

## Announcement 2015-02

TEB Voluntary Closing Agreement Program: Relief from violation of qualified ownership and use requirements for qualified 501(c)(3) bonds.

This Announcement provides a simplified process for issuers of qualified 501(c)(3) bonds, as defined below, to request a closing agreement in situations in which the borrower of the proceeds of the bonds received Prospective Reinstatement, as defined below, after its tax-exempt status was automatically revoked under section 6033(j)(1) of the Internal Revenue Code (the “Code”).

### SECTION 1. BACKGROUND

Interest on bonds issued under section 145 of the Code (“qualified 501(c)(3) bonds”) is tax exempt if certain requirements are met, including two principal requirements under section 145(a). First, all the property financed with the net proceeds of the bonds must be owned by an organization exempt from tax under section 501(c)(3) (a “501(c)(3) organization”) or a state or local government entity. Second, the property financed with the net proceeds of the bonds must be used almost exclusively by 501(c)(3) organizations in their related trade or business or state or local government entities. If an organization for which qualified 501(c)(3) bonds are issued fails to qualify as a 501(c)(3) organization at any time while the bonds are outstanding, the bonds may fail to qualify under section 145 of the Code.

Pursuant to section 6033(j), when a 501(c)(3) organization fails to file an annual return or notice required under subsection 6033(a)(1) or 6033(i) for three consecutive years, the organization's status as a 501(c)(3) organization shall be considered revoked on and after the required date for the filing of the third annual return or notice (the “Revocation Date”). Section 6033(j)(2) of the Code provides a mechanism by which an organization may seek reinstatement of its exempt status after automatic revocation.

Pursuant to section 6033(j)(3), retroactive reinstatement of the organization's section 501(c)(3) status may be granted in certain situations. If an organization can show reasonable cause for its failure to file, the organization's exempt status may be reinstated retroactively to the Revocation Date, which means there will be no time during which the organization was not a 501(c)(3) organization. Revenue Procedure 2014-11, 2014-3 IRB 411, provides the procedures under which an automatically revoked organization can request reinstatement, including retroactive reinstatement, of its exempt status. However, under certain situations described in Rev. Proc. 2014-11, the effective date of reinstatement of the 501(c)(3) organization's exempt status may be later than the Revocation Date (“Prospective Reinstatement”).

## SECTION 2. APPLICATION OF THIS ANNOUNCEMENT AND THE CLOSING AGREEMENT PROCESS.

.01 An issuer of qualified 501(c)(3) bonds (the "Bonds") may apply for a closing agreement under this Announcement if the following requirements are met:

(1) The 501(c)(3) organization that is the beneficiary of the Bonds (the "Organization") has received Prospective Reinstatement of its exempt status.

(2) The Organization's exempt status has not been previously revoked since the issue date of the Bonds. If the proceeds of the Bonds were used to refund prior qualified 501(c)(3) bonds, for purposes of this Announcement, the "issue date" means the issue date of the refunded bonds.

(3) The request for the closing agreement is submitted within 12 months of the date of the reinstatement letter. If the reinstatement letter is dated before December 30, 2014, the issuer has 12 months from December 30, 2014 to submit a closing agreement under this Announcement.

(4) The Bonds are not under examination by the Internal Revenue Service.

.02 To obtain relief under this Announcement, an issuer must submit the documents in (1) and (2) below to the address provided in Section 2.05 of this Announcement and pay the closing agreement amount computed in accordance with Section 2.04 of this Announcement:

(1) Three executed copies of the completed closing agreement, including the Attachment A, in the form attached as an Exhibit to this Announcement,

(2) A copy of the reinstatement letter received by the Organization.

.03 If the Organization's revocation affects more than one of the issuer's bond issues, the issuer may submit one closing agreement to cover all affected bond issues. If the Bonds fail to qualify because more than one Organization that is the borrower of the proceeds of the Bonds had its exempt status revoked under section 6033(j) of the Code, the issuer must submit a separate closing agreement under this Announcement for each Organization.

.04 The closing agreement amount for each bond issue covered by a closing agreement will equal \$500 for each calendar month or portion thereof in the period starting with the month that includes the Revocation Date and ending in the month that includes the effective date of the reinstatement of the exempt status of the Organization. The issuer must pay the closing agreement amount for each bond issue included in the closing agreement as provided in the Attachment to the Agreement.

.05 The issuer must submit items in Section 2.02 of this Announcement to:

Internal Revenue Service (TE/GE)  
1122 Town & Country Commons  
Chesterfield, MO 63017  
Attn: Ken Stengel, SE:T:GE:TEB:CPM

.06 Issuers of bonds for which there are violations not covered under this Announcement should refer to Notice 2008-31, 2008-11 IRB 592 (March 17, 2008), setting forth the Office of Tax Exempt Bonds' Voluntary Closing Agreement Program.

### SECTION 3. DRAFTING INFORMATION

The principal author of this Announcement is James L. Held of the IRS Office of Tax Exempt Bonds. For further information regarding this Announcement, contact James Held at (401) 528-1869 (not a toll-free call).

## EXHIBIT

### CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS

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Under section 7121 of the Internal Revenue Code of 1986, as amended (the "Code"), Issuer Name, Issuer EIN (the "Issuer"), Affected Organization Name, Affected Organization EIN, (the "Affected Organization") and the Commissioner of Internal Revenue (the "IRS") make this closing agreement (the "Agreement").

WHEREAS, this Agreement is based on the following facts and representations:

- A. This Agreement is in settlement of issues raised in a request for a voluntary closing agreement pertaining to the (insert Legal Description of Bonds, Par Amount, Name, Type, Project, Series, Etc.) (the "Bonds"), issued on (Issue Date(s)).
- B. Except as otherwise specifically stated in this paragraph B, the Issuer and Affected Organization make the following representations:
  1. The Bonds were issued and sold under the representation to bondholders that the Bonds comply with all provisions of the Code such that interest on the Bonds is not included in the bondholders' gross income.
  2. The Bonds were issued as qualified 501(c)(3) bonds pursuant to section 145 of the Code.
  3. The Affected Organization represents that on (insert Date of Revocation), the Affected Organization's status as an organization described in section 501(c)(3) of the Code was revoked pursuant to section 6033(j) of the Code.
  4. The Affected Organization represents that the Affected Organization received reinstatement of its exempt status as an organization described in section 501(c)(3) of the Code effective on (Insert Date).
  5. The Issuer and Affected Organization represent that they are aware of no reason, other than the Affected Organization's revocation under section 6033(j), that the bonds fail to qualify as qualified 501(c)(3) bonds the interest on which is excludable from gross income under section 103 of the Code.
  6. The Issuer represents that to the best of the Issuer's knowledge and belief, the above representations of the Affected Organization are true, accurate and complete.
  7. The Issuer represents that it satisfies all of the requirements for relief under Announcement 2014-02.
- C. Based on the representations of the Issuer and Affected Organization in paragraph B, the IRS has a basis to conclude that interest on the Bonds is includable in the bondholders' gross income because the described revocation of the Affected

Organization's status under section 6033(j) of the Code resulted in the failure of the Bonds to meet the requirements of section 145(a) of the Code.

- D. The IRS has not formally asserted any claims against the Issuer or the Affected Organization, or sought to tax interest on the Bonds.
- E. The Issuer, the Affected Organization and the IRS desire to resolve the violation described in paragraph C.
- F. The terms of this Agreement were arrived at pursuant to Announcement 2014-02 and may differ from the settlement terms of other closing agreements.
- G. The Issuer and the Affected Organization also represent that payment of the Settlement Amount defined below shall be made from sources other than proceeds of bonds described in sections 103, 54A or 54AA of the Code.

NOW, IT IS HEREBY DETERMINED AND AGREED PURSUANT TO THIS AGREEMENT EXECUTED BY THE PARTIES HERETO UNDER SECTION 7121 OF THE CODE THAT FOR FEDERAL INCOME TAX PURPOSES:

1. Prior to the execution of this Agreement by the IRS, the Issuer shall cause to be electronically paid the sum of \$ \_\_\_\_\_, ( \_\_\_\_\_ Dollars) (the "Settlement Amount") to the U.S. Treasury via the Electronic Federal Tax Payment System and in accordance with the directions contained in the Attachment to this Agreement.
2. The Settlement Amount is not refundable or subject to credit or offset under any circumstance.
3. The Settlement Amount or any portion thereof paid by or on behalf of the Issuer shall not be deductible or amortizable for federal income tax purposes by any person.
4. The Settlement Amount shall not be treated as income to any person benefiting from this Agreement.
5. The bondholders shall not be required to include interest paid on the Bonds in gross income because of the specific violation identified in paragraph C.
6. The IRS may take any appropriate action, including requiring bondholders to include interest paid on the Bonds in gross income, for any violation not specifically listed in paragraph C that has occurred or will occur with respect to the Bonds.
7. This Agreement is not based upon an examination of the Bonds by the IRS and does not preclude or impede an examination of the Bonds, the Issuer, the Affected Organization, or any Bondholder with respect to matters not addressed herein.
8. This Agreement may not be cited or relied upon by any person or entity whatsoever as precedent in the disposition of any other case.

9. This Agreement is final and conclusive, except that:
  - a. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;
  - b. It is subject to sections of the Code that expressly provide that effect be given to their provisions notwithstanding any other law or rule of law; and
  - c. If it relates to a tax period ending after the effective date of this agreement, it is subject to any law enacted after the Agreement date that applies to that tax period.

This space intentionally left blank.

By signing, the parties certify that they have read and agreed to the terms of this Agreement.

**ISSUER:**

**EIN:**

By signing, I certify that I have the authority to execute this Agreement on behalf of Issuer

**BY:**

\_\_\_\_\_

SIGNATURE

\_\_\_\_\_

NAME (PLEASE PRINT)

\_\_\_\_\_

TITLE

\_\_\_\_\_

DATE

**AFFECTED ORGANIZATION:**

**EIN:**

By signing, I certify that I have the authority to execute this Agreement on behalf of Affected Organization

**BY:**

\_\_\_\_\_

SIGNATURE

\_\_\_\_\_

NAME (PLEASE PRINT)

\_\_\_\_\_

TITLE

\_\_\_\_\_

DATE

**COMMISSIONER OF INTERNAL REVENUE:**

**BY:**

\_\_\_\_\_

SIGNATURE

Karen A. Skinder  
Acting Manager, Tax Exempt Bonds Compliance & Program  
Management

\_\_\_\_\_

NAME AND TITLE

\_\_\_\_\_

DATE

ATTACHMENT A

**TAXPAYER INFORMATION WORKSHEET FOR ELECTRONIC FEDERAL TAX PAYMENT SYSTEM DEPOSIT**

This Agreement requires the electronic deposit of the Settlement Amount set forth in the Agreement to the U.S. Treasury through the Electronic Federal Tax Payment System (EFTPS) as a term for resolution of certain identified matters related to the tax-advantaged treatment of interest paid on a municipal obligation. This Settlement Amount will be deposited in accordance with this Attachment.

In signing the Agreement, the Issuer represents that to the best of its knowledge, the information provided below is correct. Unless specifically stated otherwise is in this Attachment, Issuer is to deposit the Settlement Amount through the EFTPS (either *EFTPS – Direct* or *EFTPS – Through a Financial Institution*) accurately and in accordance with this information and the terms of this Agreement.

1. Total Amount of Tax Deposit: \$ \_\_\_\_\_
2. Issuer Employee Identification Number (EIN): \_\_\_\_\_
3. Issuer Name Control (4 characters): \_\_\_\_\_
4. Issuer Name (up to 35 characters): \_\_\_\_\_
5. Tax Type (5 characters): **80384**
6. Tax Year (2 digits): \_\_\_\_\_
7. Tax Month (2 digits): \_\_\_\_\_

The Issuer's financial institution may call the EFTPS Financial Institution Helpline for questions or assistance at **1-800-605-9876** (Monday – Friday, 8:00 a.m. – 8:00 p.m., Eastern Standard Time).

**NOTE:** If the Issuer is not enrolled in *EFTPS – Direct* or *EFTPS – Through a Financial Institution*, or is otherwise unable to use the Same Day Payment option, the Issuer should provide its financial institution with the information listed above and direct it to accurately deposit the Settlement Amount utilizing the following routing and account numbers: **Note that the Receiving ABA/Routing Number, Receiving FI Name, Tax Type (under Beneficiary) and Beneficiary FI indicated below do not change.**

Receiving ABA/Routing Number: **091036164 FRB MPLS ETA**  
Receiving FI Name: **US TREAS SINGLE TX**  
Beneficiary: **Issuer EIN: Name Control: Issuer Name 35 Characters:80384:YY:MM**  
Beneficiary FI: **20092900IRS**

If the financial institution has difficulty transmitting the EFTPS same-day payment, please call **1-800-382-0045** (Monday – Friday, 7:45 a.m. – 4:30 p.m. Central Standard Time) to receive assistance from a Customer Service Representative at the Minneapolis Federal Reserve Bank.



**CONTACT INFORMATION**

**ISSUER**

Name:

Address:

Attn:

Phone Number:

**AFFECTED ORGANIZATION**

Name:

Address:

Attn:

Phone Number: