4:00 pm  

Controversy and Cooperation with the IRS. This panel will discuss certain fact patterns that involve (i) two cases that went to appeals and why, in each case, the decision to appeal was made and how the process unfolded procedurally, and (ii) seeking a PLR after the bonds are issued and related disclosure and opinion questions.

Moderator: Mark O. Norell, Ballard Spahr LLP, New York, New York  
Panelists: Charles Henck, Ballard Spahr LLP, Washington, DC; and Aviva Roth, Orrick Herrington & Sutcliffe LLP, Washington, DC.

I. Introduction

A. Panel will address Internal Revenue Service audits of tax-exempt bonds, whether and when to request a Technical Advice Memorandum, and seeking appeals

B. Discussion of two cases that went to appeals and why the decision were made and how the cases unfolded procedurally will be described

II. Issuer Alternatives when Conflict with the Internal Revenue Service

A. Concede

1. Work out settlement with the Internal Revenue Service

2. At times, despite an Issuer having a case with merit, an Issuer may concede simply to avoid incurring legal and other costs of continuing the audit (e.g., settlement costs may be less than potential costs of pursuing the appeal)

   a. Discussion regarding implications

B. Technical Advice Memorandum Alternatives and Considerations

1. Request initiated on the Issuer’s behalf

   a. Issuer experiences

2. Request initiated by the Internal Revenue Service
3. Chief Council discretion as to issue a TAM

4. Resources related to TAMs

C. Seeking an Appeal

1. Appeal Decision Considerations:
   a. Financial cost
   b. Timeline and typical duration of the appeals process

2. Once The Decision to File an Appeal is Made
   a. Appeal letter is likely the only written submission
      (1) Lead with clear and complete narrative recitation of fact
      (2) Include all legal sources
      (3) Include “big picture” policy analysis
   b. Appeals officer is not a “Section 103” expert but is highly competent tax practitioner and is likely to approach issues differently
   c. The issuer only has 30 days (some extension is available) from the date of the Proposed Adverse Decisions (“30 day letter”) to file the appeal, the filed appeal does not actually go to the Appeals Officer immediately when filed. Rather, TEB first reviews filing for completion and then will additionally review any “new arguments” and prepare rebuttal. Only after rebuttal is sent to the issuer is case transferred to the Appeals Office

3. Resources on Appeals Process
   a. Publication 5 “Your Appeal Rights”
   b. Revenue Procedure 2006-40
   c. IRM 4.81.14 “Unagreed Issues” updated August 28, 2018

III. Case Studies

A. The Midwest Fertilizer Co. experience

B. The Oyster Elementary School experience
IV. Seeking a Private Letter Ruling or a Closing Agreement After the Bonds are Issued

A. Private Letter Ruling
   1. Requires guidance or interpretation regarding existing statutes, regulations, or rulings

B. Closing Agreement
   1. Requires a violation to be remedied

C. Disclosure considerations

V. Tax Disclosure and After Bankruptcy Proceeding, Audits and Closing Agreement
Attachments/Resources

Revenue Procedure 2019-2 (attached) and Revenue Procedure 2019-4 (not attached)

IRS Publication 5 – Your Appeal Rights

Revenue Procedure 2006-40

IRM 4.81.14 – Unagreed Issues

Bond Buyer Articles

1. March 19, 2019 Bond Buyer Article regarding Midwest Fertilizer Co.

2. March 12, 2019 Bond Buyer Article regarding Oyster Elementary School

Tax Disclosure Following City of Detroit Bankruptcy

Tax Disclosure Following Puerto Rico Sales Tax Financing PROMESA Proceeding
Your Appeal Rights and How To Prepare a Protest If You Don’t Agree

Introduction
This Publication tells you how to appeal your tax case if you don’t agree with the Internal Revenue Service (IRS) findings.

If You Don’t Agree
If you don’t agree with any or all of the IRS findings given you, you may request a meeting or a telephone conference with the supervisor of the person who issued the findings. If you still don’t agree, you may appeal your case to the Appeals Office of IRS.
If you decide to do nothing and your case involves an examination of your income, estate, gift, and certain excise taxes or penalties, you will receive a formal Notice of Deficiency. The Notice of Deficiency allows you to go to the Tax Court and tells you the procedure to follow. If you do not go to the Tax Court, we will send you a bill for the amount due.
If you decide to do nothing and your case involves a trust fund recovery penalty or certain employment tax liabilities, the IRS will send you a bill for the penalty. If you do not appeal a denial of an offer in compromise or a denial of a penalty abatement, the IRS will continue collection action.
If you don’t agree, we urge you to appeal your case to the Appeals Office of IRS. The Office of Appeals can settle most differences without expensive and time-consuming court trials. (Note: Appeals can not consider your reasons for not agreeing if they don’t come within the scope of the tax laws (for example, if you disagree solely on moral, religious, political, constitutional, conscientious, or similar grounds).)
The following general rules tell you how to appeal your case.

Appeals Within the IRS
Appeals is the administrative appeals office for the IRS. You may appeal most IRS decisions with your local Appeals Office. The Appeals Office is separate from - and independent of - the IRS Office taking the action you disagree with. The Appeals Office is the only level of administrative appeal within the IRS.
Conferences with Appeals Office personnel are held in an informal manner by correspondence, by telephone or at a personal conference. There is no need for you to have representation for an Appeals conference, but if you choose to have a representative, see the requirements under Representation.

If you want an Appeals conference, follow the instructions in our letter to you. Your request will be sent to the Appeals Office to arrange a conference at a convenient time and place. You or your representative should prepare to discuss all issues you don’t agree with at the conference. Most differences are settled at this level.
In most instances, you may be eligible to take your case to court if you don’t reach an agreement at your Appeals conference, or if you don’t want to appeal your case to the IRS Office of Appeals. See the later section Appeals To The Courts.

Protests
When you request an appeals conference, you may also need to file a formal written protest or a small case request with the office named in our letter to you. Also, see the special appeal request procedures in Publication 1660. Collection Appeal Rights, if you disagree with lien, levy or seizure, or denial or termination of an installment agreement.

You need to file a written protest:
- In all employee plan and exempt organization cases without regard to the dollars amount at issue.
- In all partnership and S corporation cases without regard to the dollar amount at issue.
- In all other cases, unless you qualify for the small case request procedure, or other special appeal procedures such as requesting Appeals consideration of liens, levies, seizures, or installment agreements. See Publication 1660.

How to prepare a protest:
When a protest is required, send it within the time limit specified in the letter you received. Include in your protest:
1) Your name and address, and a daytime telephone number.
2) A statement that you want to appeal the IRS findings to the Appeals Office.
3) A copy of the letter showing the proposed changes and findings you don’t agree with (or the date and symbols from the letter).
4) The tax periods or years involved.
5) A list of the changes that you don’t agree with, and why you don’t agree.

6) The facts supporting your position on any issue that you don’t agree with,
7) The law or authority, if any, on which you are relying.
8) You must sign the written protest, stating that it is true, under the penalties of perjury as follows: “Under the penalties of perjury, I declare that I examined the facts stated in this protest, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.”

If your representative prepares and signs the protest for you, he or she must substitute a declaration stating:
1) That he or she submitted the protest and accompanying documents and
2) Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.
We urge you to provide as much information as you can, as this will help us speed up your appeal. This will save you both time and money.

Small Case Request:
If the total amount for any tax period is not more than $25,000, you may make a small case request instead of filing a formal written protest. In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund. For an offer in compromise, in calculating the total amount, include total unpaid tax, penalty and interest due. For a small case request, follow the instructions in our letter to you by: sending a letter requesting Appeals consideration, indicating the changes you don’t agree with, and the reasons why you don’t agree.

Representation
You may represent yourself at your appeals conference, or you may have an attorney, certified public accountant, or an individual enrolled to practice before the IRS represent you. Your representative must be qualified to practice before the IRS. If you want your representative to appear without you, you must provide a properly completed power of attorney to the IRS before the representative can receive or inspect confidential information. Form 2848, Power of Attorney and Declaration of Representative, or any other properly written power of attorney or authorization may be used for this
purpose. You can get copies of Form 2848 from an IRS office, or by calling 1-800-TAX-FORM (1-800-829-3676).

You may also bring another person(s) with you to support your position.

Appeals To The Courts

If you and Appeals don’t agree on some or all of the issues after your Appeals conference, or if you skipped our appeals system, you may take your case to the United States Tax Court, the United States Court of Federal Claims, or your United States District Court, after satisfying certain procedural and jurisdictional requirements as described below under each court. (However, if you are a nonresident alien, you cannot take your case to a United States District Court.) These courts are independent judicial bodies and have no connection with the IRS.

Tax Court

If your disagreement with the IRS is over whether you owe additional income tax, estate tax, gift tax, certain excise taxes or penalties related to these proposed liabilities, you can go to the United States Tax Court. (Other types of tax controversies, such as those involving some employment tax issues or manufacturers’ excise taxes, cannot be heard by the Tax Court.) You can do this after the IRS issues a formal letter, stating the amounts that the IRS believes you owe. This letter is called a notice of deficiency. You have 90 days from the date this notice is mailed to you to file a petition with the Tax Court (or 150 days if the notice is addressed to you outside the United States). The last date to file your petition will be entered on the notice of deficiency issued to you by the IRS. If you don’t file the petition within the 90-day period (or 150 days, as the case may be), we will assess the proposed liability and send you a bill. You may also have the right to take your case to the Tax Court in some other situations, for example, following collection action by the IRS in certain cases. See Publication 1660.

If you discuss your case with the IRS during the 90-day period (150-day period), the discussion will not end the period in which you may file a petition with the Tax Court.

The court will schedule your case for trial at a location convenient to you. You may represent yourself before the Tax Court, or you may be represented by anyone permitted to practice before that court.

Note: If you don’t choose to go to the IRS Appeals Office before going to court, normally you will have an opportunity to attempt settlement with Appeals before your trial date.

If you dispute not more than $50,000 for any one tax year, there are simplified procedures. You can get information about these procedures and other matters from the Clerk of the Tax Court, 400 Second St. NW, Washington, DC 20217.

Frivolous Filing Penalty

Caution: If the Tax Court determines that your case is intended primarily to cause a delay, or that your position is frivolous or groundless, the Tax Court may award a penalty of up to $25,000 to the United States in its decision.

District Court and Court of Federal Claims

If your claim is for a refund of any type of tax, you may take your case to your United States District Court or to the United States Court of Federal Claims. Certain types of cases, such as those involving some employment tax issues or manufacturers’ excise taxes, can be heard only by these courts.

Generally, your District Court and the Court of Federal Claims hear tax cases only after you have paid the tax and filed a claim for refund with the IRS. You can get information about procedures for filing suit in either court by contacting the Clerk of your District Court or the Clerk of the Court of Federal Claims.

If you file a formal refund claim with the IRS, and we haven’t responded to you on your claim within 6 months from the date you filed it, you may file suit for a refund immediately in your District Court or the Court of Federal Claims. If we send you a letter that proposes disallowing or disallows your claim, you may request Appeals review of the disallowance. If you wish to file a refund suit, you must file your suit no later than 2 years from the date of our notice of claim disallowance letter.

Note: Appeals review of a disallowed claim doesn’t extend the 2 year period for filing suit. However, it may be extended by mutual agreement.

Recovering Administrative and Litigation Costs

You may be able to recover your reasonable litigation and administrative costs if you are the prevailing party, and if you meet the other requirements. You must exhaust your administrative remedies within the IRS to receive reasonable litigation costs. You must not unreasonably delay the administrative or court proceedings.

Administrative costs include costs incurred on or after the date you receive the Appeals decision letter, the date of the first letter of proposed deficiency, or the date of the notice of deficiency, whichever is earliest.

Recoverable litigation or administrative costs may include:

- Attorney fees that generally do not exceed $125 per hour. This amount will be indexed for a cost of living adjustment.

- Reasonable amounts for court costs or any administrative fees or similar charges by the IRS.

- Reasonable expenses of expert witnesses.

- Reasonable costs of studies, analyses, tests, or engineering reports that are necessary to prepare your case.

You are the prevailing party if you meet all the following requirements:

- You substantially prevailed on the amount in controversy, or on the most significant tax issue or issues in question.

- You meet the net worth requirement. For individuals or estates, the net worth cannot exceed $2,000,000 on the date from which costs are recoverable. Charities and certain cooperatives must not have more than 500 employees on the date from which costs are recoverable. And taxpayers other than the two categories listed above must not have net worth exceeding $7,000,000 and cannot have more than 500 employees on the date from which costs are recoverable.

You are not the prevailing party if:

- The United States establishes that its position was substantially justified. If the IRS does not follow applicable published guidance, the United States is presumed to not be substantially justified. This presumption is rebuttable. Applicable published guidance means regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if they are issued to you, private letter rulings, technical advice memoranda and determination letters. The court will also take into account whether the Government has won or lost in the courts of appeals for other circuits on substantially similar issues, in determining if the United States is substantially justified.

You are also the prevailing party if:

- The final judgment on your case is less than or equal to a “qualified offer” which the IRS rejected, and if you meet the net worth requirements referred to above.

A court will generally decide who is the prevailing party, but the IRS makes a final determination of liability at the administrative level. This means you may receive administrative costs from the IRS without going to court. You must file your claim for administrative costs no later than the 90th day after the final determination of tax, penalty or interest is mailed to you. The Appeals Office makes determinations for the IRS on administrative costs. A denial of administrative costs may be appealed to the Tax Court no later than the 90th day after the denial.
Administrative Appeal of Proposed Adverse Determination of Tax-Exempt Status of Bond Issue
Rev. Proc. 2006-40

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SECTION 1. PURPOSE

This revenue procedure provides procedures for an issuer of tax-exempt bonds to request an administrative appeal to the Office of Appeals (Appeals) within the Internal Revenue Service (Service) from a proposed adverse determination by the Service's Office of Tax Exempt Bonds (TEB) of the Tax Exempt & Government Entities Division (TE/GE) to the effect that an issue of bonds fails to qualify for the exclusion of the interest on the bonds from the gross income of the owners under section 103 of the Internal Revenue Code (the Code) and related provisions of the Income Tax Regulations (the Regulations) (Proposed Adverse Determination). This revenue procedure also provides procedures for an issuer of tax-exempt bonds to request such an administrative appeal from a denial by TEB of a claim for recovery of an asserted overpayment of arbitrage rebate under section 148 of the Code (Arbitrage Rebate Claim Denial).

SECTION 2. BACKGROUND

Prior to the enactment of the Internal Revenue Service Restructuring and Reform Act of 1993, P.L. 103-206, 112 Stat. 585 (1993 IRS Restructuring Act), procedures did not exist for an issuer to appeal a Proposed Adverse Determination by the Service that the interest on an issue

of bonds failed to qualify for the exclusion from the gross income of the owners of those bonds under section 103 of the Code. Section 3105 of RRA 98 directs the Service to modify its administrative procedures to allow issuers an expedient appeal of a proposed adverse determination by the Service to Appeals with respect to a bond issue before the Service proceeded to tax bondholders. As a result, Rev. Proc. 99-35, 1999-2 C.B. 501, was published to set forth procedures for issuers to appeal a proposed adverse determination by an Employee Plans/Exempt Organizations Key District under the Service’s prior organizational structure. Subsequently, the Service updated its organizational structure and created TEB as a separate examination division for tax-exempt bond matters within its updated organizational structure. This revenue procedure modifies and supersedes Rev. Proc. 99-35 to take into account the Service’s updated organizational structure and to apply the revised appeal procedures to a Proposed Adverse Determination or an Arbitrage Rebate Claim Denial.

SECTION 3. SCOPE

.01 In general. An appeal of a Proposed Adverse Determination by TEB is initiated by the issuer as described in section 4 of this revenue procedure. Any issue raised by TEB in a Proposed Adverse Determination that would cause interest on a bond issue to fail to qualify for the exclusion from gross income under section 103 of the Code or any Arbitrage Rebate Claim Denial that involves a denial by TEB of a claim for recovery of arbitrage rebate payments under section 148 of the Code with respect to a bond issue is appropriate for consideration by Appeals.

.02 Appeals procedure. Established appeals procedures, including those governing submissions and taxpayer conferences, apply to appeals regarding bond issues. See section 601.106 et seq. of the Regulations.

.03 Issuers as taxpayers. In order to expeditiously conduct an examination (including any related administrative appeal) of a tax-exempt bond issue, an issuer is generally treated as the taxpayer on behalf of any unidentified beneficial owners of the bonds comprising the issue under examination. See section 5.02 of this revenue procedure regarding other parties that may participate in an Appeals proceeding.

.04 Bondholders as taxpayers. TEB must concurrently treat all identified owners of the bonds as taxpayers for all aspects of an examination, including taxpayer communications and the assessment of tax on past interest paid on that bond issue. The appeal rights of a bondholder are independent and separate from the appeal rights of an issuer described under this revenue procedure.

.05 Conduit borrowers as taxpayers. In appropriate circumstances, Appeals may consider issues relating to those raised in a Proposed Adverse Determination with respect to a bond issue which affect the tax liability (other than any potential penalties) of the borrower of bond proceeds of a conduit financing issue concurrently with the issuer’s appeal. Appeals will only consider an issue relating to the borrower’s tax liability if the borrower is under examination with respect to the issue, the resolution of that issue is affected by the determination of whether the interest on an issue of bonds is excludable from gross income under section 103 (e.g., issues under sections 150(b) or 168(g) of the Code), and the borrower agrees to resolve the issue concurrently with the issuer’s appeal under this revenue procedure. See section 5.02 of this revenue procedure for Appeals procedures governing the participation of parties other than the issuer.

.06 Technical advice. Revenue Procedure 2006–2, 2006–1 I.R.B. 89, explains, in part, when and how the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities) issues technical advice memoranda to TEB and Appeals. In accordance with section 7.02 of Rev. Proc. 2006–2, or subsequent revenue procedure, an issuer may submit a request to TEB or Appeals that a tax matter be referred for technical advice in accordance with the procedures contained therein while the bond issue is under the jurisdiction of TEB or Appeals respectively.

.07 Alternative dispute resolution programs. TEB and Appeals offer certain alternative dispute resolution and fast track settlement programs pertaining to the examination of bond issues. These programs, described by revenue procedure, announcement or other published guidance, permit senior Appeals officers to mediate or otherwise assist in the resolution of matters identified during the course of an examination prior to the issuance of a Proposed Adverse Determination. See Revenue Procedure 99–28, 1999–2 C.B. 109, and Announcement 2003–36, 2003–1 C.B. 1093.

SECTION 4. INITIATING THE APPEAL PROCESS

.01 In general. Sections 4.02 through 4.06 of this revenue procedure describe the circumstances and procedures under which an issuer may appeal a Proposed Adverse Determination or an Arbitrage Rebate Claim Denial.

.02 Availability of appeal request to issuer. An issuer is eligible to request an appeal under this revenue procedure upon the receipt from TEB of either a Proposed Adverse Determination or an Arbitrage Rebate Claim Denial. Except as provided in section 3.07 of this revenue procedure, the appeal rights under this revenue procedure are not available to an issuer prior to the receipt of either such a Proposed Adverse Determination or an Arbitrage Rebate Claim Denial.

.03 Requesting an appeal. The issuer’s appeal request must be submitted in writing to TEB within 30 days of the date of TEB’s Proposed Adverse Determination or Arbitrage Rebate Claim Denial. The appeal request must include the information listed in section 4.04 of this revenue procedure. TEB may extend the 30-day submission requirement following a written request by the issuer justifying such extension.

.04 Required information and signature. The appeal request must include a detailed written response to TEB’s Proposed Adverse Determination or Arbitrage Rebate Claim Denial, including a full and complete explanation of the issuer’s position regarding the issue(s) in dispute. The appeal request must include a declaration in the following form: “Under penalties of perjury, I declare that I have examined this request for an appeal, including accompanying documents, and that, to the best of my knowledge and belief, the facts presented are true, correct, and complete.” The issuer or the issuer’s authorized representative must sign an appeal request.
An issuer may designate an authorized representative by submitting a duly executed Form 2848, Power of Attorney and Declaration of Representative, when making an appeal request under this revenue procedure.

.05 Response to an appeal request. Upon receipt of an appeal request, TEB will review the request to determine whether it meets the requirements of this revenue procedure. If the request does not meet the requirements of this revenue procedure, TEB will notify the issuer of the request's deficiencies. If the request meets the requirements of this revenue procedure and does not contain any new information or analysis of the taxpayer's position, TEB will transfer the case file to Appeals in the manner described in section 4.07 of this revenue procedure. If the request meets the requirements of this revenue procedure but the request contains new information or analysis of the taxpayer's position, TEB will notify the issuer that the new information submitted in the request may change the case's outcome and requires further discussions prior to transferring the case file to Appeals in the manner described in section 4.07 of this revenue procedure.

.06 Failure to make appeal request. If the issuer does not submit a written appeal request within the time period set forth in section 4.03 (including any filing extension granted by TEB) and in the manner described in section 4.04 of this revenue procedure, TEB's Proposed Adverse Determination or Arbitrage Rebate Claim Denial shall become final.

.07 Transfer of case file. Upon receipt of an appeal request, TEB Field Operations (TEB FO) will send the case file to TEB Compliance & Program Management (TEB CPM) for review and transfer to Appeals. To facilitate the appeals process, TEB CPM will expeditiously review the case file to ensure that the factual and legal matters therein support the issues raised by TEB FO in the Proposed Adverse Determination or Arbitrage Rebate Claim Denial. Once the review process is complete, TEB CPM will close the case at the examination level and transfer the case file to Appeals.

The file should include copies of the following:

1. the technical advice memorandum, if any;
2. all information received by TEB from the issuer regarding the bond issue;
3. all work papers related to TEB's examination of the bond issue;
4. TEB's written Proposed Adverse Determination or Arbitrage Rebate Claim Denial;
5. the issuer's written protest; and
6. TEB's response to positions stated by the issuer in its protest.

.08 Jurisdiction over tax matters. Once TEB CPM sends the case file to Appeals, jurisdiction over the issues raised in the Proposed Adverse Determination or Arbitrage Rebate Claim Denial will transfer from TEB to Appeals. Except as provided in section 3.05 of this revenue procedure, TEB will retain jurisdiction over all tax matters related to the bond issue which are not specifically raised as an issue in the Proposed Adverse Determination (e.g., section 6700 penalties) or Arbitrage Rebate Claim Denial.

SECTION 5. RESOLVING AN APPEAL ISSUE(S)

.01 In general. In accordance with the directive in the 1998 IRS Restructuring Act, an appeal by an issuer under this revenue procedure will be assigned to a senior Appeals officer specializing in tax-exempt bonds. Appeals will consider the case a priority assignment and will resolve the case as expeditiously as possible.

.02 Other participants in the appeals process. The issuer may authorize any person (e.g., a borrower) to inspect or receive confidential information during the Appeals process by submitting a duly executed Form 8821, Taxpayer Information Authorization, to the Appeals officer.

.03 New information provided. If the issuer provides additional information not previously given to TEB, Appeals may forward such information to TEB CPM for comment or return jurisdiction over the case to TEB if it determines that the significance of any new information warrants further case development by TEB FO.

.04 If agreement is reached. If Appeals and the issuer agree that no action is necessary with respect to the issues raised in a Proposed Adverse Determination or an Arbitrage Rebate Claim Denial, Appeals will provide written notification to the issuer that the Proposed Adverse Determination or Arbitrage Rebate Claim Denial has been withdrawn. If Appeals and the issuer reach an agreement with respect to the bond issue, Appeals will generally prepare a closing agreement using the model closing agreement provided in Exhibit 4.81.1-9 of the Internal Revenue Manual. Under either scenario, Appeals will provide TEB CPM with copies of the Appeals case memorandum and the executed closing agreement (if any), close the case at the appeal level, and send the case file to the Ogden Submission Processing Center.

.05 If agreement is not reached. If Appeals and the issuer cannot reach an agreement, Appeals will provide written notification to the issuer that TEB's Proposed Adverse Determination or Arbitrage Rebate Claim Denial has become final. Appeals will send the case file (including a copy of the Appeals case memorandum) to TEB CPM and close the case at the appeal level.

SECTION 6. EFFECT OF FINAL ADVERSE DETERMINATION

A Proposed Adverse Determination becomes final if there is no timely appeal under section 4 or if Appeals and the issuer cannot reach agreement with respect to an appeal under section 5.05. Once a Proposed Adverse Determination becomes final with respect to a bond issue, the interest on those bonds will no longer be treated as excludable from gross income under section 103 of the Code and TEB may initiate procedures to impose tax on the bondholders with respect to the interest on the bonds. Once a Proposed Adverse Determination becomes final with respect to a bond issue, TEB generally will not re-open settlement negotiations with an issuer regarding matters identified in the examination of the bond issue.

SECTION 7. NO USER FEE

There is no user fee for either requesting an appeal or executing a closing agreement pursuant to this revenue procedure.

SECTION 8. EFFECT ON OTHER DOCUMENTS


SECTION 9. EFFECTIVE DATE

These procedures are generally effective on September 27, 2006, the date this revenue procedure is released to the public, with respect to Proposed Adverse Determinations or Arbitrage Rebate Claim Denials for bond issues for which a closing agreement has not been executed.

SECTION 10. REQUEST FOR COMMENTS

The Service requests comments to be taken into consideration as the Service develops alternative dispute resolution programs to expeditiously resolve tax matters relating to tax-exempt bond issues during the examination and administrative appeal process. In particular, the Service is seeking comments on how TEB and Appeals may utilize mediation or other formal fast-track settlement programs. Comments should refer to Rev. Proc. 2006–40, and should be submitted to:

Internal Revenue Service
SET-GE-TEB
1111 Constitution Ave., NW, PE–583
Washington, DC 20224

DRAFTING INFORMATION

The principal authors of this revenue procedure are Steven A. Chamberlin of Tax Exempt Bonds, Compliance & Program Management (Tax Exempt & Government Entities) and David E. White of the Office of Assistant Chief Counsel (Exempt Organizations/Employment Tax/Government Entities). For further information regarding this revenue procedure, contact Mr. Chamberlin at (636) 940–6466 (not a toll-free call).
Part 4. Examining Process

Chapter 81. Tax Exempt Bonds (TEB) Examination Program and Procedures

Section 14. Unagreed Issues

4.81.14 Unagreed Issues

Manual Transmittal
August 28, 2018

Purpose

(1) This transmits revised IRM 4.81.14, Tax Exempt Bonds (TEB) Examination Program and Procedures, Unagreed Issues.

Material Changes

(1) Revised the manual to comply with the Plain Writing Act. For additional information on the Plain Writing Act, see http://www.plainlanguage.gov

(2) Revised IRM section 4.81.14.1, Introduction, to add the internal controls as required by IRM 1.11.2.2.5, Address Management and Internal Controls. Renamed the section to Program, Scope and Objectives. Added Program Controls and Acronyms.

(3) Revised the IRM to incorporate the interim guidance issued as TEGE-04-0618-0005, TEB Case Closing Procedures for Protested Unagreed Cases.

(4) Updated the manual to delete all references to Subject Matter Expert (SME) and FOTA (Field Operations Technical Advisor). Added the term TLS (Tax Law Specialist).

(5) Revised IRM section 4.81.14.3 (previously section 4.81.14.2) to include the TEB technical advisor.

(6) Revised the manual to include references to any unagreed denial of a claim for recovery of an asserted overpayment of an arbitration payment under IRC Section 148 and unagreed disallowances that credit payments under IRC Section 6431 (claim denials).

(7) Revised the manual to include reference to IRM 4.81.9, Tax Exempt Bonds Examination Program and Procedures, Technical Assistance and Technical Advice Requests for details on technical assistance.

(8) Revised IRM section 4.81.14.4 to change the title from Proposed Adverse Determination to 30-Day Letter. Added instructions for preparation of the 30-day letter.

Effect on Other Documents

This supersedes IRM 4.81.14 dated January 7, 2016.

Audience

Indian Tribal Governments/Tax Exempt Bonds

Effective Date

(08-28-2018)

Christie J. Jacobs
Director
Indian Tribal Governments/Tax Exempt Bonds
Government Entities and Shared Services
Tax Exempt and Government Entities

4.81.14.1 (08-29-2018)

Program Scope and Objectives

1. Purpose: This IRM section contains examination guidelines for Tax Exempt Bonds, Unagreed Issues, including:
   a. Denials of claims for recovery of an asserted overpayment of an arbitration payment under IRC 148.
   b. Unagreed disallowances to credit payments under IRC Section 6431 (claim denials).

2. Audience: This manual lists procedures for:
   • ITG/TEB revenue agents (agents) conducting TEB examinations (including claims)

• Group managers
• Senior managers
• Other employees in the ITG/TEB Technical groups

3. Policy Owner: Director, Indian Tribal Governments/Tax Exempt Bonds

4. Program Owner: Tax Exempt Government Entities/Shared Services

5. Authority: ITG/TEB's Examination authority to resolve issues comes from its authority determine tax liability under IRC 6201.

4.81.14.1.1 (08-28-2018)

Program Controls

1. The ITG/TEB Technical Groups conduct mandatory reviews of TEB exam cases before forwarding to the Office of Appeals.

2. All TEB examinations are conducted in accordance with the Taxpayer Bill of Rights as listed in IRC 7803(a)(3).

4.81.14.1.2 (08-28-2018)

Acronyms and Terms

1. This manual uses the following acronyms and terms.

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<th>Acronym</th>
<th>Definition</th>
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<tr>
<td>AIMS</td>
<td>Audit Information Management System</td>
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<td>Agent</td>
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<td>Appeals</td>
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<td>FOM</td>
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<td>This publication is enclosed with 30-day letter to provide taxpayers with detailed information on their rights of appeal.</td>
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<td>Letter informing the issuers of proposed changes and explaining how to dispute the changes if they do not agree.</td>
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</table>

4.81.14.2 (08-28-2018)

Communicating Identified Issues

1. If you conclude, after verifying the relevant facts and establishing the issuer's position, that the bonds fail to comply with one or more requirements, discuss the noncompliance with your manager.

2. If your manager concurs with your determination of noncompliance, consider whether the legal issue warrants technical assistance or technical advice, see IRM 4.81.9, Technical Assistance and Technical Advice Requests, for procedures to request technical assistance and technical advice (tech advice). The issuer may also request tech advice on an identified area of noncompliance, see Rev. Proc. 2018-2 (updated annually) and IRM 4.81.9.

   a. Follow your manager's instructions on how to address the noncompliance. This may include preparing Form 5701-B, Notice of Proposed Issue, and Form 886-A, Explanation of Items.

   b. Include a description of the identified noncompliance, relevant facts, applicable law and analysis, and a conclusion on Form 886-A.

   c. Issue the Form 5701-B, Notice of Proposed Issue, if applicable, to the issuer after your manager reviews and approves it along with Letter 5943, Form 5701-B Cover Letter.

3. If the issuer's response to the Form 5701-B indicates that they'd like to enter into a closing agreement, discuss any proposed resolution with the group manager. If the manager concurs with your determination of noncompliance,
discuss the proposed resolution with the issuer. If a closing agreement is warranted, see IRM 4.81.6, Closing Agreements, for closing agreement procedures.

4. If the issuer's response to the Form 5701-B indicates that they can't expeditiously resolve the noncompliant issue(s), including via a closing agreement, discuss the need for technical assistance or tech advice with your group manager.

4.81.14.3 (08-28-2018)

Technical Assistance

1. When the group manager and agent determine a case is likely to result in an adverse determination and close unagreed, or result in a claim denial, they inform the Field Operations Manager (FOM) of:
   a. The case status.
   b. Any need for help from a tax law specialist (TLS) or the TEB technical advisor.

2. If the FOM determines help is warranted, the group manager, FOM, Technical group manager, TLS and agent should follow the procedures in IRM 4.81.9, Tax Exempt Bonds Examination Program and Procedures, Technical Assistance and Technical Advice Requests.

   Note:
   The FOM may contact the TEB technical advisor at any time for help.

   Note:
   Consider whether the legal issue warrants tech advice. The issuer may also request tech advice on an identified area of noncompliance. Follow the procedures in the most recent revenue procedures on tech advice, Rev. Proc. 2018-2 (updated annually) and IRM 4.81.9, Technical Advice Requests, if this type of request is warranted.

4.81.14.4 (08-28-2018)

30-Day Letter

1. The 30-day letter notifies the issuer of their right to appeal the changes proposed by the IRS.

2. After any technical review is complete, the agent should prepare the relevant 30-day letter, as follows:
   - For Form 8038-R, use Letter 5684, TEB Arbitrage Claim Notification of Proposed Claim Disallowance.
   - For Form 8038-CP, use either Letter 5871, Proposed Adjustment to Credits under Section 6431 (Associated with an Appealed Bond Determination) or Letter 5871-A, TEB Proposed Adjustment to Credits under IRC 6431 (30-day letter).

   a. Address all identified areas of noncompliance in the letter and attachments. Your group manager reviews, signs and approves the letter.
   b. Mail the letter to the issuer and/or authorized representative via certified mail with a request for return receipt.
   c. Update the status of the case to 13 after you mail it.
   d. Keep a copy of the 30-day letter and attachments and the certified mail receipt in the case file.
   e. Follow the bondholder referral procedures in IRM 4.81.7, Tax Exempt Bonds Bondholder Referrals.

3. When an issuer receives the 30-day letter, the issuer may request an administrative appeal of the case to Appeals. If the issuer:
   a. Doesn't timely request an appeal in writing, follow the final adverse determination procedures in IRM 4.81.14.6, Final Adverse Determination.
   b. Requests an extension of time to prepare a protest, you may grant up to an additional 30 days. Issue Letter 686 (DO), Extension of Time for Certain Actions, to notify the issuer in writing of the date by which the protest must be submitted. Grant further extension requests only if your group manager approves and the FOM agrees.
   d. Submits a request that doesn't meet the requirements, call the issuer and/or authorized representative and allow up to 30 days to perfect the request. Issue Letter 686 (DO), Extension of Time for Certain Actions, to notify the issuer in writing of the date by which the perfected request must be submitted.
4. After the issuer perfects the appeal request, follow these steps:

a. Review the request and prepare a rebuttal to the arguments the issuer raised. If no new arguments are raised, note that in the rebuttal and affirm that our position hasn't changed. In your rebuttal, address:

- Only those statements, facts, or arguments the issuer made that weren't completely addressed in the 30-day letter.
- New arguments or facts the issuer raised.

b. If the protest contains new information or analysis of the issuer's position, notify the issuer that the new information submitted may change the case's outcome and requires further review and possible discussions before you transfer the case file to Appeals.

c. Since all unagreed protested cases are subject to ITG/TEB Technical mandatory review, request technical assistance before you issue the rebuttal.

d. You must mail the rebuttal to the issuer, but the issuer is not given an opportunity to respond to the rebuttal.

e. Completely address all statements, facts, and arguments discussed in the protest, then prepare Letter 5918, Protest Received Rebuttal/Transfer to Appeals, and mail to the issuer.

f. Prepare the case for closing per IRM 4.81.5.18.1, Case Closing Procedures for Examiners, and forward to your group manager.

5. Group manager:

a. Review the case for accuracy and completeness: confirm that the case file contains a valid protest, adequate rebuttal, printed copies of electronic RCCMS documents, the relevant determination, tax exposure calculation if applicable, adjustment or disallowance letter and Letter 5918 Appeals Transfer Letter.

b. Update the case to status 20 on RCCMS with disposal code 601 (add ARD code 2 for claim denials) and transfer the case to the ITG/TEB Technical group responsible for mandatory review.

c. Ship the paper case file via Form 3210 to the reviewer identified by the ITG/TEB Technical group manager responsible for mandatory reviews.

Note:
The TE/GE Closing Group won't accept any protested case to Appeals with less than 425 days remaining on the statute (330 days for cases Appeals previously returned to the group). Therefore, ITG/TEB Technical requires ITG/TEB FO to send cases with at least 435 days remaining on the statute to allow time for mandatory review.

4.81.14.5 (08-28-2018)
Mandatory Review

1. Unagreed cases and claim denials are subject to mandatory review under Rev. Proc. 2006-40 before they're sent to Appeals. The ITG/TEB Technical group manager may assign the case for mandatory review to the same TLS who initially reviewed the case per IRM 4.81.14.3.

2. The mandatory review involves:

a. Ensuring that the factual and legal matters documented in the case file support the issues raised in the proposed adverse or claim denial.

b. Reviewing the issuer's protest to the Form 886-A, Explanation of Items and the agent's rebuttal even if such documentation was previously reviewed in a prior technical review.

3. If the TLS determines that the agent's rebuttal does not sufficiently address the issuer's protest or that the agent's position requires further development, the TLS coordinates with their manager, FO group manager, and the agent. Once all issues are resolved, the TLS notifies his/her manager, the agent, the agent's group manager and transfers the case to Appeals.

4. If the agent's group manager decides to transfer the case to Appeals before the TLS determines that the rebuttal sufficiently addresses the issuer's protest, the TLS will brief his/her group manager on the case. Then, the program manager, Technical and the FO discuss whether additional case actions are required before transferring the case to Appeals.

5. Agent: provide any subsequent revisions to the rebuttal to the issuer and/or the representative before transferring the case to Appeals.

6. Agent: transfer case to Appeals:
4.81.14 Unagreed Issues | Internal Revenue Service

a. Attach a Form 3198-A, TE/GE Special Handling Notice, to the paper case file and mark the checkbox - Forward to Appeals.

b. Confirm the paper case file sent to Appeals includes, copies of the following:
   a. The technical advice memorandum, if any:
   b. All information received by ITG/TEB from the issuer regarding the bond issue or Arbitrage Rebate Claim Denial.
   c. All workpapers related to ITG/TEB’s examination of the bond issue or Arbitrage Rebate Claim Denial.
   d. ITG/TEB’s written Proposed Adverse Determination or Arbitrage Rebate Claim Denial.
   e. The issuer’s written protest.
   f. ITG/TEB’s response to positions stated by the issuer in its protest.

c. Ship the paper case file to Appeals via Form 3210, Document Transmittal, to:
   Internal Revenue Service
   ATTN: Ronda Pennington
   10 Causeway Street
   Appeals Office Room 493
   Boston, MA 02222-1083
   Phone: 617-788-0628

7. Agent: Close the case on RCCMS in status 51 with disposal code 601 to the TE/GE Closing Group (400-20011-7204).
8. Agent: Add a note to the RCCMS Comment box: "Appeals case, DC 07 (601). Paper case file sent directly to Appeals".

4.81.14.6 (08-28-2018)
Final Adverse Determination

1. If the issuer or authorized representative doesn’t request an administrative appeal of a proposed adverse determination to Appeals, issue the appropriate final adverse determination letter: Letter 4409, Notice of Final Adverse Determination; Letter 905, Final Partial Claim Disallowance; Letter 906, Final Full Claim Disallowance; or Letter 5677, TEB Arbitrage Claim Notification of Final Adverse Determination, by certified mail with a request for return receipt.

2. FO group manager forwards a copy of this letter to the Bondholder Referral Coordinator, if applicable.

3. For a conduit financing resulting in a final adverse determination, determine whether the conduit borrower is under exam by another operating division or another TE/GE function. If the conduit borrower:
   a. Is under examination, inform the appropriate operating division of the final adverse determination and coordinate as needed to consider any impact on the conduit borrower’s tax matters.
   b. Isn’t under examination, refer to the appropriate operating division or other TE/GE function to consider any impact on the borrower’s tax matters.

4.81.14.7 (08-28-2018)
Possible Actions Taken by Appeals

1. If Appeals settles the case, upon case closing, Appeals sends Form 5402, Appeals Transmittal and Case Memo and a copy of the closing letter to the program manager, Technical.

2. If Appeals is unable to settle the case, they:
   a. Issue the Final Adverse Determination Letter and close the case.
   b. Return the paper case file to ITG/TEB to contact the bondholders (if warranted).
   Note: However, Appeals doesn’t release Form 8038 Jurisdiction back to ITG/TEB. Accordingly, ITG/TEB may not: i) continue any case exam activities, or ii) reengage in resolution actions without reopening the case.

3. If Appeals:
   a. Determines that ITG/TEB has not fully developed its position, they may return the case to ITG/TEB for further development or concede the government’s position and close the case.
   b. Receives, during their consideration of the case, a new argument from the issuer, they may return the case to ITG/TEB requesting its response to the issuer’s argument. Appeals may or may not release jurisdiction.
c. Releases jurisdiction, ITG/TEB is free to re-engage in resolution actions or concede its position and close the case as agreed.

d. Doesn’t release jurisdiction, ITG/TEB should provide the response requested and return the case to Appeals within the established timeframe.

Note:
ITG/TEB must not communicate with the issuer and/or authorized representative while Appeals has jurisdiction.

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SECTION 1. PURPOSE AND AUTHORITY

Description of purpose
.01 Technical advice. This revenue procedure explains when and how an Associate office provides technical advice, conveyed in a technical advice memorandum (TAM). It also explains the rights that a taxpayer has when a field office requests a TAM regarding a tax matter. Rev. Proc. 2018-2 is superseded.

Updated annually
.02 This revenue procedure is updated annually as the second revenue procedure of the year, but it may be modified, amplified, or clarified during the year.

SECTION 2. DEFINITIONS

Operating division
.01 The term “operating division” means (1) the Large Business & International Division (LB&I); (2) the Small Business/Self-Employed Division (SB/SE); (3) the Wage and Investment Division (W&I); and (4) the Tax Exempt and Government Entities Division (TE/GE).

Director
.02 The term “Director” means (1) the Director, Field Operations (LB&I) for the taxpayer’s practice area; (2) a Territory Manager, Field Compliance (SB/SE); (3) the Director, Return Integrity & Compliance Services (W&I); (4) the Director, International Compliance, Strategy and Policy; (5) the Director, Employee Plans Examinations; (6) the Director, Employee Plans Rulings & Agreements; (7) the Director, Exempt Organizations Examinations; (8) the Director, Exempt Organizations Rulings & Agreements; (9) the Director, Indian Tribal Governments and Tax Exempt Bonds; (10) the Appeals Area Director; (11) the Appeals Director, Technical Guidance; (12) the Appeals Director, International Operations; or (13) any official to whom the authority normally exercised by a Director has properly been delegated.

Appeals officer
.03 The term “Appeals officer” means the Appeals officer assigned to the taxpayer’s case and can include an Appeals Team Case Leader or settlement officer.

Sec. 1.01
January 2, 2019

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Bulletin No. 2019-01
Taxpayer

.04 The term “taxpayer” means any person subject to any provision of the Internal Revenue Code, including an issuer of obligations the interest on which is excluded from gross income under § 103, and issuers of other bonds that provide a tax subsidy.

Associate office

.05 The term “Associate office” means (1) the Office of Associate Chief Counsel (Corporate); (2) the Office of Associate Chief Counsel (Financial Institutions and Products); (3) the Office of Associate Chief Counsel (Income Tax and Accounting); (4) the Office of Associate Chief Counsel (International); (5) the Office of Associate Chief Counsel (Passthroughs and Special Industries); (6) the Office of Associate Chief Counsel (Procedure and Administration); or (7) the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes).

Field office

.06 The term “field office” means personnel in any examination or Appeals office. For qualified retirement plan and exempt organizations matters, the term “field office” also means personnel in any Rulings & Agreements office.

Field counsel

.07 The term “field counsel” means any attorney assigned to the Division Counsel for an operating division who is not a member of Division Counsel Headquarters.

SECTION 3. THE NATURE OF TECHNICAL ADVICE

When advice furnished

.01 Technical advice is advice furnished by an Associate office in a memorandum that responds to any request, submitted under this revenue procedure, for assistance on any technical or procedural question that develops during any proceeding before the Internal Revenue Service (Service). The field office may request a TAM when the application of the law to the facts involved is unclear. The question must be on the interpretation and proper application of any legal authority, including legislation, tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements to a specific set of facts that concerns the treatment of an item in a tax period under examination or in Appeals. A TAM may not be requested for prospective or hypothetical transactions (except for certain TAMs in connection with a taxpayer’s request for a determination letter on a matter within the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, pursuant to Rev. Proc. 2019–4 or 2019–5). Proceedings before the Service include: (1) the examination of a taxpayer’s return; (2) the consideration of a taxpayer’s claim for credit or refund; (3) any matter under examination or in Appeals pertaining to tax-exempt bonds, tax credit bonds, or mortgage credit certificates; and (4) any other matter involving a specific taxpayer under the jurisdiction of a Director. Technical advice does not include any oral legal advice or any written legal advice furnished to the field office that is not submitted and processed under this revenue procedure.

TAM may be requested even if previous TAM on same matter was issued

.02 The field office may request a TAM on an issue in any tax period, even if a TAM was requested and furnished for the same or similar issue for another tax period. The field office may also request a TAM on an issue even if Appeals disposed of the same or similar issue for another tax period of the same taxpayer.

Taxpayer participation

.03 Taxpayers will be afforded an opportunity to participate in the technical advice process. Taxpayer participation is preferred but not required in order to process a TAM. A taxpayer’s failure to participate in stages identified as “material,” however, will constitute waiver of the taxpayer’s right to the taxpayer conference described in section 9.

Under no circumstances will a taxpayer be treated as having waived its right to see the issued TAM or having waived its rights regarding disclosure and deletions described in section 10.

Bulletin No. 2019–01

Sec. 2.03

January 2, 2019
.04 Regarding qualified retirement plan matters, a request for a TAM is required in cases concerning plans for which the Service is proposing to issue a revocation letter because of certain fiduciary actions that violate the exclusive benefit rule of § 401(a) of the Code and are subject to Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93–406, 1974–3 C.B. 1, 43 as amended (ERISA).

.05 The circumstances in which Exempt Organizations Determinations should seek technical advice in the course of processing applications for tax exemption are described in Rev. Proc. 2019–5, this Bulletin, section 3.03. Technical advice may also be requested by Exempt Organizations Determinations in connection with requests for determination letters where no pending application for tax exemption is involved. A request for a TAM is not required if the Director, Exempt Organizations Examinations proposes to revoke or modify a letter recognizing tax-exempt status issued by the Service.

SECTION 4. TYPES OF ISSUES NOT SUBJECT TO THIS PROCEDURE

Alcohol, tobacco, and firearms taxes

.01 The procedures for obtaining technical advice that apply to Federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

Employment status determinations

.02 Employment status determination letters issued pursuant to section 12.04 of Rev. Proc. 2019–1, of this Bulletin, are not subject to technical advice procedures.

Issues under § 301.9100

.03 A request for an extension of time for making an election or other application for relief under § 301.9100–3 of the Procedure and Administration Regulations is not submitted as a request for technical advice. Instead, the request must be submitted as a request for a letter ruling, even if submitted after the examination of the taxpayer’s return has begun or after the issues in the return are being considered in Appeals or a federal court. Therefore, a request under § 301.9100 should be submitted under Rev. Proc. 2019–1, of this Bulletin, and the payment of the applicable user fee is determined under Appendix A of Rev. Proc. 2019–1. However, a request under § 301.9100 related to recharacterization of a Roth IRA should be submitted under Rev. Proc. 2019–4 of this Bulletin. Requests for relief pertaining to exemption application matters involving §§ 505(c) and 508 are considered in the determination letter process under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. See Revenue Procedure 2019–5, this Bulletin.

Frivolous issues

.04 Associate offices will not issue a TAM on frivolous issues. The field office will deny a taxpayer’s request that it consider requesting technical advice if the taxpayer’s request involves frivolous issues. For purposes of this revenue procedure, a “frivolous issue” is one without basis in fact or law or one that asserts a position that courts have held frivolous or groundless. Examples of frivolous or groundless issues may be found in Service publications and other guidance (including, but not limited to, section 6.10 of Rev. Proc. 2019–1, Notice 2010–33, and Exhibit 25.25.10–1, Frivolous Arguments).

Issues in a docketed case

.05 Associate offices will not issue technical advice on an issue if the same issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) is in a docketed case for any taxable year. If a case is docketed for an estate tax issue of a taxpayer while a request for technical advice on the same issue of the same taxpayer is pending, the Associate office may issue the TAM only if the appropriate Appeals officer and field counsel agree, by memorandum, to the issuance of the TAM.

Sec. 3.04
January 2, 2019 110 Bulletin No. 2019–01
.06 The Associate Chief Counsel (Procedure and Administration) will not issue technical advice on matters arising under the Internal Revenue Code and related statutes and regulations that involve the collection of taxes (including interest and penalties). With respect to such matters, the Associate Chief Counsel (Procedure and Administration) may issue alternative forms of advice.

.07 Requests for relief under § 7805(b) relating to the revocation or modification of determination letters or letter rulings issued by TE/GE are handled in accordance with the procedures in sections 23 and 29 of Rev. Proc. 2019–4, and section 12 of Rev. Proc. 2019–5, this Bulletin.

SECTION 5. INITIATING A REQUEST FOR TECHNICAL ADVICE

Initiating a request for technical advice

.01 Because technical advice is issued to assist field offices, it is the field office that determines whether to request it. In determining whether to request technical advice, the field office should consider whether other forms of guidance, e.g., published guidance, generic advice, or some other form of advice, would be more appropriate. Additionally, before requesting technical advice, the field office must request assistance and a recommendation from field counsel. If the field office disagrees with field counsel’s recommendation, the field office must seek reconciliation with field counsel through their respective supervisors. A field office’s request for technical advice must be approved in writing by a Director. If technical advice is requested from the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) for a case with either an unagreed prohibited transaction, as defined in § 4975(c)(1) and ERISA § 406(a), or a violation of the exclusive benefit rule of § 401(a)(2) or ERISA § 404(a)(1)(A), a Form 6212–B must be submitted to the Department of Labor prior to submitting the request for technical advice.

Taxpayer may request referral for technical advice

.02 While a case is under the jurisdiction of a Director, a taxpayer may request that the field office refer an issue to the Associate office for technical advice. The taxpayer’s request may be oral or written and should be directed to the field office. If the field office decides that the taxpayer’s request for referral of an issue to the Associate office for a TAM is unwarranted, the field office will notify the taxpayer. A taxpayer’s request for referral of an issue for technical advice will not be denied merely because the Associate office has already provided equal advice other than a TAM to the field office on the matter.

Appeal of field office denial of TAM referral request

.03 The taxpayer may appeal the field office’s denial of the taxpayer’s request for referral by submitting to the field office, within 30 calendar days after notification that the request was denied, a written statement of the reasons why the matter should be referred to the Associate office. The statement should include a description of all pertinent facts (including any facts in dispute); a statement of the issue that the taxpayer would like to have addressed; a discussion of any relevant legal authority, including legislation, tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements; and an explanation of the taxpayer’s position and the need for technical advice. Any extensions of the 30-day period must be requested in writing and must be approved by the Director, the LB&I Territory Manager, or the Tax Exempt Bonds Manager, Field Operations. Decisions on any extensions by the Director, the LB&I Territory Manager, or in the case of Tax Exempt Bonds, the Manager, Field Operations, are final and may not be appealed.

Upon receipt, the field office will refer the taxpayer’s written statement, along with the field office’s statement of why the issue should not be referred to the Associate office for technical advice, to the Director, the LB&I Territory Manager, or in the case of Tax Exempt Bonds, the Manager, Field Operations, for decision. The Director, the LB&I Territory Manager, or in the case of Tax Exempt Bonds, the Manager, Field Operations, will determine whether the issue...
should be referred for technical advice on the basis of the statements of the field office and the taxpayer. No conference will be held with the taxpayer or the taxpayer's representative. If the Director, the LB&I Territory Manager, or in the case of Tax Exempt Bonds, the Manager, Field Operations, determines that a TAM is not warranted, the taxpayer will be informed in writing of the proposed denial of the request and the reasons for the denial (unless doing so would prejudice the Government's interests).

.04 The taxpayer may not appeal the decision of the Director, the LB&I Territory Manager, or in the case of Tax Exempt Bonds, the Manager, Field Operations, not to request a TAM. If the taxpayer does not agree with the proposed denial, all data on the issue for which a TAM has been sought, including the taxpayer’s written request and statements, will be submitted for review to the Director, LB&I; the Director, Examination, SB/SE; the Director, Specialty Tax, SB/SE; the Director, Return Integrity & Compliance Services, W&I; the Director, Indian Tribal Governments and Tax Exempt Bonds; the Appeals Director, Policy Planning Quality & Analysis; or the Commissioner, Tax Exempt and Government Entities Division (who will review the proposed denial through the Director, Employee Plans; the Director, Exempt Organizations; or, if appropriate, the Appeals Director, Policy Planning Quality & Analysis). Revicw of the proposed denial will be based solely on the written record. No conference will be held with the taxpayer or the taxpayer’s representative. The person responsible for review may consult with the Associate office, if appropriate, and will notify the field office whether the proposed denial of the taxpayer’s request is approved or denied within 45 days of receiving all information. The field office will then notify the taxpayer. While the matter is under review, the field office will suspend any final decision on the issue (except when the delay would prejudice the Government’s interests). If the request for technical advice has been denied because the issue is frivolous as described in section 4.04 of this revenue procedure, this review process is not available.

SECTION 6. PRE-SUBMISSION CONFERENCES

Purpose

.01 A pre-submission conference helps the field office, field counsel, the taxpayer, and the Associate office agree on the appropriate scope of the request for technical advice and the factual information and documents that must be included in the request. A pre-submission conference is not an alternative procedure for addressing the merits of the substantive positions advanced by the field office or by the taxpayer. During the pre-submission conference, the parties should discuss the framing of the issues and the background information and documents that should be included in the formal submission of the request for technical advice.

Pre-submission conferences are mandatory

.02 Pre-submission conferences are mandatory because they promote expeditious processing of requests for technical advice. If a request for technical advice is submitted without first holding a pre-submission conference, the Associate office will return the request for advice. Pre-submission conferences include the taxpayer and representatives from the field office, field counsel, and the Associate office. Requests for technical advice can proceed, however, even if a taxpayer declines to participate in a pre-submission conference.

Actions before a pre-submission conference

.03 Before requesting a pre-submission conference, the field office and the taxpayer must exchange proposed statements of the pertinent facts and issues. The proposed statements should include any facts in dispute, the issues that the parties intend to discuss, any legal analysis and supporting authorities, and any other background information that the parties believe would facilitate the Associate office’s understanding of the issues to be discussed during the conference. Prior to the scheduled pre-submission conference, the field office and the taxpayer must submit to the Associate office their respective statements of pertinent facts and issues. The legal analysis provided in the parties’ statements should be sufficient to enable the Associate office to be reasonably informed about the subject matter. Failure of the taxpayer to provide a statement of
pertinent issues and facts shall not be allowed to unduly delay the scheduling of the pre-submission conference. If it is not provided within a reasonable period of time, the conference may be scheduled without the taxpayer’s statements.

The field office or the taxpayer must ensure that the Associate office receives a copy of any required power of attorney. Form 2848, Power of Attorney and Declaration of Representative, should be used.

Pre-submission materials include the field office and taxpayer’s statements (discussed above) and any required power of attorney for the taxpayer. The assigned Associate office must receive the pre-submission materials at least 10 business days before the conference is to be held.

**Initiating a pre-submission conference**

> .04 A request for a pre-submission conference must be submitted in writing by the field office, with the assistance of field counsel. The request should identify the Associate office expected to have jurisdiction over the request for a TAM and should include a brief explanation of the primary issue so that an assignment within the appropriate Associate office can be made. If the request is submitted by Appeals, field counsel assignments will be subject to the *ex parte* rules set forth in section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, and Rev. Proc. 2012-18, 2012-10 I.R.B. 455. If the request involves an issue under the office of the Director, Abusive Transactions Examination, SB/SE, the field office and field counsel should coordinate with SB/SE Division Counsel headquarters. If the request involves an issue under the Office of Tax Shelter Analysis (OTSA), LB&I, then the field office and field counsel should coordinate with LB&I Division Counsel headquarters. If the request is from Appeals and involves a coordinated issue or emerging issue under Appeals Technical Guidance or International Operations or Appeals Coordinated Issue (ACI) Program, the Appeals officer must coordinate with the Appeals Technical Guidance or International Operations Technical Specialist.

**Manner of transmitting pre-submission materials**

> .05 The request for a pre-submission conference and pre-submission materials should be electronically transmitted by field counsel to the Technical Services Support Branch (TSS4510). TSS4510 will ensure delivery of the pre-submission materials to the appropriate Associate office. The TSS4510 email box cannot accept encrypted mail.

If documents are not electronically available, or if documents cannot reasonably be transmitted electronically, the request for a pre-submission conference and pre-submission materials may be sent by fax to TSS4510 at 855-592-8976 or by express mail or private delivery service to the following address to avoid any delays in regular mail:

Internal Revenue Service  
Attn: CC:PA:LDP:TSS, Room 5336  
1111 Constitution Avenue, NW  
Washington, DC 20224

**Scheduling the pre-submission conference**

> .06 After the pre-submission materials have been received, the Associate office responsible for conducting the pre-submission conference will contact the taxpayer, the field office, and field counsel to arrange a mutually convenient time for the parties to participate in the conference. The conference generally should be held within 15, but not more than 30, calendar days after the field office is contacted.

**Pre-submission conferences may be conducted in person**

> .07 Although pre-submission conferences are generally conducted by telephone, the parties may choose to conduct the conference in person.
Pre-submission conference may not be taped

.08 No tape, stenographic, or other verbatim recording of a conference may be made by any party.

Discussion of substantive issues is not binding on the Service

.09 Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service in general or on the Office of Chief Counsel in particular, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

New issues may be raised at pre-submission conference

.10 During the pre-submission conference, the Associate office may raise new issues in addition to those submitted by the field office and the taxpayer.

Power of attorney

.11 Form 2848, Power of Attorney and Declaration of Representative, should be used to provide the representative's authority (Part I of Form 2848, Power of Attorney) and the representative's qualification (Part II of Form 2848, Declaration of Representative). The name of the person signing Part I of Form 2848 should also be typed or printed on this form. A stamped signature is not permitted. An original, a copy, or fax of the power of attorney is acceptable so long as its authenticity is not reasonably disputed.

The taxpayer’s authorized representative, as described in section 7.01(13) of Rev. Proc. 2019–1, whether or not enrolled, must comply with Treasury Department Circular No. 230, which provides the rules for practice before the Service. In situations where the Service believes that the taxpayer’s representative is not in compliance with Circular 230, the Service will bring the matter to the attention of the Office of Professional Responsibility.

SECTION 7.
SUBMITTING THE REQUEST FOR TECHNICAL ADVICE

Memorandum of issues, facts, law, and arguments

.01 The field office submits the request for technical advice. Every request for technical advice must include a memorandum that describes the facts, issues, applicable law, and arguments supporting the taxpayer’s position on the issues and the field office’s position on the issues. The field office will prepare this statement with the assistance of field counsel. The memorandum must include a statement of all the facts and the issues. If the taxpayer and the field office disagree about ultimate findings of fact or about the relevance of facts, all of the facts should be included with an explanation that highlights the areas of disagreement. The memorandum must include an explanation of the taxpayer’s position, discussing any relevant legal authority, including legislation, tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements supporting the taxpayer’s position. The memorandum must also include a similar explanation of the field office’s position. Both the field office and the taxpayer should comment on any relevant legal authority contrary to their respective positions. If either party determines that there are no authorities contrary to its position, that statement should be noted in the memorandum.

When the field office initiates a request for technical advice, the field office should notify the taxpayer that it is requesting technical advice and provide the taxpayer with a copy of the arguments supporting the field office’s position. The taxpayer has 10 calendar days to state, in writing, any factual disagreement. The field office will make every effort to reach agreement on the facts and specific points at issue. The taxpayer is encouraged to submit a written statement with an explanation of the taxpayer’s position, including a discussion of any relevant legal authority.
02 If the subject matter of the request involves a transaction among multiple taxpayers, the field office may submit a request for a single TAM, but only if each taxpayer agrees to participate in the process, including the furnishing of Forms 8821, Tax Information Authorization, or other written disclosure consent, as appropriate.

03 If applicable, the request for technical advice must include a copy of the relevant parts of all foreign laws, including statutes, regulations, administrative pronouncements, and any other relevant legal authority. The documents submitted must be in the official language of the country involved and must be copied from an official publication of the foreign government or another widely available and generally accepted publication. If English is not the official language of the country involved, the submission must also include a copy of an English language version of the relevant parts of all foreign laws. This translation must be: (i) from an official publication of the foreign government or another widely available, generally accepted publication; or (ii) a certified English translation submitted in accordance with paragraph (2) of this section 7.03. The taxpayer or the field office must identify the title and date of publication, including updates, of any widely available and generally accepted publication used as a source for the relevant parts of the foreign law. The taxpayer and the field office must inform the Associate office of the implications of any authority believed to interpret the foreign law, such as pending legislation, treaties, court decisions, notices, and administrative decisions.

1) If the interpretation of a foreign law or foreign document is a material component of the request for technical advice, the Associate office, at its discretion, may refuse to provide a TAM. The interpretation of a foreign law or foreign document means making a judgment about the import or effect of the foreign law or document that goes beyond its plain meaning. This section applies whether or not the field office and the taxpayer dispute the interpretation of a foreign law or foreign document.

2) If applicable, a request for technical advice must include an accurate and complete certified English translation of the relevant parts of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, and other documents pertinent to the request that are in a language other than English. If the taxpayer or the field office chooses to submit certified English translations of foreign laws, those translations must be based on an official publication of the foreign government or another widely available and generally accepted publication. In either case, the translation must be that of a qualified translator and must be attested to by the translator. The attestation must contain: (i) a statement that the translation submitted is a true and accurate translation of the foreign language document or law; (ii) a statement as to the attestation's qualifications as a translator and as to that attestation's qualifications and knowledge regarding tax matters or foreign law if the law is not a tax law; and (iii) the attestation's name and address.

04 A request for technical advice involving the interpretation of a substantive provision of a relevant income tax or estate tax treaty must include a written statement addressing whether: (1) the tax authority of the treaty jurisdiction has issued a ruling on the same or similar issue for the taxpayer, a related taxpayer (within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504 (related taxpayer)), or any predecessor; (2) the same or similar issue for the taxpayer, a related taxpayer, or any predecessor, is being examined, or has been settled, by the tax authority of the treaty jurisdiction or is otherwise the subject of a closing agreement in that jurisdiction; and (3) the same or similar issue for the taxpayer, a related taxpayer, or any predecessor, is being considered by the competent authority of the treaty jurisdiction.

05 Except as provided below, every request for technical advice must separately include a statement of proposed deletions from public inspection (deletion statement). The text of TAMs and background file documents are open to public inspection under § 6110(a). The Service deletes certain information from the text before it is made available to the public in order to protect the

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privacy of taxpayers. To help the Service make the necessary deletions, the taxpayer must provide a deletion statement indicating the deletions desired. A taxpayer who wants only names, addresses, and identifying numbers deleted should state this in the deletion statement. A taxpayer who wants more information deleted must provide a copy of the TAM request and supporting documents on which the taxpayer has placed brackets around the material to be deleted plus a deletion statement indicating the statutory basis under § 6110(c) for each proposed deletion. The deletion statement is not to be included in the memorandum described in section 7.01 of this revenue procedure. Instead, the deletion statement is to be made in a separate document that is signed and dated by the taxpayer or the taxpayer’s authorized representative. A stamped signature or faxed signature is not permitted. If the deletion statement is not submitted, the taxpayer will be notified and advised by the field office that the deletion statement is required and that failure to provide a deletion statement will be interpreted by the field office, field counsel, and Associate office to mean that the taxpayer only wants names, addresses, and identifying numbers deleted. If the deletion statement is not received within 10 calendar days after the notification, the field office will notify the Associate office that the taxpayer has not provided a deletion statement and will advise the Associate office of any information in addition to names, addresses, and identifying numbers, that should be deleted pursuant to § 6110(c). The taxpayer should follow this same process to propose deletions from any additional information submitted after the initial request for a TAM. An additional deletion statement is not required with each submission of additional information if the taxpayer’s initial deletion statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information. The above deletion statement requirements do not apply to the extent that the TAM is open to public inspection under § 6104. Section 6104(a)(1)(A) generally provides that if an organization described in § 501(c) or § 501(d) is exempt from taxation under § 501(a) or a political organization is exempt from taxation under § 527, the application for exemption under § 501(a) that the organization filed or the notice of status filed by a political organization pursuant to § 527(i) is open for public inspection as prescribed by regulations. Generally, § 6104(a)(1)(B) provides that: (1) an application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under § 401(a) or § 403(a) or an individual retirement arrangement under § 408(a) or § 408(b) will be open to public inspection pursuant to regulations, as will (2) any application filed for an exemption from tax under § 501(a) of an organization forming part of a plan or account described above, (3) any papers submitted in support of an application referred to in (1) or (2) above, and (4) any letter or other document issued by the Internal Revenue Service and dealing with the qualification referred to in (1) or the exemption from tax referred to in (2).

.06 The field office prepares the memorandum described in section 7.01 of this revenue procedure with the assistance of field counsel and sends it to the taxpayer by mail or fax transmission. The taxpayer then will have 10 calendar days from the date of mailing or fax transmission to respond by providing a written statement specifying any disagreement on the facts and issues. A taxpayer who needs more than 10 calendar days must submit a written request for an extension of time, subject to the approval of the field office. The field office will make a determination on the request for extension as soon as reasonably possible. The request for extension will be considered denied unless the field office informs the taxpayer otherwise. The decision of the field office on whether to approve an extension, and the length of any extension granted, is final and may not be appealed. After the taxpayer’s response is received by the field office, the parties will have 10 calendar days to resolve remaining disagreements. If all disagreements about the statement of facts and issues are resolved, then the field office will prepare a single statement of those agreed facts and issues.

If disagreements continue, both the taxpayer’s set of facts and issues and the field’s set of facts and issues will be forwarded to the Associate office. The field office, with the assistance of field counsel, will prepare a memorandum for the Associate office highlighting the material factual differences, and provide a copy to the taxpayer for review. The taxpayer may respond in writing to the memorandum highlighting material factual differences. The field office may revise the
memorandum described in section 7.01 of this revenue procedure in response to the taxpayer's
comments. This memorandum will be forwarded with the initial request for technical advice.

The taxpayer's statement of facts and issues must be accompanied by the following declaration:
"Under penalties of perjury, I declare that I have examined this information, including accompa-
nying documents, and, to the best of my knowledge and belief, the information contains all the
relevant facts relating to the request for technical advice, and such facts are true, correct, and
complete." This declaration must be signed in accordance with the requirements in section
7.01(15)(b) of Rev. Proc. 2019–1. The field office must submit this declaration with the initial
request for technical advice. If no agreement regarding the facts is reached, the Associate office
may rely on the facts presented by the field office.

The field office will offer the taxpayer an opportunity to participate in the development of the
request for technical advice. If the taxpayer participates in the process, the field office will
continue to offer the taxpayer the opportunity to participate. If the taxpayer does not participate
in a material stage of the process after being offered an opportunity, the Associate office will
nonetheless process the request, and the taxpayer will have waived the right to participate in the
development and issuance of the TAM, including the right to the taxpayer conference described
in section 9. A taxpayer's failure to participate in the development of the memorandum described
in section 7.01 of this revenue procedure will be considered a failure to participate in a material
stage of the TAM process.

Under no circumstances will a taxpayer be treated as having waived its right to see the issued
TAM or having waived its rights regarding disclosure and deletions described in section 10.

Transmittal Form 4463,
Request for Technical
Advice

.07 The field counsel with whom the TAM request was coordinated must use Form 4463,
Request for Technical Advice Memorandum, for submitting a request for a TAM through
TSS4510 to the Associate office. While the field office is responsible for preparing Form 4463,
field counsel must submit the Form 4463 for a TAM request to the TSS4510 email address. To
the extent feasible, the accompanying documents should also be submitted to the TSS4510 email
address, followed by hard copies upon the request of the assigned Associate office.

All supporting and
additional documents

.08 Field counsel should send additional or supporting documents that are not available in
electronic form by fax to TSS4510 at 855-592-8976 or by express mail or private delivery service
to the following address to avoid any delays in regular mail:

Internal Revenue Service
Attn: CC:PA:LPD:TSS, Room 5336
1111 Constitution Avenue, NW
Washington, DC 20224

Whenever possible, all documents should contain the case number and name of the Associate
office attorney assigned to the pre-submission conference for the TAM request.

The field office must indicate on the Form 4463 the proper mailing address of the Director to
whom the Associate office should mail a copy of its reply to the TAM request under section 10.06
of this revenue procedure.

Number of copies of
request to be submitted

.09 The field office must submit one paper copy of the request for a TAM to the address in
section 7.08 of this revenue procedure. If the TAM relates to a SB/SE, W&I, or TE/GE taxpayer,
the field office must send one paper copy to the Division Counsel of the operating division that

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has jurisdiction over the taxpayer’s tax return. If the TAM relates to a LB&I taxpayer, an
electronic copy (no paper copy to follow) to “&LB&I HQ” email address should be sent. If the
request is from an Appeals office, the field office must advise Appeals Policy Planning Quality
& Analysis that a request has been submitted. The field office will send a copy of the TAM
request to *AP TAM Coordinator by encrypted e-mail.

SECTION 8. INITIAL PROCESSING OF THE REQUEST FOR TECHNICAL ADVICE BY THE ASSOCIATE OFFICE

Assignment and initial review by Associate office attorney

.01 After a request for technical advice has been received by the appropriate Associate office, it will be assigned to an Associate office attorney and reviewer. The Associate office attorney determines whether the request meets all procedural requirements of sections 4, 5, 6, and 7 of this revenue procedure and whether it raises issues that may be appropriately addressed in a TAM. Unless otherwise indicated, all references in this section to the Associate office or Associate office attorney are to the Associate office and attorney with primary responsibility for the TAM request.

Other forms of guidance

.02 If the assigned reviewer in the Associate office determines that guidance other than a TAM should be provided, the reviewer will immediately notify the Associate Chief Counsel. This other form of guidance may be published guidance, generic advice, or case-specific advice. Although the reviewer should make this determination as soon as possible, it may be made at any time during the processing of the request for technical advice. To make this determination, the reviewer should consider whether the issue has a broad application to similarly situated taxpayers or a practice area and whether resolution of the issue is important to a clear understanding of the tax laws. The Associate Chief Counsel, after consultation with Division Counsel Headquarters and the Operating Division, will decide whether to provide the TAM or issue guidance in another form. The Associate Chief Counsel may decide to provide the TAM as well as another type of guidance, if doing so would promote sound tax administration.

Initial acknowledgment and processing

.03 Upon receipt of a request for technical advice, the Associate office attorney who is assigned as the primary attorney on the request should immediately contact the field office. The purpose of this contact is only to acknowledge receipt of the request.

Deficiencies in request leading to return

.04 Within 7 calendar days after assignment, the Associate office attorney will contact the field office and field counsel to discuss any deficiencies in the request and will work with the field office and field counsel to correct them.

If only minor procedural deficiencies exist, the Associate office attorney will request the additional information without returning the case. If the deficiencies cannot be corrected over the next 7 calendar days, the request will be closed and returned to the field office. The request may be resubmitted when the deficiencies are corrected. If substantial additional information is required to resolve an issue or if major procedural problems cannot be resolved, the Associate office attorney will inform the field office and field counsel that the request for technical advice will be returned. If a request is returned, the field office should promptly notify the taxpayer of that decision and the reasons for the decision.

Initial discussion

.05 Within 21 calendar days of receipt, the Associate office attorney should contact the field office to discuss any procedural and substantive issues in the request. The Associate office attorney should also inform the field office about any matters referred to another Associate office for assistance and provide points of contact.

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.06 If additional information is needed, the Associate office attorney will obtain that information from the taxpayer, the field office, or the Director in the most expeditious manner possible. Any additional information requested from the taxpayer by the Associate office must be submitted by letter, accompanied by a penalties of perjury statement that conforms with the penalties of perjury statement set forth in section 7.06 of this revenue procedure, within 10 calendar days after the request for information is made. To facilitate prompt action, the Associate office and taxpayers are encouraged to exchange information by fax or express mail service whenever feasible. A taxpayer’s failure to submit the additional information requested is considered a failure to participate in a material stage of the TAM process and results in a waiver of the right to the taxpayer conference discussed in section 9.

To facilitate prompt action on TAM requests, the Associate office may request any additional information from the taxpayer by fax.

The Associate office attorney will take certain precautions to protect confidential information. For example, the Associate office attorney will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted, that does not identify the taxpayer by name or tax identifying number and that contains a statement prohibiting unauthorized disclosure of the document if a recipient of the faxed document is not the intended recipient of the fax. The cover sheet will be faxed in an order in which it is the first page covering the faxed document.

.07 A taxpayer’s request for an extension of time to submit additional information must be made in writing and received by the Associate office within the 10-day period. It must provide compelling facts and circumstances to justify an extension. Only an Associate Chief Counsel may determine whether to grant or deny the request for an extension. Except in rare and unusual circumstances, the Associate office will not agree to an extension of more than 10 calendar days beyond the end of the 10-day period. There is no right to appeal the denial of a request for an extension.

.08 Any additional information submitted by the taxpayer should be sent to the attention of the assigned Associate office attorney. Generally, only the original of the additional information is necessary. In appropriate cases, however, the Associate office may request additional copies of the information. In all cases, the taxpayer must also send a copy of the additional information to the field office and field counsel for comment.

Any comments by the field office or field counsel must be furnished within an agreed period of time to the Associate office with primary responsibility for the TAM request. If there are no comments, the Associate office attorney should be notified promptly.

.09 The Associate office attorney will inform the field office and field counsel when all necessary substantive and procedural information has been received. If possible, the Associate office attorney will provide a tentative conclusion. If no tentative conclusion can be reached, the Associate office attorney is encouraged to discuss the underlying complexities with the field office and field counsel. Because the Associate office attorney’s tentative conclusion may change during the preparation and review of the TAM, the tentative conclusion is not considered final. If the tentative conclusion is changed, the Associate office attorney will inform the field office and field counsel. Neither the Associate office, nor the field office or the field counsel, should discuss the tentative conclusion and its underlying rationale with the taxpayer or the taxpayer’s representative until the Associate office is ready to provide a TAM that agrees with the taxpayer’s position or is ready to hold an alternate conference. To afford taxpayers an appropriate opportunity to prepare and present their position at a taxpayer conference, however, the taxpayer or the taxpayer’s representative is to be told (by the Associate office attorney) the tentative conclusion when scheduling the taxpayer conference. Field counsel should be notified of, and given the opportunity...
to participate in, the notification to the taxpayer of the tentative conclusions and scheduling of the taxpayer conference.

SECTION 9. TAXPAYER CONFERENCES

Notification of conference
.01 If the Associate office proposes to provide a TAM that will be adverse to the taxpayer, and if the taxpayer has not waived its right to a taxpayer conference, the taxpayer will be informed of the time and place of the conference.

Scheduling conference
.02 The taxpayer conference for a TAM must occur within 10 calendar days after the taxpayer is informed that an adverse TAM is proposed. The Associate office will notify the field office and field counsel of the scheduled taxpayer conference and will offer the field office and field counsel the opportunity to participate in the conference.

Taxpayer may request extensions
.03 Only an Associate Chief Counsel may approve an extension of the 10-day period for holding a conference. Although extensions are granted in appropriate circumstances at the discretion of the Associate Chief Counsel, taxpayers should not expect extensions to be routinely granted. The taxpayer must submit a request for an extension in writing to the Associate office, and must immediately notify the field office and field counsel of the request. The request must contain a detailed justification for the extension and must be submitted sufficiently before the end of the 10-day period to allow the Associate Chief Counsel to consider, and either approve or deny, the request before the end of the 10-day period. If unusual circumstances near the end of the 10-day period make a timely written request impracticable, the taxpayer may orally inform the assigned Associate office attorney or reviewer before the end of the 10-day period about the need for an extension and then promptly submit the written request. The Associate office attorney will inform the taxpayer by telephone of the approval or denial of a requested extension. There is no right to appeal the denial of a request for extension.

One conference of right
.04 In general, a taxpayer who has not waived the right to a taxpayer conference is entitled by right to only one conference with the Associate office. The conference is normally held at the branch level. A person who has authority to sign the transmittal memorandum in his or her own name, or on behalf of the branch chief, will participate. When more than one branch of an Associate office has taken an adverse position on issues in the request or when the positions ultimately adopted by one branch will affect another branch’s determination, a representative from each branch with authority to sign in his or her own name, or for the branch chief, will participate in the conference. The conference is the taxpayer conference for each subject discussed.

Additional conferences may be offered
.05 After the taxpayer conference, the Service will offer the taxpayer an additional conference only if an adverse holding is proposed on a new issue or on the same issue but on grounds different from those discussed at the first conference. If a tentative position is changed at a higher level with a result less favorable to the taxpayer, the taxpayer has no right to another conference if the grounds or arguments on which the change is based were discussed at the taxpayer conference. The limitation on the number of conferences to which a taxpayer is entitled does not prevent the Associate office from inviting a taxpayer to participate in additional conferences if that office determines that additional conferences would be useful. These additional conferences are not to be offered routinely following an adverse decision.

Additional information submitted after the conference
.06 In order to ensure that the taxpayer conference is productive, the taxpayer should make a reasonable effort to supply all information, documents, and arguments in writing well before the conference.

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Sometimes, however, it becomes apparent that new information may be helpful in resolving issues discussed at the conference. If the Associate office and the taxpayer agree that such information would be helpful, all such materials must be submitted and received within 10 calendar days after the conference. Any extension of the 10-day period must be requested by the taxpayer in writing and must be approved by the branch chief of the Associate office attorney. Extensions will not be routinely granted. Taxpayers have no right to submit additional materials after the conference, and are discouraged from providing additional copies or versions of materials already submitted. If the additional information is not received from the taxpayer within 10 calendar days plus any extensions granted by the branch chief, the TAM will be issued on the basis of the existing record.

The taxpayer must also send a copy of the additional information to the field office and field counsel for comment. If the additional information has a significant impact on the facts in the request, the Associate office will ask the field office and field counsel for comments, both of which will respond within the agreed upon period of time. If there are no comments the Associate office attorney will be promptly notified.

**Normally conducted in person**

.07 Conferences under this section are generally conducted in person, but may be conducted by telephone.

**Service makes only tentative recommendations**

.08 At the end of the taxpayer conference, no commitment will be made about the conclusion that the Service will finally adopt for any issue, including the outcome of a request for relief under § 7805(b).

**Conference may not be taped**

.09 No tape, stenographic, or other verbatim recording of a taxpayer conference may be made by any party.

**SECTION 10. PREPARATION OF THE TECHNICAL ADVICE**

**Reply consists of two parts**

.01 The Associate office attorney prepares replies to requests for technical advice in two parts. Each part identifies the taxpayer by name, address, identification number, and tax period(s) involved. The first part of the reply is a transmittal memorandum (Form M–6000). The second part is the TAM, which contains: (1) a statement of the issues; (2) the conclusions of the Associate office; (3) a statement of the facts pertinent to the issues; (4) a statement of the relevant legal authority, including legislation, tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements; and (5) a discussion of the rationale supporting the conclusions reached by the Associate office. The conclusions give direct answers, whenever possible, to the specific issues raised by the field office. The Associate office is not bound by the issues as submitted by the taxpayer or by the field office and may reframe the issues to be answered in a TAM after consultation with the field office and field counsel. The discussion of the issues in a TAM will be in sufficient detail so that the field or Appeals officials will understand the reasoning underlying the conclusion.

**Status of a request**

.02 The taxpayer or the taxpayer's authorized representative may obtain information on the status of the request by contacting the field office that requested the advice. The Associate office attorney or reviewer assigned to the TAM request will give frequent status updates to the field office and field counsel.

**Opportunity for field counsel review**

.03 The Associate office attorney will inform field counsel regarding the Associate office's final conclusions before a draft of the TAM is sent to the field office. Field counsel will be offered a
reasonable opportunity to review and informally discuss these conclusions with the Associate office before the final TAM is sent to the field office.

Copy of preliminary TAM to field office and field counsel

.04 After field counsel is given a reasonable opportunity to review the Associate office's final conclusions, the Associate office attorney will provide a draft of the proposed final version of the TAM to the field office and field counsel. If the field office or field counsel disagrees with the proposed final conclusions, normal reconciliation and reconsideration procedures will be followed to resolve the disagreement.

Routing of reply

.05 A TAM is generally addressed to the field office that requested it. In the case of issues arising within the jurisdiction of the Director, Indian Tribal Governments and Tax Exempt Bonds; the Director, Employee Plans or Exempt Organizations Examinations; or the Director, Employee Plans or Exempt Organizations Rulings & Agreements, the TAM is addressed to the appropriate Director with a copy sent to the field office and the field counsel attorney. A copy of a TAM requested by LB&I should be mailed simultaneously to the appropriate Practice Area Director. A copy of a TAM requested by Appeals should be addressed to the appropriate field office, and an electronic copy sent by encrypted e-mail to *AP TAM Coordinator.

Copy of final TAM to field counsel and Division Counsel

.06 The Associate office will provide a copy of the final TAM to the individual field counsel attorney who assisted the field office in submitting the request and to that attorney's Associate Area Counsel or other manager, as appropriate. The Associate office also will provide a copy of the final TAM to the Division Counsel for the operating division from which the request originated or that has jurisdiction over the particular matter in the TAM. The TAM may be transmitted electronically if it is in .pdf format, or may be sent by mail or fax transmission.

Reconsideration

.07 Requests for reconsideration may be submitted by the field office, or in the case of bonds under the jurisdiction of the Director of Indian Tribal Governments and Tax Exempt Bonds, by that Director after the Associate office has provided a final copy of the TAM to field counsel and Division Counsel. Requests for reconsideration must describe with specificity the errors in the analysis and conclusions. Requests should focus on points that the TAM overlooked or misconstrued rather than simply re-argue points raised in the initial request. The Associate office will give priority consideration to the request and should act on the request as expeditiously as possible. The Associate office may request further submissions from the field office and field counsel or the taxpayer, but the parties should otherwise make no additional submissions. If a request for reconsideration fails to follow the procedures set forth in this section of this revenue procedure, or the request fails to raise issues or arguments different from those asserted in the initial request for technical advice, the Associate office may return the request for reconsideration without ruling on the request for reconsideration.

Discussing contents with the taxpayer

.08 The Associate office will not discuss the specific contents of the TAM with the taxpayer until after the field office has provided a copy of the TAM to the taxpayer.

Section 6110

.09 Before the TAM is issued, the Associate office will inform the taxpayer in writing of the material likely to appear in the TAM that the taxpayer proposed for deletion but that the Associate office has determined should not be deleted. If so informed, the taxpayer may submit within 10 calendar days any further information or arguments supporting the taxpayer's proposed deletions. The Associate office will attempt to resolve all disagreements about proposed deletions before the TAM is issued. The taxpayer does not have the right to a conference to resolve any disagreements about material to be deleted from the text of the TAM. For TAMs subject to § 6110, accompanying the TAM is a notice under § 6110(f)(1) of intention to disclose a TAM, including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d). If the transmittal memorandum associated with the TAM provides information not in the TAM, or if the case is returned for further development without issuance

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of the TAM, the transmittal memorandum may be Chief Counsel Advice, as defined in § 6110(i)(1), subject to public inspection under § 6110. These procedures do not apply to TAMs to the extent that § 6104 applies. See section 7.05 of this revenue procedure and § 6110(l)(1).

TAM takes effect when taxpayer receives a copy

.10 After a TAM is sent to the field office (or, for Tax Exempt Bonds, Employee Plans, and Exempt Organizations, to the Director), the field office or Director adopts and issues the TAM within the meaning of Treas. Reg. § 301.6110–2(h). Then the field office or Director provides the taxpayer a copy of the TAM, the notice of intention to disclose under § 6110(f)(1), as applicable, and a copy of the version proposed to be open to public inspection, which includes notations of third party communications under § 6110(d), as applicable. If a request for technical advice pertains to more than one taxpayer, and the requirements of section 7.02 of this revenue procedure have been met, the field office or Director will provide each taxpayer with a copy of the TAM and will notify the Associate office when this occurs. The requirement to provide a taxpayer a copy of the TAM does not apply to a TAM involving civil fraud or a criminal investigation, or to a TAM involving a jeopardy or termination assessment. See section 10.12 of this revenue procedure.

Taxpayer may protest deletions not made

.11 Generally, the Associate office considers only the deletion of material that the taxpayer has proposed for deletion or other deletions as required under § 6110(c) before the TAM is sent to the field office or Director. After receiving the notice of intention to disclose under § 6110(f)(1), the taxpayer may protest the disclosure of certain information in it by submitting a written statement in accordance with the notice of intention to disclose under § 6110(f)(1) (Notice 438, Notice of Intention to Disclose).

Public inspection in civil fraud or criminal investigation cases

.12 The provisions of this revenue procedure about referring issues upon the taxpayer’s request, telling the taxpayer about the referral of issues, giving the taxpayer a copy of the arguments submitted, submitting proposed deletions, granting conferences in the Associate office, or providing a copy of the TAM to the taxpayer do not apply to a TAM described in § 6110(g)(5)(A), which involves any matter that is the subject of a civil fraud or criminal investigation, or that involves a jeopardy or termination assessment. In these cases, after all proceedings in the investigations or assessments are complete, the taxpayer receives a copy of the TAM with the notice of intention to disclose under § 6110(f)(1). The taxpayer may protest the disclosure of certain information in the TAM by submitting a written statement in accordance with the Notice of Intention to Disclose (Notice 438).

SECTION 11.
WITHDRAWAL OF REQUESTS FOR TECHNICAL ADVICE

Taxpayer notified

.01 Once a request for a TAM has been sent to the Associate office, only a Director may withdraw the request, and this must be done before the responding transmittal memorandum for the TAM is signed. To withdraw the request, the Director must first notify the taxpayer of the intent to withdraw unless: (1) the period of limitation on assessment is about to expire and the taxpayer has declined to give written consent to extend the period; or (2) the notification would be prejudicial to the best interests of the Government. If the taxpayer does not agree that the request should be withdrawn and wishes to request review of the decision, the procedures in section 5.04 of this revenue procedure for review must be followed.

Acknowledgment of withdrawal

.02 Acknowledgment of the withdrawal of a request submitted by a Director should be sent to the appropriate Director, with a copy to the TAM coordinator. For a withdrawal of a request submitted by Appeals, send an electronic copy by encrypted e-mail to *AP TAM Coordinator.
Associate office may decide not to provide a TAM

.03 If the Associate office determines that a TAM will not be provided, it may return the request for technical advice unanswered. This determination must be made on the basis of sound tax administration and must be approved by the Associate Chief Counsel. The decision not to provide a TAM should be an infrequent occurrence and be made only after consultation with field counsel and the requesting field office. If field counsel disagrees with this determination, they may request reconsideration through existing reconciliation procedures.

Associate office may provide views

.04 If a request for technical advice is withdrawn or an Associate office decides not to provide a TAM, the Associate office may address the substantive issues through other published guidance. The Associate office may also address the substantive issues through legal advice, either generic or case-specific. The decision to address the issues through these other forms of guidance will be based on the general standards for issuing those types of guidance.

SECTION 12. USE OF THE TECHNICAL ADVICE

Service generally applies advice in processing the taxpayer's case

.01 After a TAM is issued, the field office must process the taxpayer’s case on the basis of the conclusions in the TAM. In the case of a TAM unfavorable to the taxpayer, the Appeals Area Director may decide to settle the issue under existing settlement authority. Appeals, however, will not settle an issue contrary to a TAM if it concerns an organization’s exempt status or private foundation classification, or if it concerns an employee plan’s status or qualification. Thus, if the TAM received by the field office concerns an organization’s exempt status, private foundation classification, or a plan’s status or qualification, the organization or plan has no right to appeal those specific issues with the Appeals Office. Appeals may submit a proposed disposition of the issue contrary to a TAM as a request for a new TAM. If a TAM provides conclusions involving a § 103 obligation and the issue of this obligation, the field office must apply the conclusions to the issue and any holder of the obligation, unless a field office separately initiates a request for a TAM on behalf of the holder for the same issue addressed in the TAM involving the issuer, and the Associate office issues a TAM involving that issue and that holder.

SECTION 13. RETROACTIVITY AND RELIANCE

Usually applies retroactively

.01 The holdings in a TAM are applied retroactively, whether they are initial holdings or they are later holdings that modify or revoke holdings in a prior TAM. The Associate Chief Counsel with jurisdiction over the TAM, however, may exercise the discretionary authority under § 7805(b) to limit the retroactive effect of any holding. This authority is exercised in rare and unusual circumstances.

Revocation or modification of an earlier letter ruling or TAM

.02 A TAM may be used to seek revocation or modification of an earlier TAM or revocation or modification of a private letter ruling (PLR). See Rev. Proc. 2019–1, section 11.03 et seq., with respect to revocation or modification of PLRs. Generally, a TAM that revokes or modifies a letter ruling or an earlier TAM will not be applied retroactively if: (1) the applicable law has not changed; (2) the taxpayer directly involved in the letter ruling or earlier TAM relied in good faith on it; and (3) revocation or modification would be detrimental to the taxpayer. The new TAM will be applied retroactively to the taxpayer whose tax liability was directly involved in the letter ruling or TAM if: (1) controlling facts have been misstated or omitted; or (2) the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling or earlier TAM was based. If a letter ruling or a TAM is modified or revoked with retroactive effect, the notice to the taxpayer, except in fraud cases, should set forth the grounds on which the modification or revocation is being made and the reason why the modification or revocation is being applied retroactively.

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Continuing action or series of actions

.03 If an issue addressed in the TAM relates to a continuing action or a series of actions, it is generally applied until it is withdrawn or until the conclusion is modified or revoked by a final decision in favor of the taxpayer with respect to that issue, the enactment of legislation, the ratification of a tax treaty, a decision of the United States Supreme Court, or the issuance of temporary regulations, final regulations, a revenue ruling, or other statement published in the Internal Revenue Bulletin. Publication of a notice of proposed rulemaking does not affect the application of a TAM. If a new holding in a TAM is less favorable to the taxpayer than the holding in an earlier TAM, the new holding is generally not applied to the tax period when the taxpayer relied on the earlier holding. It will be applied to that tax period, however, if material facts on which the earlier TAM was based have changed.

Other taxpayers

.04 Under § 6110(k)(3), a taxpayer may not rely on a TAM issued by the Service for another taxpayer. In addition, retroactive or non-retroactive treatment to one member of a practice area directly involved in a letter ruling or TAM does not extend to another member of that same practice area, and retroactive or non-retroactive treatment to one client of a tax practitioner does not extend to another client of that same practitioner. The tax liability of each employee covered by a letter ruling or TAM relating to a pension plan of an employer is directly involved in the letter ruling or TAM.

SECTION 14. HOW MAY RETROACTIVE EFFECT BE LIMITED?

Request for relief under § 7805(b)

.01 A taxpayer with respect to whom a TAM is issued, or for whom a TAM request is pending, may request that the appropriate Associate Chief Counsel limit the retroactive effect of any holding in the TAM or of any subsequent modification or revocation of the TAM. For a pending request for technical advice, the taxpayer should make the request for relief under § 7805(b) as part of the initial request for advice. The Associate office will consider a request for relief under § 7805(b) made at a later time if the Director determines that there is justification for the delay in the making of the request. The Director’s determination that the delayed request for § 7805 is not justified cannot be appealed. Requests for relief under § 7805(b) relating to the revocation or modification of determination letters and letter rulings issued by TE/GE are handled under the procedures in sections 23 and 29 of Rev. Proc. 2019–4, and section 12 of Rev. Proc. 2019–5, this Bulletin.

Form of request for relief — in general

.02 During the course of an examination of a taxpayer’s return by the field office or during consideration of the taxpayer’s return by the Appeals Area Director, a taxpayer’s request to limit retroactivity must be made in the form of a request for a TAM. This includes recommendations by a Director that an earlier letter ruling or TAM be modified or revoked. The request must meet the general requirements of a request for technical advice. It must also: (1) state that it is being made under § 7805(b); (2) state the relief sought; (3) explain the reasons and arguments in support of the relief sought; and (4) include any documents bearing on the request. The taxpayer’s request must be submitted to the Director, who should then forward the request to the Associate office for consideration. If taxpayer submits a request for relief after the initial TAM request, the taxpayer must provide justification for having delayed the request. Requests for relief under § 7805(b) relating to the revocation or modification of determination letters and letter rulings issued by TE/GE are handled under the procedures in sections 23 and 29 of Rev. Proc. 2019–4, and section 12 of Rev. Proc. 2019–5, this Bulletin.

Form of request for relief — continuing transaction before examination of return

.03 A request for relief under § 7805(b) must be made in the form of a request for a letter ruling if: (1) a TAM addressing a continuing transaction is modified or revoked by later published guidance; and (2) the request for relief is submitted before an examination has begun covering the tax period(s) for which relief is sought. The requirements for a letter ruling request are given in Rev. Proc. 2019–1 (this Bulletin).

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.04 When a request for a TAM concerns only the application of § 7805(b), the taxpayer has the right to a conference with the Associate office in accordance with the provisions of section 9 of this revenue procedure. If the request for application of § 7805(b) is included in the request for a TAM on the substantive issues or is made before the taxpayer conference on the substantive issues, the § 7805(b) issues will be discussed at the taxpayer's one conference of right. If the request for the application of § 7805(b) is made as part of a pending TAM request after a taxpayer conference has been held on the substantive issues and the Director determines that there is justification for having delayed the request, then the taxpayer will have the right to a taxpayer conference concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

.05 When a TAM grants a taxpayer relief under § 7805(b), the Director may not request reconsideration of the § 7805(b) issue unless the Director determines there has been a misstatement or omission of controlling facts by the taxpayer in its request for § 7805(b) relief.

SECTION 15.
SIGNIFICANT CHANGES
MADE TO REV. PROC.
2018–2

All references to Associate Chief Counsel (Tax Exempt and Government Entities) have been revised to read “Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes)”. All references to “Appeals Policy” have been revised to read “Appeals Policy Planning Quality & Analysis”.

Section 3.04 has been amended to delete the mandatory TAM requirement in qualified retirement plan matters in cases concerning proposed adverse letters or proposed revocation letters on collectively bargained plans.

Section 14.02 has been amended to clarify that requests for relief under § 7805(b) relating to the revocation or modification of determination letters and letter rulings issued by TE/GE are handled under the procedures in sections 23 and 29 of Rev. Proc. 2019–4, and section 12 of Rev. Proc. 2019–5.

SECTION 16. EFFECT ON OTHER DOCUMENTS


SECTION 17. EFFECTIVE DATE

This revenue procedure is effective January 2, 2019.

DRAFTING INFORMATION

The principal author of this revenue procedure is Marshall T. French of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure for matters under the jurisdiction of:

1. the Associate Chief Counsel (Corporate), contact Ken Cohen at (202) 317-7700 or Jean Broderick at (202) 317-6848 (not a toll-free call);

2. the Associate Chief Counsel (Financial Institutions and Products), contact K. Scott Brown at (202) 317-4423 (not a toll-free call);

3. the Associate Chief Counsel (Income Tax and Accounting), contact R. Matthew Kelley at (202) 317-7002 (not a toll-free call);
(4) the Associate Chief Counsel (Passthroughs and Special Industries), contact Anthony McQuillen at (202) 317-6850 (not a toll-free call);

(5) the Associate Chief Counsel (Procedure and Administration), contact Jennifer Auchterlonie at (202) 317-3400 (not a toll-free call);

(6) the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), contact Michael B. Blumenfeld at (202) 317-6000 (not a toll-free call);

(7) the Associate Chief Counsel (International), contact Nancy Galib at (202) 317-3800 (not a toll-free call);

(8) the Commissioner (Large Business & International Division), contact Shirley S. Lee at (202) 317-3152 (not a toll-free call);

(9) the Commissioner (Small Business/Self-Employed Division), contact Charles Hall at (240) 613-6353 (not a toll-free call);

(10) the Commissioner (Wage and Investment Division), contact Geoffrey Gerbore at (631) 977-3210 (not a toll-free call); or

(11) the Office of Appeals, contact Mark K. Wesner at (602) 636-9571 (not a toll-free call).
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IRS settles tax-exempt bond tax dispute involving fertilizer plant

By Brian Tumulty
Published March 19 2019, 11:59am EDT

More in Refunding bonds, Tax-exempt bonds, Natural disasters, IRS, Washington DC

WASHINGTON — The Internal Revenue Service has settled an appeal involving 2013 refunding bonds for an Indiana fertilizer plant that the issuer maintained should keep the tax exemption the original bonds qualified for in 2012 as Midwestern Disaster Area Bonds.

Midwest Fertilizer Co. announced Monday it has settled with the IRS Office of Appeals an audit that originally disqualified the tax-exempt status of $1.259 billion in 2013 refunding bonds that will be used to help finance a $2.79 billion fertilizer plant in Posey County, Indiana. The settlement announcement came in a public event notice filed on the Municipal Securities Rulemaking Board’s EMMA website.

The Heartland Disaster Tax Relief Act of 2008 enacted by Congress authorized Midwestern Disaster Area Bonds to be issued only through the end of December 2012.

The 2008 law, according to the nonpartisan Congressional Research Service, “provided tax relief intended to assist with the recovery from the severe weather that affected the Midwest during the summer of 2008 and Hurricane Ike, as well as including some general disaster tax relief provisions for federally declared disasters occurring prior to January 1, 2010."

Posey County took over as issuer after the Indiana Finance Authority dropped out and then refunded or remarketed the bonds six times between July 2013 and November 2015.
Charles Henck of Ballard Spahr in Washington, D.C.
Midwest Fertilizer purchased the bonds in the fall of 2016. The company is incorporated in the United States, but is owned by multinational investors, the largest of which is Fatima Group, one of the largest conglomerates in Pakistan and a leader in the South Asian fertilizer industry, according to company documents.

The tax dispute has led to years of delay in the construction of the state-of-the-art fertilizer plant in the Mount Vernon area of southwest Indiana near the borders of Kentucky and Illinois.

"When the IRS issued the proposed notice I thought then, and I think now, that the company and the issuers complied with the relevant rules," tax attorney Charles Henck of Ballard Spahr said in an interview. "The client is happy with the settlement and is looking forward to moving ahead with the project."

Henck served as special tax counsel to all the parties involved in the audit and was joined by sole practitioner Brad Waterman on the appeal.
Posey County and the Indiana Finance Authority signed a closing agreement with the IRS through the Office of Appeals on March 13.

Midwest Fertilizer chose to base the plant in Indiana because the Indiana Economic Development Corp. had offered an incentive package accepted by the company on Nov. 30, 2012, that included access to tax-exempt financing through the allocation of a portion of the state’s volume cap under the disaster bond program.

According to the company, the Indiana EDC offered it up to $2.9 million of conditional tax credits and up $400,000 training grants based on the company’s job creation estimates. It also offered the company up to $300,000 in conditional incentives from the Hoosier Business Investment tax credit. But the Indiana EDC made clear that the company would have to create jobs and invest in Indiana to receive the incentives.

The company told the state it would create more than 2,500 construction jobs and as many as 200 ongoing regulator and contract employment opportunities. It also said Indiana farmers would benefit from its fertilizer.

Just before the bonds were issued in late 2012, a representative of the U.S. Defense Department’s Joint-Improvised-Threat Defeat Agency testified during a congressional hearing that the Fatima Group had been “less than cooperative” in implementing security for its fertilizer products to prevent them from being used in explosive devices deployed against American soldiers in Afghanistan and Pakistan.

Then-Gov. Mike Pence, a day after taking office in January 2013, halted state support of the project and subsequently in mid-May of that year formally dropped all state involvement, according to bond documents.

Fatima officials, meanwhile, agreed on a range of voluntary cooperative measures to appease the federal government, including the suspension of fertilizer sales in two Pakistani provinces bordering Afghanistan and reformulating a fertilizer product that would be less susceptible to misuse as an explosive.

Les Wright, interim president and CEO of Midwest Fertilizer, said in a phone interview Monday that he couldn’t predict when construction will begin.
“Right at this moment we are literally re-engaging with project partners,” Wright said. “It’s too early today to provide milestones for going ahead with the project.”

The $2.79 billion plant is being financed with the tax-exempt bonds, which will be remarketed, along with equity financing and potentially additional debt, Wright said.

The plant will use natural gas delivered by pipeline in the production of the fertilizer, which will be shipped by rail, truck or barge along the Ohio River strictly for domestic use.

**Brian Tumulty**

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D.C. school wins P3 tax case on appeal

By Brian Tumulty
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WASHINGTON — The James F. Oyster Elementary School in the District of Columbia won a novel P3 tax case on appeal, according to an event notice filed Monday with the Municipal Securities Rulemaking Board.

“On March 1, 2019, the District of Columbia received a letter from the Internal Revenue Service Appeals Office (IRS Appeals Office) informing the district that the proposed adverse determination, dated January 19, 2017... had been withdrawn,” the notice said.

Ed Oswald, a tax partner at Orrick Herrington & Sutcliffe in Washington

Edwin Oswald, a tax partner at Orrick in Washington, D.C., who represented the District of Columbia in the case, said he has no comment on the outcome but indicated it did not involve the statute of limitations.
The $11 million in tax exempt bonds that financed the construction of the K through 6 school are being paid off by the owner of the apartment building developed on part of the 1.67-acre site.

The $11 million in 35-year payment in lieu of taxes (PILOT) revenue bonds issued in 1999 were used to finance the demolition of a school building and build a new 47,000 square foot school for 350 students on the edge of D.C.'s popular Adams Morgan neighborhood.

The 1999 official statement said developer Henry Adams agreed to make monthly payments on the PILOT bonds in exchange for the right to build a 211-unit apartment building with a rooftop terrace and below grade parking garage on part of the site that was sold as part of the deal.

The IRS began an audit in February 2016 of the remaining $8.73 million in bonds that were still outstanding, according to a public event notice the District of Columbia filed in April of that year.

Shortly before that announcement, Mark Scott, former head of the IRS Tax Exempt Bond office who has a private practice focused on representing whistleblowers, tweeted that the Oyster School P3 "is a tax scam ... that cost district residents millions in tax dollars."

At that time, Scott told The Bond Buyer that the transaction was a "PPP disaster" and asked whether this is the kind of project Mayor Muriel Bowser's new P3 office wanted to support.

Bowser created an Office of Public-Private Partnerships in November 2015 "to build collaborations between private sector businesses and [the district government] to support large-scale projects such as infrastructure development and enhancements."
Scott said at the time that he was examining the Oyster School P3 on behalf of an unnamed client under the whistleblower program by claiming the bonds should be taxable private-activity bonds. Scott claims the district made an indirect private loan to the developer, LCOR New Oyster School LLC (LCOR).

The recent decision by the IRS Office of Appeals cannot be appealed by Scott, he acknowledged in an interview Tuesday.

But it hasn't changed his view of the deal. “This was not only an abusive public-private partnership financing, but it ended up costing D.C. taxpayers substantially more than promised,” Scott said Tuesday. “D.C.’s new P3 office did not take my advice, but hopefully it won't repeat this sort of mistake.”

The new event notice does not indicate whether there was a financial settlement of the case or the IRS Office of Appeals disagreed with the audit findings that the bonds are taxable, Scott noted.

Scott said he intends to file a Freedom of Information Act request that will include the IRS Office of Appeals decision.

“I'll know eventually what happened,” Scott said. He said the D.C. Court of Appeals recently ruled in his client's favor in another FOIA request involving the Oyster School P3 in which a lower district court had issued a summary judgment in favor of the IRS.

Brian Tumulty

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THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT MAY BE REVISED TO REFLECT EVENTS THAT OCCUR AFTER THE DATE HEREOF BUT PRIOR TO THE BANKRUPTCY COURT'S APPROVAL OF THE DISCLOSURE STATEMENT.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,
Debtor.

Chapter 9
Case No. 13-53846
Hon. Steven W. Rhodes

FOURTH AMENDED DISCLOSURE STATEMENT WITH RESPECT TO FOURTH AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF THE CITY OF DETROIT

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XII.

FEDERAL INCOME TAX CONSEQUENCES OF CONSUMMATION OF THE PLAN

Circular 230 Disclosure: TO ENSURE COMPLIANCE WITH INTERNAL REVENUE SERVICE CIRCULAR 230, EACH HOLDER OF A CLAIM IS HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER OF A CLAIM FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "IRC"); (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE CONFIRMATION OF THE PLAN TO WHICH THE TRANSACTIONS DESCRIBED IN THIS DISCLOSURE STATEMENT ARE ANCILLARY; AND (C) ANY HOLDER OF A CLAIM SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A DESCRIPTION OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO HOLDERS OF CERTAIN CLAIMS IS PROVIDED BELOW. THE DESCRIPTION IS BASED ON THE IRC, TREASURY REGULATIONS, JUDICIAL DECISIONS AND ADMINISTRATIVE DETERMINATIONS, ALL AS IN EFFECT ON THE DATE OF THIS DISCLOSURE STATEMENT AND ALL SUBJECT TO CHANGE, POSSIBLY WITH RETROACTIVE EFFECT. CHANGES IN ANY OF THESE AUTHORITIES OR IN THEIR INTERPRETATION COULD CAUSE THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO DIFFER MATERIALLY FROM THE CONSEQUENCES DESCRIBED BELOW.

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. NO RULING HAS BEEN REQUESTED FROM THE INTERNAL REVENUE SERVICE (THE "IRS"); NO OPINION HAS BEEN REQUESTED FROM THE CITY'S COUNSEL CONCERNING ANY TAX CONSEQUENCE OF THE PLAN; AND NO TAX OPINION IS GIVEN BY THIS DISCLOSURE STATEMENT.

THE DESCRIPTION THAT FOLLOWS DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO HOLDERS OF CLAIMS. FOR EXAMPLE, THE DESCRIPTION DOES NOT ADDRESS ISSUES OF SPECIAL CONCERN TO CERTAIN TYPES OF TAXPAYERS, SUCH AS DEALERS IN SECURITIES, FINANCIAL INSTITUTIONS, INSURANCE COMPANIES, PASS-THROUGH ENTITIES AND INVESTORS THEREIN, TAX-EXEMPT ORGANIZATIONS, PERSONS SUBJECT TO THE ALTERNATIVE MINIMUM TAX AND NON-U.S. TAXPAYERS. IN ADDITION, THE DESCRIPTION DOES NOT DISCUSS STATE, LOCAL OR NON-U.S. INCOME OR OTHER TAX CONSEQUENCES (INCLUDING ESTATE OR GIFT TAX CONSEQUENCES).

FOR THESE REASONS, THE DESCRIPTION THAT FOLLOWS IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND PROFESSIONAL TAX ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. HOLDERS OF CLAIMS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.

The federal income tax consequences of the Plan to a Holder of a Claim will depend, in part, on the nature of the Claim, what type of consideration was received in exchange for the Claim, whether the Holder reports income on the accrual or cash basis, whether the Holder has taken a bad debt deduction or worthless security deduction with respect to the Claim and whether the Holder receives Distributions under the Plan in more than one taxable year.

A. Exchange of Property Differing Materially in Kind or Extent, Generally

An exchange of property for other property differing materially either in kind or extent generally is considered a taxable exchange for U.S. federal income tax purposes, and the holder of such property generally will realize gain or loss on such exchange for U.S. federal income tax purposes. In the case of an exchange of a new debt instrument for an existing debt instrument, such an exchange is considered to be an exchange of property differing materially in kind or extent if the terms of the new debt instrument are considered to be a "significant modification" of the terms of the existing debt instrument.

Various changes in the terms of a debt instrument can constitute a "modification" of the terms of an existing debt instrument for U.S. federal income tax purposes, such as a change in the amount or yield of the instrument, a change in the
term of the instrument, a change in the obligor of the instrument, a change in the security or credit enhancement of the instrument or a change in the nature of the instrument. A modification may be considered to be "significant" for U.S. federal income tax purposes if, based on all the facts and circumstances, the legal rights or obligations that are altered and the degree to which they are altered are economically significant. When making such a determination, all modifications to the debt instrument generally are considered collectively, subject to certain exclusions.

A change in the yield of a debt instrument is considered to be a significant modification of the debt instrument if the yield of the modified instrument, as computed in accordance with the Treasury Regulations, varies from the annual yield of the unmodified instrument by more than the greater of one quarter of one percent or five percent of the annual yield of the unmodified instrument. A change in the timing of payments of a debt instrument, including an extension of the final maturity date, may be a considered a significant modification if it results in a material deferral of scheduled payments under the relevant facts and circumstances. A deferral of one or more scheduled payments will not be considered material if the payment is deferred no longer than the lesser of five years or fifty percent of the original term of the debt instrument. A substitution of a new obligor on a recourse obligation generally is considered a significant modification, but in the case of a tax-exempt bond, such a substitution is not a significant modification if the old and new obligors are both governmental units, agencies or instrumentalities that derive their powers, rights and duties in whole or part from the same sovereign authority (such as a state), and if the collateral securing the instrument continues to include the original collateral. The substitution of a new obligor on a nonrecourse debt instrument is not a significant modification. A change in the security or credit enhancement of a recourse debt instrument that releases, substitutes, adds or otherwise alters the collateral for, a guarantee on, or other form of credit enhancement is a significant modification if it results in a change in payment expectations from adequate to primarily speculative, or from primarily speculative to adequate. A change in the security or credit enhancement of a nonrecourse debt instrument generally is a significant modification if it releases, substitutes, adds or otherwise alters the collateral for, a guarantee on, or other form of credit enhancement, unless the collateral is fungible. A change in the nature of an instrument, from recourse (or substantially all recourse) to nonrecourse (or substantially all nonrecourse), from nonrecourse (or substantially all nonrecourse) to recourse (or substantially all recourse), is generally a significant modification. Likewise, a change in the nature of an instrument that results in an instrument or property right that is not debt for U.S. federal income tax purposes is a significant modification. Other changes to an instrument, such as a change in the status of the debt instrument from being a tax-exempt obligation to a taxable obligation, may be considered to be a material modification if such a change is considered to be economically significant.

Holders of Claims are urged to consult their tax advisors regarding the application of the above rules to any Distributions they may receive pursuant to the Plan.

B. Treatment of Claim Holders Receiving Distributions Under the Plan

1. Holders Whose Existing Bonds or Other Debt Obligations Will Be Exchanged for Property Including New Securities

The U.S. federal income tax treatment of Holders who hold Claims with respect to existing Bonds or other debt obligations and who receive Distributions of property, including New Securities, pursuant to the Plan (which may include Holders of the DWSO Bonds, Holders of COP Claims, Holders of Limited Tax General Obligation Bonds, Holders of Unlimited Tax General Obligation Bonds, and, to the extent such Claims are for existing Bonds or other debt obligations, Holders of Unsecured Claims) will depend upon whether the terms of the New Securities, if any, received differ materially in kind or extent from the terms of the existing Bonds or other debt obligations relinquished by such Holder pursuant to the Plan, as discussed above under "Exchange of Property Differing Materially in Kind or Extent, Generally." If the terms of such New Securities do not differ materially from the terms of the existing Bonds or other debt obligations relinquished, then the U.S. federal income tax consequences should be as described below under "Holders of Allowed Claims Receiving New Securities that are Not Materially Different." If the terms of such New Securities differ materially from the terms of the Claims relinquished, and/or if the Holders receive cash or other property in respect of their Claims, then the U.S. federal income tax consequences should be as described below under "Holders of Allowed Claims Receiving Cash, Other Property or New Debt Securities with Materially Different Terms."

It is anticipated that interest on the New DWSO Bonds and the New Existing Rate DWSO Bonds will be tax-exempt for U.S. federal income tax purposes. The City intends to seek opinions of nationally recognized bond counsel addressing the tax status of the interest payable on the New DWSO Bonds and the New Existing Rate DWSO Bonds, which are expected to be delivered with such bonds on the Effective Date. Recipients of such bonds should refer to such opinions for more information as to the tax status of the interest payable on such bonds.
As of the date of this Disclosure Statement, it is not known whether interest on any New Securities other than the New DWSD Bonds or the New Existing Rate DWSD Bonds will be taxable or tax-exempt for U.S. federal income tax purposes.

Holders of Claims are urged to consult their tax advisors regarding whether the terms of any New Securities received pursuant to the Plan differ materially from the terms of any Claims relinquished pursuant to the Plan.

(a) **Holders of Allowed Claims Receiving New Securities that are Not Materially Different**

A Holder of an Allowed Claim who receives New Securities that are not materially different in kind or extent from the Claims for existing Bonds relinquished by such Holder pursuant to the Plan, generally should not recognize gain, loss or other taxable income for U.S. federal income tax purposes upon the receipt of such New Securities in exchange for their Claims under the Plan. Such Holder's holding period for the New Securities will include its holding period for the Claims exchanged therefor, and such Holder's basis in the New Securities will be the same as its basis in the Claims immediately before the exchange.

Taxable income, however, may be recognized by those Holders for U.S. federal income tax purposes if such Holders are considered to receive interest, damages or other income in connection with the exchange, as described in "Holders of Allowed Claims Receiving Cash, Other Property or New Debt Securities with Materially Different Terms," below.

(b) **Holders of Allowed Claims Receiving Cash, Other Property or New Debt Securities with Materially Different Terms**

A Holder of an Allowed Claim who receives cash, other property or New Securities that are treated as debt for U.S. federal income tax purposes ("New Debt Securities") with materially different terms from the Claims relinquished by such Holder pursuant to the Plan, in exchange for such Holder's Claim, would recognize gain or loss in an amount equal to the difference between (i) the amount realized under the Plan in respect of its Claim, which will generally equal (A) the amount of any cash received, plus (B) the fair market value of any property received (including any New Securities that are not treated as debt for U.S. federal income tax purposes) and (C) the issue price of any New Debt Security received by the Holder with respect to its Claim and (ii) the Holder's adjusted tax basis, if any, in its Allowed Claim.

As a general matter, the "issue price" of a New Debt Security should equal its fair market value, if treated as "publicly traded" within the meaning of the IRC and applicable Treasury Regulations, or, if the New Debt Securities are not publicly traded, but the existing Bonds are publicly traded, the fair market value of the existing Bond as of the day immediately prior to the effective date of the Plan. Debt instruments generally will be treated as "publicly traded" if they are traded on an established securities market or if certain firm or indicative price quotes are available for such debt instruments, or if other conditions are satisfied. If neither the existing Bonds nor the New Debt Securities are considered to be publicly traded, the issue price of the New Debt Securities will equal their stated principal amount.

In addition, the New Debt Securities may be treated as issued with original issue discount ("OID") for U.S. federal income tax purposes in an amount equal to the excess of their stated principal amount over their "issue price" (subject to a de minimis exception). A Holder of a New Debt Security that is not a tax-exempt bond generally will be required to include any OID in gross income as it accretes over the term of the New Debt Securities based on a constant yield to maturity method, regardless of the U.S. Holder's method of tax accounting. However, if the Holder's basis in the New Debt Security equals or exceeds the issue price of the New Security, the amount of OID that has to be included in income may be reduced or eliminated. As a result, the Holder generally will include OID that is not otherwise offset on such taxable New Debt Securities in gross income in advance of the receipt of cash payments attributable to that income.

The tax basis of a New Debt Security received in the hands of a Holder will be equal to the "issue price" of the New Debt Security received in the exchange. The holding period of the New Debt Security will commence on the day after the exchange date and it will not include the U.S. Holder's holding period of the existing Bond deemed surrendered in the exchange.

Any gain or loss recognized would be capital or ordinary, depending on the status of the Claim in the Holder's hands, including whether the Claim constitutes a market discount bond in the Holder's hands. Generally, any gain or loss recognized by a Holder of a Claim would be a long-term capital gain if the Claim is a capital asset in the hands of the Holder and the Holder has held such Claim for more than one year, unless the Holder had previously claimed a bad debt or
worthless securities deduction or the Holder had accrued market discount, which is generally treated as ordinary income, with respect to such Claim. If the Holder realizes a capital loss, the Holder's deduction for the loss may be subject to limitation.

2. **PFRS Pension Claims and GRS Pension Claims**

Holders of PFRS Pension Claims and Holders of GRS Pension Claims who receive any PFRS Adjusted Pension Amount, PFRS Restoration Payment, GRS Adjusted Pension Amount, GRS Restoration Payment or other future benefit payments, including payments under the New GRS Active Pension Plan or the New PFRS Active Pension Plan, as applicable, generally will recognize taxable, ordinary income to the extent of such amounts received, which amounts may be treated as compensation income to them, depending on the nature of the Claims and the payments received.

3. **COP Swap Claims**

Holders of COP Swap Claims who are deemed to receive the Distribution Amount with respect to their COP Swap Claims pursuant to the Plan, as well as any interest or deferral fee received with respect to any Net Amount, will recognize taxable income to the extent of such amounts received or deemed received, to the extent not previously included in income.

C. **Certain Other Tax Considerations for Holders of Claims**

1. **Accrued but Unpaid Interest**

In general, a Claim Holder that was not previously required to include in taxable income any accrued but unpaid interest on a Claim that is not a tax-exempt Bond may be required to take such amount into income as taxable interest for U.S. federal income tax purposes upon receipt of a Distribution with respect to such interest. A Claim Holder that was previously required to include in taxable income any accrued but unpaid interest on the Claim may be entitled to recognize a deductible loss to the extent that such interest is not satisfied under the Plan. The Plan provides that, to the extent applicable, all Distributions to a Holder of an Allowed Claim will apply first to the principal amount of such Claim until such principal amount is paid in full and then to any applicable accrued interest included in such Claim to the extent that interest is payable under the Plan. There is no assurance, however, that the IRS will respect this treatment and will not determine that all or a portion of amounts distributed to such Holder and attributable to principal under the Plan is properly allocable to interest. Each Holder of a Claim on which interest has accrued is urged to consult its tax advisor regarding the tax treatment of Distributions under the Plan and the deductibility of any accrued but unpaid interest for U.S. federal income tax purposes.

2. **Post-Effective Date Distributions**

Holders of Claims may receive Distributions of Cash or property, including New Securities, subsequent to the Effective Date. The imputed interest provisions of the IRC may apply to treat a portion of any post-Effective Date distribution as imputed interest for U.S. federal income tax purposes. Imputed interest may, with respect to certain Holders, accrue over time using the constant interest method, in which event the Holder may, under some circumstances, be required to include imputed interest in income prior to receipt of a Distribution.

In addition, because additional Distributions may be made to Holders of Claims after the initial Distribution, any loss and a portion of any gain realized by a Holder may be deferred until the Holder has received its final Distribution. All Holders are urged to consult their tax advisors regarding the possible application of, or ability to elect out of, the "installment method" of reporting gain that may be recognized in respect of a Claim.

3. **Bad Debt and/or Worthless Securities Deduction**

A Holder who, under the Plan, receives in respect of an Allowed Claim an amount less than the Holder's tax basis in the Allowed Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under section 166(a) of the IRC or a worthless securities deduction under section 165(g) of the IRC. The rules governing the character, timing and amount of bad debt or worthless securities deductions place considerable emphasis on the facts and circumstances of the Holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.
4. Information Reporting and Backup Withholding

All Distributions under the Plan will be subject to applicable U.S. federal income tax reporting and withholding. The IRC imposes "backup withholding" (currently at a rate of 28%) on certain "reportable" payments to certain taxpayers, including payments of interest. Under the IRC's backup withholding rules, a Holder of a Claim may be subject to backup withholding with respect to Distributions or payments made pursuant to the Plan, unless the Holder (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (b) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional federal income tax, but merely an advance payment that may be refunded to the extent it results in an overpayment of income tax. A Holder of a Claim may be required to establish an exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

5. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX OR LEGAL ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.
XIII.

APPLICABILITY OF CERTAIN FEDERAL AND STATE SECURITIES LAWS

A. General

1. Registration Of Securities

In general, securities issued by the City, such as the New Securities are exempt from the registration requirements of the Securities Act under section 3(a)(2) of the Securities Act.

In addition to exemptions provided to local governments such as the City under the Securities Act, section 1145(a)(1) of the Bankruptcy Code provides an exemption to all kinds of debtors from the registration requirements of the Securities Act and from any requirements arising under state securities laws in conjunction with the offer or sale of securities of the debtor under a plan of adjustment where such securities are issued to a creditor of the debtor. The Bankruptcy code provides that certain creditors, which are deemed "underwriters" within the meaning of the Bankruptcy Code, may not resell obligations of a debtor, which they receive pursuant to a plan of adjustment without registration. Since obligations of the City are exempt from registration under generally applicable securities law, this exception is not relevant to securities of the City, although the provisions of section 1145 of the Bankruptcy Code which suspend the operation of securities laws may not be available to "underwriters" within the meaning of the Bankruptcy Code. Creditors of the City who believe they meet the definition of "underwriter" within the meaning of the Bankruptcy Code should consult qualified counsel with respect to their obligations under relevant federal and state securities laws.

Because the Exit Facility is not being issued directly to the creditors of the City in connection with the Plan, but will be publically offered, the City intends to rely on generally applicable securities law exemptions for the offering and sale of the Exit Facility. The City does not expect to offer the Exit Facility in states where registration of City securities may be required by the applicable state securities law, unless first registered. The New Securities issued under the Plan of Adjustment will also be exempt from registration under federal or state securities law to the maximum extent provided under section 1145 of the Bankruptcy Code. The remainder of the City's publicly traded securities will not be exchanged, reassigned or refinanced by the Plan, and therefore, the City does not expect implementation of the Plan to implicate federal securities laws with respect to those obligations. Holders of the City's publicly traded securities not specifically mentioned in this paragraph should consult with qualified counsel to determine if any state securities laws may be implicated in connection with the Plan.

Like the exemption from registration provided by the City under section 3(a)(2) of the Securities Act, generally applicable securities laws provide an exemption from qualification for certain trust indentures entered into by governmental entities. Therefore, each trust indenture, ordinance and resolution relating to DWSD Bonds or the Bonds will be exempt from qualification under section 304(a)(4) of the Trust Indenture Act.

2. Market Disclosure

(a) Initial Offer and Sale

Although exempt from registration, securities issued by the City are subject to the anti-fraud provisions of federal securities laws. Section 10(b) of the Securities Act and Rule 10b-5 promulgated by the SEC under the Securities Act generally prohibit fraud in the purchase and sale of securities. Therefore, each publicly offered sale of City obligations typically is accompanied by an offering document that is referred to as an "Official Statement" and contains disclosure of material information regarding the issuer and the securities being sold so that investors may make an informed investment decision as to whether to purchase the securities being offered. Section 1125(d) of the Bankruptcy Code provides that the adequacy of any disclosure to creditors and hypothetical investors typical of Holders of Claims in this case is not subject to principals of any otherwise applicable non-bankruptcy law, rule or regulation, which includes federal securities laws. Instead, section 1124(d) of the Bankruptcy Code provides disclosure regulation by requiring that adequate information be provided to the various classes of creditors of the City and to hypothetical investors in obligations of the City through a disclosure statement such as this.

However, as described in the Plan, the City will issue bonds pursuant to the Exit Facility. In connection with the sale of the Exit Facility bonds in a public offering, the City will prepare an Official Statement
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of

THE COMMONWEALTH OF PUERTO RICO, et al.,

Debtors.

PROMESA
Title III
No. 17 BK 3283-LTS
(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of

PUERTO RICO SALES TAX FINANCING
CORPORATION,

Debtor.

PROMESA
Title III
No. 17 BK 3284-LTS

DISCLOSURE STATEMENT FOR THE
SECOND AMENDED TITLE III PLAN OF ADJUSTMENT OF THE
DEBTS OF PUERTO RICO SALES TAX FINANCING CORPORATION

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Attorneys for the Financial Oversight and Management Board
as Representative for the Puerto Rico Sales Tax Financing Corporation in its Title III Case

Dated: November 26, 2018
constant yield method under the accrual rules for original issue discount. If interest accruals exceed the cash payments on the Taxable COFINA Bonds in any year, a U.S. Holder will have "phantom income" in that year, which may be substantial.

In the event of a sale or other taxable disposition of a COFINA Bond with accrued market discount, a U.S. Holder must recognize ordinary income (in lieu of capital gain) to the extent of accrued market discount, unless the U.S. Holder previously elected to include the market discount in income as it accrued in the event of a sale or other taxable disposition of a COFINA Bond. Recent legislation and IRS guidance may affect the timing of interest inclusion and market discount inclusions for accrual basis taxpayers that maintain financial statements in accordance with GAAP or any other financial reporting standard. See "Material United States Federal Income Tax Considerations—U.S. Holders—Tax Treatment of Allowed Claims—Holders of Senior Bond COFINA Claims (Class 1), Senior Bond COFINA Claims (Ambac) that do not elect to receive the Ambac Certificates (Class 2), Senior Bond COFINA Claims (National) that do not elect to receive the National Certificates (Class 3) and Junior COFINA Bond Claims (Class 5)—Taxation of COFINA Bond."

ALL HOLDERS SHOULD READ THE DISCUSSION OF THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP, AND DISPOSITION OF THE NEW BONDS THAT IS CONTAINED IN THIS DISCLOSURE STATEMENT UNDER THE HEADING "MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS."

XV. Material United States Federal Income Tax Considerations

A. General

A general description of certain material U.S. federal income tax consequences of the Plan of Adjustment to Holders of certain Claims is provided below. This description is based on the U.S. Internal Revenue Code of 1986, as amended (the "IRC"), regulations promulgated under the IRC (the "Treasury Regulations"), judicial decisions and administrative determinations, all as in effect on the date of this Disclosure Statement and all of which are subject to change, possibly with retroactive effect. Changes in any of these authorities or in their interpretation could cause some or all of the U.S. federal income tax consequences of the Plan of Adjustment to differ materially from the consequences described below.

The U.S. federal income tax consequences of the Plan of Adjustment are complex. As of the date of this Disclosure Statement, a private letter ruling has not been submitted to the Internal Revenue Service (the "IRS") and no written or other formal determination has been issued by the IRS; no opinion has been requested from the Debtor's counsel concerning any tax consequence of the Plan of Adjustment except as specifically set forth therein; and no tax opinion is given by this Disclosure Statement.

The description that follows does not cover all aspects of U.S. federal income taxation that may be relevant to Holders of Claims. For example, the description does not address issues of special concern to certain types of taxpayers (e.g., regulated investment companies, real estate investment trusts, banks and certain other financial institutions, insurance companies, tax-exempt
organizations, retirement plans, individual retirement and other tax-deferred accounts, Holders that are, or hold their Claims through, S corporations, partnerships or other pass-through entities for U.S. federal income tax purposes, persons whose functional currency for tax purposes is not the U.S. dollar, dealers in securities or foreign currency, traders that mark-to-market their securities, persons subject to the alternative minimum tax, individuals receiving Social Security or Railroad Retirement benefits, and persons whose claims are part of a straddle, hedging, constructive sale, or conversion transaction). In addition, the description does not address U.S. federal taxes other than income taxes, nor does it apply to any person that acquires COFINA Bonds in the secondary market. Furthermore, the description does not discuss state, territorial (including Puerto Rico), local or non-U.S. income or other tax consequences (including estate or gift tax consequences).

For these reasons, the description that follows is not a substitute for careful tax planning and professional tax advice based upon the individual circumstances of each Holder of a Claim. Holders of Claims are urged to consult with their own tax advisors regarding the federal, state, territorial (including Puerto Rico), local and non-U.S. tax consequences of the Plan of Adjustment.

The Puerto Rico tax consequences of the Plan of Adjustment to Holders that are bona fide residents of the Commonwealth, and others who may be subject to tax on a gross or net basis by the Commonwealth are not discussed in this section. Such Holders should review the section "Certain Material Puerto Rico Income Tax Considerations" below.

B. U.S. Holders

1. Definition of U.S. Holder

Unless otherwise noted, the discussion below applies only to U.S. Holders. As used herein, the term "U.S. Holder" means a beneficial owner of Existing Securities on the Effective Date of the Plan of Adjustment that is, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;

- a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the United States, any state thereof or the District of Columbia;

- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or

- a trust, if a court within the United States is able to exercise primary jurisdiction over its administration and one or more U.S. persons have authority to control all of its substantial decisions, or if the trust has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

If a partnership or other entity or arrangement taxable as a partnership for U.S. federal income tax purposes holds Existing Securities, the U.S. federal income tax treatment of a partner
in such partnership generally will depend upon the status of the partner and the activities of the partnership. Partners in such a partnership holding Existing Securities are urged to consult their tax advisors.

The term "U.S. Holder" does not include a Puerto Rico Individual or a Puerto Rico Corporation, each as defined below under "—Puerto Rico Individuals and Puerto Rico Corporations." Puerto Rico Individuals and Puerto Rico Corporations should review the discussion below as to U.S. federal income tax consequences of the Plan of Adjustment under "—Puerto Rico Individuals and Puerto Rico Corporations."

A U.S. Holder who holds Allowed Claims on more than one Class may have different U.S. federal income tax consequences for each Class of Allowed Claims. Holders should carefully review the sections of this discussion applicable to each Class of Allowed Claims such U.S. Holder holds, and U.S. Holders of more than one Class of Allowed Claims should consult their own tax advisors as to the potential interaction of the U.S. federal income tax consequences of each Class of Allowed Claims such U.S. Holder holds.

Certain U.S. Holders that use the accrual method of accounting for U.S. federal income tax purposes generally will be required to include certain amounts in income with respect to the Allowed Claims no later than the time that such amounts are reflected on certain financial statements of such U.S. Holders. Such U.S. Holders should consult their own tax advisors regarding the U.S. federal income tax consequences of the Plan of Adjustment in their individual circumstances.

2. Tax Treatment of Allowed Claims

(a) Holders of Senior COFINA Bond Claims (Class 1), Senior COFINA Bond Claims (Ambac) that do not elect to receive the Ambac Certificates (Class 2), Senior COFINA Bond Claims (National) that do not elect to receive the National Certificates (Class 3) and Junior COFINA Bond Claims (Class 5)

The Debtor expects that pursuant to the Plan of Adjustment, each U.S. Holder of any of the following: (i) Senior COFINA Bond Claims; (ii) Senior COFINA Bond Claims (Ambac) that do not elect to receive the Ambac Certificates; (iii) Senior COFINA Bond Claims (National) that do not elect to receive the National Certificates; and (iv) Junior COFINA Bond Claims will be treated as exchanging a portion of such U.S. Holder’s Existing Securities that are classified in these Classes of Claims for COFINA Bonds and exchanging the remaining portion of such U.S. Holder’s Existing Securities that are classified in these Classes of Claims for cash, in separate transactions for U.S. federal income tax purposes. The remainder of this discussion assumes this will be the case.

This discussion does not apply to U.S. Holders of Senior COFINA Bond Claims (Ambac) that elect to receive the Ambac Certificates or to U.S. Holders of Senior COFINA Bond Claims (National) that elect to receive the National Certificates. See below under "—Holders of Senior COFINA Bond Claims (Ambac) that elect to receive the Ambac Certificates, and Senior COFINA Bond Claims (National) that elect to receive the National Certificates" regarding the
U.S. federal income tax consequences of the Plan of Adjustment for such U.S. Holders.

i. Tax Treatment of Exchange

The tender of the allocable portion of the Existing Securities in exchange for the COFINA Bonds will be treated as an exchange of such allocable portion of the Existing Securities for the COFINA Bonds for U.S. federal income tax purposes.

Whether or not such exchange will be taxable for a U.S. Holder will depend in part on whether or not the exchange of a portion of the Existing Securities for the COFINA Bonds qualifies as a recapitalization for U.S. federal income tax purposes. The exchange of such portion of the Existing Securities for COFINA Bonds will constitute a recapitalization for U.S. federal income tax purposes only if (i) COFINA is classified as a corporation for U.S. federal income tax purposes and (ii) both the Existing Securities and the COFINA Bonds are treated as “securities” for purposes of the applicable IRC provisions. It is not clear whether COFINA would be classified as a corporation for U.S. federal income tax purposes. The Debtor believes that the Existing Securities and the COFINA Bonds are securities for U.S. federal income tax purposes. While the matter is not free from doubt, the Debtor intends to take the position that the exchange does not qualify as a recapitalization because neither COFINA nor Reorganized COFINA should be classified as a corporation for U.S. federal income tax purposes. However, no direct authority exists on this issue, and U.S. Holders should consult their own tax advisors regarding whether the exchange qualifies as a recapitalization for U.S. federal income tax purposes.

a. Tax Treatment if the Exchange is not Treated as a Recapitalization

If, consistent with the Debtor’s expectation, the exchange of a portion of the Existing Securities for the COFINA Bonds pursuant to the Plan of Adjustment does not qualify as a recapitalization, then the exchange will be considered a taxable exchange under Section 1001 of the IRC. In this case, a U.S. Holder will recognize gain or loss in an amount equal to (i) the “issue price” of the COFINA Bonds for U.S. federal income tax purposes (determined in the manner described below under “—Issue Price”), (ii) less the allocable portion of the U.S. Holder’s adjusted tax basis in the Existing Securities that were tendered therefor (such adjusted tax basis calculated as described below). Subject to the discussion under “—Market Discount,” any gain or loss that a U.S. Holder recognizes upon the exchange of the allocable portion of the Existing Securities for the COFINA Bonds pursuant to the exchange will generally be capital gain or loss and, if the U.S. Holder’s holding period of the Existing Securities surrendered is more than one year, long-term capital gain or loss.

If the exchange of the allocable portion of Existing Securities for COFINA Bonds is a taxable exchange, the holding period for the COFINA Bonds will begin the day after the exchange. A U.S. Holder’s tax basis in the COFINA Bonds received in the exchange will generally be equal to the “issue price” of the COFINA Bonds (determined in the manner described below under “—Issue Price”).

b. Tax Treatment if the Exchange is Treated as a Recapitalization
If contrary to the Debtor’s expectation, the IRS determines that the exchange of the allocable portion of the Existing Securities for the COFINA Bonds is treated as a recapitalization, then gain or loss generally would not be recognized for U.S. federal income tax purposes in connection with the U.S. Holder’s receipt of the COFINA Bonds.

A U.S. Holder will generally have an adjusted tax basis in an Existing Security (equal to the amount it paid for such Existing Security), plus any original issue discount (“OID,” described below) and market discount previously included in income in respect of such Existing Security and minus any payments on the Existing Securities other than a payment of qualified stated interest and any previously amortized bond premium on such Existing Security.

Further, if the exchange is treated as a recapitalization, a U.S. Holder’s aggregate tax basis in the COFINA Bonds received in the exchange will be equal to the allocable portion of such U.S. Holder’s tax basis in the Existing Securities exchanged therefor, plus the amount of any gain recognized by such U.S. Holder on the exchange, minus cash (other than cash received attributable to accrued but unpaid interest) and fair market value of other property received for the Existing Securities. The U.S. Holder’s holding period in the COFINA Bonds will include the holding period for the Existing Securities exchanged therefor.

c. Tax Treatment of Receipt of Cash

(1) Section 103 Cash, COFINA Cash Available for Distribution and Rounding Amount Cash

Each of Section 103 Cash, COFINA Cash Available for Distribution and Rounding Amount Cash is expected to be treated as a payment on the Existing Securities, other than cash received attributable to accrued but unpaid interest. The Plan of Adjustment provides that, to the extent applicable, all distributions to a holder of a Claim will apply first to the principal amount of such Claim until such principal amount is paid in full and then to any applicable accrued interest included in such Claim to the extent that interest is payable under the Plan of Adjustment. Legislative history of the Bankruptcy Tax Act of 1980 indicates that an allocation of consideration as between principal and interest provided in certain reorganizations under the United States Bankruptcy Code is binding for U.S. federal income tax purposes. The Treasury Regulations generally treat payments on indebtedness as allocated first to accrued but unpaid interest. However, the IRS has provided that in the case of an insolvent issuer, payments in liquidation of the debt (including tax-exempt bonds) are allocated first, to principal and then to accrued but unpaid interest. While the Debtor intends to report distributions to a U.S. Holder in accordance with the Plan of Adjustment, there can be no assurance that the IRS will respect those allocations with respect to Existing Securities. U.S. Holders should consult their tax advisors to determine the appropriate characterization of payments received.

A U.S. Holder will recognize gain or loss in an amount equal to (i) the cash received (other than cash received attributable to accrued but unpaid interest), (ii) less the allocable portion of the U.S. Holder’s adjusted tax basis in the Existing Securities that were tendered therefor (such adjusted tax basis calculated as described above). Subject to the discussion under “—Market Discount,” any gain or loss that a U.S. Holder recognizes upon the exchange of the allocable portion of Existing Securities for cash will generally be capital gain or loss and, if the
U.S. Holder’s holding period of the Existing Securities surrendered is more than one year, long-term capital gain or loss. Long-term capital gain is generally taxable at preferential rates to non-corporate U.S. Holders. The deductibility of capital losses is subject to limitations.

Subject to the discussion in the first paragraph of this Section, if any of the cash received is attributable to accrued but unpaid interest on the Existing Securities, the treatment of such cash paid to a U.S. Holder will depend on whether the accrued but unpaid interest on such U.S. Holder’s Claim is, or is not, tax-exempt for U.S. federal income tax purposes. In general, a U.S. Holder that was not previously required to include in taxable income any accrued but unpaid interest on a Claim that is not tax-exempt may be required to include such amount of cash received as interest income for U.S. federal income tax purposes upon receipt of a distribution with respect to such interest. A U.S. Holder that was previously required to include in taxable income any accrued but unpaid interest on a Claim that is not tax-exempt may be entitled to recognize a deductible loss to the extent that such interest is not satisfied under the Plan of Adjustment. However, a U.S. Holder that receives a distribution of accrued but unpaid interest on a Claim that is tax-exempt will not be required to include such amount as interest income for U.S. federal income tax purposes upon receipt of a distribution with respect to such interest. Although U.S. Holders generally will not be required to include the foregoing amounts in computing U.S. taxable income, U.S. Holders will likely have to report such amounts to the IRS.

For tax-exempt Existing Securities that are capital appreciation bonds, the accrual of the original issue discount is treated as tax exempt interest and, as such original interest discount accrued, the amount thereof would have increased the tax basis of a bondholder, thereby increasing a bondholder’s investment in the capital appreciation bond. Such increase in tax basis is generally considered an increase in the principal amount of the capital appreciation bond such that the principal amount is equal to the accreted value thereof from time to time. While there is no direct authority that concludes such accruals are treated as principal for purposes of applying the allocation rules between principal and interest described above for insolvent issuers, the treatment of such accruals as principal for general U.S. federal income tax purposes should also apply in this case.

U.S. Holders of Claims on which interest has accrued are urged to consult their own tax advisors regarding the tax treatment of distributions under the Plan of Adjustment and the deductibility of any accrued but unpaid interest for U.S. federal income tax purposes.

(2) Consummation Costs

The U.S. federal income tax treatment of the Consummation Costs is unclear. The Debtor intends to treat the receipt of the Consummation Costs in the same manner as the Section 103 Cash, COFINA Cash Available for Distribution and Rounding Amount Cash as discussed above under “—Section 103 Cash, COFINA Cash Available for Distribution and Rounding Amount Cash”. It is possible, however, that the Consummation Costs could instead be treated as a separate fee that would be reported as ordinary income, rather than an amount paid under the Existing Securities. U.S. Holders should consult their own tax advisors regarding the U.S. federal income tax treatment of the Consummation Costs.

(3) National Payment and Ambac Payment

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The holders of Senior COFINA Bond Claims (National) and Senior COFINA Bond Claims (Ambac) that do not validly elect to receive the National Certificates or Ambac Certificates, respectively, will each receive their pro rata portion of Senior COFINA Bond Distribution plus consideration from National or Ambac, as applicable. Generally, for U.S. federal income tax purposes, the IRS treats a bond insurance policy as both incidental and not a separate debt instrument or similar investment if, at the time it is purchased: (i) the amount paid to obtain it is reasonable; (ii) the purchase is customary; and (iii) it is consistent with the expectation that the issuer of the bonds, rather than the insurer, will pay debt service on the bonds. Additionally, the result is the same regardless of whether the holder acquired the bonds at original issuance or on the secondary market. Although the matter is not free from doubt, the Debtor believes that the Senior COFINA Bond Distribution received by U.S. Holders of Senior COFINA Bond Claims (National) and U.S. Holders of Senior COFINA Bond Claims (Ambac) pursuant to the Plan of Adjustment will be treated in the same manner as described above under “—Tax Treatment of Exchange; —Tax Treatment of Receipt of Cash—Section 103 Cash, COFINA Cash Available for Distribution and Rounding Amount Cash and—Consummation Costs.”

The consideration from National and Ambac may be treated as an additional payment of principal or interest, as applicable, under the Existing Securities. Furthermore, to the extent that the payments relate to a tax-exempt bond, any amounts received that relate to accrued but unpaid interest may not be subject to tax. The IRS has ruled in situations where the debtor is not in bankruptcy proceedings that interest paid by an insurance company on behalf of an issuer of tax-exempt obligations is excludable from gross income of the holders of such obligations. The Debtor intends to report the consideration from National and Ambac in a manner consistent with such rulings.

U.S. Holders of Senior COFINA Bond Claims (National) and U.S. Holders of Senior COFINA Bond Claims (Ambac) should consult their own tax advisors regarding the tax treatment of payments received under the Plan of Adjustment.

d. Market Discount

If a U.S. Holder acquired the Existing Securities for less than the “adjusted issue price” of the Existing Securities and the difference between the U.S. Holder’s cost and the “adjusted issue price” exceeded a de minimis threshold (equal to 0.25 percent of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining complete years to maturity), such difference will generally be treated as “market discount.”

If the exchange of the Existing Securities for the COFINA Bonds does not qualify as a recapitalization, any gain recognized on the exchange should be treated as ordinary income to the extent of any accrued market discount not previously included in ordinary income with respect to the Existing Securities.

If the exchange of the Existing Securities for the COFINA Bonds qualifies as a recapitalization, any accrued market discount not previously included in ordinary income with respect to the Existing Securities should generally carry over to the COFINA Bonds and not be
recognized on the exchange.

However, to the extent gain is recognized pursuant to the exchange of Existing Securities for COFINA Bonds, including in the case of a recapitalization (as a result of the receipt of cash), a U.S. Holder must include as ordinary income any gain that would have otherwise been treated as capital gain to the extent of the accrued market discount on the Existing Securities, unless the U.S. Holder previously elected to include the market discount in income as it accrued. See below “—Taxation of COFINA Bonds—Sale, Retirement or Other Disposition of COFINA Bonds” for a further discussion regarding the election to include market discount in income as it accrues.

Holders should consult their own tax advisors regarding the tax treatment of market discount pursuant to the exchange including the interaction of the market discount, OID and acquisition premium rules.

ii. Taxation of COFINA Bonds

The COFINA Bonds will be issued as either bonds the interest on which is excluded from gross income for U.S. federal income tax purposes (the “Tax-Exempt COFINA Bonds”) or bonds the interest on which is not excluded from gross income for U.S. federal income tax purposes (the “Taxable COFINA Bonds”). While the Commonwealth expects that, under existing law as of the date of this Disclosure Statement, interest on at least a portion of the COFINA Bonds will be excluded from gross income for U.S. federal income tax purposes, the tax status of the COFINA Bonds cannot be determined as of the date of this Disclosure Statement. The Commonwealth expects to cause an opinion of nationally recognized bond counsel (“Bond Counsel”) addressing the tax status of the COFINA Bonds to be delivered with the COFINA Bonds on the Effective Date. Recipients of the COFINA Bonds should refer to such opinion for more information on the tax status of the COFINA Bonds.

a. Issue Price

The Debtor expects that the issue price of the COFINA Bonds should equal the fair market value of the COFINA Bonds on the date of the exchange. This determination is based on the Debtor’s conclusion that both the Existing Securities and the COFINA Bonds should be treated as “publicly traded” within the meaning of the applicable Treasury Regulations. The fair market value of the COFINA Bonds will be determined by the “trading price” on the date of the exchange. There is no specific guidance on how to determine the trading price as of a specific time; however, related regulations suggest that a taxpayer may use any consistently applied, reasonable method to determine fair market value when there is more than one sales price or quoted price. The Debtor’s determination that the Existing Securities and the COFINA Bonds are “publicly traded” will be binding on all Holders, unless a Holder discloses its contrary position in the manner required by applicable Treasury Regulations. The rules regarding the determination of “issue price” are complex and highly detailed, and U.S. Holders should consult their own tax advisors regarding the determination of the “issue price” of the COFINA Bonds for U.S. federal income tax purposes.

b. Interest Including OID

The U.S. federal income tax rules used to determine what amounts are treated as interest
are complex. U.S. Holders are urged to consult their own tax advisors regarding what amounts will be treated as interest for U.S. federal income tax purposes in their individual circumstances.

(1) Tax-Exempt COFINA Bonds

The IRC imposes certain requirements that must be met subsequent to the issuance and delivery of the Tax-Exempt COFINA Bonds for interest thereon to be and remain excluded from gross income for U.S. federal income tax purposes pursuant to Section 103 of the IRC. Noncompliance with such requirements could cause the interest on the Tax-Exempt COFINA Bonds to be included in gross income for U.S. federal income tax purposes retroactive to the date of issue of the Tax-Exempt COFINA Bonds. When the Tax-Exempt COFINA Bonds are issued on the Effective Date, the Commonwealth and COFINA will covenant to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the Tax-Exempt COFINA Bonds from gross income for U.S. federal income tax purposes pursuant to Section 103 of the Code. In addition, the Commonwealth and COFINA will have made certain representations and certifications relating to the Tax-Exempt COFINA Bonds. Bond Counsel will not independently verify the accuracy of those representations and certifications.

On the Effective Date, Bond Counsel is expected to deliver an opinion that, under then-existing law and assuming compliance with the aforementioned covenants, and the accuracy of the representations and certifications made by the Commonwealth, COFINA, and Reorganized COFINA, amounts treated as interest for U.S. federal income tax purposes on the Tax-Exempt COFINA Bonds will be excluded from gross income for U.S. federal income tax purposes under Section 103 of the Code. Bond Counsel is also expected to opine that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the IRC. Amounts allocable to pre-issuance accrued interest on the Tax-Exempt COFINA Bonds will not be treated as tax-exempt interest.

(2) Taxable COFINA Bonds

If interest on the COFINA Bonds (or a portion of them) is not treated as exempt from gross income for U.S. federal income tax purposes, then payments or accruals of "qualified stated interest" (as defined below) on the COFINA Bonds (or the relevant portion of them) will be taxable to such U.S. Holder as ordinary interest income at the time received or accrued, in accordance with such U.S. Holder’s regular method of accounting for U.S. federal income tax purposes. The term "qualified stated interest" generally means stated interest that is unconditionally payable in cash or property (other than debt instruments of the issuer) at least annually during the entire term of the debt instrument at a single fixed rate of interest, or, subject to certain conditions, based on one or more interest indices. Stated interest payments on the COFINA Bonds is expected to be qualified stated interest.

(3) OID

The amount of OID on the COFINA Bonds, if any, will be equal to the excess of the sum of all principal and stated interest payments (other than qualified stated interest) provided by the COFINA Bonds (initially taking into account the payment schedule as described below) over the "issue price" (determined in the manner described above under "—Issue Price") of the COFINA

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Bonds. Furthermore, the taxable COFINA Bonds would bear OID only if the issue price of a COFINA Bond is less than its principal amount by more than a de minimis amount. OID will be considered de minimis if it is less than 0.25% of the stated redemption price at maturity multiplied by the number of remaining complete years to maturity of the COFINA Bonds. U.S. Holders, whether on the cash or accrual method of accounting for U.S. federal income tax purposes, must include the OID in gross income (as ordinary income) as it accrues (on a constant yield to maturity basis), regardless of whether cash attributable to such OID is received at such time. However, the COFINA Bonds may be subject to the acquisition premium rules (described below under “—Acquisition Premium”), which could reduce the amount of OID includible in gross income.

For taxable COFINA Bonds, the amount of OID includible in gross income by a U.S. Holder in any taxable year generally is the sum of the “daily portions” of OID with respect to a COFINA Bond for each day during such taxable year or portion of such taxable year on which the U.S. Holder holds the COFINA Bond. The daily portion is determined by allocating to each day in any “accrual period” a pro rata portion of the OID allocable to that accrual period. The “accrual period” for a COFINA Bond may be of any length and may vary in length over the term of the COFINA Bond, provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs on the first day or the final day of an accrual period. The amount of OID allocable to any accrual period, subject to the possible adjustments described below, will be an amount equal to the product of the COFINA Bond’s “adjusted issue price” at the beginning of the accrual period and its yield to maturity (less payments of qualified stated interest allocable to that period). The “yield to maturity” of the COFINA Bonds is the discount rate that, when used in computing the present value (as of the issue date) of all principal and interest payments to be made on the COFINA Bonds, produces an amount equal to the “issue price” of the COFINA Bonds. The amount of OID allocable to the final accrual period is the difference between the amount payable at maturity (other than a payment of qualified stated interest) and the “adjusted issue price” at the beginning of the final accrual period. The “adjusted issue price” of a COFINA Bond at the beginning of any accrual period is equal to its “issue price,” increased by the accrued OID for each prior accrual period and reduced by any payments made on the COFINA Bond during the prior accrual periods (other than payments of qualified stated interest).

For Tax-Exempt COFINA Bonds, the amount of OID is excluded from gross income for U.S. federal income tax purposes to the same extent as interest on the Tax-Exempt COFINA Bonds. The OID accruals are computed in the same manner as described above for Taxable COFINA Bonds, but such accruals will be added to the Holder’s tax basis for the Tax-Exempt COFINA Bonds. The accrual of OID may be taken into account as an increase in the amount of tax-exempt income for purposes of determining various other tax consequences of owning the Tax-Exempt COFINA Bonds, even though there will not be a corresponding cash payment. Owners of the Tax-Exempt COFINA Bonds with OID are advised that they should consult with their own advisors with respect to the tax consequences of owning such Tax-Exempt COFINA Bonds.

This disclosure assumes that the COFINA Bonds will not be considered contingent payment debt instruments.
The rules regarding OID are complex and the rules described above may not apply in all cases. If other rules apply instead, U.S. Holders receiving the COFINA Bonds could be treated differently than described above. U.S. Holders receiving the COFINA Bonds should consult their own tax advisors regarding the potential application of the OID and related U.S. federal income tax rules to the COFINA Bonds.

c. Acquisition Premium

A COFINA Bond would be treated as acquired at an acquisition premium if the U.S. Holder’s initial basis in a COFINA Bond is (a) less than or equal to the sum of all amounts payable on the COFINA Bond (other than payments of qualified stated interest) and (b) greater than the COFINA Bond’s “adjusted issue price.”

If a taxable COFINA Bond was acquired with acquisition premium, generally a U.S. Holder would reduce the amount of OID that otherwise would be included in income for each accrual period by an amount equal to (i) the amount of OID otherwise includible in income multiplied by (ii) a fraction, the numerator of which is the excess of the adjusted tax basis of the COFINA Bond immediately after its acquisition by the U.S. Holder over the “adjusted issue price” of the COFINA Bond and the denominator of which is the excess of the sum of all amounts payable on the COFINA Bond after the purchase date, other than payments of qualified stated interest, over the COFINA Bond’s “adjusted issue price.” If a Tax-Exempt Bond were acquired with acquisition premium, a U.S. Holder will reduce the COFINA Bond’s tax basis during each accrual period using the same method described above for a taxable COFINA Bond.

As an alternative to reducing the amount of OID that otherwise would be included in income during an accrual period or reducing the tax basis of the COFINA Bond in the case of a Tax-Exempt Bond, the U.S. Holder may elect to compute OID accruals by applying the constant yield method described above. U.S. Holders who acquire COFINA Bonds with acquisition premium should consult their own tax advisors as to the consequences of such an election in their individual circumstances.

d. Sale, Retirement or Other Disposition of COFINA Bonds

A U.S. Holder will generally recognize taxable gain or loss on the sale, exchange, retirement (including redemption) or other taxable disposition of a COFINA Bond equal to the difference, if any, between (i) the amount realized upon such disposition (other than cash received attributable to accrued but unpaid interest) and (ii) the adjusted tax basis of the COFINA Bond. A U.S. Holder’s adjusted tax basis in a COFINA Bond will generally equal such U.S. Holder’s tax basis on such COFINA Bond on the date the U.S. Holder acquired such COFINA Bond, increased by any OID previously accrued by the U.S. Holder, and decreased by the amount of any cash payments (other than payments of qualified stated interest) previously received on the COFINA Bond by the U.S. Holder. U.S. Holders should consult with their own tax advisors as to the tax basis of their COFINA Bonds on the date of acquisition.

Subject to the discussion of market discount below, any gain or loss that a U.S. Holder recognizes upon the sale or other taxable disposition of a COFINA Bond should generally
constitute capital gain or loss and will be long-term capital gain or loss if such Holder’s holding period in the COFINA Bond is greater than one year. A U.S. Holder’s holding period in COFINA Bonds received pursuant to the exchange will begin the day after the exchange, if the exchange is not treated as a recapitalization. If the exchange is treated a recapitalization, a U.S. Holder’s holding period in COFINA Bonds received pursuant to the exchange will include the holding period of the Existing Securities exchanged therefor. Long-term capital gain is generally taxable at preferential rates to non-corporate U.S. Holders. The deductibility of capital losses is subject to limitations. U.S. Holders should consult their own tax advisors as to the possibility of market discount carrying over to the COFINA Bonds in case, contrary to the Debtor’s expectation, the IRS rules that the exchange of the Existing Securities for the COFINA Bonds is a recapitalization. Upon a taxable disposition of the COFINA Bonds, a U.S. Holder must recognize ordinary income (in lieu of capital gain) to the extent of accrued market discount, unless the U.S. Holder previously elected to include the market discount in income as it accrued. A U.S. Holder can elect to include market discount in income as it accrues, in which case such income would be treated as ordinary interest income at the time it is recognized and the U.S. Holder would increase its basis in the COFINA Bond by the amount of the market discount recognized. Such election is made by including market discount in income on a timely filed U.S. federal income tax return and attaching a statement to the return providing that such election has been made.

If such election is made, the election applies to all market discount bonds acquired by the U.S. Holder during the year for which the election is made and all subsequent years.

(b) **Holders of Senior COFINA Bond Claims (Ambac) that elect to receive the Ambac Certificates (Class 2), and Senior COFINA Bond Claims (National) that elect to receive the National Certificates (Class 3)**

This section only addresses U.S. Holders that elect to receive the Ambac Certificates or the National Certificates, as applicable. See below under “—Tax Treatment of Exchange if National Exercises the National Election” for the U.S. federal income tax consequences to U.S. Holders if National exercises the National Election.

i. **National Trust**

a. **Tax Characterization of the Trust**

The National Trust is expected to be treated as a grantor trust for U.S. federal income tax purposes. To the extent the National Trust is treated as a grantor trust, each National Certificate Holder will be treated as receiving their respective certificate in exchange of their Allowed Claims, and as owning its pro rata undivided interest in the National Trust Assets, each to the extent of its pro rata interest in the National Certificates. U.S. Holders should consult their own tax advisors regarding the U.S. federal income tax treatment of the National Trust.

To the extent National Certificate Holders are treated as owning their pro rata share of the National Trust Assets under a grantor trust, they will be treated as if they had received distributions under the Plan of Adjustment directly and as owners of their pro-rated portion of the COFINA Bonds. Interest on a portion of such COFINA Bonds is expected to be excluded...
from gross income for U.S. federal income tax purposes (such interest, the "National Trust Tax-Exempt Interest"). Orrick Herrington & Sutcliffe, LLP expects to deliver an opinion, on the Effective Date, that, under then current law, the National Trust Tax-Exempt Interest received by the National Trust, and passed through and paid to the National Certificate Holders will be excluded from gross income for federal incomes tax purposes to the same extent as if the COFINA Bonds were directly held by the National Certificate Holders. Such opinion is subject to the final documentation governing the National Trust. The opinion of Orrick Herrington & Sutcliffe, LLP is not binding on the IRS or the courts. No opinion is expected to be delivered by Orrick Herrington & Sutcliffe, LLP or any other counsel on payments made to the National Trust, and passed through to the National Certificate Holders, that do not derive from the COFINA Bonds.

It is possible that the IRS may assert that the National Trust is properly characterized in a manner other than as a grantor trust for U.S. federal income tax purposes. Such alternative characterization could result in different (and possibly adverse) tax consequences to the National Trust and the National Certificate Holders. All National Certificate Holders are urged to consult their own tax advisors regarding the tax consequences in case the National Trust is not classified as a grantor trust for U.S. federal income tax purposes.

b. Taxation of Ownership and Sale or Disposition of the National Certificates

To the extent that each National Certificate Holder is treated as owning its pro rata share of the applicable outstanding National Insured Bonds and related insurance policy, it will be entitled to payments from the underlying insurance policy. The U.S. federal income tax treatment of payments from the underlying insurance policy after the Effective Date is uncertain and National Certificate Holders are urged to consult their own tax advisors regarding the U.S. federal income tax treatment of such insurance payments. To the extent that each National Certificate Holder is treated as owning its pro rata share of the COFINA Bonds, see "—Holders of Senior COFINA Bond Claims (Class 1), Senior COFINA Bond Claims (Ambac) that do not elect to receive the Ambac Certificates (Class 2), Senior COFINA Bond Claims (National) that do not elect to receive the National Certificates (Class 3) and Junior COFINA Bond Claims (Class 5)—Taxation of COFINA Bonds" above for a discussion of the U.S. federal income tax consequences of owning the COFINA Bonds.

To the extent that each National Certificate Holder is treated as receiving its pro rata share of the Senior COFINA Bond Distribution in respect of Senior COFINA Bond Claims (National) including the Consummation Cost, see above "—Holders of Senior COFINA Bond Claims (Class 1), Senior COFINA Bond Claims (Ambac) that do not elect to receive the Ambac Certificates (Class 2), Senior COFINA Bond Claims (National) that do not elect to receive the National Certificates (Class 3) and Junior COFINA Bond Claims (Class 5)—Tax Treatment of Exchange" for the U.S. federal income tax consequences of receiving such distribution.

Certain aspects of the U.S. federal income tax treatment of owning and disposing of a National Certificate are uncertain. U.S. Holders should consult their tax advisors regarding the ownership, sale and disposition of the National Certificates in their individual circumstances.
c. Tax Treatment of Exchange if National Exercises the National Election

If National exercises the National Election, U.S. Holders of Senior COFINA Bond Claims (National) will receive cash consideration in an amount equal to one hundred percent (100%) of the Compounded Amount (as defined in the Bond Resolution) of the National Insured Bonds. As discussed above in “—Holders of Senior COFINA Bond Claims (Class 1), Senior COFINA Bond Claims (Ambac) that do not elect to receive the Ambac Certificates (Class 2), Senior COFINA Bond Claims (National) that do not elect to receive the National Certificates (Class 3) and Junior COFINA Bond Claims (Class 5)—Tax Treatment of Exchange—Tax Treatment of Receipt of Cash,” generally, a U.S. Holder that was not previously required to include in taxable income any accrued but unpaid interest on a Bond Claim that is not tax-exempt may be required to include such amount as interest income for U.S. federal income tax purposes. Otherwise, the remainder portion of such cash consideration is expected to be treated as a payment under the Existing Securities. A U.S. Holder would recognize gain or loss in an amount equal to the difference between (i) the cash received, and (ii) the U.S. Holder’s adjusted tax basis in the Senior COFINA Bond Claims (National).

ii. Ambac Trust

a. Tax Characterization of the Trust

Although it is not free from doubt, the Ambac Trust is expected by Ambac to be treated as a partnership for U.S. federal income tax purposes. To the extent the Ambac Trust is treated as a partnership, it should not be subject to any entity level U.S. federal income tax. Each holder of an Ambac Certificate will be treated as receiving their respective certificate in exchange of their Allowed Claims, and as owning an interest in the Ambac Trust. Certain restrictions and limitations may be placed on the ownership or transferability of the Ambac Certificates if a determination is made that such provisions are necessary or desirable to prevent the Ambac Trust from being treated as a publicly traded partnership taxable as a corporation.

U.S. Holders should consult with their own tax advisors regarding the U.S. federal income tax treatment of the Ambac Trust.

b. Taxation of Sale or Other Disposition of Tax-Exempt COFINA Bonds

To the extent that Tax-Exempt COFINA Bonds are sold at a gain, such gain shall be distributed to each Ambac Certificate Holder but will be subject to U.S. federal income taxation to the extent not offset by any consequent losses.

(c) Junior COFINA Bond Claims (Assured) (Class 6)

U.S. Holders of Junior COFINA Bond Claims (Assured) will receive one hundred percent (100%) of the Junior COFINA Bond Claims (Assured) at an acceleration price of par plus accrued interest or Compounded Amount. Generally, the U.S. federal income tax
consequences to the U.S. Holders of Junior COFINA Bond Claims (Assured) would be as described above under "—Tax Treatment of Exchange if National Exercises the National Election." U.S. Holders of Junior COFINA Bond Claims (Assured) should consult their tax advisors regarding the tax consequences of the Plan of Adjustment in their individual circumstances.

(d) **Holders of Senior COFINA Bond Claims (Taxable Election) (Class 4) and Junior COFINA Bond Claims (Taxable Election) (Class 7)**

The exchange of the Existing Securities for the COFINA Bonds and the distribution of Rounding Amount Cash by U.S. Holders of Senior COFINA Bond Claims (Taxable Election) and Junior COFINA Bond Claims (Taxable Election) generally will be treated as described above under "—Holders of Senior COFINA Bond Claims (Class 1), Senior COFINA Bond Claims (Ambac) that do not elect to receive the Ambac Certificates (Class 2), Senior COFINA Bond Claims (National) that do not elect to receive the National Certificates (Class 3) and Junior COFINA Bond Claims (Class 5)—Tax Treatment of Exchange; —Tax Treatment of Receipt of Cash—Section 103 Cash, COFINA Cash Available for Distribution and Rounding Amount Cash and—Consummation Costs." Although, not free from doubt, the Debtor expects that the Taxable Bond Election Amount generally shall be treated similarly to the description above of Consumption Costs under "—Holders of Senior COFINA Bond Claims (Class 1), Senior COFINA Bond Claims (Ambac) that do not elect to receive the Ambac Certificates (Class 2), Senior COFINA Bond Claims (National) that do not elect to receive the National Certificates (Class 3) and Junior COFINA Bond Claims (Class 5)—Tax Treatment of Receipt of Cash—Section 103 Cash, COFINA Cash Available for Distribution and Rounding Amount Cash and—Consummation Costs."

U.S. Holders of Senior COFINA Bond Claims and Junior COFINA Bond Claims that are eligible to make the election described above should consult their own tax advisors regarding the U.S. federal income tax consequences of making such election. As described above, the term "U.S. Holders" as defined herein does not include Puerto Rico Individuals and Puerto Rico Corporations, each as defined below under "—Puerto Rico Individuals and Puerto Rico Corporations." Puerto Rico Individuals and Puerto Rico Corporations should see the discussion below under "—Puerto Rico Individuals and Puerto Rico Corporations.

(e) **Holders of GS Derivative Claims (Class 8)**

The tax treatment of derivatives is complex. U.S. Holders of GS Derivative Claims should refer to the underlying offering document and agreement and consult their tax advisors regarding the tax treatment of their derivatives including the consequences of the termination of their contracts.

(f) **Holders of General Unsecured Claims (Class 9)**

In the event that a U.S. Holder of General Unsecured Claims votes to accept the Plan of Adjustment and receives its pro rata share of One Hundred Thousand Dollars ($100,000.00), it would recognize gain or loss in an amount equal to the difference between (a) the amount of such cash, and (b) the U.S. Holder's adjusted tax basis in such General Unsecured Claims.
3. **Bad Debt and/or Worthless Securities Deduction**

A U.S. Holder who, under the Plan of Adjustment, receives in respect of an Allowed Claim an amount less than the U.S. Holder’s tax basis in the Allowed Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction or a worthless securities deduction. The rules governing the character, timing and amount of bad debt or worthless securities deductions place considerable emphasis on the facts and circumstances of the U.S. Holder, the obligor and the instrument with respect to which a deduction is claimed. U.S. Holders of Allowed Claims should consult their tax advisors with respect to their ability to take such a deduction.

4. **Medicare Surtax**

A U.S. Holder of Taxable COFINA Bonds that is an individual, estate or trust that does not fall into a special class of trusts that is exempt from such tax, is subject to a 3.8% Medicare surtax on the lesser of (1) the U.S. Holder’s “net investment income” (or “undistributed net investment income” in the case of an estate or trust) for the relevant taxable year, which includes, among other items, interest (including original issue discount) on debt, and capital gains from the sale or other taxable disposition of debt, and (2) the excess of the U.S. Holder’s modified adjusted gross income (or adjusted gross income in the case of an estate or trust) for the taxable year over a certain threshold (which in the case of individuals is between $125,000 and $250,000, depending on the individual’s circumstances). A U.S. Holder that is an individual, estate or trust should consult its own tax advisors regarding the applicability of the Medicare surtax to its income and gains in respect of its exchanges and their ownership of the COFINA Bonds.

5. **Information Reporting and Backup Withholding**

Information reporting will generally apply to (i) payments in respect of the exchange, (ii) payments of principal and interest and OID, if any, on the COFINA Bonds, and (iii) payments of proceeds of the sale or other disposition of the COFINA Bonds.

Additionally, backup withholding may apply to any payments if such U.S. Holder (a) fails to provide an accurate taxpayer identification number, (b) furnishes an incorrect taxpayer identification number, (c) is notified by the IRS that it has failed to report all interest and dividends required to be shown on its U.S. federal income tax returns, or (d) fails to certify under penalties of perjury that the U.S. Holder has furnished a correct taxpayer identification number and that the IRS has not notified the U.S. Holder that the U.S. Holder is subject to backup withholding. The application for exemption is available by providing a properly completed IRS Form W-9 (or suitable substitute).

Backup withholding is not an additional tax. A U.S. Holder generally may obtain a refund of any amounts withheld under the backup withholding rules that exceed its U.S. federal income tax liability by timely filing a refund claim with the IRS.

Certain U.S. Holders are not subject to information reporting and backup withholding, in some cases provided they properly identify themselves as exempt. U.S. Holders should consult their own tax advisors regarding their qualification for an exemption from backup withholding.
and the procedures for obtaining such an exemption.

C. Puerto Rico Individuals and Puerto Rico Corporations

1. Definition of Puerto Rico Individuals and Puerto Rico Corporations

As used herein, the term "Puerto Rico Individual" means a beneficial owner of a Bond Claim or COFINA Bond that is an individual and a bona fide resident of the Commonwealth within the meaning of Section 937 of the IRC and the Treasury Regulations for the entire taxable year that includes the Effective Date. As used herein, the term "Puerto Rico Corporation" means a beneficial owner of a Bond Claim or COFINA Bond that is a corporation organized under the laws of the Commonwealth.

The following discussion includes only certain U.S. federal income tax consequences of the Plan of Adjustment to Puerto Rico Individuals and Puerto Rico Corporations. The discussion does not include any non-U.S. (including Puerto Rico) tax considerations. A Puerto Rico Individual or a Puerto Rico Corporation should review the section "Certain Material Puerto Rico Income Tax Considerations" below for the Puerto Rico tax consequences of the Plan of Adjustment.

The rules governing the U.S. federal income tax consequences to Puerto Rico Individuals and Puerto Rico Corporations are complex. Puerto Rico Individuals and Puerto Rico Corporations should consult their own tax advisors regarding the U.S. federal, state and local and the foreign tax consequences of the consummation of the Plan of Adjustment in their own circumstances.

2. Tax Treatment of Exchange

A Puerto Rico Individual generally would not be subject to U.S. federal income tax with respect to any gain realized on the exchange of an Allowed Claim pursuant to the Plan of Adjustment. A Puerto Rico Corporation generally would not be subject to U.S. federal income tax with respect to any gain realized on the exchange of an Allowed Claim pursuant to the Plan of Adjustment, unless such gain is effectively connected with such Puerto Rico Corporation's conduct of a trade or business in the United States, in which case the gain will be subject to tax in the same manner as effectively connected income as described below under "—Sale, Retirement or Other Disposition of COFINA Bonds."

3. Taxation of COFINA Bonds

(a) Treatment of Interest

Payments of interest on a COFINA Bond (including OID) to a Puerto Rico Individual or a Puerto Rico Corporation, generally, would not be subject to U.S. federal income tax unless, in the case of a Puerto Rico Corporation, the Puerto Rico Corporation is deemed to be engaged in a trade or business in the United States and such income is effectively connected with the conduct of a trade or business within the United States.

If a Puerto Rico Corporation is treated as engaged in a trade or business in the United

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States and interest (including OID) on the Taxable Bonds is "effectively connected" with the conduct of that trade or business, then the Puerto Rico Corporation would be subject to U.S. federal income tax on that interest (including OID) on a net income basis generally in the same manner as if it were a U.S. Holder. In addition, a Puerto Rico Corporation may be subject to a branch profits tax with respect to such effectively connected income.

(b) Sale, Retirement or Other Disposition of COFINA Bonds

Gain realized upon a sale, retirement or other disposition of a COFINA Bond by a Puerto Rico Individual or a Puerto Rico Corporation generally would not be subject to U.S. federal income tax unless, in the case of a Puerto Rico Corporation, the Puerto Rico Corporation is deemed to be engaged in a trade or business in the United States and such income is effectively connected with the conduct of a trade or business within the United States.

If a Puerto Rico Corporation is treated as engaged in a trade or business in the United States and gain realized upon a sale, retirement or other disposition of a COFINA Bond by the Puerto Rico Corporation is "effectively connected" with the conduct of that trade or business, then the Puerto Rico Corporation would be subject to U.S. federal income tax on that gain on a net income basis generally in the same manner as if it were a U.S. Holder. In addition, a Puerto Rico Corporation may be subject to a branch profits tax with respect to such effectively connected income.

The tax consequences of the Plan of Adjustment to Puerto Rico Individuals and Puerto Rico Corporations are uncertain. Puerto Rico Individuals and Puerto Rico Corporations should consult their tax advisors regarding the particular tax consequences to them of the transactions contemplated by the Plan of Adjustment.

4. Information Reporting and Backup Withholding

Information reporting will generally apply to (i) payments in respect of the exchange, (ii) payments of principal and interest and OID, if any, on the COFINA Bonds, and (iii) payments of proceeds of the sale or other disposition of the COFINA Bonds.

In general, a Puerto Rico Individual will not be subject to backup withholding with respect to any payments on the COFINA Bonds if it provides a validly completed IRS Form W-9 (or suitable substitute) unless such Puerto Rico Individual (a) fails to provide an accurate taxpayer identification number, (b) furnishes an incorrect taxpayer identification number, (c) is notified by the IRS that it has failed to report all interest and dividends required to be shown on its U.S. federal income tax returns, or (d) fails to certify under penalties of perjury that the U.S. Holder has furnished a correct taxpayer identification number and that the IRS has not notified the U.S. Holder that the U.S. Holder is subject to backup withholding.

A Puerto Rico Corporation, generally, will not be subject to backup withholding with respect to payments in respect of the exchange or payments of principal and interest and OID, if any, on the COFINA Bonds, provided that the Puerto Rico Corporation has provided a validly completed IRS Form W-8BEN-E (or other applicable form) establishing that it is not a U.S. person as defined in the IRC (or it satisfies certain documentary evidence requirements for establishing that it is not a U.S. person). Information reporting and, depending on the
circumstances, backup withholding will apply to payments of proceeds of the sale or other disposition of the COFINA Bonds made within the United States or conducted through certain United States-related financial intermediaries, unless the Puerto Rico Corporation certifies to the payor under penalties of perjury that it is not a U.S. person (and the payor does not have actual knowledge or reason to know that such Puerto Rico Corporation is a U.S. person), or otherwise establishes an exemption.

Backup withholding is not an additional tax. A Puerto Rico Individual or Puerto Rico Corporation, as applicable, generally may obtain a refund of any amounts withheld under the backup withholding rules that exceed its U.S. federal income tax liability by timely filing a refund claim with the IRS.

Certain Puerto Rico Individuals and Puerto Rico Corporations are not subject to information reporting and backup withholding in some cases provided they properly identify themselves as exempt. Puerto Rico Individuals and Puerto Rico Corporations should consult their own tax advisors regarding their qualification for an exemption from backup withholding and the procedures for obtaining such an exemption.

D. Non-U.S. Holders

1. Definition of Non-U.S. Holders

Unless otherwise noted, the discussion below applies only to Non-U.S. Holders. As used herein, the term "Non-U.S. Holder" means a beneficial owner of Existing Securities that is not (i) a U.S. Holder, (ii) a partnership or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes or (iii) an individual that is a bona fide resident of Puerto Rico for all or part of the taxable year that includes the Effective Date.

The following discussion includes only certain U.S. federal income tax consequences of the Plan of Adjustment to Non-U.S. Holders. The discussion does not include any non-U.S. tax considerations. The rules governing the U.S. federal income tax consequences to Non-U.S. Holders are complex. Non-U.S. Holders should consult their own tax advisors regarding the U.S. federal, state and local and the foreign tax consequences of the consummation of the Plan of Adjustment in their individual circumstances.

2. Tax Treatment of Exchange

A Non-U.S. Holder generally would not be subject to U.S. federal income tax with respect to any gain realized on the exchange of an Allowed Claim pursuant to the Plan of Adjustment, unless (i) such gain is effectively connected with such Non-U.S. Holder's conduct of a trade or business in the United States (and, if an income tax treaty applies, such gain is attributable to a permanent establishment or fixed base maintained by such Non-U.S. Holder in the United States), in which case the gain will be subject to tax in the same manner as effectively connected income as described below under "—Sale, Retirement or Other Disposition of COFINA Bonds;" or (ii) such Non-U.S. Holder is a nonresident alien individual who holds the COFINA Bonds as a capital asset and is present in the United States for 183 days or more in the taxable year of the exchange and such gain is derived from sources within the United States.
3. **Taxation of COFINA Bonds**

(a) **Treatment of Interest**

Payments of interest on a COFINA Bond (including OID) to a Non-U.S. Holder, which will be foreign source income for U.S. federal income tax purposes, generally would not be subject to U.S. federal income tax so long as the Non-U.S. Holder is not deemed to be engaged in a trade or business in the United States and such income is not effectively connected with the conduct of a trade or business within the United States.

If a Non-U.S. Holder is treated as engaged in a trade or business in the United States and interest (including OID) on the Taxable COFINA Bonds is "effectively connected" with the conduct of that trade or business, then the Non-U.S. Holder will be subject to U.S. federal income tax on that interest (including OID) on a net income basis generally in the same manner as if it were a U.S. Holder unless an applicable income tax treaty provides otherwise. In addition, if the Non-U.S. Holder is a corporation, it may be subject to a branch profits tax with respect to such effectively connected income unless an applicable income tax treaty applies to reduce such rate.

(b) **Sale, Retirement or Other Disposition of COFINA Bonds**

Gain realized upon a sale, retirement or other disposition of a COFINA Bond by a Non-U.S. Holder generally would not be subject to U.S. federal income tax so long as the Non-U.S. Holder is not deemed to be engaged in a trade or business in the United States and such gain is not effectively connected with the conduct of a trade or business within the United States.

If a Non-U.S. Holder is treated as engaged in a trade or business in the United States and gain realized upon a sale, retirement or other disposition of a COFINA Bond by the Non-U.S. Holder is "effectively connected" with the conduct of that trade or business, then the Non-U.S. Holder will be subject to U.S. federal income tax on that gain on a net income basis generally in the same manner as if it were a U.S. Holder unless an applicable income tax treaty provides otherwise. In addition, if the Non-U.S. Holder is a corporation, it may be subject to a branch profits tax with respect to such effectively connected income unless an applicable income tax treaty applies to reduce such rate.

The tax consequences of the Plan of Adjustment to the Non-U.S. Holders are uncertain. Non-U.S. Holders should consult their tax advisors regarding the particular tax consequences to them of the transactions contemplated by the Plan of Adjustment.

E. **FATCA**

Pursuant to FATCA, foreign financial institutions (which term includes most foreign hedge funds, private equity funds, mutual funds, securitization vehicles and other investment vehicles) and certain other foreign entities generally must comply with certain new information reporting rules with respect to their U.S. account holders and investors or confront a new withholding tax on U.S.-source payments made to them (whether received as a beneficial owner or as an intermediary for another party). A foreign financial institution or such other foreign entity that does not comply with the FATCA reporting requirements generally would be subject
to withholding tax with respect to any “withholdable payments.” For this purpose, “withholdable payments” are any U.S.-source payments of fixed or determinable, annual or periodic income and, beginning January 1, 2019, also include the entire gross proceeds from the sale or other disposition of any property of a type which can produce U.S.-source interest or dividends even if the payment would otherwise not be subject to U.S. nonresident withholding tax. For taxable years beginning no earlier than January 1, 2019, withholding under FATCA generally may apply to certain “foreign passthru payments.” Withholding under FATCA generally should not apply to payments of interest (including OID) under a COFINA Bond because such payment generally should be foreign source income. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules. Holders should consult with their tax advisors as to the application of FATCA in their individual circumstances.

XVI. Certain Material Puerto Rico Income Tax Considerations

A general description of certain material Puerto Rico income tax consequences of the Plan of Adjustment to Holders of Allowed Claims is provided below. This summary is based on current provisions of Act No. 91 of May 13, 2016, as amended, known as the Urgent Interest Fund Act, the Puerto Rico Internal Revenue Code of 2011, as amended (the “P.R. Code”) and the regulations promulgated or applicable thereunder issued by the Department of Treasury of Puerto Rico (the “P.R. Treasury”), the Puerto Rico Municipal Property Tax Act of 1991, as amended, and the regulations promulgated thereunder, the Municipal License Tax Act, as amended, and the regulations promulgated thereunder, and administrative pronouncements and judicial decisions in connection with the foregoing laws and regulations (collectively, “Applicable P.R. Tax Law”). Changes in or new interpretations of Applicable P.R. Tax Law may have retroactive effect and could significantly affect the Puerto Rico tax consequences described below.

The Puerto Rico tax consequences of the Plan of Adjustment are complex. As of the date of this Disclosure Statement, no ruling has been requested from the P.R. Treasury with respect to the tax consequences discussed herein, and the discussion below is not binding upon P.R. Treasury or the courts. No tax opinion is given by this Disclosure Statement and no assurance can be given that P.R. Treasury would not assert, or that a court would not sustain, a different position than any position discussed herein.

Except as specifically noted otherwise, this summary does not address U.S. federal, state, local or foreign tax consequences of the exchange, nor does it purport to address all aspects of Puerto Rico taxation that may be relevant to a holder in light of its individual circumstances or to a holder that may be subject to special tax rules (such as registered investment companies, broker-dealers, banks, insurance companies, financial institutions, tax-exempt organizations, corporations of individuals, partnership or other pass-through entities, beneficial owners of pass-through entities, Holders who hold Claims or who will hold the COFINA Bonds as part of a straddle, hedge, conversion transaction, or other integrated investment, or subsequent purchasers of COFINA Bonds).

Furthermore, this summary assumes that a Holder holds Existing Securities and COFINA Bonds only as a “capital asset” (within the meaning of section 1034.01(a)(1) of the P.R. Code) and that the COFINA Bonds qualify as debt under the P.R. Code.