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Simplified Settlement Procedures for Issuers of 501(c)(3) Bonds

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The Internal Revenue Service (IRS) has announced a simplified process for issuers that have loaned proceeds of qualified 501(c)(3) bonds to borrowers that automatically lost their tax-exempt status for failing to file annual returns or notices for three consecutive years, but have subsequently received reinstatement of their tax-exempt status from the IRS. Released on December 30, 2014, Announcement 2015-2 also sets forth a penalty that issuers will have to pay to preserve the tax-exempt status of the affected bonds.

The simplified process set forth under Announcement 2015-2 is available only under certain circumstances. Specifically, an issuer of qualified 501(c)(3) bonds may apply for a closing agreement under Announcement 2015-2 if the following requirements are met:

- The IRS has prospectively reinstated the borrower's tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- The borrower's tax-exempt status has not been previously revoked since the issue date of the affected bonds. If the proceeds of the affected bonds were used to refund prior qualified 501(c)(3) bonds, the "issue date" for purposes of Announcement 2015-2 means the issue date of the refunded bonds.
- The request for the closing agreement under Announcement 2015-2 is submitted within 12 months of the date of the reinstatement letter, or within 12 months of December 30, 2014 if the reinstatement letter was received before that date.
- The affected bonds are not under IRS examination.

If the foregoing requirements are satisfied, the issuer will be able to avail itself of the simplified process by completing a form attached as an Exhibit to Announcement 2015-2, as well as paying the "closing agreement amount" (i.e., a penalty equal to $500 for each calendar month or partial month in the period beginning with the month that includes the revocation date and ending with the month that includes the effective date of the prospective reinstatement). Interestingly, the form attached as an Exhibit to Announcement 2015-2 requires a representation from both the issuer and the borrower that neither is aware of a reason (other than the prior revocation of the borrower's tax-exempt status) that could cause the affected bonds to fail to qualify as tax-exempt bonds – a representation that is not required with respect to some other tax-exempt bond voluntary closing agreement program requests.

Finally, if the revocation of the borrower's exempt status affects more than one of the issuer's bond issues, the issuer may submit one closing agreement to cover all affected bond issues. If an issuer's bonds fail to qualify as qualified 501(c)(3) bonds because more than one of its borrowers have had their tax-exempt status automatically revoked and prospectively reinstated, the issuer must submit a separate closing agreement and pay a separate closing agreement amount for each such borrower.

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