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Bond Ruling Emboldens Abusive Scheme, Former IRS Official Says: Tax Analysts

A recent private letter ruling has emboldened the use of an abusive arbitrage scheme and should be withdrawn, says William Mark Scott, former director of the IRS Office of Tax-Exempt Bonds.

Summary by Tax Analysts®

September 8, 2015

William J. Wilkins, Esq.
Chief Counsel, IRS Office of Chief Counsel
1111 Constitution Ave., NW
Washington, DC 20224
Re: Priv. Ltr. Rul. 201502008

Dear Mr. Wilkins,
I write to you to lend my voice to the discontent over Priv. Ltr. Rul. 201502008 (dated May 21, 2014, and released Jan. 9, 2015). I believe your office erred when it issued this ruling, and that the ruling should be revoked per Rev. Proc. 2015-1, § 11.04. And, with full knowledge of the errors, I am hopeful you will act accordingly.

Priv. Ltr. Rul. 201502008 addresses the use of a total return swap (TRS) in conjunction with an issue of tax-exempt bonds. In the ruling, one party wears 2 hats as both the swap counterparty and the holder of the tax-exempt debt. Because of this dual role, the swap counterparty/bondholder, through pricing terms applicable to the “total return” portion of the TRS, can lower its taxable income in exchange for greater tax-exempt income. The ruling, therefore, describes an arbitrage scheme that is quite easy to abuse.

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