



**National Association
of Bond Lawyers**

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May 30, 2008

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Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2008-47)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Notice 2008-47 – 2008-2009 Guidance Priority List

Dear Sir or Madam:

The National Association of Bond Lawyers (NABL) appreciates the invitation for public comment on recommendations for items to be included on the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) 2008-2009 Guidance Priority List, as announced in Notice 2008-47.

NABL welcomes the opportunity to provide further input as the 2008-2009 plan is formulated. Please feel free to 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.

Again, thank you for inviting public comment for identification of tax issues to be addressed through Treasury/IRS administrative guidance.

Sincerely,

J. Foster Clark

Enclosure

cc: Eric Solomon
Donald L. Korb
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National Association *of* Bond Lawyers

RECOMMENDATIONS
BY THE
NATIONAL ASSOCIATION OF BOND LAWYERS
FOR THE
DEPARTMENT OF THE TREASURY
OFFICE OF TAX POLICY
AND THE
INTERNAL REVENUE SERVICE
2008-2009 GUIDANCE PRIORITY LIST

In response to Notice 2008-47, the National Association of Bond Lawyers (“NABL”) respectfully suggests that the following items¹ be included in the Department of the Treasury, Office of Tax Policy and Internal Revenue Service 2008-2009 Guidance Priority List:

1. Provide final guidance under Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”) relating to the qualified hedge provisions under the arbitrage restrictions, including treatment of variable rate advance refunding issues hedged by LIBOR swaps and other clarifications and simplifications of the treatment of hedges for arbitrage purposes. NABL provided comments with respect to the Proposed Regulations to the Department of the Treasury, dated December 26, 2007, and January 28, 2008.
2. Provide proposed regulations under Section 150 of the Code relating to reissuance standards for State and local bonds pursuant to Notice 2008-41. NABL expects to provide comments with respect to Notice 2008-41 shortly.
3. Provide additional guidance on the “issue price” of tax exempt obligations for purposes of the Treasury Regulations promulgated under Section 148 of the Code. NABL provided comments and suggestions for this type of guidance to the Department of the Treasury in a comment letter, dated August 25, 2006.
4. Provide other miscellaneous “clean-up” and simplifying amendments to the Treasury Regulations under Section 148 of the Code, including but not limited to the following:
 - Amend the “yield-to-call” test in Treas. Reg. §1.148-4(b)(3)(i) to apply on a bond-by-bond basis;
 - Expand the scope of Treas. Reg. §1.148-5(b)(2)(iv) single investment treatment to cover equity funded defeasance escrows;

¹ One should not imply order of priority or importance from the listing order below.

- Expand the definition of the term "refunding escrow" to include one or more funds funded exclusively with equity funds and not proceeds of a refunding issue;
 - Clarify the treatment of grants from bond proceeds as capital or working capital expenditures;
 - Delete the prohibition on directly or indirectly financing working capital reserves for TRAN issues contained in Treas. Reg. §1.148-1(c)(4)(ii);
 - Clarify the interrelationship between Treas. Reg. §1.148-5(d)(2) and (d)(3), in particular the last sentence of (d)(3)(i) relating to when fair market valuation is required for yield restricted investments;
 - Clarify whether payments of principal and interest on purpose investments are sale proceeds or investment proceeds;
 - Expand Revenue Procedure 95-47, 1995-2 C.B. 417, to permit State and local governments to make rebate payments to the Department of the Treasury in connection with the issuance of new advance refunding bond issues when the SLGs window is closed on the date such bonds are priced; and
 - Better unify and simplify the separate yield reduction and rebate payment regimes under Treas. Reg. §1.148-2 and §1.148-3. A letter containing NABL's suggestions and recommendations in this area was furnished to the Department of the Treasury on December 5, 2006.
5. Provide final guidance on the definition of "solid waste disposal facilities" for purposes of Section 142 of the Code. NABL provided comments on the Proposed Regulations to the Department of the Treasury, dated August 9, 2004.
 6. Provide a "safe harbor" for recordkeeping requirements applicable to issuers of tax-exempt bonds. A letter containing NABL's suggestions and recommendations in this area was furnished to the Department of the Treasury, dated March 13, 2007.
 7. Provide final guidance with respect to allocation and accounting under Section 141 of the Code. NABL has provided its comments and recommendations on the Proposed Regulations in letters to the Department of the Treasury, dated February 15, 2008, and December 22, 2006.
 8. Provide final guidance with respect to the treatment of payments in lieu of taxes under the "private security or payment" test of Treas. Reg. §1.141-4. NABL provided comments on the Proposed Regulations to the Department of the Treasury, dated June 28, 2007.

9. Provide further guidance on the definition of “essential governmental function” under Section 7871 of the Code. A letter containing NABL’s suggestions and recommendations in this area was furnished to the Department of the Treasury, dated February 8, 2007.
10. Provide guidance on the application of the arbitrage regulations promulgated under Section 148 of the Code to Qualified Zone Academy Bonds issued under Section 1397E of the Code.
11. Provide proposed regulations or other additional guidance describing the tax rules applicable to Clean Renewable Energy Bonds.
12. Review and update the Treasury Regulations implementing the public hearing and approval requirements of Section 147(f) of the Code to address post-issuance compliance, and clarify and expand the scope of the insubstantial deviation exception. For example, post-issuance hearings should be permitted in instances in which the nature of a project unexpectedly changes after the bonds are issued. The change in use regulations, including Treas. Reg. §1.141-12(e) and (f), have embraced similar concepts relating to post-issuance hearings. NABL has provided its comments and recommendations on this matter in a letter to the Department of the Treasury, dated January 24, 2007.
13. Update Revenue Procedure 97-13, 1997-1 C.B. 632, modifying the conditions under which a management contract does not result in private business use under Section 141(b) of the Code, to address certain unresolved issues and to better reflect current market practices. NABL expects to provide comments and recommendations on this matter.
14. Provide guidance confirming the ability to issue bonds after December 31, 2010, to refund outstanding Gulf Opportunity Zone Bonds originally issued prior to January 1, 2011, to the extent (a) the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds, and (b) the refunding is not an advance refunding, consistent with the guidance provided for Liberty Zone Bonds in Notice 2003-40. NABL notes that timely guidance is necessary to aid in structuring Gulf Opportunity Zone Bond issues today to assure that a current refunding will be available after December 31, 2010.