



**National Association
of Bond Lawyers**

PHONE 202-682-1498 601 Thirteenth Street, N.W.
FAX 202-637-0217 Suite 800 South
www.nabl.org Washington, D.C. 20005

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Birmingham, AL

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KENNETH J. LUURS
230 West Monroe Street
Suite 320
Chicago, IL 60606-4715
Phone 312-648-9590
Fax 312-648-9588

March 12, 2008

Internal Revenue Service
CC:PA:LPD:PR (Notice 2008-13)
Room 5203
PO Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Notice 2008-13: Guidance under the Preparer Penalty Provisions
of the Small Business and Work Opportunity Tax Act of 2007

Ladies and Gentlemen:

The National Association of Bond Lawyers (NABL) respectfully submits
the enclosed comments with respect to Notice 2008-13, Guidance under
the Preparer Penalty Provisions of the Small Business and Work
Opportunity Tax Act of 2007 (the "Notice").

NABL appreciates both the significant effort of the Department of the
Treasury and the Internal Revenue Service in the preparation of the
Notice as well as the request for and consideration of NABL's
submission.

These comments were prepared by an ad hoc subcommittee of the NABL
Tax Law Committee listed in Exhibit I.

NABL believes that participating in the guidance process supports
clarification of and facilitates compliance with the tax law and
regulations. Accordingly, NABL members would welcome the
opportunity to discuss these recommendations to achieve clarity,
certainty and administrability in this area of the law.



If you have any questions, please contact me at 205/226-3482 or through email at fclark@balch.com or Elizabeth Wagner, Director of Governmental Affairs, at 202/682-1498 or through email at ewagner@nabl.org.

Thank you again for the opportunity to submit NABL's comments.

Sincerely,



J. Foster Clark

Enclosure

cc: Eric Solomon
Donald L. Korb
Michael J. Desmond
Stephen Larson
John J. Cross III
James A. Polfer
Matthew S. Cooper
Michael E. Hara
Clifford J. Gannett
NABL Ad Hoc Tax Law Subcommittee



National Association *of* Bond Lawyers

COMMENTS BY THE NATIONAL ASSOCIATION OF BOND LAWYERS TO THE INTERNAL REVENUE SERVICE

REGARDING NOTICE 2008-13

GUIDANCE UNDER THE PREPARER PENALTY PROVISIONS OF THE SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007

The following comments are submitted on behalf of the National Association of Bond Lawyers (“NABL”) with respect to Notice 2008-13, Guidance under the Preparer Penalty Provisions of the Small Business and Work Opportunity Tax Act of 2007, Pub. L. No. 110-28, 121 Stat. 90 (the “Act”), pursuant to the Requests for Comments section therein.

BACKGROUND

Implementation of the Act. On December 31, 2007, the IRS released Notice 2008-13 implementing certain provisions of the Act relating to tax return preparers and their responsibilities under Section 6694 of the Internal Revenue Code of 1986, as amended (the “Code”). Among other things, Section A.2. of Notice 2008-13, relating to information returns, states:

“A person who for compensation prepares any of the forms listed on Exhibit 2, which form does not report a tax liability but affects an entry or entries on a tax return and constitutes a substantial portion of the tax return or claim for refund that does report a tax liability, is a tax return preparer who is subject to section 6694.”

Exhibit 2 of Notice 2008-13 includes the following forms, each of which is usually prepared by bond counsel:

“Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues;

Form 8038-G, Information Return for Government Purpose Tax-Exempt Bond Issues;
and

Form 8038-GC, Consolidated Information Return for Small Tax-Exempt Government Bond Issues.”

Definition of Tax Return Preparer under Notice 2008-13. Notice 2008-13 is based on the following definition of “tax return preparer” set forth in Section 7701(a)(36) of the Code, as amended by the Act:

“In general. The term ‘tax return preparer’ means any person who prepares for compensation, or who employs one or more persons to

prepare for compensation, any return of tax imposed by this title or any claim for refund of tax imposed by this title. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.”

DISCUSSION

NABL recommends that the references to the three Forms 8038 be withdrawn from Notice 2008-13 or the successor provisions thereto when the relevant regulations are finalized, as the Forms 8038 are strictly information returns that do not contain information affecting entries on any tax returns. If the three Forms 8038 are not withdrawn from Notice 2008-13 or the successor provisions thereto when finalized, NABL recommends the Forms 8038 be among the forms listed on the successor to Exhibit 3 of Notice 2008-13, rather than Exhibit 2.

Inclusion of Forms 8038 Not Appropriate. NABL believes that, as a technical matter, the three Forms 8038 should not be referenced in Notice 2008-13 because the forms are information returns that are not described in Section A.2. of Notice 2008-13 -- *i.e.*, they do not include “...information that is or may be reported on a taxpayer’s tax return or claim for refund...” that “...constitutes a *substantial portion* of that taxpayer’s tax return or claim for refund....” The Forms 8038 are information returns providing data to the Internal Revenue Service¹; the Forms 8038 are not required nor expected to be typically transmitted to holders of the obligations referred to in such forms.² Moreover, if the Forms 8038 were so distributed, a holder of the obligations would not derive any information from such forms that is needed or necessary with respect to that holder’s own tax return. The information on the Forms 8038 is not in a format useful to a holder to ascertain information for his or her tax return; the Forms 8038 do not include the stated interest rate, the minimum denomination, or the various maturities of the obligations, all of which would be necessary information to a holder for his or her tax return to itemize tax-exempt interest. Rather, such information is found on the Form 1099 received by the holder. Further, the Forms 8038 do not provide any of the requisite information for a secondary market purchaser since the information set out in such forms is purely related to the original issuance of the obligations. The Forms 8038 are unique among the forms listed in Exhibit 2 of Notice 2008-13 in that every other form provides information to taxpayers who use that information for their own tax returns. The Forms 8038 do not provide such information, even on an aggregate basis.

Exhibit 3 Treatment. The Forms 8038 are listed on Exhibit 2, which is titled “Information Returns That Report Information That is or May be Reported on Another Tax Return That May Subject a Tax Return Preparer to the Section 6694(a) Penalty if the Information Reported Constitutes a Substantial Portion of the Other Tax Return.”³ This exhibit designation is

¹ See Section 149(e)(2) of the Code and Treas. Reg. § 1.149(e)-1.

² Further, since the Forms 8038 are to be filed soon after issuance of the obligations, any distribution would be to initial holders of the obligations, *e.g.*, institutions. No purchaser of the obligations on the secondary market would receive them.

³ Note that the phrasing of this language indicates the information on the listed forms must be needed on another tax return. Again, since no information is included which is necessary to holders of the obligations, the language is inapplicable to the Forms 8038.

distinguished from Exhibit 3, which is for “Forms That Would Not Subject a Tax Return Preparer to the Section 6694(a) Penalty Unless Prepared Willfully in any Manner to Understate the Liability of Tax on a Return of Claim for Refund or in Reckless or Intentional Disregard of Rules or Regulations.” Exhibit 3 includes the Forms 990, 990-EZ and 990-N. NABL recommends that, if the above given reasons for eliminating the Forms 8038 from the successor regulations to Notice 2008-13 are not deemed adequate, then Forms 8038 be moved to Exhibit 3. The information thereon and the use thereof are more compatible with the other forms in such category.

CONCLUSION

Based on the foregoing, NABL recommends the removal of the three Forms 8038 from Notice 2008-13 and any subsequent guidance. Alternatively, if NABL’s recommendation is not accepted, NABL recommends that such forms are better suited for inclusion in Exhibit 3.



National Association of Bond Lawyers

EXHIBIT I

NABL TAX LAW COMMITTEE AD HOC SUBCOMMITTEE MEMBERS

Notice 2008-13

Guidance Under the Preparer Penalty Provisions of the Small Business and Work
Opportunity Tax Act of 2007

William H. McBride (Chair)
Hunton & Williams LLP
Raleigh, NC
(919) 899-3030
wmcbride@hunton.com

Carol L. Lew
Stradling Yocca Carlson & Rauth
Newport Beach, CA
(949) 725-4237
clew@sycr.com

Kristin H. R. Franceschi
DLA Piper US LLP
Baltimore, MD
(410) 580-4151
kristin.franceschi@dlapiper.com

Scott R. Lilienthal
Hogan & Hartson L.L.P.
Washington, DC
(202) 637-5849
srilienthal@hhlaw.com

Perry E. Israel
Law Office of Perry Israel
Sacramento, CA
(916) 485-6645
perry@103law.com

Elizabeth Wagner
National Association of Bond Lawyers
Washington, DC
(202) 682-1498
ewagner@nabl.org