

**Airports Council International - North America**  
**American Public Power Association**  
**Council of Development Finance Agencies**  
**Council of Infrastructure Financing Authorities**  
**Government Finance Officers Association**  
**International City/Council Management Association**  
**National Association of Counties**  
**National Association of Higher Educational Facilities Authorities**  
**National Association of State Auditors Comptrollers and Treasurers**  
**National Association of State Treasurers**  
**National Council of Health Facilities Finance Authorities**  
**National Council of State Housing Agencies**  
**National League of Cities**  
**US Conference of Mayors**

March 8, 2005

CC:PA:LPD:PR (REG - 159824-04)  
Courier's Desk  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20044

Ladies and Gentlemen:

The organizations listed above, representing tax-exempt bond issuers from across the country, are writing in objection to the December 20, 2004 proposed regulations relating to Circular 230, as it would apply to tax-exempt bonds.

We appreciate the efforts that have been made throughout the past year by officials from the Treasury Department and the Internal Revenue Service in discussing the application of Circular 230 to tax-exempt bonds. Additionally, we appreciate that the tax-exempt bonds provisions of Circular 230 were not finalized as part of the regulations issued on 12/20/04, and that the tax-exempt bond community was provided with the opportunity to comment on a revised proposed regulation and participate in a public hearing.

We remain extremely concerned about the cost implications inherent in the proposed regulation. The additional costs resulting from Circular 230 will be borne by local and state governmental entities, not tax lawyers. We strongly believe that the costs associated with Circular 230 compliance in the public sector should not be ignored, and strong consideration should be given to this consequence, which adversely affects local and state government rather than tax counsel. At a time when local and state governments continue to struggle to provide balanced budgets in the face of decreasing federal funds and increasing demands for services from our citizens, the federal government should not impose another costly measure on these entities – both in the form of increased legal costs for obtaining bond opinions and the potential for higher interest rates due to market disruption. These funds should be used to provide for the essential infrastructure and services that counties, cities, hospitals, universities and other entities provide for their citizens, not to provide additional compensation to tax counsel for work that is of highly questionable value to the transaction.

We remain concerned as well, that this is a proposal that would address a very small number of possible abuses that exist within the tax-exempt bond sector, while placing costly regulations on the entire sector – approximately 15,000 transactions a year. The National Association of Bond Lawyers’ standard that is applied by bond counsel in rendering “unqualified opinions” means that bond counsel believes that there are no material tax issues in the related transaction. We

believe that if an unqualified opinion is rendered and, as a result, bond counsel believes that there are no significant tax issues, additional documentation for that transaction should not be required. The proposed regulations are unclear in addressing if additional bond counsel documentation is required for all tax-exempt bond opinions, or only those with significant tax issues. We ask that clarification be provided, and we are hopeful that the outcome is that a vast majority of tax-exempt bond opinions are exempt from the requirement that bond counsel prepare specified documentation under Circular 230.

While practices differ from lawyer to lawyer and firm to firm, we believe that bond attorneys perform sufficient due diligence in rendering their tax opinions and that these practices should be permitted to continue. If significant documentation is required for all transactions, the costs to local and state governmental entities could be immense. We believe that the statement in the proposal that the documentation required by the proposed Circular 230 rules would add an additional 3 hours to the bond attorney’s time for each transaction is grossly underestimated.

If new documentation standards are to be required, Treasury and the IRS should provide general, flexible guidelines and then have the public finance community, working with the IRS and Treasury, develop more detailed guidelines for compliance with Circular 230. This would allow for a market/industry driven solution to avoid market disruption and undue cost burdens to local and state governments. As with many compliance measures, having the marketplace help develop the standard will likely yield better results than if the federal government imposes standards on its own.

Thus, we would encourage broad guidance be provided for bond counsel that allows bond counsel and the industry, along with the IRS, to develop uniform standards that will:

- addresses any new due diligence and documentation requirements for bond opinions;
- provide recommended best practices for the issuer and legal communities to use;
- provide some standardization for documentation that will be used in bond transactions (e.g., checklist, memo template, tax certificate);
- allow for incremental costs to decrease over time.

Likewise, if Treasury's intent is to not require new documentation for all bond transactions, but only those with 'significant tax issues' then the following issues need to be addressed:

- Treasury and the IRS need to clearly define 'significant tax issues';
- Treasury and the IRS need to work with issuer and bond attorney communities to provide examples illustrating significant tax issues;
- Most significantly, disclosure problems could exist under a system where only in transactions with significant tax issues is additional documentation required. This could lead to market disruption, and again, higher costs to governmental entities in the form of increased interest rates. Therefore an approach needs to be implemented that does not result in this type of market disruption.

We also do not believe that the public sector under Circular 230 should be held to higher standards than the private sector (e.g., including Circular 230 documentation in the bond transcript). Additionally, due to the increase of costs that will be impacting local and state governments, Treasury should look at ways to assist local and state governments with these costs such as the use of a mechanism to the rebate computation credit provided under the section 148 regulations.

At the upcoming hearing on March 22, 2005, Timothy Firestone, Finance Director of Montgomery County, Maryland, and Vice Chair of the Government Finance Officers Association's Governmental Debt Management Committee will be presenting on behalf of the GFOA. His remarks, and expanded written testimony will further outline issuer concerns and address questions that Treasury may have about our position.

As always, we look forward to the continuing dialogue with Treasury and IRS officials on this matter, and appreciate the opportunity to comment on the proposed Circular 230 regulation. If you have any questions about this letter or the Public Finance Network, please contact Susan Gaffney at 202-393-8020 x209.

Sincerely,

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National Association of Higher Educational Facilities Authorities, Charles Samuels, 202-434-7311  
National Association of State Auditors, Comptrollers and Treasurers, Cornelia Chebinou, 202-624-5451  
National Association of State Treasurers, Chris Allen, 202-624-8595  
National Council of Health Facilities Finance Authorities, Charles Samuels, 202-434-7311  
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National League of Cities, Janine Jones-Smith, 202-626-3194  
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