

Part IV - Items of General Interest

TEB Voluntary Closing Agreement Program: Relief from Allocation and Accounting Errors for Certain Issuers of Tax-Exempt Student Loan Bonds

Announcement 2012-14

SECTION 1. BACKGROUND

Some issuers of qualified student loan bonds allocated student loans made or acquired with gross proceeds to an issue of bonds (the first bond issue) and subsequently reallocated the same student loans to other issues. These reallocations were not due to a refunding of the first bond issue or the universal cap rule. The issuers did not sell, discharge, or otherwise actually dispose of the student loans. The issuers were unable to establish the bond issues to which the student loans were properly allocable as purpose investments and, as a consequence, the issuers could not establish that the bond issues involved were other than issues of arbitrage bonds.

Some of these issuers have approached the IRS about the possibility of entering into closing agreements after the discovery of these types of reallocations with respect to their qualified student loan bonds. This Announcement sets forth the terms under which the IRS will enter into a voluntary closing agreement with an issuer of qualified student loan bonds that are not the subject of an examination.

The intent underlying this program is to treat expeditiously all requests for closing agreements which are submitted in accordance with this Announcement.

SECTION 2. TAX EXEMPT BONDS VOLUNTARY CLOSING AGREEMENT PROGRAM (TEB VCAP)

.01 Pursuant to the TEB VCAP program set forth in Notice 2008-31, 2008-11 I.R.B. 592 (March 17, 2008), the IRS will consider requests from issuers of qualified student loan bonds for voluntary closing agreements. Such requests will be processed under the administrative procedures described in section 7.2.3 of the Internal Revenue Manual (the "IRM").

.02 The closing agreement will provide:

(A) The interest on the bonds covered by the agreement (the "Bonds") will not be includible in gross income of bondholders solely as a result of an action relating to the allocation of student loans as purpose investments that occurred subsequent to the issue date that caused the Bonds to fail to meet certain requirements of §148 of the Internal Revenue Code, as amended (the "Code").

(B) The Issuer represents that as of the date of the closing agreement, the Issuer has discontinued the practice of reallocation of qualified student loans from one bond issue to another other than pursuant to the transferred proceeds rules in § 1.148-9 of the Income Tax Regulations (the "Regulations") or the universal cap rules in § 1.148-6 of the Regulations.

(C) Prior to the IRS' execution and delivery of the agreement, the Issuer shall cause to be electronically paid to the IRS a settlement amount (the

“Settlement Amount”). The Settlement Amount will be an amount equal to the sum of (a) forty percent (40%) of the taxpayer exposure on each issue of the Bonds computed pursuant to IRM 4.81.6.5.3.1 and (b) based on the Issuer’s existing records, an amount equal to the excessive arbitrage profit (as defined in IRM 4.81.6.5.3.8) on the Bonds from the issue date to the beginning of the first year included in the calculation of taxpayer exposure, calculated as follows: (Step 1) determine the aggregate amount of excess earnings on each issue of the Bonds separately from the issue date to the date the VCAP request was filed, (Step 2) allocate the amount determined for each issue of the Bonds equally to each calendar year (including partial years as full calendar years) between the issue date of each issue of the Bonds and the date the VCAP request was filed, and (Step 3) add the amounts resulting from Step 2 from the issue date of each issue of the Bonds to January 1 of the year that is the earliest year used in computing the taxpayer exposure pursuant to IRM 4.81.6.5.3.1. Payment of the Settlement Amount shall not be made from proceeds of bonds described in § 103(a) of the Code.

(D) The Settlement Amount will not be refundable, subject to credit or offset, or deductible for Federal income tax purposes under any circumstance.

(E) Payment of the Settlement Amount will eliminate any liability under § 148 of the Code for yield reduction payments or rebate amounts in respect of any student loans allocable or allocated to the Bonds producing a yield that is materially higher than the yield on the Bonds accrued through the date of this

Agreement, or accruing thereafter through the date the Bonds are retired, reissued and/or refunded.

(F) Because this program does not arise out of an examination, consideration under this program does not preclude or impede the IRS' examination of the Issuer, the bondholders, or the Bonds with respect to any matter not addressed in the closing agreement.

.03 An Issuer requesting a settlement under TEB VCAP must request a settlement with respect to all of the outstanding qualified student loan bond issues (1) from which it reallocated student loans made or acquired with gross proceeds of the issue to another issue other than due to the transferred proceeds or universal cap rules and (2) to which it reallocated those loans.

.04 The Issuer must submit the TEB VCAP request no later than July 31, 2012, under the operating procedures described in IRM 7.2.3.

.05 Generally, within 60 days of the receipt of a complete TEB VCAP request, the IRS will process the request and send a closing agreement to the issuer for its execution. An issuer must submit payment of the Settlement Amount, in accordance with the closing agreement, prior to returning the executed closing agreement to the IRS.

SECTION 3. DRAFTING INFORMATION

The principal author of this Announcement is Mark S. Westergard of the IRS Office of Tax Exempt Bonds. For further information regarding this Announcement contact Mark Westergard at (802) 859-1003 (not a toll-free call).