

Bond Case Briefs

Municipal Finance Law Since 1971

IRS Disputes Tax-Exempt Status of Solid Waste Bonds in S.C.

WASHINGTON - The Internal Revenue Service is preliminarily challenging the tax-exempt status of bonds issued in December 2010 by the Three Rivers Solid Waste Authority in South Carolina to provide permanent financing for a system to treat and deliver methane gas from a landfill site to Kimberly-Clark Corp.

The authority, which sells the gas to Kimberly-Clark for its manufacturing facility in Beech Island, S.C. under an agreement according to the official statement for the bonds, described the dispute with the IRS in its audited financial statement for the year ending on June 30, 2015. The audit was opened in the authority's fiscal 2015, according to that document.

"The IRS has preliminarily asserted in an 'Information Document Request' that the 2010 bonds do not satisfy the federal tax requirements on 'solid waste disposal facilities' because the [gas] conveyance system, which comprised the majority of the project, was not part of a solid waste disposal function," the authority said in its financials. "If the IRS is correct, the conveyance system would not be permitted to be financed with tax-exempt bonds."

Based on that description, the IRS appears to be questioning how tax-exempt bonds could be issued to finance a treatment and pipeline system designed to deliver landfill gases the authority is selling to a private company. The authority said that it and its legal counsel "disagree ... with the conclusions reached by the IRS" and that "management is preparing a response to the IRS rebutting its claims."

Tim Fox, general manager for the authority said on Monday that, "We're optimistic that we've moved through that situation." But he referred questions about the dispute to the authority's tax controversy counsel, Mike Larsen, a partner at Parker Poe in Charleston. Larsen could not be reached for comment.

The \$11.21 million of December 2010 solid waste disposal facilities refunding revenue bonds were used in part to refund \$11.25 million of lease revenue bond anticipation notes that also were sold in 2010. The BANs, in turn, were used to refund solid waste disposal facilities tax-exempt certificates of participation that were issued in 2007 to finance the development of the treatment and conveyance system from the landfill to Kimberly-Clark's manufacturing facility.

The landfill consists of 1,378 acres on the U. S. Department of Energy's Savannah River Site in Aiken County, S. C. There is a memorandum of understanding, a permit agreement, and a business agreement between the authority and DOE. But the involvement of the federal government does not appear to be an issue in the audit, based on the authority's description of it.

The dispute has its roots in a series of actions that took place in the 1990s, according to the official statement for the bonds. In May 1991, the governor of South Carolina signed into law the Solid Waste Policy and Management Act, which, in an effort to stop disposing of waste in unlined trenches throughout the state, toughened regulations and resulted in the closing of many landfills. The act

encouraged the development of regionalized efforts to deal with waste and charged the state's counties with the responsibility for the waste generated within their jurisdictions.

The counties formed a solid waste authority and tasked it with coming up with a comprehensive solid waste plan for them. At that time, DOE was investigating several locations to site a landfill and wanted to explore partnerships with private or public entities. That led to the agreements between DOE and the Three Rivers Solid Waste Authority.

Under the 50-year permit agreement, DOE will not incur any costs in the construction, operation, maintenance, closure or monitoring on the premises or of any authority facilities or structures without DOE's written consent. DOE agrees to provide water, sewer, leachate treatment and other services. Under the business agreement, the authority must ensure landfill activities comply with all applicable federal and state laws and regulations. The authority agreed to contribute \$1.00 per ton of municipal solid waste received at the landfill to an escrow account for the Solid Waste Technology Center for as long as the landfill is in operation.

The authority began solid waste disposal operations in July 1998 after completion of the first of 11 cells of the landfill. It has agreements to take solid waste from nine counties.

Initially, the authority had proposed to deal with the methane generated from the landfill by flaring it into the atmosphere. But the authority decided that the most economically-feasible method of disposing of the landfill gas would be to sell it to Kimberly-Clark for its manufacturing facility. Bond counsel and disclosure counsel for the 2010 refunding revenue bonds was Howell Linkous & Nettles in Charleston.

Underwriters counsel was Drinker Biddle & Reath in Philadelphia. The Mosteller Law Firm in Barnwell, S.C. was counsel to the authority.

Municipal Advisors Group of Boston, Inc., in North Scituate, Mass. was financial advisor to the authority. The bonds were underwritten by Oppenheimer & Co. and Morgan Keegan.

The Bond Buyer

by Lynn Hume

Feb 29, 2016 12:30pm ET