May 21, 2003

Ms. Helen Hubbard
Tax Legislative Counsel
Department of the Treasury
Room 1308
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

RE: Priority Guidance Plan for 2003

Dear Ms. Hubbard:

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 2003. 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 (202) 585-8305 if you would like to discuss these recommendations further.

Sincerely,

Mitch Rapaport

Mitchell Rapaport, Chair

Enclosure

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

Recommended Treasury Department Projects for 2003

The following are suggested projects for the Business Plan of the Treasury Department for Fiscal Year 2003-2004 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. 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) Finalization of Proposed Regulations. The proposed regulations relating to (a) investment-type property, (b) refundings, (c) hospital acquisitions, and (d) fees for broker's or similar commissions with respect to guaranteed investment contracts and other types of investments should be finalized.

(2) Mixed Use Rules Issued. Regulations under § 1.141-6, relating to allocation and accounting particularly for mixed use projects, should be issued. Rules for mixed use projects were proposed nine years ago and in 1997 the IRS stated that it would be taking a flexible approach to tax-exempt financing in the mixed use context. These rules have not yet been finalized despite their importance in an era of economically strained state and local governments seeking to work with the private sector to finance projects. We would be happy to work with the IRS and Treasury on these issues.

(3) Change of Use, Naming Rights and Other Section 141 Issues. There are several issues under the final regulations issued in 1997 that should be clarified. For example, guidance on the treatment of naming rights is needed. Further, 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 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).

In addition, recent private letter rulings involving naming rights, did not involve the Treasury or the opportunity for public comment and the IRS should issue guidance on this important topic in the form of proposed regulations. Proposed regulations will allow the IRS to elaborate on the particular components of a naming rights contract that may or may not trigger private business use and can

also expand upon several of the components of the existing examples of incidental use already in the section 1.141-3 regulations. The private letter ruling directly dealing with naming rights of a governmental arena and convention center also contained analysis on the measurement of use in a mixed use facility, and would hopefully be dealt with in the mixed use allocation rules.

(4) Swaps. The existing regulations under § 1.148-4(h) relating to integration of hedging transactions are in need of clarification with respect to the treatment of Libor-based swaps, both under the integration and "super-integration" rules. In particular, guidelines setting forth the circumstances under which Libor-based swaps can be super-integrated (or extending the applicability of yield reduction payments) is needed. In addition, guidance on the treatment of hedges of investments is needed.

(5) 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.

(6) Improvements to the Tax-Exempt Bond Enforcement Program. 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. We continue to believe that there must be improvements in the manner in which the enforcement program is operated, whether administratively or legislatively.

(7) Public Approval Rules. Recent activity in connection with audits has made it clear that guidance is needed on the application of the public approval rules to qualified 501(c)(3) bonds and pooled financing transactions. The existing 1982 regulations have never been modified to reflect public comments and were written with very different industrial development bond transactions in mind.

(8) 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 issued 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. These rules have become especially important given the financial difficulties that many state and local governments are experiencing.

(9) Simplification of Arbitrage and Other Rules. Attached hereto is a portion of the report on tax law simplification submitted by NABL relating to relatively discrete items most of which could be accomplished without the need for legislation. We encourage the Treasury and IRS to consider these suggestions.

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. In addition, in light of a recent technical advice memorandum, guidance is needed on the treatment of GNMA fees.

(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. Recent audit activity related to the treatment of guarantees issued by Federal Home Loan Banks illustrates the need for guidance on this issue.

(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 regulatory 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.

(d) We believe that the application of the yield reduction payment rules should be extended.

(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) Qualified Public Educational Facilities. Guidance is needed under section 142(k) to clarify that the requirement that the ownership of a qualified public educational facility for tax purposes is determined without regard to the requirement of the Code that the facility be transferred to the State or local educational agency for no additional consideration. It is clear that this is the result intended in the enactment of section 142(k) but clarification is needed.

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.