



May 31, 2024

Submitted via [www.regulations.gov](http://www.regulations.gov)

(IRS Notice-2024-28)

Internal Revenue Service

Attn: CC:PA:LPD:PR (Notice 2024-28) Room 5203

P.O. Box 7604

Ben Franklin Station

Washington, D.C. 20044

**RE:** Requests for 2024-2025 IRS Priority Guidance Plan

To Whom It May Concern:

The National Association of Bond Lawyers (“NABL”) respectfully submits the following suggestions for inclusion in the U.S. Treasury Department’s Office of Tax Policy and Internal Revenue Service (“IRS”) 2024-2025 Priority Guidance Plan. Unless otherwise indicated, section references are to the Internal Revenue Code of 1986 (the “Code”). These items are listed in order of priority.

**1. Provide guidance regarding implementation of Section 142(n) and 142(o) of the Code.**

The Infrastructure Investment and Jobs Act (Pub. L. 117-58) expands Internal Revenue Code Section 142(a) to provide two new categories of exempt facility bonds for the financing of “qualified broadband projects” and “qualified carbon dioxide capture facilities.” The statutory language raises questions regarding the ability to issue bonds to meet the stated requirements for each category. The tax-exempt bond community would benefit from guidance with respect to the implementation of these new exempt facility categories. For example, among other items, guidance is needed on the qualified carbon dioxide capture facility provisions to clarify how the capture and storage percentage set forth under section 142(o)(3) is applied to a bond financing for “eligible components” described under section 142(o)(2)(A), which encompasses activities beyond the capture and storage of carbon dioxide. NABL has provided specific comments to the IRS regarding these two new categories in letters dated June 24, 2022 (qualified carbon dioxide capture facilities)<sup>1</sup> and February 24, 2023 (qualified broadband projects)<sup>2</sup> and would be pleased to discuss any questions.

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<sup>1</sup> See NABL letter re: “Request for Guidance on Qualified Broadband Bonds” sent on June 24, 2022. Web access: <https://www.nabl.org/resources/request-cc-bonds/>

<sup>2</sup> See NABL letter re: “Request for Guidance on Qualified Broadband Bonds” sent on February 24, 2023. Web access: <https://www.nabl.org/resources/request-broadband-bonds/>

## **2. Request to modernize the incidental use exception to the private business use rules.**

In 1997, Treasury promulgated rules setting forth the amount of non-governmental use or “private business use” which may be financed with tax exempt bonds. These rules include an exception that allows an issuer to disregard small amounts of “incidental use” of a bond-financed facility by a private party if certain requirements are met. NABL believes these rules need to be modernized to account for changes in technology and expanded possibilities for novel uses of traditional bond-financed facilities that simply were not contemplated in 1997. Examples of these technologies include, but are not limited to, EV charging stations, solar panels, landfill gas used in renewable energy, and 5G infrastructure (such as a cell tower placed on the roof of a building). NABL intends to provide a full comment letter to the IRS and Treasury regarding these matters in the coming months, which we would be pleased to discuss with you.

## **3. Provide guidance regarding refundable tax credits under section 6417 used in conjunction with tax-exempt bonds.**

As amended by the Inflation Reduction Act of 2022 (Pub. L. 117-169), a number of tax credit provisions contain a “haircut” provision, set forth in section 45(b)(3) (and cross-referenced in the various other tax credit provisions), which mandates that tax credits be reduced by a fraction of the cost of the energy project financed with tax-exempt bonds to the total cost of the energy project (but not reduced by more than 15%). Guidance is needed to confirm that the allocation methodologies available to issuers and conduit borrowers of tax-exempt bonds under Treas. Reg. §1.148-6 apply for purposes of determining whether, and to what extent, the section 45(b)(3) tax credit reduction applies. NABL has provided specific comments to the IRS and Treasury regarding these matters in a letter dated August 14, 2023<sup>3</sup> (which NABL also submitted officially on <http://regulations.gov> for REG-101607-23) and in a letter dated March 9, 2023,<sup>4</sup> and we would be pleased to discuss our comments.

Moreover, NABL believes that, as detailed in our letter dated March 9, 2023, additional guidance is needed to confirm that refundable tax credit payments received pursuant to section 6417 do not constitute “*gross* proceeds” of tax-exempt bonds within the meaning of Treas. Reg. §1.148-1(b).

## **4. Request to lower the user fee for private letter rulings related to tax-advantaged bonds for state and local governments.**

Private letter rulings are an important tool that an issuer may use to better understand and comply with its tax responsibilities. Requests for private letter rulings are also a helpful

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<sup>3</sup> See NABL letter re: “On Proposed Regulations for Section 6417 Elective Payments of Applicable Credits” sent on August 14, 2024. Web access: <https://www.nabl.org/resources/comments-proposed-section-6417/>

<sup>4</sup> See NABL letter re: “Suppl. Comments on IRS Notices 2022-49 and 2022-50” sent on March 9, 2023. Web access: <https://www.nabl.org/resources/suppl-comments-ira-notices/>

tool for the IRS to understand the areas in which additional guidance may be needed. User fees have significantly increased since 2010, resulting in the costs for Private Letter Rulings to be prohibitive for many issuers, leading to fewer requests for private letter rulings and fewer private letter rulings being issued. The reduction in private letter rulings could result in less voluntary compliance with tax laws and higher overall costs and risks to issuers and taxpayers generally. NABL requests that the charges for private letter rulings relating to tax-advantaged bonds for state and local governments be significantly reduced. NABL has provided specific comments to the IRS and Treasury regarding these matters in a letter dated November 4, 2019,<sup>5</sup> and we would be pleased to discuss our comments.

**5. Provide guidance regarding when tax-exempt and other tax-advantaged debt obligations are treated as “reissued” for certain tax purposes, by finalizing proposed regulations (with appropriate modifications).**

Currently, issuers look to a patchwork of guidance to determine whether a tax-advantaged bond (in particular, a “qualified tender bond”) is treated as “reissued.” On December 31, 2018, Treasury released proposed regulations (REG-141739-08) that would synthesize much of the existing guidance. The proposed regulations omit several helpful aspects of the existing guidance, which should be maintained and incorporated into the final regulations because issuers have come to rely on these helpful rules and the tax-exempt bond community can still benefit from them. NABL has provided specific comments to the IRS and Treasury regarding these matters in a letter dated March 1, 2019 (which NABL also submitted officially on <http://regulations.gov> for REG-141739-08),<sup>6</sup> and we would be pleased to discuss our comments.

**6. Revise and supplement Revenue Procedure 2018-26 to clarify, simplify, and expand the application of the remedial action rules.**

On April 11, 2018, the IRS released Rev. Proc. 2018-26, 2018-18 IRB 546, which expanded the availability of certain remedial actions under Treasury Regulation §1.141-12. Revenue Procedure 2018-26 was a step in the right direction and provides much needed relief in this area. However, there are several ways that the IRS could improve this guidance through additional guidance promulgated under Treasury’s authority in Treasury Regulation §1.141-12(h) (i.e., guidance that need not take the form of additional regulations issued after notice and comment). NABL has provided specific comments to the IRS and Treasury regarding these matters in a letter dated February 1, 2019,<sup>7</sup> and we would be pleased to discuss our comments.

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<sup>5</sup> See NABL letter re: “On IRS PLR Fees (2019)” sent on November 4, 2019. Web access: <https://www.nabl.org/resources/letter-on-irs-plr-fees-2019/>

<sup>6</sup> See NABL letter re: “Comments on When Tax-Exempt Obligations are Treated as Retired (2019)” sent on March 1, 2019. Web access: <https://www.nabl.org/resources/comments-on-when-tax-exempt-obligations-are-treated-as-retired-2019/>

<sup>7</sup> See NABL letter re: “Recommended Remediation Proposals (On Rev. Proc. 2018-26)” sent on February 1, 2019. Web access: <https://www.nabl.org/resources/recommended-remediation-proposals-on-rev-proc-2018-26/>

**7. Provide clarifying guidance concerning the application of the final allocation and accounting regulations in section 1.141-6 of the Treasury Regulations.**

On October 27, 2015, the Department of the Treasury published final regulations (T.D. 9741) relating to the definition of “private activity bonds” (the “Final Regulations”). The Final Regulations address four areas: (i) allocating and accounting for projects financed with tax-advantaged bonds, especially focused on projects financed both with proceeds of bonds and with moneys not derived from tax-advantaged borrowings; (ii) the treatment of certain partnerships; (iii) remedial actions, including “anticipatory remedial actions;” and (iv) qualification for multipurpose issue allocations under Treas. Reg. § 1.141-13(d). The Final Regulations provide a workable framework, but there are still some areas that merit clarification. NABL has provided specific comments to the IRS and Treasury regarding these matters in a letter dated September 26, 2018,<sup>8</sup> and we would be pleased to discuss our comments.

**8. Revise Instructions to IRS Form 8038 and Form 8038-G.**

The current instructions for IRS Form 8038 and Form 8038-G include provisions that are ambiguous and inconsistent with each other and with other published guidance. These inconsistencies and ambiguities have resulted in differing interpretations and differing approaches to information reporting. The ambiguity and inconsistency of the instructions (or lack of instructions) for many line items has led not only to inconsistent completion of the forms but also to many different practices of providing annotations, supplemental schedules and attachments to IRS Forms 8038 and 8038-G that make form preparation more difficult and may make the completed forms less useful to the IRS. NABL has provided specific comments to the IRS regarding these matters in a letter dated September 29, 2020, and we would be pleased to discuss our comments.

This list of suggested items for inclusion was compiled by members of NABL’s Tax Law Committee. If you have any questions concerning this submission, please contact our Director of Governmental Affairs, Brian Egan, at 202-503-3290 or [began@nabl.org](mailto:began@nabl.org).

Sincerely,



**Carol Juang McCoog**  
President  
National Association of Bond Lawyers

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<sup>8</sup> See NABL letter re: “Comments Regarding Final Regulations on Allocation and Accounting and Certain Other Matters” sent on September 26, 2018. Web access: <https://www.nabl.org/resources/comments-to-irs-on-final-rule-on-private-activity-bonds-pabs/>

CC:

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