

Chapman Client Alert

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Current Issues Relevant to Our Clients

What to Do When the IRS Writes: IRS to Implement New Information Collecting Process for Bond Audits

The Tax Exempt and Government Entities Division of the Internal Revenue Service (“IRS”) announced changes to the information document request (“IDR”) process in tax-exempt bond and tax-advantaged bond examinations (“audits”). The IRS issues IDRs to gather information with respect to a bond issue during an examination. The revised process will go into effect on April 1, 2017.

Under the revised process, an IRS examiner will notify the bond issuer of the examination with an initial contact letter. Unlike under current procedures, this initial contact letter may not contain an IDR and may not list the reason for the examination. After ten business days from the date of the initial contact letter, the IRS examiner will contact the issuer (or issuer representative) by telephone to discuss with the issuer the bond issue being examined and the information to be requested in the IDR. While many of the updates to the examination procedures involve formalizing time frames and communications, a significant change is the information gathering process involving this initial telephone conversation with the issuer (or issuer representative). Under the new process, the final version of the initial IDR will be provided for an examination only after the examiner speaks with the issuer or issuer representative. The initial conversation with the issuer or issuer representative may allow the examiner to probe for areas of noncompliance and tailor its IDR based on information provided during the conversation. A first impression of the examining agent formed during the initial call may play a crucial role in the eventual outcome of the examination. It is important for an issuer that receives an initial contact letter to determine the most effective way to communicate with the IRS during the examination process, which may include the use of counsel (whether the issuer’s general counsel or bond counsel) to act as the issuer’s representative to appropriately focus the scope of the IDR. An issuer may want to contact counsel as soon as it receives an initial contact letter for assistance in formulating its initial strategy.

Prior to mailing the IDR or revised IDR, the examiner and the issuer are to agree on the response date; if an agreement on a response date cannot be reached, the examiner will assign a reasonable response date. In addition, the examiner will determine the date that he or she plans to review the IDR response for completeness of information and will note the acknowledgement date on the IDR.

If the issuer submits a complete response to an IDR, the examiner will call the issuer (or issuer representative) to advise that the response was complete. If the response is incomplete or the issuer does not respond to the IDR, the examiner may grant one extension of up to 15 business days to the issuer to provide the information, and a second extension of up to 15 business days may be granted with the examiner’s manager’s approval. If the issuer does not timely provide the information requested in the IDR by the agreed upon date, including extensions, the examiner will issue a delinquency notice and, if a failure to respond continues, procedures for summons or other enforcement methods may be implemented.

For More Information

If you would like further information concerning the matters discussed in this article, please contact your primary Chapman attorney or visit us online at chapman.com.

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