# Bond Case Briefs

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## Nebraska Issuer Pays $350K to Settle BAB Dispute With IRS.

The Nebraska Public Power District has agreed to pay $350,000 to the Internal Revenue Service to settle a tax law dispute regarding $50.36 million of Build America Bonds it issued in 2009.

NPPD disclosed the settlement in an event notice filed on the Municipal Securities Rulemaking Board's EMMA system. The agreement appears to be the first publicly disclosed settlement of a BAB tax dispute.

The IRS concluded that some of the district's 2009 Series A general revenue bonds were sold in its initial public offering at a price greater than the de minimis amount of premium permitted under the tax law. NPPD said in the notice that it disagrees the IRS' finding but decided to resolve the matter in a closing agreement. The resolution allows NPPD to continue getting its full subsidy payment from the U.S. Treasury.

Neither Christine Pillen, NPPD's deputy assistant treasurer, nor lawyers at Fulbright & Jaworski LLP, which was bond counsel for the BABs and represented the NPPD before the IRS, would provide further details about the dispute.

The BABs program allowed state and local governments to issue taxable bonds in 2009 and 2010 and receive subsidy payments equal to 35% of the interest costs. Under the tax law, a bond cannot be treated as a BAB if the issue price has more than a de minimis amount of premium, generally defined as 0.25% of the stated redemption price at maturity multiplied by the number of complete years from the bond's issue date to its maturity date.

Last year, NPPD disclosed that the IRS believed $10 million of these bonds did not qualify for the 35% subsidy, based on the IRS' determination of the bonds' issue price. The loss of the subsidy on the bonds would have been about $260,000 per year or $6.5 million over the term of the bonds, the NPPD said in a notice filed in October.

IRS officials have contended for months that the issue prices stated for some BABS in bond documents were not the actual issue prices because on the day the BABs were issued, they immediately began trading up at higher prices. As a result, the actual issue prices should have higher, exceeding the de minimis amounts, and Treasury's subsidy payments to the issuers should have been lower, according to the IRS officials.

The $50.36 million of bonds were issued along with $100 million of 2009 Series B taxable revenue bonds and $17.89 million of 2009 Series C revenue bonds, according to the official statement. Proceeds from the Series A and C bonds were used to finance about $66.6 million of the costs of generation and other transmission capital additions, as well as to add to a reserve fund and pay for financing costs. Proceeds from the Series B bonds were used to finance about $24.8 million of the costs of additions to the Cooper Nuclear Station in Brownville, Neb., to refund about $69.5 million of taxable series notes, and to add to a reserve fund and pay financing costs, the offering document said.

The bonds were underwritten by a syndicate led by Morgan Stanley. John C. McClure served as the issuer’s counsel.

by: NAOMI JAGODA