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ALERT

AUGUST 23, 2007

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IRS Releases Exempt Organization Compliance Check Questionnaire

The IRS publicly released on August 21, 2007 the “Tax-Exempt Bond Financings Compliance Check Questionnaire,” which it is sending by the end of August 2007 to 200 exempt organizations that have tax-exempt bonds outstanding. The purpose of the compliance check is to help the IRS evaluate the adequacy of procedures and practices Section 501(c)(3) organizations have in place to establish and maintain compliance with the federal tax-exempt bond rules. The candidates for the compliance check were selected from the 2005 Form 990s filed by borrowers with outstanding tax-exempt bonds.

In the questionnaire, which includes 68 yes/no questions, the IRS requests information on topics including the exempt organization’s:

- record-keeping practices;
- written monitoring procedures to assure compliance;
- officials responsible for compliance with bond tax-exemption requirements;
- education and training practices;
- maintenance of key organizational documents;
- expenditure allocation documentation;
- investment records;
- arbitrage compliance; and
- maintenance of records with respect to private use and unrelated trade or business activities.

Although borrowers receiving the questionnaire are not under audit, failure to respond could trigger an examination. In addition, the IRS

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has informed borrowers that it could commence an examination during a compliance check. Hence, we advise borrowers receiving the questionnaire to review their responses with their counsel.

This is the first time that the Tax-Exempt Bond (TEB) office of the IRS has used this questionnaire approach to encourage voluntary compliance and education. Although it is unknown what the results of the study will show, significant noncompliance could possibly lead to further educational efforts by the IRS and the establishment of a voluntary compliance initiative by the TEB's Office of Compliance and Program Management. Indeed, if the study is not conclusive or is incomplete, further questionnaires could be sent out.

Previous client alerts on the subject of post-issuance compliance can be found at the following links:

- “Charitable Borrowers Must Track Private Use of Bond-Financed Facilities” (Jan. 13, 2006)
- “After the Bond Closing: Obligations of Non-Profit Borrowers” (Dec. 8, 2003)

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If you wish to discuss the contents of this alert, or for assistance with issues raised by the legal developments that are the subject of this alert, please contact the Mintz Levin lawyers listed below or any other member of Mintz Levin's Public Finance section.

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