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ABA Section Submits Letter to IRS on Definition of Political Subdivision.

The American Bar Association's Section of Taxation [submitted comments](#) this week to the Internal Revenue Service requesting guidance on the definition of political subdivision for tax exempt bonds and other tax-advantaged bonds, related to the technical advice memorandum issued in 2013 ([TAM 201224038](#)). In the comments, the tax section of ABA said that parts of the 2013 TAM "appear to set forth new substantive requirements not previously considered in the various statutory, administrative or judicial precedents."

The letter voices concern that "auditors of tax-exempt bonds may use the 2013 TAM to apply a new standard not based on existing law, thereby creating significant uncertainty in a well-established transactional practice that relies on unqualified tax opinions."

The 2013 TAM concluded that, since "the Issuer is not directly or indirectly answerable to the electorate, it is not a division of a state or local government," and therefore not a political subdivision. The ABA Section on Taxation argues that "accountability has not previously been required to achieve political subdivision status and control has been analyzed as a factor in whether sovereign power has been delegated."

The letter recommends that, "in light of these new requirements that the 2013 TAM seems to impose to qualify as a political subdivision... [it should] be withdrawn or modified to conform with existing precedent." It also recommends that "the Service and Treasury issue a notice providing interim guidance prior to the issuance of new political subdivision regulations and stating that any change to the definition of political subdivision will apply solely on a prospective basis."