
26 CFR 601.202: *Closing agreements.*

(Also Part I, §§ 57, 103, 141, 142, 144, 145, 147, 7121; 1.141-12, 1.142-2, 1.144-2, 1.145-2, 1.147-2.)

Rev. Proc. 97-15

SECTION 1. PURPOSE

This revenue procedure provides a program under which an issuer of state or local bonds may request a closing agreement with respect to outstanding bonds (1) to prevent the interest on those bonds from being includible in gross income of bondholders or (2) to prevent the interest on those bonds from being treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the Internal Revenue Code of 1986 relating to use of proceeds.

SECTION 2. BACKGROUND

.01 Under § 103(a) of the 1986 Code, gross income does not include interest on any state or local bond if the applicable requirements of §§ 141 through 150 of the 1986 Code are satisfied. These requirements include requirements relating to use of bond proceeds that must be met after the issue date.

.02 Sections 1.141-12, 1.142-2, 1.144-2, 1.145-2, and 1.147-2 of the Income Tax Regulations provide that, in the event that an action taken subsequent to the issue date causes an issue of state or local bonds to fail to meet certain requirements relating to use of proceeds, an issuer may generally take certain remedial actions to prevent interest on the bonds from becoming includible in gross income. Application of these remedial action provisions may not be possible or practicable for issuers in some cases.

.03 The remedial action permitted in § 1.141-12(f) applies to bonds that were not treated as private activity bonds on their issue date. Under this provision, if a subsequent action causes bonds of an issue to meet the private activity bond tests of § 141 of the 1986 Code, the bonds may be treated as reissued qualified private activity bonds on the date of the action for certain purposes, including §§ 55 through 57 of the 1986 Code.

.04 Section 57(a)(5) of the 1986 Code provides that the interest on certain qualified private activity bonds is treated as an item of tax preference for purposes of the alternative minimum tax.

.05 Corresponding provisions of the Internal Revenue Code of 1954 set forth requirements for the exclusion from gross income of the interest on an issue of state or local bonds. For purposes of this revenue procedure, any reference to a provision of the 1986 Code includes a reference to the corresponding provision, if any, under the 1954 Code.

SECTION 3. DESCRIPTION OF THE CLOSING AGREEMENT PROGRAM FOR SUBSEQUENT ACTIONS

.01 Under the program established by this revenue procedure, the Service will enter into closing agreements with issuers of state or local bonds. These closing agreements will provide that (1) the interest on bonds will not be includible in gross income of bondholders or (2) the interest on bonds will not be treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case solely as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the 1986 Code relating to use of bond proceeds. The closing agreements will not resolve any other matter.

.02 In general, in the case of a closing agreement providing that the interest on bonds will not be includible in gross income of bondholders, the closing agreement will apply only to the period between the issue date of the bonds and the next date on which the bonds may be redeemed under their terms after the date of the closing agreement (the "next redemption date"). The next redemption date will be specified in the closing agreement.

.03 In general, in the case of a closing agreement providing that the interest on bonds will not be treated as an item of tax preference for purposes of the alternative minimum tax, the closing agreement will apply only to the period between the date of the subsequent action and the date specified in the closing agreement.

.04 This program is a compliance program but is not based upon an examination of an issue of bonds by the Service.

.05 Because this program does not arise out of an examination, consideration under this program does not preclude or impede an examination of the issuer, the bondholders, or the issue of bonds by the Service with respect to matters not addressed in the closing agreement.

.06 The intent underlying this program is to treat expeditiously all requests for closing agreements which are submitted in accordance with sections 5 and 6 of this revenue procedure. Accordingly, negotiations with issuers on the basis of mitigating circumstances of individual cases will not be entertained under the terms of this revenue procedure.

SECTION 4. SCOPE

.01 This revenue procedure applies only to failures to meet the requirements for excludability of interest from gross income in §§ 141 through 150 of the 1986 Code that can be remediated under §§ 1.141-12, 1.142-2, 1.144-2, 1.145-2, or 1.147-2 with respect to proceeds that have been spent. These remedial action provisions generally require that the initial use of proceeds of the issue of bonds, including the use of any facility financed with those proceeds, satisfied all the applicable requirements for tax-exempt bonds under §§ 103 and 141 through 150 of the 1986 Code. The requirements for excludability of interest from gross income in §§ 141 through 150 of the 1986 Code that can be

remediated under §§ 1.141-12, 1.142-2, 1.144-2, 1.145-2, and 1.147-2 are §§ 141(b)(1), 141(b)(3), 141(b)(4), 141(b)(5), 141(c), 142 (except paragraphs (d) and (f)), 144 (except paragraphs (a)(4), (a)(10), and (b)), 145(a), 147(c)(3), 147(d)(2) and (3), 147(e), and 147(f) of the 1986 Code. This revenue procedure has no effect on the application of the provisions set forth in §§ 150(b) and (c) of the 1986 Code.

.02 An issue of bonds that is under an examination by the Service is not eligible for the program. An issue of bonds is under examination if the issuer of the bonds has been notified in writing by the Service that the issue has been selected for examination.

SECTION 5. PROCEDURE

.01 An issuer seeking relief must request, within 180 days from the date of the subsequent action, a closing agreement following the procedures in this revenue procedure.

.02 In its request for a closing agreement under this revenue procedure, the issuer must include the following information relating to the issue of bonds:

(1) A copy of the completed and filed Form 8038;

(2) A copy of the final offering document, if any;

(3) A statement detailing the subsequent action;

(4) A statement explaining the computation of the proposed closing agreement amount, as described in section 6 of this revenue procedure; and

(5) In the case of a request for a closing agreement providing that the interest on bonds will not be includible in gross income of bondholders, a copy of the written notice (which may acknowledge that the issuer does not currently have funds on hand to redeem the nonqualified bonds) to the bondholders of the issue that:

(a) The nonqualified bonds will be redeemed on the next redemption date; and

(b) In the event the issuer fails to redeem the nonqualified bonds in accordance with the terms of the closing agreement on the next redemption date, the bonds of the issue will be treated as private activity bonds that are not qualified bonds as of that date.

.03 The closing agreement will be prepared by the Service and, in general, will be in substantially the same form

which is shown as an exhibit at the end of this revenue procedure.

.04 As a condition to the Service executing a closing agreement under this procedure, the following requirements must be met:

(1) The requirements of §§ 1.141-12(a), 1.142-2, 1.144-2, 1.145-2, or 1.147-2, as applicable, relating to conditions for remedial action must be satisfied.

(2) In the case of a closing agreement providing that the interest on bonds will not be includible in gross income of bondholders, the issuer must agree to:

(a) Notify the bondholders in writing, within 30 days after the date the closing agreement is executed by the Service, that:

(i) The nonqualified bonds will be redeemed on the next redemption date; and

(ii) In the event the issuer fails to redeem the nonqualified bonds in accordance with the terms of the closing agreement on the next redemption date, the bonds of the issue will be treated as private activity bonds that are not qualified bonds as of that date; and

(b) Not make any payment under the closing agreement from proceeds of bonds described in § 103(a) of the 1986 Code.

(3) In the case of a closing agreement providing that the interest on bonds will not be treated as an item of tax preference for purposes of the alternative minimum tax, the issuer must agree to not make any payment under the closing agreement from proceeds of bonds described in § 103(a) of the 1986 Code.

(4) In the case of a closing agreement providing that the interest on bonds will not be includible in gross income of bondholders, the issuer must execute, simultaneously with the execution by the issuer of the closing agreement, a § 6103(c) disclosure consent authorizing the Service to make public any returns and return information (as those terms are defined in § 6103(b) of the 1986 Code) of the issuer relating to the closing agreement under this revenue procedure, but only in the event the issuer fails to redeem the nonqualified bonds in accordance with the terms of the closing agreement.

(5) The issuer must pay, simultaneously with the execution by the issuer of the closing agreement, the applicable closing agreement amount computed under section 6 of this revenue procedure.

.05 A request for a closing agreement and the closing agreement under this revenue procedure must be signed by the issuer. The person who signs for an issuer must be an official of the issuer who is authorized to sign a Form 8038 and who has personal knowledge of the facts regarding bonds to be covered by the closing agreement, the subsequent action relating to the use of the proceeds of those bonds, and the computation of the proposed closing agreement amount described in section 6 of this revenue procedure.

.06 To sign the request for a closing agreement or to appear before the Service in connection with the request for a closing agreement, the issuer or the representative must comply with the requirements of sections 9.02(11) and (12) of Rev. Proc. 97-4, 1997-1 I.R.B. 97 or any successor to Rev. Proc. 97-4.

.07 The following declaration must accompany a request for a closing agreement and any factual information submitted after the original request or any change in the request at a later time: **“Under penalties of perjury, I declare that I have examined this request for a closing agreement, including accompanying documents, and that, to the best of my knowledge and belief, the facts presented in support of the requested closing agreement are true, correct, and complete.”** The declaration must be signed by the issuer, not the issuer’s representative.

.08 A request for a closing agreement must be clearly labeled as a request for a closing agreement under this revenue procedure and sent to the following address:

Internal Revenue Service
1111 Constitution Avenue, N.W.
Attention: CP:E:EO:P:2, Room 6052
Washington, D.C. 20224

SECTION 6. CLOSING AGREEMENT AMOUNT

.01 *In general.* Except as provided in section 6.04 of this revenue procedure, the closing agreement amount is equal to an estimate of the federal income tax liability that is not required to be paid with respect to interest accruing on the nonqualified bonds commencing on the date of the subsequent action, as provided in this section. The closing agreement amount is computed as follows:

(1) *Step 1.* Determine the amount of interest accruing on the nonqualified bonds in each calendar year, commenc-

ing on the date on which the subsequent action occurs and ending on the next redemption date;

(2) *Step 2.* Multiply the amount determined in section 6.01(1) of this revenue procedure for each calendar year by 0.29;

(3) *Step 3.* Determine the present value of each amount determined in section 6.01(2) of this revenue procedure for each calendar year in accordance with section 6.02 of this revenue procedure by assuming it is paid on April 15 in the following calendar year;

(4) *Step 4.* Determine the sum of the present value amounts determined in section 6.01(3) of this revenue procedure for all calendar years.

.02 *Computation of present value.* Present value must be computed as of the date on which the payment is sent to the Service.

(1) In the case of a closing agreement providing that the interest on bonds will not be includible in gross income of bondholders, the discount rate used to determine present value is the taxable applicable federal rate (semiannual compounding), determined as of the date of the subsequent action, for a term equal to the period between the date of the subsequent action and the next redemption date.

(2) In the case of a closing agreement providing that the interest on bonds will not be treated as an item of tax preference for purposes of the alternative minimum tax, the discount rate used to determine present value is the taxable applicable federal rate (semiannual compounding), determined as of the date of the subsequent action, for a term equal to the period between the date of the subsequent action and the date specified in the closing agreement.

.03 *Nonqualified bonds* has the same meaning as in §§ 1.141-12(j) or 1.142-2(e), as applicable. Nonqualified bonds that continue to be treated as tax-exempt because of a permissible remedial action under §§ 1.141-12(d), (e), or (f), 1.142-2(c), 1.144-2, 1.145-2, or 1.147-2, as applicable, will not be treated as nonqualified bonds for purposes of this closing agreement program.

.04 *Amount for closing agreement on item of tax preference.* In the case of a closing agreement providing that the interest on bonds will not be treated as an item of tax preference for purposes of the alternative minimum tax, the closing agreement amount is equal to an estimate of the federal income tax liability that is not required to be paid

because of this treatment commencing on the date of the subsequent action, as provided in this section. The closing agreement amount is computed as follows:

(1) *Step 1.* Determine the principal amount of nonqualified bonds that will be outstanding on January 1 of each calendar year commencing the calendar year in which the subsequent action occurs and ending the first calendar year in which the nonqualified bonds will no longer be outstanding;

(2) *Step 2.* Multiply the amount determined in section 6.04(1) of this revenue procedure for each calendar year by .0014;

(3) *Step 3.* Determine the present value of each amount determined in section 6.04(2) of this revenue procedure for each calendar year in accordance with section 6.02 of this revenue procedure by assuming it is paid on April 15 in the following calendar year;

(4) *Step 4.* Determine the sum of the present value amounts determined in section 6.04(3) of this revenue procedure for all calendar years.

SECTION 7. INQUIRIES

Inquiries, comments, or suggestions in regard to this revenue procedure should be directed to:

Internal Revenue Service
1111 Constitution Avenue, N.W.
Attention: CP:E:EO:P:2, Room 6052
Washington, D.C. 20224

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for bonds issued on or after May 16, 1997. In addition, an issuer may apply this revenue procedure to any bonds issued before May 16, 1997.

SECTION 9. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1528.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in section 5 of this revenue procedure. This information

is required by the Service to verify compliance with §§ 57, 103, 141, 142, 144, 145, and 147 of the 1986 Code, as applicable. This information will be used by the Service to enter into a closing agreement with the issuer and to establish the closing agreement amount. The collections of information are required to obtain a benefit. The likely respondents are state or local governments.

The estimated total annual reporting and/or recordkeeping burden is 75 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 hour to 3 hours, depending on individual circumstances, with an estimated average of 1.5 hours. The estimated number of respondents and/or recordkeepers is 50.

The estimated annual frequency of responses (used for reporting requirements only) is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Loretta J. Finger of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure contact Loretta J. Finger on (202) 622-3980 (not a toll-free call).

CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS RELATING TO A SUBSEQUENT ACTION RELATING TO USE OF PROCEEDS

Under section 7121 of the Internal Revenue Code (the "Code"), _____ (the "Issuer") and the Commissioner of Internal Revenue (the "Commissioner" or "IRS") make this closing agreement (the "Agreement").

WHEREAS, the parties have determined the following facts and made the following legal conclusions and representations:

A. This Agreement is in settlement of issues raised in a request for a closing agreement under Rev. Proc. 97-15, 1997-5 I.R.B. 21, pertaining to the _____ (the "Bonds") issued on _____ (the "Issue Date").

B. This Agreement is not based upon an examination of the Bonds by the IRS and does not preclude or impede an examination of the Issuer, any holders of the Bonds, or the Bonds by the IRS with respect to matters not addressed in this Agreement.

C. The IRS has not formally asserted any claims against the Issuer, or sought to tax any holders of the Bonds on interest income on the Bonds.

D. The terms of this Agreement were arrived at pursuant to Rev. Proc. 97-15 and may differ from the terms of settlement of bond issues examined or to be examined by the IRS.

E. This Agreement is for the benefit of the past, present and future registered and beneficial owners of the Bonds during the period covered by this Agreement (collectively, the "Bondholders").

F. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: The first date on which the Bonds may be redeemed, under the terms of the bond documents for the Bonds after the date of this Agreement, is _____ (the "Next Redemption Date").]

[Insert additional premises on which this Agreement is based, including a description of the subsequent action causing the Bonds to fail to meet a requirement of the Code relating to use of proceeds. Specifically identify that requirement of the Code.]

NOW IT IS HEREBY DETERMINED AND AGREED PURSUANT TO THIS AGREEMENT EXECUTED BY THE PARTIES HERETO UNDER SECTION 7121 OF THE CODE THAT FOR FEDERAL INCOME TAX PURPOSES:

1. The Issuer shall pay [the amount computed under section 6 of Rev. Proc. 97-15] to the IRS upon the Issuer's execution of this Agreement. Payment of this amount shall not be made from proceeds of bonds described in section 103(a) of the Code. Payments of this amount shall be made by certified check payable to the "Internal Revenue Service." Payment must be sent, simultaneously with this Agreement executed by the Issuer, to Internal Revenue Service, Attention: CP:E:EO, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

2. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: The Bondholders are not required to include in their gross incomes any interest accrued on the Bonds from the Issue Date to the Next Redemption Date be-

cause of the violations set forth herein.] [In the case of a closing agreement entered into under section 3.01(2) of Rev. Proc. 97-15, provide as follows: The Bondholders are not required to treat interest accrued on the Bonds from [the date of the subsequent action] to [a specified date] as an item of tax preference for purposes of the alternative minimum tax, because of the violations set forth herein.]

3. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: Within 30 days after the date this Agreement is executed by the IRS, the Issuer must notify all Bondholders in writing that the Bonds will be redeemed on the Next Redemption Date and that, in the event that the Issuer fails to redeem the Bonds, the Bonds will be treated as private activity bonds that are not qualified bonds after the Next Redemption Date.]

4. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: The Issuer is required to redeem the Bonds on the Next Redemption Date. Further, the Issuer may not redeem the Bonds from proceeds of bonds described in section 103(a) of the Code.]

5. Notwithstanding anything to the contrary contained herein, the IRS may take any appropriate action with respect to the Bonds, including taxing the Bondholders on interest earned on the Bonds, for violations other than those set forth herein or for violations arising after the effective date of this Agreement.

6. This Agreement is executed with respect to a federal income tax liability of the Bondholders.

7. No income shall be recognized by any Bondholder as a result of this Agreement or any payments made pursuant to this Agreement.

8. No party shall endeavor by litigation or other means to attack the validity of this Agreement.

9. This Agreement may not be cited or relied upon by any person or entity whatsoever as precedent in the disposition of any other case.

10. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: The Issuer shall execute, upon the Issuer's execution of this Agreement, a consent meeting the requirements of section 6103(c) of the Code permitting the disclosure to the general public of information concerning this Agreement. The consent will permit such disclosures

only in the event the Issuer fails to redeem the Bonds in accordance with the terms of this Agreement.]

11. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: In the event that the Bonds are retired prior to the Next Redemption Date, no amount paid by the Issuer under paragraph 1 of this Agreement may be refunded.] [In the case of a closing agreement entered into under section 3.01(2) of Rev. Proc. 97-15, provide as follows: In the event that the Bonds are retired prior to [the date specified in paragraph 2 of this Agreement], no amount paid by the Issuer under paragraph 1 of this Agreement may be refunded.]

12. This Agreement is final and conclusive except that—

a. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;

b. It is subject to the sections of the Code that expressly provide that effect be given to their provisions (including any stated exception for section 7122 of the Code) notwithstanding any other law or rule of law; and

c. It is subject to any law, enacted after the date of this Agreement, that applies to a tax period ending after the date of this Agreement covered by this Agreement.

By signing, the above parties certify that they have read and agreed to the terms of this Agreement.

ISSUER _____
TIN: _____
By: _____ Date: _____
[Name]
Title: _____

COMMISSIONER OF INTERNAL REVENUE
By: _____ Date: _____
[Name]
Title: _____

CONSENT TO DISCLOSE TAX INFORMATION

I [we] hereby authorize the Internal Revenue Service ("IRS") to make public any returns and return information (as those terms are defined in section 6103(b) of the Internal Revenue Code) of [INSERT NAME OF ISSUER] ("the Issuer") relating to the Closing Agreement ("Agreement") dated [INSERT DATE] between the Issuer, [INSERT NAME OF ANY OTHER PARTY

SIGNING THE AGREEMENT] and the Commissioner of Internal Revenue, concerning [INSERT NAME OF BOND ISSUE]. The above described information may be disclosed by the IRS to members of Congress, the press, or the general public. Such disclosures may be made only in the event the Issuer fails to redeem the Bonds in accordance with the terms of the Agreement.

I [we] am [are] aware that without this authorization the returns and return information of [INSERT NAME OF ISSUER] are confidential and are protected by law under the Internal Revenue Code.

I [we] hereby certify that I [we] have the authority to execute this consent to disclose on behalf of the Issuer.

NAME OF ISSUER: _____
EMPLOYER IDENTIFICATION NUMBER: _____
ISSUER'S ADDRESS: _____
NAME OF INDIVIDUAL EXECUTING CONSENT: _____
TITLE: _____
SIGNATURE: _____
DATE: _____