Internal Revenue Service

Form 990 Redesign for Tax Year 2008

Schedule K, Supplemental Information on Tax-Exempt Bonds – Highlights

December 20, 2007

Rationale

The current Form 990 requires a schedule to be attached for line 64a, Tax-exempt bond liabilities. The line 64a instructions provide that for all bonds and obligations outstanding at any time during the year, the schedule must show for each separate issue:

- the purpose of the issue;
- the amount of the issue outstanding;
- the unexpended bond proceeds; and
- whether any portion of any bond-financed facility was used by a third party (other than a governmental unit or section 501(c)(3) organization), and, if so, the percentage of space used by the third party.

The IRS is aware of significant noncompliance with recordkeeping and record retention requirements relating to tax-exempt bonds issued by or for the benefit of section 501(c)(3) organizations. This has made it difficult for the IRS to determine whether the bonds continue to remain qualified throughout their life. The IRS also is concerned about the investment of proceeds that might circumvent existing arbitrage rebate requirements. As a result, the IRS created the Schedule K, Supplemental Information on Tax-Exempt Bonds.

Summary of Draft

The Draft Schedule K contained four parts:

- Part I, Bond Issues, requested information about all of an organization's outstanding bond issues with an outstanding principal amount of greater than $100,000;
- Part II, Proceeds, requested information about the use and investment of bond proceeds;
- Part III, Private Use, requested information about private use; and
- Part IV, Compensation of third parties, requested information about the compensation of third parties who provide services to bond issuances.

Major Comments and Changes to Draft

The IRS received numerous comments from the tax-exempt bond sector regarding this schedule. Many of the comments suggested clarifications to many of the questions, including those regarding proceeds and private use. A number of comments questioned the need for Part IV information regarding compensation paid to third parties, and suggested that more information be requested regarding arbitrage. Some stated that some of the requested information was redundant because it is already reported on Form 8038, and that much of the requested information should not be disclosed to the public.

In response to these comments, the schedule has been substantially revised to clarify the Part II proceeds and Part III private use tables. The Part IV third party compensation table has been eliminated and replaced with a table requesting information about arbitrage reporting and compliance concerns.

Many comments recommended more specific instructions to clarify the reporting requirements and definitions. These comments will be addressed as the schedule's instructions are completed.

Transition Relief

A number of comments stated that many organizations will have a difficult time completing much of the schedule for 2008 tax years and requested a delay in implementation for one to two years. Others recommended that the new reporting requirements not apply to bonds issued before a certain date because many organizations do not have the records, or cannot easily retrieve or compile the information, needed to complete the schedule.

The Schedule K will be effective for 2008 tax years. However, only Part I will be required for 2008 so that an organization need only provide basic identifying information regarding outstanding bond issues. Parts II, III, and IV will be optional for 2008 tax years. All parts must be completed beginning with 2009 tax years. Beginning with 2008 tax years, the organization need not report information regarding bonds that were issued before 2003.

Expected Impact on Burden

The schedule retains the $100,000 bond issue threshold included in the Draft in order to eliminate reporting with respect to bonds with relatively small amounts outstanding. Most of the information contained in Part I is required by the current form so any additional burden for this part should be minimal. The information contained in Parts II, III and IV is new and will impose additional reporting burden on those organizations that have borrowed through the use of tax-exempt bonds. The exception from reporting of pre-2003 bond issues will mean that organizations are not required to annually provide information regarding those bond issues for purposes of Form 990 reporting going forward, although other applicable reporting and recordkeeping requirements will continue to apply for such issues. The one year delay for most portions of the form will provide organizations an opportunity to put in place the systems needed to compile the information required to complete the schedule.