

INSIGHTS

Final Treasury Regulations Set Deadline for Arbitrage Rebate Overpayment Claims

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Effective November 13, 2014, the filing deadline for a claim for an arbitrage rebate overpayment on tax-exempt and other tax-advantaged bonds is two years after the final arbitrage computation date for the issue from which the claim arose.

Treasury Decision 9701, released on November 12, 2014 and scheduled to be published in the Federal Register of November 13, 2014, announced final regulations promulgated by the Department of the Treasury adding new Treas. Reg. §§ 1.148-3(i)(3)(i) through -3(i)(3)(iii) (the “Final Regulations”), which specifically provide that an issuer of tax-exempt and other tax-advantaged bonds must file a claim for a refund of an arbitrage rebate overpayment no later than the date that is two years after the final computation date for the issue to which the overpayment relates. Interestingly, the two-year deadline adopted in the Final Regulations is not included in the Internal Revenue Code of 1986, as amended, meaning that the Department of the Treasury has enacted a limitations period by regulation and not in accordance with legislative action.

In addition, the Final Regulations provide that the Internal Revenue Service (“IRS”) may request additional information from the issuer to support such a claim and specify a date (no less than 21 days from the date of the request) for a return of such additional information. Finally, the Final Regulations provide issuers the right to file an appeal with the IRS Office of Appeals in the event that the IRS denies an issuer’s refund claim because either (i) the initial claim is not filed within the two-year deadline, or (ii) the response to a request for additional information is filed after the time period imposed by the IRS.

The Final Regulations apply to refund claims arising from an issue of bonds for which the final computation date is after June 24, 2008. For purposes of applying the two-year deadline, issues for which the actual final computation date is on or before June 24, 2008 are deemed to have a final computation date of July 1, 2008. With respect to the IRS’s request for additional information and the issuer’s ability to file an appeal with the IRS Office of Appeals, the Final Regulations apply to refund claims arising from an issue of bonds to which the two-year deadline applies and for which the final computation date is after September 16, 2013.

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