THE BOND BUYER

IRS

NABL suggests $7,600 fee for IRS private letter rulings

By Brian Tumulty March 05, 2020, 1:36 p.m. EST 3 Min Read

The National Association of Bond Lawyers wants the Internal Revenue Service to reduce the maximum fee for private letter rulings to $7,600 from the current $30,000 for local and state governments.

In a letter to the IRS Wednesday, NABL offered a rationale for the lower fee as a follow up to an earlier request sent in November that didn't suggest a specific amount.

The new NABL letter points out that the IRS already uses a reduced fee of $7,600 for governmental entities with annual operating revenues of between $250,000 and $1 million and suggests that it become the single user fee for all governmental entities.

wishing to obtain a PLR."

Rebecca Harrigal, a shareholder at Greenberg Traurig in Philadelphia, chaired a group of six NABL attorneys who made the request to the IRS. *Brian Tumulty, The Bond Buyer*

The current $30,000 fee discourages voluntary compliance, according to the new letter.

PLRs also help bond issuers obtain an "unqualified opinion" from their bond counsel regarding the federal tax status of their bonds, reducing the cost of financing fees and interest costs.

"I think the IRS was coming back to us and giving us some clarification as to how they set the fee," said Rebecca Harrigal, a shareholder at Greenberg Traurig in Philadelphia who chaired a group of six NABL attorneys who wrote both letters.

"The current system bases the user fee on annual operating revenue," said NABL. "Presumably the theory is that entities with more annual operating revenue should be able to more easily afford the user fee. The problem with this approach and with any other approach that attempts to measure a governmental entity's revenues or net income is that it does not take into account the fundamental nature of government operations."

NABL said that all governmental entities are obligated to use all their available revenues for public services and they frequently operate in a deficit.

Harrigal, a former director of the Office of Tax Exempt Bonds at the IRS, was joined in the letter by NABL President Richard Moore, a tax partner at the San Francisco headquarters of Orrick.

Other members included Michael G. Bailey, a partner at Foley & Lardner in Chicago; Johnny Hutchinson of Squire Patton Boggs in Houston; Victoria Ozimek of Bracewell in Austin and Christie Martin of Mintz Levin in Boston.

Harrigal declined to predict whether the IRS will adopt NABL's recommendation.

"I think it's fair to assume that they haven't said no," she said. "Beyond that, I'm not sure. I can't read their mind."

The IRS publishes its fee structure at the beginning of each calendar year.

"My hope is that they adopt it and publish it in their January 2021 revenue procedure," said Harrigal.

The November letter pointed out that the number of PLRs shrank to only four in 2018 when the fee rose to $28,300 from 16 in 2008 when it was only $11,500.

That higher fee "makes the PLR program effectively unavailable for issuers that do not have the resources to pay the user fee," the NABL letter said.

The most recent IRS private letter publicly released Feb 21 serves an example of the role PLRs could play if they are more frequently issued. The latest PLR involved a public housing agency that missed a deadline for filing an IRS Form 8328 to inform the service it planned to use part of its state volume cap carryforward to issue tax-exempt PABs.

That PLR gave a go-ahead to the public housing agency by concluding it had "acted reasonably and in good faith upon discovery of the mistake. No taxpayer will have a lower tax liability than if the election had been made timely."