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More Standards Coming for Resolving Exempt Bond Violations.

The IRS is preparing to add new resolution standards to its voluntary closing agreement program (VCAP) for issuers of tax-exempt bonds, an official with the agency said September 17.

During a phone forum presented by the IRS Office of Tax-Exempt Bonds (TEB), George Gurrola, a TEB tax law specialist, said the IRS “in the near future” will publish an update to its VCAP for exempt bond issuers. The update will include four new resolution standards, he said.

The first two standards will involve approval violations under the 1982 Tax Equity and Fiscal Responsibility Act. The first will cover instances in which issuers rely on a misinterpretation of the TEFRA approval exception for current refundings under section 147(f)(2)(D), Gurrola said. The standard generally will provide for a closing agreement payment of 7.5 percent of taxpayer exposure from the issue date to the date of the closing agreement.

The second TEFRA-related standard will address violations that take place when an issuer reasonably relies on an individual other than a qualifying, applicable, elected representative to approve an issuance of private activity bonds, Gurrola said. That standard will provide for a closing agreement payment of 5 percent of taxpayer exposure from the issue date to the date of the closing agreement.

The third new standard is intended to resolve violations involving some small-issue bonds issued as draw-down bonds in an amount that exceeds volume cap. The standard was developed after some issuers of small-issue bonds issued as draw-down bonds realized that some draws in calendar years after the calendar year of the issue date resulted in bonds issued above the applicable volume cap limits, Gurrola explained.

The new standard generally will require the closing agreement to include representations from the issuer and a closing agreement payment of \$1,000 for each calendar year after the calendar year of the initial draw, Gurrola said.

The final new standard addresses violations that occur when an otherwise satisfactory effort to remediate deliberate actions fails because a Form 8038 series return is not filed. Under the new standard, when the issuer asks to resolve the violation through VCAP within six months of the end of the prescribed period to file the return, the violation will be resolved with a \$1,000 closing agreement payment, Gurrola said.

There also will be updates to resolution standards for direct pay bonds. A significant change, Gurrola said, is the separation of the de minimis premium violation standard previously applicable to some direct pay bonds into two resolution standards, with one standard applying to Build America Bonds (BABs) and recovery zone economic development bonds and the other to specified tax credit bonds.

The new standards are designed to resolve violations that occur when direct pay bonds are issued with more than the permitted amount of premium, Gurrola explained. They will provide generally

that the violations can be resolved with closing agreement payments representing the amount of the excess direct pay credits attributable to the excess premium, he said. The revised standard for BABs and recovery zone economic development bonds extends the date for submitting VCAP requests to October 1, 2014, but the closing agreement payment will be slightly higher than under the previous standard.

Gurrola said TEB realizes that many VCAP requests will not fit within the resolution standards. He said it often helps if the issuer's proposed resolution terms have some consistency with or similarity to one of the resolution standards or a remedial action in the code or regulations, even if the standard or remedial action does not directly apply to the specific violation or facts and circumstances of the request.

by Fred Stokeld