



TEB Newsletter

April 2013

As a result of the State Government Communication and Outreach project undertaken by TEB, we are releasing our semi-annual newsletter to assist in meeting the needs of state officials responsible for overseeing the issuance of tax-advantaged bonds and ongoing compliance with applicable federal tax rules. This newsletter also draws attention to key program developments and new educational resources released over the past six months.

The newsletter introduces our 2013 Work Plan and priorities, which continue to focus on identifying and deterring abusive transactions as well as promoting issuer implementation of post-issuance compliance monitoring practices and procedures. Also in the newsletter is a description of our recently released report, "Avoiding Troubled Tax-Advantaged Bonds," which is an information sharing tool to help issuers spot situations, not only in post-issuance compliance, but also in the planning and development phases that might lead to such transactions.

This newsletter presents relevant tax administration topics geared toward the needs of our state colleagues as part of our continuing outreach efforts. We hope you find the TEB Newsletter helpful and we encourage you to contact the TEB representative associated with each jurisdiction with any questions, feedback or concerns.

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The explanations in this publication provide a general discussion of TEB program updates and may also include information about tax laws, regulations and court decisions. This information is intended for general guidance only as part of our education and outreach efforts and is not intended to provide formal guidance or a specific legal determination with respect to a particular set of circumstances. You may contact the IRS for additional information. You may also want to consult a tax advisor to address your situation.



Tax Exempt Bonds FY2013 Work Plan

The fiscal year [2013 Work Plan](#) identifies the operating priorities for the office of Tax Exempt Bonds (TEB) and provides program guidance and direction to all TEB employees.

TEB general programs are comprised of a diverse array of work that supports IRS strategic goals and TEB priorities. General program work consists of enforcement, voluntary compliance and education and outreach activities. In addition to general program work, TEB annually identifies projects and other work that are considered high priority for the fiscal year. Finally, TEB partners with other federal agencies and municipal market regulators to promote compliance across the market.

Areas of Focus:

While TEB general program work and other project work ensures a broad coverage of compliance matters relating to tax-exempt bonds, tax credit bonds, and direct pay bonds, much of TEB's work in FY 2013 will center on the following areas of focus.

Abusive Transactions – TEB will continue to identify and respond to abusive arbitrage motivated transactions and other impermissible tax schemes. Highlights for FY 2013 include:

- Continued prioritization of enforcement work focused on pricing manipulation or false certifications relating to investments, hedges, or the bonds themselves.
- Continued use of civil penalty examinations under section 6700 and other statutory authorities on transaction participants or other parties involved in the abusive matter.
- Continued coordination with IRS Criminal Investigations and Fraud offices in the development of referral items relating to possible criminal or civil investigations.

Post-Issuance Compliance – TEB will continue to promote the use of post-issuance compliance monitoring practices (including the implementation of written procedures) as an effective means for issuers to meet their tax responsibilities and ensure the continued compliance of their obligations. Highlights for FY 2013 include:

- Publication of a report presenting research from TEB's compliance practices research project identifying the circumstances and transactional decisions that can lead to tax violations as well as factors issuers should consider in detecting and avoiding future noncompliance.
- Revisions to Publications 4077, 4078 and 4079 which provide an overview of the federal tax requirements applicable to governmental bonds, qualified 501(c)(3) bonds and other qualified private activity bonds, including expanded information on post-issuance compliance.



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Arbitrage – The issuance of bonds for the primary purpose of diverting arbitrage will remain TEB’s highest compliance risk and enforcement focus. Highlights for FY 2013 include:

- Continued prioritization of enforcement work relating to arbitrage-motivated transactions, including those involving long investment periods or large investment amounts.
- Continued analysis of trading and other financial data from external informational databases to identify bond issues with higher risk of noncompliance.
- Continued prioritization of the processing of requests for recovery of overpayment of rebate to ensure the timely payment of refunds due to issuers.

Financial Restructurings – TEB will continue to identify and analyze potential tax compliance risks resulting from actions taken by issuers or other parties in response to their financial hardship or general market liquidity constraints. Highlights for FY 2013 include:

- Continued coordination with Federal, State & Local Governments, Indian Tribal Governments, and other IRS offices to identify and resolve compliance matters with insolvent or bankrupt governmental entities.
- Continued development of educational resources and targeted outreach efforts to issuers of financially distressed securities to assist them in understanding their tax responsibilities and how to avoid unintended adverse consequences for their obligations.

Governmental and Charitable Financings – TEB will continue to maintain a high priority on examination, voluntary compliance, education and outreach programs focused on governmental bonds and qualified 501(c)(3) bonds reflecting their relative prominence in the municipal bond market. Highlights for FY 2013 include:

- Continued examination presence focused on arrangements that increase noncompliance risk due to excessive private business use.
- Continued coordination and information sharing with Exempt Organizations, including the development and analysis of referral information.

Direct Pay Bonds – Direct pay bonds present unique compliance and fraud deterrence risks that require heightened levels of review. Highlights for FY 2013 include:

- Continued coordination of enforcement, voluntary compliance, and educational programs as well as forms, processing, and pre-payment review systems to ensure the effective administration of this high profile market segment.
- Development of Internal Revenue Manual examination procedures for direct pay bonds.
- Continued support to Chief Counsel and Treasury offices in the development of technical and procedural guidance relating to direct pay bonds.



Effect of Sequestration on Certain Filers of Form 8038-CP

Pursuant to the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, certain automatic reductions, including a reduction to refundable credits under section 6431 of the Internal Revenue Code applicable to certain qualified bonds, took place beginning March 1, 2013. The sequester reduction is applied to section 6431 amounts claimed by an issuer on any [Form 8038-CP](#) filed with the Service which results in a payment to such issuer on or after March 1, 2013. The sequestration reduction rate will be applied until the end of the fiscal year (September 30, 2013) or intervening Congressional action, at which time the sequestration rate is subject to change.

These reductions apply to Build America Bonds (including Recovery Zone Economic Development Bonds), Qualified School Construction Bonds, Qualified Zone Academy Bonds, New Clean Renewable Energy Bonds, and Qualified Energy Conservation Bonds for which the issuer elected to receive a direct credit subsidy pursuant to section 6431. As determined by the Office of Management and Budget, payments to issuers from the budget accounts associated to these qualified bonds are subject to a reduction of 8.7% of the amount budgeted for such payments.

Issuers should complete [Form 8038-CP](#) in the manner provided by the [Form 8038-CP Instructions](#). Affected issuers will be notified through correspondence that a portion of their requested payment was subject to the sequester reduction. Issuers should use this correspondence to identify the portion(s) of amounts requested that were subject to the sequester reduction. Issuers with any questions about the status of refunds claimed on [Form 8038-CP](#), including any sequester reduction, should contact IRS Customer Account Services at 1-877-829-5500.

Relief Granted for Certain Issuers Affected by Hurricane Sandy

In the aftermath of Hurricane Sandy, the IRS announced that certain government entity issuers affected by Hurricane Sandy could have qualified for extended time to file certain returns related to tax-exempt bonds, qualified tax credit bonds, and specified tax credit bonds. Under this extended IRS relief, issuers located in the certain localities that were required to file a [Form 8038 series](#) information return or a [Form 8038-T](#) in connection with an arbitrage payment were granted an extension. This extension also applied if the conduit borrower, bond counsel, or other professional upon whom the issuer relied to make such filing or payment was located in the particular localities. The IRS will abate any late-filing penalty that would otherwise apply to these filings.



IRS Releases Report on Avoiding Troubled Tax-Advantaged Bonds

The TEB Compliance Practice Research Team produced the report, [Avoiding Troubled Tax-Advantaged Bonds](#), in order to provide aid to issuers of tax-advantaged municipal bonds. This report identifies some considerations for issuers of such bonds and is TEB's initial step toward producing public resource products that assist issuers in avoiding troubled transactions. For more than a decade, TEB observed some of the worst problems in the municipal industry and then witnessed the efforts taken (by leaders in state and local government, the professional communities that support them, and various regulatory bodies) to address them. Many of these complex compliance issues facing issuers of tax-advantaged municipal debt still exist.

The report covers three phases of the life cycle of bonds. These three identified phases are 1) the transaction development phase, 2) the transaction execution phase, and 3) the post-issuance phase.

TEB hopes that market associations and other stakeholders will use this information to create related products beneficial to their members. These products will provide additional tools that facilitate issuer adoption of practices and procedures that avoid abusive or questionable transactions.

New Voluntary Closing Agreement Program Request Form

The Internal Revenue Service released the new [Form 14429, Tax Exempt Bonds Voluntary Closing Agreement Program Request](#). Completion, in full, of the new form is a requirement before a submission to the Tax Exempt Bonds Voluntary Closing Agreement Program (TEB VCAP) is accepted. The purpose of the new form is to assist issuers in organizing TEB VCAP submission requests and to ensure that their submissions are complete, in accordance with the requirements under [Notice 2008-31, 2008-11 I.R.B. 592](#) and [IRM 7.2.3](#). Use of the new form should avoid delays in processing a request because of missing information as well as facilitating the process for accepting and assigning requests.

The new [Form 14429](#) is an example of the latest effort by TEB to improve the administration of the TEB VCAP program and further this commitment. Last year, TEB provided [web content](#) to provide more information about the TEB VCAP program as well as descriptions (provided in [IRM 7.2.3.4](#)) of the resolution standards for identified violations both for tax-exempt and certain direct pay bonds. TEB believes that these resolution standards encourage due diligence by providing certainty, to issuers and other parties, in understanding the methodologies available to resolve eligible violations.

[IRM Section 7.2.3](#) provides additional procedural guidance on how to submit a TEB VCAP request. See [TEB Voluntary Compliance](#) under Information for the Tax Exempt Bond Community on [TEB's website](#) for more information.



Education and Outreach

One part of the overall mission of the office of Tax Exempt Bonds is to assist members of the bond community in understanding their tax responsibilities by developing tailored education and outreach programs focused on bond market segments. We have been busy this fiscal year participating in many outreach events throughout the country, including conferences sponsored by the National Association of Bond Lawyers (NABL), Municipal Securities Rulemaking Board (MSRB), Securities Industry and Financial Markets Association (SIFMA), Bond Dealers of America (BDA), National Council of State Housing Agencies, and New England States Government Finance Officers Association (NESGFOA). Over the coming months, we expect to participate in conferences sponsored by the Government Finance Officers Association (GFOA), National Association of State Treasurers (NAST), Council of Infrastructure Financing Authorities, among others. We appreciate the opportunity to participate in these events and look forward to building on our efforts to share tax related materials, educational resources and to open communication with issuers.

In addition, as part of TEB's outreach endeavors, TEB's Financial Restructuring Compliance Team is coordinating an outreach effort to political subdivisions in financial distress with the IRS office of Federal State and Local Governments (FSLG). FSLG specialists will contact the local governments by telephone or by mail and introduce himself or herself and provide information concerning services available such as web resources, publications, newsletters, etc. As part of this effort, FSLG will provide issuers of tax-advantaged bonds with a TEB fact sheet on financial restructuring compliance.



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TEB has committed to or is in discussion with the following sponsors to participate in the events listed below in order to provide information with respect to compliance with the federal tax laws applicable to state and local government debt obligations. This schedule is subject to change.

Event	Month	Location
Council of Infrastructure Financing Authorities (CIFA) Federal Policy Conference	May	Washington, DC
Virginia Government Finance Officers Association (VGFOA) Spring Conference	May	Virginia Beach, Virginia
National Association of State Treasurers (NAST) State Debt Management Conference	May	Pittsburgh, PA
American Bar Association (ABA) 2013 May Meeting	May	Washington, DC
American Institute of CPAs (AICPA) National Governmental Accounting & Auditing Conference (GAAC) EAST	June	Washington, DC
Governmental Finance Officers Association (GFOA) Annual Conference	June	San Francisco, CA
Municipal Securities Rulemaking Board / Securities Industry & Financial Markets Association (MSRB/SIFMA) Conference	June	San Francisco
TEB Teleconference - Qualified 501(c)(3) Bonds and Schedule K	June	Free Teleconference
National Association of Counties (NACO) Conference	July	Fort Worth, TX
Treasury Bureau of Public Debt 2013 SLGS Forum	August	Louisville, KY
American Bar Association (ABA) 2013 Joint Fall CLE Meeting	September	San Francisco, CA
National Association of Bond Lawyers (NABL) Bond Attorneys' Workshop	September	Chicago, IL
TEB Teleconference - VCAP Update	September	Free Teleconference