



TAX-EXEMPT BONDS

NABL seeks lower fee for IRS private letter rulings

By Brian Tumulty November 05, 2019, 2:31 p.m. EST 2 Min Read



The National Association of Bond Lawyers wants the Internal Revenue Service to “significantly lower the user fee” it charges state and local governments for private letter rulings involving the issuance of tax-advantaged bonds.

The letter addressed to IRS Commissioner Charles P. Rettig points out that the number of letter rulings fell to four in 2018 when the fee rose to \$28,300, from 16 rulings in 2008 when the fee was only \$11,500.

“The current user fee of \$30,000 is so high that it deters issuers of state and local bonds ('issuers') from seeking clarification of the tax law through the private letter ruling ('PLR') process and, in some cases, makes the PLR program effectively unavailable for issuers that do not have the resources to pay the user fee,” the letter said.

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consider PLRs influential in how they view similar facts in other cases.

The letter cites the special relationship between the federal government and state and local governments laid out in the U.S. Constitution as well as federal laws such as the Unfunded Mandates Reform Act and an Executive Order issued by the White House.



The letter also cites the role PLRs play in assisting voluntary compliance as well as assisting bond attorneys in issuing an “unqualified opinion” regarding the federal tax status of a bond issuance.

Michael G. Bailey, a partner at Foley & Lardner in Chicago who served on the ad hoc NABL committee that wrote the letter, said a robust letter ruling program benefits the IRS as well as bond attorneys and state and local governments.

“It’s helped to inform the IRS of real world problems and real world issues in interpreting the code and the regulations,” Bailey said in an interview, citing his personal experience as an attorney at the IRS in the 1990s.

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The letter sent to the IRS commissioner on Monday also was sent to seven other top IRS officials and to John Cross at the Treasury Department's Office of Tax Policy.

Bailey noted that Rebecca Harrigal, who drafted most of the NABL letter, also worked at the IRS and found value in the PLRs. Harrigal, a shareholder at Greenberg Traurig in Philadelphia, is a former director of the Office of Tax Exempt Bonds at the IRS.

"State and local governments are not like other taxpayers," said Bailey. "There's a special relationship between the federal government and state and local governments which may seem obvious, but isn't being taken into account in these user fees."

The letter did not suggest a dollar amount for a revised fee, but Bailey said it should be "a fraction of what it is now" and a minimal expense.

"It would be helpful in rebooting this program," he said. "In my experience when you tell a state or local government the user fee is \$30,000, they very frequently balk. In my mind there's a clear relationship between the increase in the fee and the reduction in the requests."

Other NABL attorneys who participated in writing the letter were Victoria Ozimek of Bracewell in Austin, Texas; Christie Martin of Mintz Levin in Boston, Johnny Hutchinson of Squire Patton Boggs in Houston and NABL President Richard Moore of Orrick in San Francisco.

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