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Courier's Desk  
Internal Revenue Service  
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1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

RE: Notice 2005-25 -- 2005-2006 Guidance Priority List

Dear Sir or Madam:

The General Tax Committee of the National Association Of Bond Lawyers welcomes the opportunity to provide input to the Treasury-IRS 2005-2006 Guidance Priority List. Enclosed is a list of recommendations made by the General Tax Committee. I hope you find our suggestions helpful as you formulate this year's plan. Please feel free to contact me at (202) 339-8438 if you would like to discuss these recommendations further.

Sincerely,

*Edwin G. Oswald*  
Edwin G. Oswald, Chair

Enclosure

## NATIONAL ASSOCIATION OF BOND LAWYERS

### Recommendations for 2005-2006 Guidance Priority List of U.S. Treasury and Internal Revenue Service

The following are recommendations for the 2005-2006 Guidance Priority List from the National Association of Bond Lawyers (“NABL”), as compiled by its Tax Matters Committee. In compiling this list, NABL solicited comments from its membership. These recommendations have been grouped into three categories: (1) proposed regulations that should be finalized or re-proposed in light of public comments, (2) new regulatory projects, and (3) certain discrete guidance recommendations.

We believe that effective and timely guidance to the public finance community may be accomplished with respect to category (3) of our recommendations above through revenue rulings, revenue procedures and notices. We recommend that the Treasury and the Service consider such forms of published guidance where appropriate.

#### **Proposed Regulations**

**Mixed Use Accounting Rules.** We recommend that allocation and accounting rules be issued under Section 141 for so-called “mixed use” projects involving both governmental use and private business use. Certain rules for mixed use projects were first proposed in 1994. Guidance in this area continues to be of high importance in an era of economically strained State and local governments seeking to work with the private sector to finance projects. Given that proposed regulations were issued more than 10 years ago, we recommend that new proposed regulations be issued.

**Refunding Rules.** On May 14, 2003, the Service issued proposed regulations relating to the application of the private activity bond tests to refunding issues. NABL submitted comments on the proposed refunding regulations to the Service on November 18, 2003. We recommend that final regulations be issued after review and consideration of public comments.

**Solid Waste Rules.** On May 4, 2004, the Service issued proposed regulations relating to the definition of solid waste facilities for purposes of Section 142(a)(6) of the Code. NABL submitted comments on the proposed solid waste regulations on August 9, 2004. We recommend that the development of regulations defining solid waste disposal facilities under section 142 be continued. The issuance of proposed regulations was a welcome effort to address long-standing concerns, but the rules as proposed were prospective only, major portions of the proposed rules were reserved, and the regulations as proposed raised a number of serious concerns as reflected in the comments of NABL and others. NABL members believe that the proposed rules, because of the fundamentally new regulatory approach they would adopt, have increased, rather than alleviated the uncertainty in this area.

**QZAB Rules.** On March 26, 2004, the Service issued proposed regulations relating to Qualified Academy Zone Bonds (“QZABs”). NABL submitted comments on the QZAB regulations on June 25, 2004. We recommend that final regulations be issued after review and consideration of public comments.

**Single Family Rules-Pooled Mortgage Insurance.** On November 5, 2003, the Service issued proposed regulations relating to the treatment of pooled mortgage insurance for single family bonds. We recommend that final regulations be issued after review and consideration of public comments.

## **New Regulation Projects**

**Regulations under Section 6700 in the Tax-Exempt Bond Context.** In light of the increasing use of tax shelter promoter penalties under Section 6700 as an enforcement tool in the tax-exempt bond audit area and the dearth of guidance in this area, we recommend that public guidance be provided. We request that guidance focus on the tax-exempt bond area, including guidance on such fundamental issues as the standard of liability (with respect to which we believe that the statute clearly suggests a knowing fraud standard as contrasted with a negligence standard) and the precise measure of the Section 6700 penalty in the tax-exempt bond context about which there has been considerable uncertainty. Moreover, consideration should be given to providing public guidance to address standards for referrals to the IRS Office of Professional Responsibility in the case of Section 6700 violations.

**Recordkeeping for Tax-Exempt Bond Issues.** We recommend that public guidance be issued to address State and local governmental recordkeeping requirements in the tax-exempt bond context. We recommend that due consideration be given to the importance of striking an appropriate balance between the need to monitor the continuing qualification for tax exemption of a bond issue and the administrative and financial burdens imposed on State and local governmental entities. We recommend that the Service issue guidance that would permit a combination of assumptions, certifications, and summaries of original documents to ease the compliance burden.

**Naming Rights.** We recommend that public guidance be issued regarding the sale of naming rights for purposes of the private business restrictions on tax-exempt bonds under Section 141.

## **Other Guidance Recommendations**

**Hedging and Swaps.** We recommend that the arbitrage hedging rules more clearly address the treatment of LIBOR-based swaps. Such guidance should include the hedging treatment under both the simple “integration” rule (i.e., taking into account the bond interest rate, the hedge and the basis differential on a net basis in arbitrage yield as a variable yield issue) and “super-integration” rule (i.e., taking into account the bond interest rate and the hedge, with a disregard of certain differences in substantially similar interest indexes, as a fixed yield issue).

**Long-Term Working Capital Financings.** Given the financial difficulties that State and local governments are experiencing, we believe that it is important to provide public guidance for long-term tax-exempt bonds used to finance working capital purposes. We recommend that the arbitrage rules relating to “other replacement proceeds” and “reasonable working capital reserves” for long-term working capital financings be reviewed and clarified. Clear, workable safe harbors are needed for situations in which long-term bonds are issued for working capital financings. These safe harbors should address any appropriate constraints or ongoing compliance mechanisms for bonds in these situations.

**Updating Revenue Procedure 97-14, dealing with Sponsored Research.** Revenue Procedure 97-14 provides narrow private use safe harbor exceptions for certain research conducted in bond-financed facilities. These exceptions are generally based on the legislative history of the Tax Reform Act of 1986. Significant innovations have occurred since the passage of the 1986 Tax Act in both the manner and methods of how sponsored research is conducted. Accordingly, we recommend new safe harbors be provided to address such innovations and practice methods that have evolved over the last 20 years. At a minimum, we recommend that guidance be provided regarding the application of the safe harbors and/or the private activity bond regulations to bond-financed facilities in which federally sponsored research is being conducted under the Bayh/Dole Act (Pub. L. 96-517)

**Updating Revenue Procedure 97-13, relating to Management and Service Contracts.** Over the past several years, the Service has released private letter rulings interpreting aspects of the safe harbors for management and service contracts. It would be very helpful to incorporate these interpretations into existing safe harbors so that they can be relied upon by issuers and practitioners, and to expand upon the factors that were important to the Service's analysis. Particular areas which should be covered include the applicability of a capitation fee beyond the health insurance context and how deferred or subordinated fees are treated.

**Reissuance Rules Amended.** The so-called "reissuance" regulations contained in Treas. Reg. Section 1.1001-3 (modifications of debt instruments) contain an exception for tax-exempt bonds that are "qualified tender bonds," which are subject to their own specialized reissuance rules under Notice 88-130. Notice 88-130, however, provides that a qualified tender bond will be treated as retired if, among other things, there is a change that would constitute a disposition under Section 1001. The rules are circular and contradictory. We recommend that the rules be modified to place all the reissuance rules for tax-exempt obligations in one regulation, presumably under Section 1001, as modified to address the qualified tender bond principles specifically.

NABL is committed to assisting the Treasury and the Service with respect to these matters. 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.