permanently and conclusively resolve a specific matter identified during an examination
- Appeals – an independent review to resolve the tax controversy on a fair and impartial basis for both the issuer and the Government



Closing Agreements

- Under section 7121 of the Code and corresponding Regulations, the IRS may enter into a written closing agreement with any person relating to the liability of such person to any internal revenue tax for any taxable period
- A closing agreement is appropriate when there is an advantage to permanently and conclusively resolve specific matters and there is no disadvantage to the Government
- IRM section 4.81.6 covers the authority, finality, negotiating, drafting, terms and execution of closing agreements to resolve TEB examinations



Terms of the Agreement

- Fair, equitable and consistent
- Tailored to the facts and circumstances
- Promote voluntary compliance and encourage due diligence
- Recognize the difference between enforcement and voluntary compliance programs



Who May Enter a Closing Agreement

- The issuer is always a party to a closing agreement involving its bonds
- In certain cases, other parties may join the issuer in executing the closing agreement
- It is the policy of the IRS to resolve violations at the transaction level



Closing Agreement Committee

- Closing agreement terms must be approved by the TEB Closing Agreement Committee
- The Closing Agreement Committee is composed of the members of the TEB Senior Management Team:
 - Director, Tax Exempt Bonds
 - Manager, Field Operations
 - Manager, Compliance & Program Management



Closing Agreement Resolution

- Original copies of closing agreements and payment instructions are sent to the issuer for signature
- Closing agreement payments are made through the Electronic Federal Tax Payment System
- TEB executes the copies of closing agreements after confirmation of:
 - Receipt of closing agreement payment
 - Redemption or defeasance of bonds (if any)
 - Any other action required under the agreement terms
- The executed agreement is returned to the issuer with notification that the exam is closed



Proposed Adverse Determination

- Notice of Proposed Adverse Determination describes the facts, law, and examiner's position on each issue
- The issuer has 30 days to respond, and responses may include:
 - Issuer agrees with the examiner's position
 - Issuer does not agree and describes its position in writing to the examiner
 - Issuer can request an appeal if it does not agree with the examiner's position
- If the Issuer does not respond, the IRS will issue a Notice of Final Adverse Determination declaring the bonds taxable



Response to Notice of Proposed Adverse Determination

The issuer's response must include:

- Name, address and daytime phone number of contact person
- Copy of letter showing the proposed changes
- Tax periods involved
- List of changes that are not agreed with and why
- Facts and law supporting the issuer's rebuttal to the examiner's position
- Statement requesting appeal to the IRS Office of Appeals (if desired)
- Signature under penalties of perjury



Appeals Process

- The Office of Appeals is independent of any other IRS office and provides an independent review to resolve the tax controversy on a fair and impartial basis for both the issuer and the Government
- Revenue Procedure 2006-40, IRM section 8.7.8.13, and Publication 5 provide information on how to request administrative appeal to the Office of Appeals



Mandatory Review of Appeals Cases

- Revenue Procedure 2006-40 requires the mandatory review of all cases before closing to Appeals
 - Mandatory review is performed by subject matter experts in Compliance & Program Management
 - Mandatory review ensures that the facts and legal analysis included in the case file support the issues raised by the examiner



Appeals Resolutions

- Appeals and the issuer agree that no action is necessary with respect to the issues raised in a Proposed Adverse Determination
 - Appeals will provide the issuer with written notification that the Proposed Adverse Determination is withdrawn
- Appeals and the issuer enter a closing agreement permanently and conclusively resolving the issues raised in the exam
- Appeals and the issuer do not reach agreement
 - Appeals will provide written notification to the issuer that the Proposed Adverse Determination has become final



Exam Issue Resolution & Closing Process – Recap of Key Points

- Closing agreements may be used to permanently and conclusively resolve violations based upon the facts & circumstances of each case
- The TEB Closing Agreement Committee ensures the fairness and consistency of proposals
- The appeals process is available to issuers under examination when an agreement cannot be reached at the exam level



More Information at www.irs.gov/bonds

- Click “TEB Forms & Pubs”
 - Links to Form 8038 series returns, instructions and publications
- Click “TEB Published Guidance”
 - Links to Revenue Procedure 2006-40 and IRM sections 4.81.5 and 4.81.6 as well as other published guidance
- Click “TEB Voluntary Compliance”
 - Links to articles on post-issuance compliance and information about the VCAP program
- New web educational resources on arbitrage compliance and the TEB examination process coming soon!



Closing

- Webinar on Financial Restructurings and How to Avoid Unintended Consequences
 - Scheduled for September, 2012
 - Registration will be posted on our website later this summer
- Look for additional teleconferences on TEB related topics during FY 2013
- Contact us with your questions by e-mail at TaxExemptBondQuestions@irs.gov
 - Include contact information