

Part IV

ADMINISTRATIVE APPEAL OF PROPOSED ADVERSE DETERMINATION OF
TAX-EXEMPT STATUS OF BOND ISSUE

REVENUE PROCEDURE 99-35

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SECTION 1. PURPOSE

As required by § 3105 of the Internal Revenue Service Restructuring and Reform Act of 1998, P.L. 105-206, 112 Stat. 685 (RRA 98), this revenue procedure provides procedures for Issuers (as defined in Rev. Proc. 96-16, 1996-1 C.B. 630) to request an administrative appeal to the Office of Appeals (Appeals) of a proposed adverse determination by an Employee Plans/Exempt Organizations Key District (the District) that the interest on their debt obligations (the Bond Issue) is not excludable from gross income under § 103 of the Internal Revenue Code.

SECTION 2. BACKGROUND

Prior to RRA 98, procedures did not exist for Issuers to appeal a proposed adverse determination by the District that the interest on a Bond Issue is not excludable from gross income of the bondholders. Section 3105 of RRA 98 directs the Service to modify its administrative procedures to allow Issuers to appeal a proposed adverse determination by the District to Appeals with respect to a Bond Issue. As a result, an Issuer may appeal a proposed adverse determination to Appeals before the District proceeds to tax bondholders. This revenue procedure sets forth procedures for Issuers to appeal proposed adverse determinations by the District, and makes other modifications to the examination process made appropriate by RRA 98.

As a result of the changes made by section 3105 of RRA 98, examination procedures have been modified to eliminate the requirement that the District receive a technical advice memorandum from Assistant Chief Counsel (Financial Institutions & Products) that is unfavorable to the Issuer before the District proceeds to tax bondholders.

SECTION 3. SCOPE

.01 In general. An appeal of a proposed adverse determination by the District is optional and is initiated by the Issuer as described below. Any issue raised by the District during an examination of a Bond Issue that would cause the interest on the Bond Issue not to be excludable from gross income under § 103 or claims for refund or rebates raised by the Issuers are appropriate for consideration by Appeals.

.02 Issuers as taxpayers. For purposes of examining Bond Issues, Issuers are treated as taxpayers. See Section 8.02 of this revenue procedure regarding other persons that may participate in an Appeals proceeding.

.03 Conduit borrowers. In appropriate circumstances, Appeals may consider issues that relate to the tax liability of the beneficiary of bond proceeds in a conduit financing (Conduit

Borrower) at the same time as the Issuer's appeal. Appeals will only consider an issue relating to the tax liability of a Conduit Borrower if the Conduit Borrower is under examination with respect to the issue, the resolution of the issue is affected by the determination of whether the interest on the Bond Issue is excludable from gross income under § 103, and the Conduit Borrower agrees to resolving the issue at the same time as the Issuer's appeal under this revenue procedure. See section 8.01 of this revenue procedure for Appeals procedures governing the Conduit Borrower.

.04 Early referral. Section 3465 of RRA 98 provides that the Service shall prescribe procedures by which a taxpayer may request early referral of one or more unresolved issues to Appeals. Under Revenue Procedure 99-28, 1999-29 I.R.B. 109, an Issuer may make a separate request to the District for the early referral to Appeals of one or more issues regarding a Bond Issue. See section 2.02 of Rev. Proc. 99-28 for issues that are appropriate for early referral. Early referral may also be appropriate for issues that are not determinative of whether the interest on the Bond Issue is excludable from gross income under § 103, including such issues for which the National Office has issued a technical advice memorandum to the District.

SECTION 4. ADMINISTRATIVE APPEAL PROCESS

.01 In general. Sections 4.03, 4.04, and 4.05 of this revenue procedure describe the circumstances in which an Issuer may appeal a proposed adverse determination by the District that the interest on a Bond Issue is not excludable from gross income under § 103. To the extent provided in sections 4.03(2), 4.04(2), or 4.05(2), the Issuer may request an appeal in accordance with section 5.

.02 Consultations with District Counsel. Prior to issuing a proposed adverse determination to the Issuer regarding a Bond Issue, the District will consult with District Counsel regarding whether the District should request technical advice. Technical advice should be requested, for example, when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by the National Office.

.03 The District requests technical advice. (1) If, after consultation with District Counsel, the District determines that technical advice is warranted, the District will follow the procedures for requesting technical advice set forth in Rev. Proc. 99-2, 1999-1 I.R.B. 73, or subsequent revenue procedure. If the National Office issues a technical advice memorandum to the District, the District will notify the Issuer, in writing, of the National Office's determination.

(2) The written notice will identify the Bond Issue under examination and will include a copy of the technical advice memorandum. If the District has made a proposed adverse determination that the interest on the Bond Issue under examination is not excludable from gross income under § 103, the written notice will state the District's reasons for the proposed adverse

determination, and will inform the Issuer of the availability of an administrative appeal of such proposed adverse determination.

.04 The Issuer requests technical advice. (1) If, after consultation with District Counsel, the District determines that technical advice is not necessary, the District will notify the Issuer, in writing, of its preliminary adverse determination that the interest on the Bond Issue is not excludable from gross income under § 103, and provide the Issuer with an opportunity to have closing agreement discussions. The notice will also inform the Issuer that it may request that an issue be referred to the National Office for technical advice in accordance with Rev. Proc. 99-2, 1999-1 I.R.B. 73, or subsequent revenue procedure. If the Issuer requests that an issue be referred to the National Office for technical advice, such referral will be made, and considered, in accordance with the procedures set forth in Rev. Proc. 99-2, or subsequent revenue procedure. If the National Office issues a technical advice memorandum to the District, the District will notify the Issuer, in writing, of the National Office's determination.

(2) The written notice will identify the Bond Issue under examination and will include a copy of the technical advice memorandum. If the District has made a proposed adverse determination that the interest on the Bond Issue under examination is not excludable from gross income under § 103, the written notice will state the District's reasons for the proposed adverse determination, and will inform the Issuer of the availability of an administrative appeal of such proposed adverse determination.

.05 Technical advice not requested. (1) If, after receiving notice of the District's preliminary adverse determination described in section 4.04(1) of this revenue procedure, the Issuer does not request technical advice or if the Issuer's request is denied, the District will provide the Issuer with an opportunity to have closing agreement discussions. If closing agreement discussions between the Issuer and the District are unsuccessful, the District will send the Issuer a written notice to the effect that the District has made a proposed adverse determination that the interest on the Bond Issue under examination is not excludable from gross income under § 103.

(2) The written notice will identify the Bond Issue under examination, state the District's reasons for its proposed adverse determination and inform the Issuer of the availability of an administrative appeal of the District's proposed adverse determination.

.06 Closing agreement with the District. The District will retain jurisdiction over the Bond Issue until the Issuer has made a request to appeal the District's proposed adverse determination that interest on the Bond Issue is not excludable from gross income under § 103 and the agent's file has been sent to Appeals in accordance with section 6 of this revenue procedure. Prior to requesting an appeal, the Issuer may enter into closing agreement discussions with the District and

execute a closing agreement with respect to the Bond Issue. The District will generally prepare a closing agreement using the model closing agreement provided in Internal Revenue Manual exhibit 7.6.2.5-3.

SECTION 5. HOW TO REQUEST AN APPEAL

.01 In general. Established Appeals procedures, including those governing submissions and taxpayer conferences, apply to requesting an appeal of a proposed adverse determination that interest on a Bond Issue is not excludable from gross income under § 103.

See § 601.106 et seq. of the Statement of Procedural Rules.

.02 The Issuer's appeal request and response to the District's notice. The Issuer's appeal request must be in writing. The appeal request must include a detailed written response to the District's notice of the District's proposed adverse determination, and include any further explanation of the Issuer's position regarding the issue(s) in dispute. The Issuer's written appeal request must be submitted to the District within 30 days of the date of the notice from the District regarding its proposed adverse determination. The District may extend this 30-day requirement following a written request by the Issuer justifying such extension. The Issuer or the Issuer's authorized representative must sign an appeal request. It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used to designate an authorized representative when making an appeal request under this revenue procedure.

.03 Failure to make appeal request. If the Issuer does not submit a written appeal request within the time period set forth in section 5.02 of this revenue procedure, the District's proposed adverse determination shall become final and the District may begin the process of taxing bondholders without further notice to the Issuer.

SECTION 6. THE DISTRICT FORWARDS CASE FILE TO APPEALS

The District will forward 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 the District from the Issuer regarding the Bond Issue;
3. all work papers of the District examining the Bond Issue;
4. the District's notice;
5. the Issuer's written appeal request, and
6. the District's response to the Issuer's position, if any.

After the case file is sent to Appeals, Appeals will have jurisdiction over the Bond Issue.

SECTION 7. PROCESSING AN APPEAL REQUEST

An appeal by an Issuer of a proposed adverse determination will be assigned to a senior Appeals officer, who will make every effort to resolve the case as expeditiously as possible.

SECTION 8. RESOLVING AN APPEAL ISSUE(S)

.01 In general. Established Appeals procedures, including those governing submissions and taxpayer conferences, apply to appeals regarding Bond Issues. See § 601.106 et seq. of the Statement of Procedural Rules. See also Treasury Department Circular 230, 31 C.F.R., Part 10. The procedures in sections 8.04 and 8.05 of this revenue procedure, specifically apply to Bond Issues.

.02 Other participants in the Appeals process. The Issuer may authorize any person (e.g., Conduit Borrower) to inspect or receive confidential information during the Appeals process by submitting a duly executed Taxpayer Information Authorization (Form 8821) to the Appeals officer. In addition, the Issuer may authorize certain persons to represent the Issuer before Appeals by submitting a duly executed Power of Attorney and Declaration of Representative (Form 2848) to the Appeals Officer.

.03 New information provided. If the Issuer provides additional information not previously given to the District, Appeals will forward the information to the District for its comments.

.04 If agreement is reached. If Appeals and the Issuer agree that no action is necessary with respect to the Bond Issue, Appeals will notify the District and close the case. 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 Internal Revenue Manual exhibit 7.6.2.5-3.

.05 If agreement is not reached. (1) If Appeals and the Issuer fail to reach an agreement with respect to an appeal, Appeals will close the appeal file, return jurisdiction over the Bond Issue to the District, and send a copy of the Appeals Case Memorandum with respect to the Bond Issue to the District. In such case, the District's proposed adverse determination shall become final and the District may begin the process of taxing the bondholders without further notice to the Issuer.

(2) Appeals will not reconsider an unagreed appeal unless there has been a substantial change in the circumstances regarding the appeal issue.

SECTION 9. NO USER FEE

There is no user fee for an appeal request.

SECTION 10. EFFECTIVE DATE

These procedures are generally effective on September 22, 1999, the date this revenue procedure is released to the public, with respect to proposed adverse determinations made by the District for Bond Issues for which a closing agreement has not been executed.

DRAFTING INFORMATION

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