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NEW HAMPSHIRE HIGHER EDUCATION ASSISTANCE FOUNDATION  
GRANITE STATE MANAGEMENT & RESOURCES  
NEW HAMPSHIRE HIGHER EDUCATION LOAN CORPORATION  
NHHEAF NETWORK EDUCATIONAL FOUNDATION

On July 30, 2012, the New Hampshire Health and Education Facilities Authority (the "Authority"), formerly known as the New Hampshire Higher Educational and Health Facilities Authority, submitted a request for a closing agreement pursuant to the Internal Revenue Service Tax-Exempt Bond function's Voluntary Closing Agreement Program (the "VCAP") and Announcement 2012-14. The bonds to which the request pertained were issued by the Authority on behalf of the New Hampshire Higher Education Loan Corporation (the "Corporation"). The Corporation used the proceeds to acquire student loans.

Announcement 2012-14 asserted with only minimal explanation that a methodology used by the Corporation and many other organizations for tracking student loans was improper. The methodology commonly is referred to as "loan swapping." The announcement set forth settlement terms for issuers who wished to resolve the issues raised therein via the VCAP.

The Authority filed the request notwithstanding the Corporation's belief that the methodology complied with all requirements of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations.

The Authority and the Tax-Exempt Bond function ("TEB") were unable to negotiate terms that were acceptable to the Authority, the Corporation, and TEB.

In this regard, TEB demanded that the Authority and the Corporation concede in the VCAP closing agreement, *i.e.*, the settlement agreement, that use of the methodology violated the Treasury Regulations. The Authority and the Corporation were willing to settle with TEB, and in particular, the Corporation was prepared to make the settlement payment which TEB demanded. However, the Authority and the Corporation were not willing to concede that use of the methodology violated the Treasury Regulations.

On June 27, 2013, the Authority withdrew its request for a VCAP closing agreement.

As expected, TEB initiated examinations of the bonds to which the request for the VCAP closing agreement pertained:

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- the \$25,000,000 New Hampshire Higher Educational and Health Facilities Authority Education Loan Revenue Bonds New Hampshire Higher Education Loan Corporation Issue, Series 1998 - issued on June 25, 1998 - CUSIP # 64461RDK1 (the "Series 1998 Bonds");

- the \$45,000,000 New Hampshire Higher Educational and Health Facilities Authority Education Loan Revenue Bonds New Hampshire Higher Education Loan Corporation Issue, Series 1999 - issued on April 21, 1999 - CUSIP # 64461RFC7 (the "Series 1999 Bonds");

- the \$25,000,000 New Hampshire Health and Education Facilities Authority Education Loan Revenue Bonds New Hampshire Higher Education Loan Corporation Issue, Series 2000 - issued on April 18, 2000 - CUSIP # 644614AD1 (the "Series 2000 Bonds");

- the \$50,000,000 New Hampshire Health and Education Facilities Authority Education Loan Revenue Bonds New Hampshire Higher Education Loan Corporation Issue, Series 2001A and Series 2001B - issued on May 3, 2001 - CUSIP #s 644614CV9 (Series 2001A-1) and 644614CW7 (Series 2001A-2) (the "Series 2001 Bonds");

- the \$65,000,000 New Hampshire Health and Education Facilities Authority Education Loan Revenue Bonds New Hampshire Higher Education Loan Corporation Issue, Series 2002A and Series 2002B - issued on April 25, 2002 - CUSIP #s 644614EX3 (Series 2002A) and 644614EY1 (Series 2002B) (the "Series 2002 Bonds");

- the \$75,000,000 New Hampshire Health and Education Facilities Authority Education Loan Revenue Bonds New Hampshire Higher Education Loan Corporation Issue, Series 2003A - issued on April 24, 2003 - CUSIP # 644614FQ7 (the "Series 2003 Bonds");

- the \$100,000,000 New Hampshire Health and Education Facilities Authority Education Loan Revenue Bonds New Hampshire Higher Education Loan Corporation Issue, Series 2004A-1, Series 2004A-2, and Series 2004B - issued on April 22, 2004 - CUSIP #s 644614HG7 (Series 2004A-1), 644614HH5 (Series 2004A-2), and 644614HJ1 (Series 2004B) (the "Series 2004 Bonds");

- the \$150,000,000 New Hampshire Health and Education Facilities Authority Education Loan Revenue Bonds New Hampshire Higher Education Loan

Corporation Issue, Series 2005A-1, Series 2005A-2, and Series 2005B - issued on April 21, 2005 - CUSIP #s 64461RFH6 (Series 2005A-1), 64461RFJ2 (Series 2005A-2), and 64461RFK9 (Series 2005-B) (the "Series 2005 Bonds");

- the \$75,000,000 New Hampshire Health and Education Facilities Authority Education Loan Revenue Bonds New Hampshire Higher Education Loan Corporation Issue, Series 2006A and Series 2006B - issued on April 20, 2006 - CUSIP #s 644614PC7 (Series 2006A-1) and 644614PD5 (Series 2006B) (the "Series 2006 Bonds");

- the \$100,000,000 New Hampshire Health and Education Facilities Authority Education Loan Revenue Bonds New Hampshire Higher Education Loan Corporation Issue, Series 2007A and Series 2007B - issued on April 19, 2007 - CUSIP #s 644614SJ9 (Series 2007A) and 644614SK6 (Series 2007B) (the "Series 2007 Bonds"); and

- the \$10,000,000 New Hampshire Health and Education Facilities Authority Adjustable Rate Education Loan Revenue Bonds New Hampshire Higher Education Loan Corporation Issue, Series 2011B - issued on August 24, 2011 - CUSIP # 644614P45 (the "Series 2011B Bonds").

With the exception of the Series 2011B Bonds, the bonds listed above were redeemed not later than 2011. The Series 2011B Bonds were deemed to have been reissued - and thus currently refunded and redeemed - for Federal income tax purposes during 2014.

When TEB initiated the examinations, it advised the Authority with respect to each bond issue that "your debt issuance was selected for examination because of information we developed internally that causes a concern that the debt issuance may fail one or more provisions of sections 103, 141 - 150 of the Internal Revenue Code." TEB did not elaborate. However, the Authority and the Corporation believed that TEB's concern related to the methodology used by the Corporation.

On November 26, 2013, TEB issued a Notice of Proposed Issue ("NOPI") with respect to each bond issue listed above. The NOPIs confirmed that TEB's concern related to the methodology used by the Corporation, i.e., loan swapping.

Each NOPI recited that "during our examination of the bonds referenced above, we found that the bonds violate one or more of the requirements for interest to be excluded from gross income of the bondholders" and "if you do not agree with the Service's position you may request an informal conference with an IRS supervisor to discuss the merits of any factual or legal issues in the case."

As set forth in the NOPIs, the deadline for responding was December 26, 2013.

By letter dated December 20, 2013, the Authority's representative, Bradley S. Waterman, Esq., advised TEB that the Authority did not agree with TEB's position and requested a conference.

On December 18, 2013 - prior to the deadline for responding to the NOPIs, TEB issued a proposed adverse determination.

The proposed adverse determination recited that "following the issuance of the [NOPIs] the Issuer's representative notified the Service that no written response would be provided on behalf of the Issuer . . . ." This was incorrect.

The proposed adverse determination recited that "this is to inform you that we have concluded our examination of the Bond Issue(s) named above (the 'Bonds') . . . we have made a proposed determination that the interest paid to the beneficial owners of the Bonds is not excludable from gross income under section 103 of the Internal Revenue Code . . . and you may formally respond to this proposed determination by requesting an administrative appeal of your case to the Office of Appeals of the Internal Revenue Service (IRS)."

The Authority responded to the proposed adverse determination on January 27, 2014 by filing a protest, including a request for review by the Office of Appeals ("Appeals").

Appeals recently concluded its review.

Appeals determined that interest paid to bondholders with respect to the Series 1998 Bonds was taxable. The determination was based on a theory which Appeals developed, not a theory presented by TEB in the proposed adverse determination, *i.e.*, Appeals' theory related to a matter other than loan swapping. The Authority and the Corporation strongly disagreed with Appeals' analysis and its conclusion. However, the Authority did not request further proceedings - specifically, mediation - because under the Internal Revenue Service's general approach to the statute of limitations in tax-exempt bond cases the assessment of tax on interest paid to the holders of the Series 1998 Bonds is time-barred, and accordingly, there was nothing at stake from a financial perspective. Appeals closed the matter as "unagreed" and on October 8, 2015 it issued a letter in which it stated that "the Proposed Adverse Determination dated December 18, 2013 issued by the Manager, Tax Exempt Bonds Field Operations, is now final."

Appeals determined that interest paid to bondholders with respect to the Series 1999 Bonds, the Series 2000 Bonds, the Series 2001 Bonds, the Series 2002 Bonds, the Series 2003 Bonds, the Series 2004 Bonds, the Series 2005 Bonds, the Series 2006 Bonds, and the Series 2007 Bonds was not taxable. On October 6, 2015 and October 7, 2015, Appeals issued closing letters relating to the bonds. Each closing letter recited that "this letter is your written notification, as prescribed by Revenue Procedure 2006-30, that the Proposed Adverse Determination Letter dated December 18, 2013 issued by the Manager, Tax Exempt Bonds Field Operations, has been withdrawn."

Appeals determined that interest paid to bondholders with respect to the Series 2011B Bonds was taxable. The determination was based on a theory which Appeals developed, not a theory presented by TEB in the proposed adverse determination, *i.e.*, Appeals' theory related to a matter other than loan swapping. The Authority and the Corporation strongly disagreed with Appeals' analysis and its conclusion. However, the Authority did not request further proceedings - specifically, mediation - because the amount at issue - approximately \$8,500, *i.e.*, the present value of the tax which the bondholders would have paid on interest had such interest been subject to tax - was insignificant. The Authority made a settlement payment in such amount to the Internal Revenue Service with funds provided by the Corporation, and the Authority and the Internal Revenue Service, via Appeals, entered into a closing agreement that confirmed that "the Bondholders are not required to include in gross income any interest on the Bonds."

For additional information, please contact Bradley S. Waterman, Esq., at 202 682 1616.