

Tax Exempt Bond Mediation Dispute Resolution Pilot Program

Announcement 2003–36

SECTION 1. BACKGROUND AND SUMMARY

.01 This announcement contains the procedures for the Tax Exempt Bond Mediation Dispute Resolution Pilot Program (TEB Mediation). In furtherance of the Service's goal of resolving tax controversies on a basis that is fair and impartial to both the government and taxpayers, TEB Mediation establishes new opportunities for Issuers (as defined in Rev. Proc. 96–16, 1996–1 C.B. 630) of tax-exempt debt, with the assistance of the Office of Appeals, to expedite the resolution of cases within the Tax Exempt Bond organization.

.02 TEB Mediation is jointly administered by TEB and Appeals and is available to Issuers of tax-exempt debt with cases under examination within TEB. Due to the nature of these cases, conduit borrowers (and in certain limited cases, other interested parties) may participate in TEB Mediation, but every TEB Mediation must involve a person with decision making authority for the Issuer, whether the Issuer itself, an authorized representative of the Issuer pursuant to a power or attorney, or another entity (e.g., a conduit borrower) pursuant to a power of attorney from the Issuer. See §§ 4.05, 4.09, and 4.10. TEB Mediation takes place prior to the issuance of the proposed adverse determination letter to the Issuer and is designed to be completed in approximately 60 days or less.

.03 TEB Mediation utilizes the services of a trained Appeals mediator with TEB experience (Appeals Mediator), serving as a neutral participant, to facilitate the resolution of factual disputes between the parties. At the Issuer's expense, TEB and the Issuer (the parties) may use a non-Service co-mediator in the TEB Mediation.

SECTION 2. SCOPE

.01 TEB Mediation is an optional process. TEB Mediation may not be the appropriate dispute resolution process for all cases. The TEB Field Manager and the Is-

suer must evaluate their individual circumstances to determine if this process meets their needs.

.02 TEB Mediation is generally available for all TEB cases within the jurisdiction of TEB in which:

(1) The factual issues are fully developed,

(2) There are a limited number of unagreed issues,

(3) The preliminary adverse determination letter has been issued (*see* Rev. Proc. 99–35, § 4.04(1), 1999–2 C.B. 501, and any succeeding revenue procedure); and

(4) A written response to the preliminary adverse determination letter has been provided by the Issuer.

.03 TEB Mediation will *not* be available for any of the following issues:

(1) Legal issues for which there is no precedent;

(2) Issues in a taxpayer's case designated for litigation;

(3) Issues docketed in any court;

(4) Issues for which mediation would not be consistent with sound tax administration, e.g., issues governed by closing agreements, by *res judicata*, or by controlling precedent; and

(5) Issues for which a proposed adverse determination letter has been issued (*see* Rev. Proc. 99–35, § 4.05(1), 1999–2 C.B. 501).

The exclusion of an issue under this section, however, does not preclude the consideration of another issue in the case through the TEB Mediation process.

SECTION 3. REQUESTS FOR MEDIATION

.01 Either the Issuer or the TEB Field Manager may suggest the use of TEB Mediation procedures.

.02 To initiate formal consideration of a request for mediation, the Issuer must send the TEB Field Manager a written request that includes the following information:

(1) A description of the issue for which TEB Mediation is being requested;

(2) A representation that the issue for which TEB Mediation is being requested is not an excluded issue described in section 2.03, above; and

(3) A request by the Issuer to use a non-Service co-mediator, if applicable.

.03 TEB Mediation requests will be evaluated to determine if the particular issue(s) is appropriate for inclusion in the program. If TEB denies the mediation request, the TEB Field Manager will promptly inform the Issuer and the Appeals TEB Mediation Program Manager. The decision not to approve a request for TEB Mediation is final and not subject to administrative appeal or judicial review.

.04 If TEB and the Issuer agree that the use of mediation procedures is appropriate, the TEB Field Manager and the Issuer will enter into a written agreement to mediate, in the form of Exhibit 1, TEB Agreement to Mediate. The TEB Agreement to Mediate will specify the issues that the parties have agreed to mediate, identify a neutral conference site (e.g., the Appeals Mediator's office), and an agreed projected process ending date. The preliminary adverse determination letter and a written response from the Issuer should be attached to the TEB Agreement to Mediate.

SECTION 4. PROCEDURES FOR CONDUCTING THE TEB MEDIATION

.01 TEB Mediation utilizes the services of a trained Appeals Mediator to facilitate the resolution of factual disputes between the Issuer and TEB. The Appeals Mediator, as a neutral participant, will assist the parties in defining the issues. The Appeals Mediator will not render a decision regarding any issue in dispute. Prior to the commencement of the mediation, the Appeals Mediator will advise the parties of the procedures and ground rules for the mediation process. At the conclusion of the TEB Mediation process, the Appeals Mediator will prepare a brief written report in the form set forth in Exhibit 2, Model Mediator's Report.

.02 Within three business days of receiving a TEB Agreement to Mediate, the Appeals TEB Mediation Program Manager will assign an Appeals Mediator, selected from a list of eligible individuals who, generally, will be from the same Appeals office or geographic area where the case is assigned.

.03 The Issuer also may request, at the Issuer's expense, to use a non-Service co-mediator. If the Issuer requests to use a non-Service co-mediator, the Issuer and the TEB Field Manager shall make the selection from

any local or national organization that provides a roster of qualified neutrals. To qualify, the proposed non-Service co-mediator must have completed mediation training, have previous mediation experience, and have a substantive knowledge of relevant tax law or knowledge of industry practices.

.04 Generally, the Appeals Mediator begins the TEB Mediation with an initial joint session at which all parties are present. Both the Issuer and TEB will be provided ample opportunity to present their respective positions. After the initial joint session, the Appeals Mediator may hold, as necessary, individual sessions with the parties, or additional joint sessions, as deemed appropriate in the sole judgment of the Appeals Mediator.

.05 During the TEB Mediation session, both the Issuer and TEB will have at least one representative present with decision-making authority, unless there is an agreement to the contrary (e.g., a decision maker, while not physically present, must be available by telephone). The Issuer and TEB should also include individuals with the information and expertise necessary to assist the parties and the Appeals Mediator during the mediation process. In cases where doing so will facilitate the process, the Appeals Mediator may ask that the number of participants be limited. Any person engaged in practice before the Service, as defined in Publication 216, *Conference and Practice Requirements*, must have a power of attorney from the issuer or other represented party (Form 2848, *Power of Attorney and Declaration of Representative*).

.06 The goal of the TEB Mediation Program is to complete the mediation process in approximately 60 days.

.07 The TEB mediation session generally will be held at the Appeals Mediator's office, unless the TEB Field Manager and the Issuer specify another neutral location, on a date agreeable to the parties.

.08 The TEB mediation process is confidential. All information concerning any dispute resolution communication is confidential and may not be disclosed by any party, participant, observer or mediator, except as provided by statute, such as in sections 6103 and 7214(a)(8) and 5 U.S.C. § 574. A dispute resolution communication includes all oral or written communications prepared for purposes of a dis-

pute resolution proceeding, including the mediator's report prepared at the conclusion of the mediation process.

.09 In executing the TEB Agreement to Mediate, the Issuer consents under section 6103 to the disclosure by the Service of its returns and return information incident to the TEB Mediation to any participant or observer identified in the initial lists of participants and observers and to any subsequent participants and observers identified in writing by the parties. (See Exhibit 1 of this announcement). In addition, the Issuer may authorize any person (e.g., conduit borrower) to inspect or receive confidential information during the mediation process by submitting a duly executed Form 8821, *Tax Information Authorization*, to the TEB Field Manager. Where appropriate for the mediation of the issues involved, the conduit borrower (or any other interested party participating in the TEB Mediation) must consent under section 6103 to the disclosure by the Service of its returns and return information incident to the TEB Mediation to any participant or observer identified in the initial lists of participants and to any subsequent participants and observers identified in writing by the parties.

.10 The Issuer may authorize certain persons to represent the Issuer during the mediation process by submitting a duly executed Form 2848, *Power of Attorney and Declaration of Representative*, to the TEB Field Manager. If the TEB Agreement to Mediate is executed by a person pursuant to a Form 2848, that power of attorney must clearly express the Issuer's grant of authority to consent to disclose its returns and return information by the Service to third parties, and a copy of that power of attorney must be attached to the agreement.

.11 Employees of the Service and the Treasury Department who participate in or observe the mediation process in any way, and any person under contract to the Service, pursuant to section 6103(n), that the Service invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Code, including sections 6103, 7213, and 7431.

.12 The prohibition of *ex parte* communications between Appeals Officers and other Service employees provided by § 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications aris-

ing in the TEB Mediation process because the Appeals personnel, in facilitating the resolution of a factual dispute between the Issuer and TEB, are not acting in their traditional Appeals' settlement role.

.13 At the conclusion of the TEB Mediation process, the Appeals Mediator will prepare a brief written report, in the form attached as Exhibit 2, Model Mediator's Report, which will summarize the Appeals Mediator's findings. A copy of the Mediator's Report shall be provided to the TEB Field Manager and the Issuer. If a non-Service co-mediator is involved in the process, a single report will be prepared for joint signature. The Mediator's Report may not be used as precedent by any party.

.14 If the parties reach an agreement on all or some issues through TEB Mediation, TEB will use established issue or case closing procedures, which may include the preparation of a Form 906, *Closing Agreement on Final Determination Covering Specific Matters*, or the mailing of a no-change closing letter.

.15 If any issues remain unresolved after TEB Mediation, the Issuer retains the option of requesting that the issue be heard through the traditional Appeals process in accordance with Rev. Proc. 99-35.

SECTION 5. WITHDRAWAL FROM THE TEB MEDIATION DISPUTE RESOLUTION PILOT PROGRAM

Either party may withdraw from TEB Mediation at any time by notifying the other party and the Appeals Mediator in writing. The Appeals Mediator, but not the non-Service co-mediator, may terminate the TEB Mediation process, by notifying the parties and, if applicable, the non-Service co-mediator, in writing, if it becomes apparent that meaningful progress toward resolution of the issues has stopped.

SECTION 6. EFFECTIVE DATE

The TEB Mediation Dispute Resolution Pilot Program is effective beginning June 3, 2003, and applications to the program will be accepted through June 3, 2005.

SECTION 7. COMMENTS

The Service invites interested persons to comment on this pilot program. Written comments on the announcement should be delivered or mailed by December 3, 2004, to:

Internal Revenue Service
Office of the Chief, Appeals
1099 14th Street, NW
Suite 4035 — East
Washington, D.C. 20005

Alternatively, comments may be submitted by e-mail to the following address: *Notice.comments@irscounsel.treas.gov*.

SECTION 8. FURTHER INFORMATION

For further information regarding this announcement, contact: Jacqueline A. Harris, Appeals TEB Mediation Program Manager, at (972) 308-7330; Ralph G. Messenger, Appeals TEB Team Manager, Oklahoma City, OK at (405) 297-4910; Brian W. Haley, Appeals Area Director, Dallas, TX at (972) 308-7455; or Thomas C. Louthan, Appeals Area Director, Washington, DC at (202) 694-1842 (not toll-free calls).

EXHIBIT 1
TEB Agreement to Mediate

Date _____

The undersigned requests that an Appeals Mediator be assigned in the TEB Mediation Process as described in Announcement 2003-36. The Issuer (as defined in Rev. Proc. 96-16, 1996-1 C.B. 630) may also use a non-Internal Revenue Service (Service) co-mediator, at the Issuer's expense. The Issuer, by signing this Agreement to Mediate and participating in the mediation, acknowledges that the Appeals Mediator is a current employee of the Service.

IRS and Treasury employees who participate in any way in the TEB Mediation process and any person under contract to the IRS invited to participate, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including *I.R.C. sections 6103, 7213, and 7431*. See also *5 U.S.C. section 574*. The parties also acknowledge that IRS and all other Treasury employees involved in the mediation are bound by *I.R.C. section 7214(a)(8)* and must report information concerning violations of any revenue law to the Secretary. The Appeals Mediator will have the right to ask either party for additional information if deemed necessary for a full understanding of the issues being mediated. A copy of any submission a party gives to the Appeals Mediator will be provided simultaneously to the other party.

The Issuer consents to the disclosure by the IRS of the Issuer's returns and return information incident to the mediation to any participant or observer for the Issuer. If the mediation agreement is executed by a person pursuant to a power of attorney executed by the Issuer, that power of attorney must clearly express the Issuer's grant of authority to consent to disclose the Issuer's returns and return information by the IRS to third parties, and a copy of that power of attorney must be attached to this agreement.

The issues for which mediation is requested are as follows: *(provide attachment if necessary)*

Each party will prepare a discussion summary of the issues, including the party's arguments in favor of the party's position, for consideration by the Mediator(s), not to exceed 20 pages (exclusive of exhibits consisting of pre-existing documents and reports), double-spaced and using a typeface no smaller than 12 characters per inch. The discussion summaries should be submitted to the Mediator(s) and the other party no later than two weeks before the mediation session is scheduled to begin. The Mediator(s) will have the right to ask either party for additional information before the mediation session, if deemed necessary for a full understanding of the issues to be mediated.

____ Estimated TEB Mediation Process End Date:

Neutral Conference Site:

TEB Field Manager Name:

Telephone #: (_____)

Fax #: (_____)

Issuer's Name:

Fax #: (_____)

Issuer's Address:

Issuer's Representative (if applicable):

Name of Firm:

Address:

Telephone #: (_____)

Fax #: (_____)

SIGNATURES

Issuer: _____ Date _____

TEB Field Manager: _____ Date _____

Issuer's Representative (if applicable): _____ Date _____

Comments and Other Participants (attach additional sheets as necessary)

| Name | Position or Affiliation | Phone |
|------|-------------------------|-------|
|------|-------------------------|-------|

Appeals Mediator Assigned, Name: phone number

Appeals TEB Mediation Program Manager

Date

EXHIBIT 2
Model Mediator's Report

*The parties below agreed to mediate their dispute and attended a mediation session on **Month, Day, Year** in an attempt to resolve the following factual issue(s):*

ISSUE:

RESOLUTION Yes
 No
 Partial

ISSUE:

RESOLUTION: Yes
 No
 Partial

DATED this _____ day of _____

/s/ Mediator(s)

/s/ Co-Mediator (if necessary)

/s/ Party

/s/ Party