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NABL Seeks Guidance Projects on Reissuance, Issue Price.

WASHINGTON The National Association of Bond Lawyers would like to see reissuance, management contracts, issue price and other projects on the Treasury Department and Internal Revenue Service 20152016 priority guidance plan.

NABL made its recommendations in a letter sent to the IRS Thursday that was signed by the group's president, Antonio Martini.

Treasury and the IRS use their guidance plan to identify and prioritize tax issues that should be dealt with through guidance. The 20152016 guidance plan will identify projects that Treasury and the IRS intend to work on from July 1, 2015 to June 30, 2016.

Only one of NABL's recommendations guidance concerning the reissuance of tax-exempt and tax-advantaged bonds was not on the 20142015 plan.

Matthias Edrich, an attorney at Kutak Rock and chair of NABL's tax law committee, said NABL has requested guidance on reissuance in the past. The association is specifically interested in guidance on reissuance as it relates to private placements with banks, he said.

NABL also submitted suggestions for the guidance plan that relate to items that are on the plan for 2014-2015.

The current plan includes projects that will update the existing guidance on when management contracts do not give rise to private business use. NABL would like to see updates to the management and service contract safe harbors, with an emphasis on the safe harbors working better with transportation projects and arrangements entered into under the Affordable Care Act, Edrich said.

In October, the IRS released interim guidance on accountable care organizations, which is one type of arrangement encouraged by the ACA. The guidance includes a safe harbor about when participation in certain ACOs won't give rise to private business use.

NABL recommends that Treasury and the IRS provide additional guidance on how the private business use test applies to ACOs and other shared savings arrangements entered into under the ACA. The group submitted comments about the interim guidance in January and it wants the regulators to adjust the safe harbor to work better with ACOs that already exist, Edrich said.

The current plan includes arbitrage regulations. Treasury and the IRS proposed arbitrage regulations in 2007 and 2013. The 2013 proposed regulations included a definition of issue price that has been widely criticized by market participants.

NABL wants Treasury and the IRS to revise and repropose regulations on issue price and to finalize the 2007 proposed regulations and the nonissue price parts of the 2013 proposed regulations.

With issue price, "I think everyone understands that there are still some concepts to work through to

make these regulations workable,” Edrich said.

Treasury associate tax legislative counsel John Cross has said that the agencies will repropose issue price regulations and handle that topic separately from the other provisions included in the proposed arbitrage regulations.

NABL would also like to see guidance on the definition of a political subdivision. This issue has become a particular concern since the IRS issued a technical advice memorandum in May 2013 arguing that the Village Center Community Development District in Florida is not a political subdivision that can issue tax-exempt bonds because its board does not, and will not, include elected officials.

The current guidance plan also includes regulations on allocation and accounting principles and final regulations on public approval requirements for private activity bonds. NABL is recommending that Treasury and the IRS repropose regulations on these topics. Edrich noted that the proposed regulations in these areas were published a while ago.

In addition to the interim guidance on ACOs, the IRS has also published three other sets of guidance on the current plan regarding reallocation of new clean renewable energy bonds, temporary relief after a declared disaster, and arbitrage rebate overpayments.

The Bond Buyer

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