Part III – Administrative, Procedural, and Miscellaneous

Expanded Temporary Rule Allowing Governmental Issuers to Purchase Their Own Tax-Exempt Bonds

Notice 2008-88

SECTION 1. Purpose

This Notice amends and supplements Notice 2008-41, 2008-15 I.R.B. 742 (April 14, 2008), regarding reissuance standards for tax-exempt bonds. (Defined terms in Notice 2008-41 shall have the same meanings when used in this Notice.) This Notice expands the circumstances and time periods during which the Treasury Department and the Internal Revenue Service ("IRS") will treat a tax-exempt bond that is purchased by its state or local governmental issuer as continuing in effect without resulting in a reissuance or retirement of the purchased tax-exempt bond solely for purposes of § 103 and §§ 141 through 150 of the Internal Revenue Code, as amended ("Code"). (Except as noted, section references in this Notice are to the Code and the Income Tax Regulations.) This Notice is intended to provide flexibility to assist state and local governments in efforts to facilitate liquidity and stability in the short-term sector of the tax-exempt bond market.

SECTION 2. Background

In response to auction failures and liquidity constraints in the auction rate bond sector of the tax-exempt bond market, § 4 of Notice 2008-41 provides a special temporary rule which allows governmental issuers to purchase their own tax-exempt auction rate bonds on a temporary basis without resulting in a reissuance or retirement of the purchased tax-exempt bonds solely for purposes of § 103 and §§ 141 to 150. To be eligible for that special rule, a governmental issuer must purchase the tax-exempt auction rate bonds before October 1, 2008, and hold those bonds for not more than a 180-day period from the date of purchase.

Recently, circumstances affecting liquidity and stability in the credit markets have extended beyond the auction rate bond sector to affect other sectors of the short-term tax-exempt bond market, including other “qualified tender bonds” (as defined in § 3.2 of Notice 2008-41) (e.g., variable rate demand bonds with seven-day put options) and tax-exempt commercial paper. In the case of commercial paper, a special rule under § 1.150-1(c)(4)(ii) allows certain short-term tax-exempt bonds issued pursuant to the same commercial paper program to be treated as part of the same issue. For purposes of this Notice, references to “tax-exempt commercial paper” means tax-exempt bonds issued pursuant to the same commercial paper program that are treated as a single issue under this special rule in § 1.150-1(c)(4)(ii).

This Notice expands the circumstances and time periods during which governmental issuers may purchase their own tax-exempt bonds to include the purchase and holding of all qualified tender bonds and tax-exempt commercial paper through the end of 2009. This Notice also extends certain other time deadlines for special rules in Notice 2008-41.

SECTION 3. Scope and Application

3.1 Expanded Temporary Rule Allowing Governmental Issuers to Purchase Their Own Tax-Exempt Bonds. Solely for purposes of § 103 and §§ 141 through 150, the Treasury Department and the IRS will treat a tax-exempt “qualified tender bond” (as defined in Notice 2008-41) or “tax-exempt commercial paper” (as defined in § 2 of this Notice) that is purchased by its “governmental issuer” (as defined in Notice 2008-41) on a temporary basis as continuing in effect without resulting in a reissuance or retirement of the purchased tax-exempt bond if, irrespective of when the governmental issuer purchases the bond (including a purchase of a bond before October 1, 2008), the governmental issuer holds the bond until not later than December 31, 2009. Subsequent to the end of this period, a governmental issuer generally may not hold its own bond without causing a reissuance or retirement of such bond under the general rules in § 3.1 of Notice 2008-41 and other applicable law.

Thus, recognizing that the purchased bond is treated as continuing in effect without resulting in a reissuance or retirement of that bond solely for purposes of § 103 and §§ 141 through 150 during the permitted holding period until not later than December 31, 2009 (“permitted holding period”), the governmental issuer may refund the purchased bond with a refunding bond, tender the purchased bond for purchase in a qualified tender right in its capacity as a bondholder, or otherwise resell the purchased bond during this permitted holding period. Further, in the case of the purchase of any particular obligation of tax-exempt commercial paper, including a purchase of such a particular obligation at maturity, a refinancing of that purchased tax-exempt commercial paper during the permitted holding period will be treated as part of the same issue as the issue of which the purchased tax-exempt commercial paper was a part. After the end of this permitted holding period, however, a governmental issuer generally may not hold its own bond without causing a reissuance or retirement of such bond under the general rules in Notice 2008-41 and other applicable law.

3.2 Extension of Certain Other Time Limits for Special Rules in Notice 2008-41. Section 3.2(3)(b) of Notice 2008-41 regarding operating rules for qualified tender rights is amended to extend the final date for purchase of bonds pursuant to qualified tender rights for which the special 180-day holding period applies (in lieu of the general 90-day holding period rule for this purpose) from October 1, 2008 to December 31, 2009. Section 6.2 of Notice 2008-41 regarding the treatment of certain waivers of interest rate caps on tax-exempt auction rate bonds is amended to extend the final date on which covered waivers of interest rate caps are disregarded from October 1, 2008 to December 31, 2009.

3.3 No Inferences on Law. This Notice provides administrative relief in furtherance of public policy to promote liquidity and stability in the short-term tax-exempt bond market. Except with respect to the administrative relief expressly provided in this Notice, no inference should be drawn from this Notice regarding any other Federal tax issues affecting tax-exempt bonds or any other security. In addition, this Notice is not intended to address any other Federal tax issue implicated in the transactions described in this Notice allowing governmental issuers to purchase their own tax-exempt bonds on a temporary basis in prescribed circumstances.

SECTION 4. Effect on other Documents

This Notice amends and supplements Notice 2008-41.

SECTION 5. Effective Date

This Notice is effective as of March 25, 2008, which is the effective date of Notice 2008-41. Issuers of tax-exempt bonds may apply and rely on this Notice to the same extent and in the same manner as provided in § 8 of Notice 2008-41.

SECTION 6. Drafting Information

The principal author of this Notice is Timothy L. Jones, of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this Notice, contact Mr. Jones at (202) 622-3980 (not a toll-free call).