

February 28, 2001

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RE: Priority Guidance Plan for 2001

Dear Msrs. Mikrut and Watson:

The General Tax Committee of the National Association of Bond Lawyers welcomes the opportunity to provide input to the Treasury-IRS Priority Guidance Plan for 2001. Enclosed is a comprehensive list of recommendations made by the General Tax Committee. I hope you find our suggestions helpful as you formulate the final draft of this year's plan. Please feel free to contact me at (415) 773-5449 if you would like to discuss these recommendations further.

Sincerely,

Chas Cardall, Chair

cc: Rebecca Harrigal, Esq.
Tim Jones, Esq.
Bruce Serchuk, Esq.
Mark Scott, Esq.

Recommended Treasury Department Projects for 2001

The following are suggested projects for the Business Plan of the Treasury Department for Calendar Year 2001 from the National Association of Bond Lawyers (“NABL”), as compiled by the Tax Matters Committee on behalf of NABL. This list consists of items the NABL membership has indicated require attention on a priority basis during calendar year 2001. While several of these items involve major regulatory projects, we believe that a number of these suggestions involve discrete areas where guidance could be provided without a major commitment of IRS and Treasury resources.

- (1) Improvements to the Tax-Exempt Bond Enforcement. On January 24, 2001, NABL submitted a letter to various IRS officials setting forth suggestions for the improvement of the tax-exempt bond enforcement program. A copy of this letter is attached hereto. Guidance along the lines suggested in this letter should be a priority for 2001.
- (2) Investment-Type Property. The proposed regulations relating to investment-type property should be finalized. In addition, clarification of the statements contained in the preamble to those proposed regulations is very important. As you are no doubt aware, the preamble has caused significant disruption in the market. While we would not want to slow down the promulgation of these rules, as noted below, certain “clean-up” changes to the arbitrage regulations are requested.
- (3) Private Activity Regulations Completed. The incomplete sections of the private activity regulations contained in Treas. Reg. Sections 1.141-1 to –16 need to be completed, in particular Sections –6 (allocation and accounting rules) and –13 (refunding issues).
- (4) Finalization of Rules on Broker’s Fees. The rules on the allowable amount of recoverable fees for broker’s or similar commissions with respect to guaranteed investment contracts and other types of investments in Treas. Reg. Section 1.148-5(e) should be finalized. We strongly urge that the regulations include a safe harbor for these fees.
- (5) Remedial Action Rules Clarified/Amended. The remedial action rules contained in Treas. Reg. Sections 1.141-12, 1.142-2 and 1.144-2 are effective, under their terms, for bonds issued on or after May 16, 1997 (or bonds issued earlier if certain elections in Treas. Reg. Section 1.141-15(d) or (e) are made). When these rules were enacted, the previous rules relating to change in use contained in Rev. Proc. 93-17 and other pronouncements were repealed, effectively leaving no applicable rules for change in use situations for bonds issued before the effective date. We would like to see either the prior rules reinstated for such bonds, or some

other flexible application/clarification of the current rules. In addition, our members have expressed concern that the rules are inflexible and in some cases, unduly harsh (e.g. the rule that treats the nonqualified bonds as the highest percentage of private business use means issuers are denied the allowable private business use portions expressly granted under the statute).

- (6) Solid Waste Regulations Revised. The existing regulations with respect to exempt facilities for solid waste disposal contained in Treas. Reg. Section 1.103-(8)(f) and Temp. Treas. Reg. Section 17.1 are ambiguous and incomplete, particularly as related to recycling projects, and need to be substantially revised/clarified.

Additional Guidance Projects. We recognize that the regulation projects described above, could consume all or a substantial part of the time available for projects relating to tax-exempt bonds. Despite this, we believe that there are a number of other areas where guidance is needed. These include:

- (1) Single Family Regulations Updated. The existing single family regulations under Code Section 143 were issued in 1982 and need to be updated to take into account the changes made by the 1986 Tax Act, subsequent statutory changes (such as the ten year recycling rule and 42-month rule), and subsequent industry developments on refundings, crosscalling and yield blending.

- (2) Federal Guarantee Defined. Although Code Section 149(b) was enacted in substantially similar form in 1982, there is no definition of what constitutes a federal guarantee for this purpose. We believe the Treasury needs to address this issue in the next few years if possible.

- (3) Arbitrage Regulations “Cleanup”. There are several sections in the existing arbitrage regulations contained in Treas. Reg. Sections 1.148-1 to –10 and related Section 1.150-1 which require attention as follows:

- (a) We note that under –4(h)(6) the Commissioner has the power to specify certain contracts as qualified or unqualified hedges by issuing revenue rulings or revenue procedures, whereas in –10(e) the Commissioner has the power to treat hedges as qualified or unqualified without the issuing a revenue ruling or revenue procedure. We would clarify which of these provisions is authoritative by amending the rules (probably –10(e)) to indicate that the more specific hedge rule in –4(h)(6) must be followed.
- (b) We would like to see revisions made to the investment valuation rules in Treas. Reg. Sections 1.148-5(d)(2) and

(3). These sections, in practical application, cause unintended and unfair results.

- (c) We applaud the regulation amendments made to Treas. Reg. Sections 1.148-5(d)(6) and –5(e) on the definition of fair market value. Our members have indicated some areas of these new rules could use some cleanup.

(4) Reissuance Rules Amended. The so-called “reissuance” regulations contained in Treas. Reg. Section 1.1001-3 (modifications of debt instruments) contain an exception for “qualified tender bonds” pursuant to Notice 88-130, which in turn except events constituting a reissuance under Code Section 1001, resulting in a circular and confusing set of rules. We would like to see these rules modified to place all the reissuance rules for tax-exempt obligations in one regulation consistently applied to all tax-exempt obligations. In light of the significant continuing issuance of qualified tender bonds each year, this item should receive prompt attention if possible.

(5) Clarification and Review of Rules for Long-Term Working Capital Financings. The arbitrage rules relating to “other replacement proceeds,” particularly for long-term working capital financings, should be reviewed and clarified. First, rules are needed for situations in which long-term bonds are issued for working capital financings. The regulations do not provide guidance for working capital financings that do not satisfy the safe harbors for “other replacement proceeds” and other guidance from the IRS has resulted in confusion over the ability to issue bonds in these situations. In addition, NABL believes that the other replacement proceeds safe harbors too often result in unnecessary practical difficulties for issuers seeking to comply with those safe harbors. Many of NABL’s members have experienced difficulties with these rules such as where an issuer seeks to refund bonds issue fifteen or twenty years ago and modestly extend the maturity of those bonds but has no accurate records to establish that the safe harbors were met.

NABL is committed to assisting the Treasury and IRS with respect to these matters. At the present time, NABL has undertaken comment projects on a number of these matters. Given the relatively large number of important projects, we would be pleased to provide other forms of assistance (for example, submitting drafts of regulatory provisions or rulings). In submitting these suggestions, NABL also wishes to again state that, while it supports a vigorous, fair enforcement program, it continues to believe that the proper method of issuing new guidance in the tax-exempt bond area is through the issuance of regulations that provide an opportunity for comment and, where necessary, other published guidance.