Voluntary Compliance and VCAP

Phone Forum Presented by IRS Office of Tax Exempt Bonds
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Topics

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

• Debbie Cho, Tax Law Specialist
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• 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
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
  - 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
  - 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](http://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](http://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
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