

CURRENT DEVELOPMENTS

by
Susan Ruth

1. Introduction

Since the publication of our first Continuing Professional Education text there have been several legislative, regulatory, and administrative developments in the area of Tax Exempt Bonds. We have attempted to list and summarize some of the most important pronouncements, procedures and legislation issued over the past year. However, we encourage you to keep abreast of more current developments by visiting our website at www.irs.gov/bonds.

2. Announcements

A. Announcement 2002-43, 2002-16 I.R.B. 1 (04/05/02)

The Service announced a program under which certain issuers of state or local bonds may request a closing agreement pursuant to which bonds (“the refinancing bonds”) issued to refinance certain outstanding bonds (“the refinanced bonds”) will be recognized as acquisition bonds (and therefore will not be treated as a refunding issue under section 1.150-1(d) of the Income Tax Regulations) and the allocations of proceeds to expenditures for such bonds will be respected. Issuers seeking relief must enter into a closing agreement with the Service on or before December 31, 2002, in accordance with the procedures set out in the Announcement. Bond issuers are eligible for the program regardless of whether they are under examination. This Announcement was issued simultaneously with the issuance of proposed Regulations.

B. Announcement 2001-115, 2001-48 I.R.B. 539 (11/26/01)

The Service announced the availability of new Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions. This form replaces the procedures of Rev. Proc. 92-83, 1992-2 C.B. 487.

C. Announcement 2001-101, 2001-43 I.R.B. 374 (10/22/01)

This announcement provides issuers of tax-exempt bonds affected by the September 11 terrorist attacks with additional time to file certain information required under section 149(e) or make certain payments to the Service under section 148(f) of the Code. Affected issuers who have an original filing or payment deadline between September 11, 2001 and November 30, 2001, have an

additional 6 months plus 120 days to file the return and make any payment due with the return. In addition to providing additional time for filing and payment, the Service will also grant relief to affected issuers under appropriate circumstances.

3. Notices

A. Notice 2002-52, 2002-30 I.R.B. ___ (07/22/02)

On April 17, 2002, the Treasury Department and the Service published proposed regulations under sections 141 and 148 of the Code relating to tax-exempt bonds issued by state or local governments (REG-113526-98; REG-105369-00) (the proposed regulations). This notice clarifies the application of certain provisions of the proposed regulations relating to natural gas prepayments. For purposes of section 1.148-1(e)(2)(ii)(C) of the proposed regulations, the Notice provides that a natural gas commodity swap contract will not fail to be an independent contract solely because the swap contract may terminate in the event of a failure of a gas supplier to deliver gas for which the swap contract is a hedge. The Notice requests comments on the limitations on commodity swap contracts contained in the proposed regulations.

B. Notice 2002-51, 2002-29 I.R.B. 131 (07/22/02)

The Treasury Department and the Service have received inquiries regarding the application of section 142(a)(6) of the Code to recycling facilities. Section 142(a) lists the categories of exempt facility bonds, which includes bonds for solid waste disposal facilities under section 142(a)(6). As part of the Priority Guidance plan for the period July 1, 2002 through June 30, 2003, Treasury and the Service intend to undertake a guidance project to address the application of 142(a)(6) to recycling facilities. This Notice provides background materials relating to solid waste disposal facility financing and requests public comment on the issue.

C. Notice 2002-42, 2002-27 I.R.B. 36 (7/8/02)

This Notice provides guidance concerning the New York Liberty Zone business employee credit, Qualified New York Liberty Bonds and Liberty Advance Refunding Bonds. Section 301 of the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147 (see below) provides various tax benefits for the area of New York City damaged or affected by the terrorist attack on September 11, 2001. Section 1400L(d) authorizes issuance of an aggregate of \$8 billion of tax-exempt private activity bonds to finance the acquisition, construction reconstruction and renovation of certain nonresidential real property, and public utility property, and section 1400L(e) authorizes the issuance of an

aggregate of \$9 billion of certain tax-exempt advance refunding bonds. The Notice clarifies the filing requirements applicable to issuers of Liberty Bonds and the appropriate allocation of the limitation amounts under section 1400L(d)(3)(B). The Notice also makes clear that bonds issued by the New York City Municipal Water Finance Authority, the New York City Transit Authority, Triborough Bridge and Tunnel Authority, and bonds issued by the Municipal Assistance Corporation for The City of New York are eligible for the advance refunding provisions of section 1400L(e) if they otherwise satisfy the requirements of that section.

D. Notice 2002-13, 2002-8 I.R.B. 547 (2/25/02)

This Notice informs State and local housing credit agencies that allocate low-income housing tax credits under section 42 of the Code and states and other issuers of tax-exempt private activity bonds under section 141, of the proper population figures to be used for calculating the 2002 calendar year population-based component of the state housing credit ceiling under section 42(h)(3)(C) and the 2002 calendar year volume cap under section 146.

E. Notice 2002-10, 2002-6 I.R.B 1 (01/17/02)

This Notice clarifies that the use of gross proceeds of qualified 501(c)(3) bonds to acquire investments in a manner that complies with section 148 is not an unrelated trade or business under section 145(a)(2) and does not result in income from debt-financed property within the meaning of section 514. The Notice does not affect the determination of whether the use of property financed with expenditures of bonds is an unrelated trade or business for purposes of section 145(a)(2) results in unrelated business taxable income under section 512.

F. Notice 2001-60, 2001-40 I.R.B. 304 (10/1/2001)

This notice provides information about a closing agreement program for tax-exempt bonds (TEB VCAP). TEB VCAP is administered by Tax Exempt Bonds, Outreach, Planning and Review. TEB VCAP provides a mechanism whereby issuers of tax-exempt bonds who come forward on a voluntary basis can resolve violations of the Code by entering into closing agreements with the Service. Representatives of issuers can come in for preliminary consideration of a closing agreement on an anonymous basis. TEB VCAP is not available to issuers who have an available remedy under the remedial provisions of the regulations or other closing agreement programs such as that described in Rev. Proc. 97-15. Comments are requested on TEB VCAP and on how the Service can expand its efforts to encourage voluntary compliance with the Code.

G. Notice 2001-49, 2001-34 I.R.B. 188 (8/20/01)

This Notice proposed a revenue procedure which set forth a safe harbor under which an issue of tax or revenue anticipation bonds will not be treated as outstanding longer than is reasonably necessary to accomplish the governmental purposes of the bonds under section 1.148-10(a)(4) of the regulations. The proposed revenue procedure was finalized as Rev. Proc. 2002-31, 2002-19 I.R.B. 1 on May 1, 2002. Pursuant to the Notice, issuers were entitled to rely on the proposed revenue procedure with respect to any issue of tax or revenue anticipation bonds that was sold before the effective date of the proposed revenue procedure set out in the notice and on or after August 3, 2001.

4. Revenue Procedures

A. Rev. Proc. 2001-39, 2001-28 I.R.B. 38. (7/9/2001)

This revenue procedure modifies the definitions of capitation fee and per-unit fee set forth in Rev. Proc. 97-13, 1997-5 I.R.B. 632, to permit an automatic increase of those fees according to the specified, objective, external standard that is not linked to the output or efficiency (for example, the Consumer Price Index).

B. Rev. Proc. 2002-24, 2002-17 I.R.B. 1 (4/11/2002)

This revenue procedure provides guidance concerning the United States and area median gross income figures that are to be used by issuers of qualified mortgage bonds, as defined in section 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in section 25(c), in computing the housing cost/income ratio described in section 143(f)(5).

C. Rev. Proc. 2002-25, 2002-17 I.R.B. 1 (4/12/2002)

This revenue procedure allocates among the States the 2002 national limitation amount of Qualified Zone Academy Bonds (“QZABs”) that may be issued by each state for the calendar year 2002. The Taxpayer Relief Act of 1997 added Section 1397E of the Code, which provides a credit, in certain circumstances, to holders of qualified academy zone bonds so that bonds can be issued without discount or interest. Section 1397E(e) provides that the total face amount of QZABs that may be issued in 2002 at \$400 million. This revenue procedure sets out the individual state allocations.

D. Rev. Proc. 2002-31, 2002-19 I.R.B. 1 (5/1/2002)

This final revenue procedure sets forth a safe harbor under which an issue of tax or revenue anticipation bonds will not be treated as outstanding longer than is reasonably necessary to accomplish the governmental purposes of the bonds for purposes of section 1.148-10(a)(4) of the Income Tax Regulations. On August 20, 2001, this revenue procedure was published in proposed form as Notice 2001-49, 2001-34 I.R.B. 188.

The tax or revenue anticipation bonds (TRANS) will not be treated as outstanding longer than is reasonably necessary to accomplish the governmental purposes if the final maturity date of the issue is not later than the end of the applicable temporary period under section 1.148-2(e)(3)(i) or 1.148-2(e)(3)(ii) for which proceeds of the issue qualify. This revenue procedure does not apply to determine whether an issue of tax or revenue anticipation bonds meets the other requirements of section 148.

5. Proposed and Final Regulations

A. REG.-105369-00, 2002-18 I.R.B. 828 (5/6/02) 67 Fed. Reg. 18835 (4/17/02)

These proposed regulations contain proposed amendments to the final regulations on the arbitrage and private activity restrictions applicable to tax-exempt bonds issued by State and local governments. The proposed amendments affect issuers of tax-exempt bonds and provide guidance on the definitions of investment type property and private loans to help issuers comply with the arbitrage and private activity restrictions.

With certain exceptions, section 148 prohibits the use of proceeds of a tax-exempt bond issue to acquire investment property with a yield that materially exceeds the yield on the issue. Section 148(b)(2)(D) expanded the types of investments of bond proceeds that are subject to the arbitrage restrictions to include all investment-type property. The existing regulations provide that a prepayment does not give rise to investment-type property if it is made for a substantial business purpose other than investment return and the issuer has no commercially reasonable alternative to the prepayment. In addition, the existing regulations provide that a prepayment does not constitute investment-type property if prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but are not beneficiaries of tax-exempt financing. The proposed regulations (1) amend the business purpose exception; (2) retain the customary exception in its present form; (3) add an exception for certain prepayments by municipal utilities to acquire a

supply of natural gas; and (4) add a de minimus exception for prepayments made within 90 days of delivery of the property or services. In addition, the proposed regulations provide that the Commissioner may, by published guidance, set forth additional circumstances in which a prepayment does not give rise to investment type property.

- B. REG.-165706-01, 2002-16 I.R.B. 787. (April 22, 2002), 67 Fed. Reg. 17309 (4/10/02)

The Service proposed regulations on the definition of refunding issue applicable to tax-exempt bonds issued by States and local governments. Section 1.150-1(d) of the current regulations provides a definition of refunding issue. In general, a refunding issue is an issue of obligation the proceeds of which are used to pay principal, interest or redemption price on another issue. One exception provides that an issue is not a refunding issue to the extent that the obligor of one issue is neither the obligor of the other issue nor a related party with respect to the obligor of the other issue. Another exception provides that if a person assumes obligations of an unrelated party in connection with an asset acquisition and the assumed issue is refinanced within six months before or after the date of the debt assumption, the refinancing issue is not treated as a refunding issue. Recently, questions have arisen regarding the application of these provisions with respect to certain issuances of bonds for 501(c)(3) organizations that operate hospital systems. In question is whether bonds issued in connection with the combination of two or more 501(c)(3) organizations to refinance outstanding bonds should be characterized as refunding bonds. Another question is how the change in obligor exception and the six-month exception should be applied when the obligor of the new issue becomes related to the obligor of the other issue as part of the refinancing transaction. Others question whether the acquisition by a 501(c)(3) organization of the sole membership interest in another 501(c)(3) organization should be treated as an asset acquisition for purposes of the six-month exception and what assets should be treated as financed by the new bonds under both the change in obligor exception and the six-month exception.

In general, the proposed regulations retain the change in obligor exception and the six-month exception, with certain modifications. The proposed regulations note that the determination of whether persons are related for purposes of the change in obligor exception and the six-month exception is generally made immediately before the transaction. However, a refinancing issue is a refunding issue under the proposed regulations if the obligor of the refinanced issue (or any person that is related to the obligor of the refinanced issue immediately before the transaction) has or obtains in the transaction the right to appoint the majority of the members of the governing body

of the obligor of the refinancing issue (or any person that controls the obligor of the refinancing issue).

The proposed regulations provide that the six-month exception applies to acquisition transactions. An acquisition transaction is defined as a transaction in which a person acquires from an unrelated party: (i) assets, other than an equity interest in an entity, if the acquirer is treated as acquiring such assets for all Federal income tax purposes; (ii) stock of a corporation with respect to which a valid election under section 338 is made; or (iii) control of a governmental unit or a 501(c)(3) organization through the acquisition of stock, membership interests or otherwise.

The proposed regulations retain the exclusion under which the six-month exception does not apply to transactions to which section 381(a) applies, and broaden its scope. Under the proposed regulations, the exclusion may apply even if the person assuming the obligations is not the acquiring corporation within the meaning of section 381(a) (for example, a transaction in which a corporation assumes the obligations of a target corporation in a transaction to which section 381(a) applies and then contributes all of the assets of the target corporation to a controlled subsidiary). The proposed regulations also extend the application of this rule for section 381(a) transactions to the change in obligor exception.

The proposed regulations include two new requirements for purposes of the change in obligor exception and the six-month exception. In certain instances where the obligors of the issues are affiliated before the transaction or become affiliated as part of the transaction, the proposed regulations provide that an issue will be treated as a refunding issue unless: (i) the refinanced issue is redeemed on the earliest date on which the issue may be redeemed, and (ii) the new issue is treated as being used to finance the assets that were financed with the proceeds of the refinanced issue. These new requirements are intended to avoid overburdening the tax-exempt bond market.

The proposed regulations will apply to bonds sold on or after the date of publication of final regulations in the Federal Register. However, issuers may apply the proposed regulations in whole, but not in part, to any issue that is sold on or after the date the proposed regulations are published in the Federal Register and before the applicability date of the final regulations.

C. T.D. 8967, 2001-50 I.R.B. 568 (12/10/01), 66 Fed. Reg. 58061 (11/20/2001)

This document amends the final regulations on the definition of private business use applicable to tax-exempt bonds issued by State and local

governments. The amendments provide that certain arrangements do not result in private business use if the term of use does not exceed 50, 100, or 200 days, as applicable. T.D. 8967 changes section 1.141-3 of the regulations to provide that specified arrangements do not result in private business use if the term of use does not exceed 50 (rather than 30), 100 (rather than 90), or 200 (rather than 180) days. The provisions of the revised regulation apply to any bond sold after November 19, 2001.

6. Bond Legislation Enacted by the Congress

A. Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21 (3/9/2002)

Section 1400L of the Act provides for the treatment of qualified New York Liberty Zone bonds as tax-exempt facility bonds. The term Qualified New York Liberty Bond means any bond issued as part of an issue that meets the following requirements: 95% or more of the net proceeds of such issue are to be used for qualified project costs; such bond is issued by the State of New York or any political subdivision thereof; the Governor of New York or the Mayor designates such bond for purposes of this section; and such bond is issued before January 1, 2005. Qualified project costs means the cost of acquisition, construction, reconstruction and renovation of non-residential real property and residential rental property located in the New York Liberty Zone and public utility property located in the New York Liberty Zone. The aggregate amount of bonds which can be designated under the act shall not exceed \$8 billion of which half may be designated by the Governor and half may be designated by the Mayor for projects to acquire, build, rebuild and renovate residential rental, nonresidential real, and public utility property in the Zone, or certain nonresidential real property elsewhere in New York City if specific conditions are met. Volume cap limitations shall not apply to such bonds. The 147(c) limitation on use for land acquisition shall be determined by reference to the aggregate authorized face amount of all qualified New York Liberty Bonds rather than the net proceeds of each issue. Section 147(d) relating to the restrictions on the acquisition of existing property shall be applied by substituting 50% for 15% each place it appears. The construction exception to rebate shall also apply to construction proceeds of bonds issued under this section.

The Act also permits an additional advance refunding of certain tax-exempt bonds used to finance facilities within New York City. These bonds include only bonds for which all prior-law refunding authority was exhausted before September 12, 2001, and with respect to which the advance refunding bonds are authorized under prior law. The maximum amount of advance refunding bonds that may be issued under the Act is \$9 billion, one half of which may be designated by the

Governor and half of which may be designated by the Mayor. The provision is effective on the date of enactment and before January 1, 2005.

In addition, this legislation authorized issuance of up to \$400 million of qualified zone academy bonds annually in calendar years 2002 and 2003. The provision is effective for obligations after the date of enactment.

B. The Economic Growth and Tax Relief Reconciliation Act of 2001,
Pub. Law No.107-116, 115 Stat. 38 (6/07/01)

Subtitle C of Public Law 107-16, includes two provisions intended to liberalize tax-exempt financing rules for public school construction which will apply to obligations issued after December 31, 2001.

Section 421 generally provides for an increase in the existing arbitrage rebate exception for governmental bonds used to finance education. Prior to enactment of the 2001 Act, an issuer was excepted from rebate under the “small issuer exception” if the entity issued less than \$10 million of debt per year and no more than \$5 million of the debt was used for public school construction. Debt issued for other non-school construction governmental activities could not exceed \$5 million. Under P.L.107-16, an organization may now issue up to \$10 million in bonds for public school construction. Accordingly, a governmental issuer could potentially issue up to \$15 million per year and still come within the small issuer exception.

Section 422 of the Act expands the definition of an “exempt facility bond” to include bonds issued for qualified public educational facilities which are owned by private, for-profit corporations pursuant to public-private partnership agreements with a State or local educational agency. The Act defines a public educational facility as any school facility which is: (A) part of a public elementary or a public secondary school and (B) owned by a private, for profit corporation pursuant to a public-private partnership agreement with a state or local educational agency.

The term school facility includes school building and functionally related and subordinate land (including stadiums or other athletic facilities) primarily used for school events and depreciable personal property used in the school facility. The limits on the amount of the proceeds of a private activity bond issue that may be used to finance land acquisitions do not apply to qualified public educational facilities under the statute.

As distinguished from other exempt facility bonds, the new qualified public educational facility bonds are subject to a separate volume cap equal to the greater of \$10 multiplied by the State population or \$5 million.

7. Miscellaneous Reports

A. Joint Committee on Taxation, Federal Tax Provisions Affecting the Electric Power Industry, JCX-67-01 (9/10/01)

The Joint Committee on Taxation has released an overview of federal tax provisions relating to the electric power industry in conjunction with a Senate Finance Committee Hearing. The tax provisions most affecting municipal electric service providers involve tax-exempt financing according to the Committee Report.

The report notes that the provision of electric service is a governmental activity eligible for financing with governmental tax-exempt bonds when the financed facilities are used by or paid for by a State or local governmental entity (e.g. by public power). As with other governmental activities, public power is also eligible for limited tax-exempt financing of working capital costs. Private investor owned facilities and co-op electric service providers are generally not eligible for tax-exempt financing of their facilities. The report points out that if public power entities elect to participate in State open access industry restructuring plans where public and private business electric systems are integrated, interest on outstanding tax-exempt bonds of the public power entities may become retroactively taxable unless the issuers of the bonds qualify for, and issuers avail themselves of, certain administrative relief provided under the regulations. In addition, public power facilities that are used in a manner violating the Code's restrictions on the issuance of tax-exempt bonds to private persons will be ineligible for future tax-exempt financing. The report includes an overview of Senate bills relating to electricity, restructuring the electric power industry, and clean coal bills.

8. Proposed Legislation-107th Congress

The 107th Congress has introduced many bills involving tax-exempt bonds. While most of these specific bills will not be enacted and others will be amended and refined prior to enactment, they are reflective of many issues of concern to the bond community including public utilities, solid waste management, housing, and school construction. As noted below, a few of these bills have been enacted to date.

A. House Bills Introduced in the 107th Congress Related to Tax Exempt Bonds

- H.R. 1: To close the achievement gap with accountability, flexibility and choice so that no child is left behind (became P.L. 107-110 on 1/8/2002).
- H.R. 4: To enhance energy conservation, research and development and to provide for security and diversity in the energy supply for the American people, etc.
- H.R. 43: To amend the Internal Revenue Code of 1986 to provide a higher purchase price limitation applicable to mortgage subsidy bonds based on median family income.
- H.R. 178: To amend the Internal Revenue Code of 1986 to provide broader authority for the issuance of tax-exempt bonds by Indian Tribal Governments and for other purposes.
- H.R. 379: To amend the Internal Revenue Code of 1986 to allow issuance of tax-exempt private activity bonds to finance public-private partnership activities relating to school facilities in public elementary schools and for other purposes.
- H.R. 415: To amend the Internal Revenue Code of 1986 to encourage school construction through the creation of a new class of bond.
- H.R. 546: To amend the Internal Revenue Code to provide tax benefits for small businesses, to amend the Fair Labor Standards Act of 1938, to increase the minimum wage, and for other purposes.
- H.R. 884: To amend the Internal Revenue Code of 1986 to permit advanced refunding of private activity bonds with governmental bonds under certain limited circumstances.
- H.R. 916: To amend the Internal Revenue Code of 1986 to correct the treatment of tax-exempt financing of professional sports facilities.

- H.R. 1448: To clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa.
- H.R. 1427: To amend the Internal Revenue Code of 1986 to permit the issuance of tax-exempt bonds for certain air and water pollution control facilities.
- H.R. 1459: To amend to Internal Revenue Code of 1986 to improve electric reliability, enhance transmission infrastructure and to facilitate access to the electric transmission grid.
- H.R. 1711: To amend the Internal Revenue Code of 1986 to modify the treatment of bonds issue to acquire renewable resources on land subject to conservation easements.
- H.R. 1986: To amend the Internal Revenue Code of 1986 to allow the proceeds from bonds to be used for prepayments for natural gas.
- H.R. 1931: To amend the Internal Revenue Code of 1986 to treat spaceports like airports under the exempt facility bond rules.
- H.R. 2200: To amend the Internal Revenue Code of 1986 to permit financial institutions to determine their interest expense deduction without regard to tax-exempt bonds issued to provide certain small loans for health care or educational purposes.
- H.R. 2207: To amend the Internal Revenue Code of 1986 to provide that the volume cap for private activity bonds shall not apply to bonds for water and sewage facilities.
- H.R. 2233: To assist municipalities and local communities to explore and determine options for the alternative provision of electricity and to create new public power systems, and for other purposes.
- H.R. 2253: To amend the Internal Revenue Code of 1986 to provide for the issuance of tax-exempt bonds by Indian Tribal governments and for other purposes.

- H.R. 2511: To amend the Internal Revenue Code of 1986 to provide tax incentives to encourage energy conservation, energy reliability and energy production.
- H.R. 2884: An act to amend the Internal Revenue Code of 1986 to provide tax relief for victims of the terrorist attacks against the United States and for other purposes (became part of P.L. 107-147 on 1/23/2002).
- H.R. 3090: To provide tax incentives for economic recovery (became part of P.L.107-147 on 3/9/2002)
- H.R. 3373: To amend the Internal Revenue Code of 1986 to provide tax benefits for the recovery of the area of New York City damaged in the September 11, 2001 terrorist attacks.
- H.R. 3381: To amend the Internal Revenue Code of 1986 to provide that certain bonds issued by local governments in connection with delinquent property taxes may be treated as tax-exempt.
- H.R. 3402: To provide tax incentives for the recovery of businesses in the City of New York that were impacted by the September 11, 2001, terrorist attacks.
- H.R. 3586: To amend the Internal Revenue Code of 1986 to clarify the small issuer exception from the tax-exempt bond arbitrage rebate requirement.
- H.R. 4121: To amend the Internal Revenue Code of 1986 to allow an additional advance refunding of tax-exempt bonds issued for the purchase or maintenance of electric generation, transmission, or distribution assets.
- H.R. 4475: To amend the Internal Revenue Code of 1986 to promote the economic recovery of the District of Columbia.

B. Senate Bills Introduced in the 107th Congress related to Tax Exempt Bonds

- S. 23: A bill to promote a new urban agenda, and for other purposes.

- S. 97: A bill to amend the Internal Revenue Code of 1986 with respect to the eligibility of veterans for mortgage revenue bond financing, and for other purposes.
- S. 243: A bill to provide for the issuance of bonds to provide funding for the construction of Schools of the Bureau of Indian Affairs and for other purposes.
- S. 250: A bill to amend the Internal Revenue Code to allow a credit to holders of qualified bonds issued by Amtrak and for other purposes
- S. 370: A bill to amend the Internal Revenue Code of 1986 to exempt agricultural bonds from State volume caps.
- S. 596. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage the production and use of efficient energy sources.
- S. 615: A bill to amend the Internal Revenue Code of 1986 with respect to the eligibility of veterans for mortgage bond financing and for other purposes.
- S. 660: A bill to amend the Internal Revenue Code to provide for the issuance of tax-exempt bonds by Indian Tribal governments, and for other purposes.
- S. 677: A bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financing to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income and for other purposes.
- S. 822: A bill to amend the Internal Revenue Code of 1986 to modify the treatment of bonds issued to acquire renewable resources on land subject to a conversation easement.
- S. 972: To amend the Internal Revenue Code of 1986 to improve electric utility reliability, enhance transmission infrastructure and to facilitate access to the electric transmission grid

- S. 1038: A bill to amend the Internal Revenue Code of 1986 to improve access to tax-exempt debt for small nonprofit health care and educational institutions.
- S. AMDT. 767 to HR 1836: To aid public health and improved water safety by arsenic standard recommended by the National Academy of Sciences and adopted by the World Health Organization and European Union.
- S.AMDT 789 to H.R. 1836: Bond related provisions include the proposed modification of the treatment of bonds issued to acquire renewable resources on land subject to conservation easement, to provide tax-exempt bond authority for treatment facilities that reduce arsenic levels in drinking water.

9. Press Releases

A. Treasury Suspends Sales of State and Local Government Series Securities (5/14/02)

The Treasury Department announced the suspension of sales of State and Local Government series (SLGS) until further notice, effective May 15, 2002. This suspension is necessary because the statutory debt ceiling has not been raised. The Internal Revenue Service has issued guidance related to suspensions of SLGs sales in Rev. Proc. 95-47, 1995-2 C.B. 417. Rev. Proc. 95-47 permits issuers to make yield reduction payments under certain circumstances when they are unable to purchase SLGS and must purchase other higher yielding securities.

B. Sale of State and Local Government Securities Resumed (6/28/02)

The Treasury Department announced the resumption of issuance of SLGs effective July 8, 2002, following enactment of legislation to raise the debt limit.

10. Private Letter Rulings and Technical Advice

The following are private letter rulings and technical advice memoranda released between 6/01/01 and 6/01/02. Private letter rulings and technical advice memoranda are generally released 90 days after issuance. It should be noted that these documents are directed only to the taxpayers requesting them and may not be used or cited as precedent under section 6110(k)(3)

A. Section 103

- PLR 200204032 (10/26/01) The Service concluded that an agency created to own and operate four hydroelectric generating facilities that provide electricity at a cost effective rate to citizens of the state is a political subdivision of the state under section 1.103-1(b) of the regulations. It was further concluded that the Agency has been delegated the right to exercise sovereign power and is also a division of the State since it is controlled by the State and is motivated by a wholly public purpose.

B. Section 141

- PLR 200222006 (2/19/2002) The Service concluded that a management contract between a section 501(c)(3) organization and an unrelated service provider to manage a hotel does not result in private business use under section 141(b). While the Service determined that a pre-opening agreement and management contract did not satisfy all the requirements of section 5.03 of Rev. Proc. 97-13, it concluded that, based on consideration of the facts and circumstances, including representations of the issuer accompanied by a perjury statement from an appropriate party, the management contract does not result in private business use under section 1.141-3(b)(4).
- PLR 200211022 (12/14/2001) The Service concluded that a state electrical agency's entry into an agreement to form an independent system operator will not be treated as a deliberate action by the Agency with respect to the bonds under 1.141-2(d) because it is an action described in section 1.141-7T(f)(5)(ii). The Service noted that the agency action is being taken to implement FERC regulations and that there is no sale, exchange or other disposition of the transmission facility to a non-governmental person. No determination was made with respect to whether the Agency's entering into the agreement will cause the private business or the private loan financing test to be met.
- PLR 200211003 (12/18/2001) A state university issued bonds to finance part of a multi-purpose recreation center. Students and faculty as well as family of faculty and students, employees of the university hospital, and participants in on-campus programs will use the center. Since none of the proposed uses involves the use of the center by a nongovernmental person in a trade or

business, it was determined that the proposed use of the center is not a private use under section 141(b)(1).

- PLR 200205009 (11/2/2001) A 501(c) (3) conduit borrower used proceeds to construct and purchase a ferry for seasonal expeditions. The organization plans to enter into a nonrenewable management contract with an unrelated manager to manage certain operations of a ferry service. It was concluded that the contract satisfies the requirements under Rev. Proc. 97-13 and, accordingly, it does not result in private use.
- PLR 200209005 (10/22/01) In a heavily redacted ruling, the Service concluded that a change in a tax-exempt bond issuer's program wouldn't cause the bonds to be described in an undisclosed provision of the Code. The Service noted that the rulings were based upon information and representations by the taxpayer, accompanied by a perjury statement, and that the material submitted in support of the ruling request was subject to verification on examination.
- ITA 200143031 (9/19/01). In a technical assistance request, it was concluded that the private business use test under section 141(b)(1) is met when an airport authority's lease with a private air carrier gives the carrier an interest in the net profits generated by the parking facility fees (in the form of reduced lease payments) because the arrangement conveys special legal entitlements to the financed facility to the carrier.

C. Section 142

- PLR 200226002 (3/1/2002) The Service concluded that a processor consisting of a centrifuge, evaporator to be financed with bonds which produces cattle feed from stillage is a solid waste facility. In reaching its conclusion, the Service found that the stillage is a solid waste within the meaning of section 103-8(f) of the regulations. Stillage is produced as a waste by-product of ethanol and has the consistency of oatmeal. Due to environmental regulations, the stillage cannot be dumped onto the ground or into a waterway and no person is willing to purchase it in the form it is in when removed from the manufacturing process.

- FSA 200201008 (9/28/01) In a field service memorandum, it was concluded that a bond financed facility located adjacent to an airport and leased to an airline to provide maintenance service and engine overhauls for the airline's passenger aircraft meets the public use requirements of section 142(a) because it is leased by a common carrier who uses it in the business of provided scheduled passenger service to the general public, the facility is a directly related and essential part of the airport, as defined in section 142(a), and the facility is functionally related to the airport.
- FSA 200207010 (11/8/2001) Solid waste facility bonds were issued and proceeds were loaned to a company engaged in the production of metals in a process that produces hazardous waste as defined by the Environmental Protection Agency. It was concluded that the facility was not a qualified hazardous waste facility as defined in section 142(a)(10) because the Company is the source of all of the waste material treated at the facility. It was further concluded that the facility would qualify as a solid waste disposal facility under section 142(a)(6) even though the solid waste was hazardous. It was noted that the Code doesn't contain any relevant language that would prevent financing with solid waste disposal facility bonds.

D. Section 143

- PLR 200147051 (8/28/01) In order to meet the purchase price requirement of section 143(e), the acquisition cost of a single family resident may not exceed 90% of the applicable average area purchase price, except in the case of a targeted area. The Service has provided new safe harbor limitations for computing purchase price limitations used with respect to section 143 qualified mortgage bonds. Based on the information submitted and representations made, the Service concluded that the calculations submitted by the Authority in the case of new and existing single-family residences are based upon more accurate and comprehensive data than that used for calculating the limitations published in Rev. Proc. 94-55, and may be used by the Authority as provided under the regulations.

E. Section 145

- PLR 200132017 (5/10/01) The Service concluded that the proceeds of bonds may be allocated to the portions of the research facilities that were used for qualified research arrangements, with such portions based on the ratio of the present value of qualified research revenue to the present value of gross research revenue (qualified research revenue plus non-qualified research revenue), using the yield on the Bonds (determined under section 148) as the discount rate. As a result the University may finance such portions of the research facilities under section 145.

F. Section 146

- PLR 200212022 (12/20/01) PLR 200211026 (12/14/ 2001) PLR 200208014 (11/20/01) PLR 20015001 (9/17/01) In each ruling the Service granted an issuer an extension to elect under section 146(f) to carry forward its excess volume cap. In each case, the issuer filed for an extension when it was discovered that Form 8328 hadn't been previously filed. In each case, the Service determined the issuer acted reasonably and in good faith.

G. Section 148

- FSA 200152027 (9/27/01) The Service requested advice regarding whether the 15-month term of certain TRANs constitutes overburdening of the market under section 1.148-10(a)(4) of the Income Tax Regulations because the TRANs are outstanding longer than necessary to accomplish the governmental purposes of the bonds. It was concluded that Notice 2001-49 (now finalized as Rev. Proc. 2002-31) applied to the TRANs and closed the issue of whether the TRANs were outstanding longer than necessary under section 1.148-10(a)(4) of the regulations. It was concluded, however, that the repayment fund constituted a qualified debt service reserve fund under section 1.148-1(b) of the regulations.
- TAM 200214005 (11/7/01) The Service concluded that bonds issued by a school district on behalf of a state issuing agency were not eligible for the rebate exception for governmental units issuing \$5,000,000 or less of bonds. The bonds issued by the school district were one of a series of 10 issues by 10 individual

school districts. It was concluded that the state association used the individual school district to avoid the purposes of 148(f) and that the bonds of the school district should be aggregated with those issued by the state association. As a result of the aggregation, the bonds were subject to rebate.

H. Section 6700

- FSA 200129011 (4/6/01) The Service requested field service advice regarding whether it could assert a section 6700 penalty against various parties who participated in the marketing of certain mortgage revenue bonds, including an attorney who rendered opinions and statements regarding the excludability of interest earned on the bonds, in a case where the Service did not enter into a closing agreement with the issuer, declare interest taxable, or otherwise penalize the issuer or owners of the bonds. It was concluded that although the Service need not open an audit of the bond issue, the burden of proof with respect to each element of the 6700 penalty is on the Service in such a case. The Service must establish that: (1) bond counsel organized or participated in the sale of the bonds; (2) bond counsel made or furnished a statement with respect to whether a deduction or credit is allowable, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the bonds; (3) the statement is fraudulent as to any material matter; and (4) bond counsel knew or had reason to know that the statement was false or fraudulent.