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NABL Seeks Clarification From IRS.

Bond lawyer requests for clarifications on Internal Revenue Service rules affecting municipal finance are so far eliciting no answers from the IRS, leading the National Association of Bond Lawyers to send a letter to the agency requesting a response to some issues that date back to 2018.

The letter comes from NABL president Jodie Smith of Maynard Nexsen, who's halfway through his term leading the group. The bones of contention include defining two new categories of exempt facility bonds used for financing qualified broadband projects and qualified carbon dioxide capture facilities. There are also unanswered questions about when a qualified tender bond is treated as reissued, which is a question that dates back to 2019.

Concerns about Revenue Procedure 2018-26, which deals with remedial actions for improper uses of tax-exempt bond proceeds, trace back to a 2018 IRS regulation. Clarifications dating from 2015 Treasury rulings are still being sought on final regulations for private activity bonds. NABL is also requesting additional guidance on discrepancies between IRS Form 8038 and Form 8038-G, an e-filing form that the agency has been wrestling since the pandemic.

Although some of the issues have been waiting on decisions for five years, the letter represents business as usual.

"We submit comments to the IRS priority guidance plan every year," said Brian Egan, NABL's director of government affairs. "As practitioners, our members have valuable input that helps set the course for what guidance the market needs prioritized."

The reasons for the lack of response from the agency remain conjecture.

"It can mean many things," said Rich Moore, tax partner at Orrick, Herrington & Sutcliffe. "Sometimes, the IRS is actively working through a guidance project and trying to determine the details. Other times, the IRS has the intent to get to a project but doesn't have the bandwidth. Occasionally, NABL and the IRS won't see eye to eye as to whether guidance on a subject is needed."

The ongoing back and forth between the lawyers and the agents also comes with its own rules of engagement regarding what goes into the letters.

"This is not the time or place for new comments," said Moore. "It is viewed by many as inappropriate to put something on the list for which NABL has not already provided detailed suggestions. This is just an exercise in reinforcing that previously submitted comments are still a priority."

Streamlining dealings with the IRS was promised by an $80 billion funding infusion that was turned into a political football and then a bargaining chip used to partially pay for the Fiscal Responsibility Act of 2023. Repercussions from the defunding also remain unknown.

"We support the IRS getting whatever resources it needs to effectively carry out its mission," said Egan. "I cannot say with certainty what the claw back of funds provided under the Inflation

Reduction Act will mean for tax-exempt municipal market participants, but it’s worth noting the Service made investment and upgrades in relevant areas even before the passage of IRA.”

By Scott Sowers

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