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Advisory Committee Recommends Electronic 8038 Filing, More Targeted Enforcement to IRS.

The Advisory Committee on Tax-Exempt and Government Entities provided its annual set of recommendations to the IRS recently. Among other things, the panel recommended that the IRS implement electronic filing of Form 8038s and decrease the frequency of random audits, shifting instead to more targeted audits of tax-advantaged bond issues.

The Committee is a group of private sector individuals that work in various areas under the jurisdiction of the IRS Tax-Exempt and Government Entities. The Committee provides an organized forum for discussion between IRS officials and the private sector; three of the Committee's members come from the tax-advantaged bond community.

The Committee provides annual reports to the IRS Commissioner of the Tax-Exempt and Government Entities division (currently Sunita Lough), and the section of the Committee from the tax-advantaged bond community makes recommendations for continuous improvement and enhancing resources in the tax-advantaged bond market. Two of the Committee's comments are worth discussing.

The Committee recommends that the IRS should adopt electronic filing for Forms 8038.

Issuers of tax-advantaged bonds file one of the forms in the 8038 series to report the issuance of tax-advantaged bonds (or, in the case of direct pay tax-advantaged bonds, they file Form 8038-CP to request a direct payment) to the IRS. As the parties to a tax-advantaged bond transaction rush to close the deal, they often push the filing of the 8038 until after the bond deal closes; the due date can be as far off as several months depending on where the issuance date falls in a calendar quarter. And in some cases, the parties forget to do it altogether. The Form is filed via snail mail to the IRS Service Center in Ogden, Utah. While at one time the IRS would send mail confirmation that it had received the applicable 8038, it no longer does so. It is difficult, if not impossible, to contact the IRS to affirmatively confirm that the IRS received the form. Often, the only confirmation available comes when the IRS writes to ask for missing information or to ask the parties to correct information on the form that is incorrect. Once the IRS receives the forms, they are presumably scanned or entered by hand into the IRS's computer system.

The Committee recommends that the IRS allow electronic filing of 8038s. This is a great idea. While it is clear that the IRS faces a tightened budget from Congress, spending money to improve the IRS's technology so that it can accept electronic filing of 8038s should make the IRS operate more efficiently and allow it to save money elsewhere. The IRS already allows electronic filing of income tax returns for various taxpayers, so it should not be a stretch to extend the technology to information returns for tax-advantaged bonds. Electronic filing would prevent errors in transcription and allow IRS employees to focus their efforts on other tasks.

An even better approach would be to take the "interactive form" approach that the IRS has recently implemented for Forms 8038-CP and expand it to all 8038s. The new "interactive" Form 8038-CP

can be accessed here. It contains some very helpful features for 8038-CP filings that would greatly benefit issuers filing other 8038s to report the issuance of tax-advantaged bonds. For example, the interactive form (best viewed in Internet Explorer), contains a number of error-checking features. After a bit of monkeying around, I discovered that the form will tell you if you've accidentally entered an interest payment date that precedes the issue date, if you've improperly done the multiplication required to calculate the amount of the subsidy payment, and many other helpful checks. The form also contains a "Verify and Print" button that allows for final confirmation that everything is in place before filing the form. (But you do still have to print the form and mail it in.) The ultimate goal should be to combine both the interactive form and electronic filing of 8038s.

The Committee recommends that the IRS move more resources away from random audits and shift them to targeted audits.

In addition, putting the information on the 8038 into an electronic format from the beginning should allow the IRS to more easily review trends in 8038 filing and better determine particular topics in which to concentrate its enforcement efforts. As the Committee Report notes, some stakeholders might find this unappealing on a superficial level because it arguably makes it easier for the IRS to audit bond issues. But this result would be in everyone's best interest. Anyone who has slogged through a random audit of a tax-exempt bond issue that has no defects, and the attendant time-consuming gathering of papers and payment of legal bills to defend the audit, knows that it would be more appropriate and efficient for the IRS to be able to more efficiently parse the 8038s that it receives to determine which truly need a further look.

For this reason (and others), the Committee recommends that the IRS increase its use of targeted audits. This is also a good idea. The first Information Document Request of the audit routinely contains over 30 questions that require a great many pieces of information simply to acquaint the IRS agent with the transaction in the first place.

It remains to be seen whether either suggestion will be adopted, but both suggestions would be an improvement.

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