

THE BOND BUYER

Tax-exempt bond enforcement declined in 2020

By

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*The exams that TEB did close involved a combination of “compliance strategies and referrals, claims and other casework,” the IRS said in a summary published by Edward Killen, the acting commissioner for Tax Exempt & Government Entities group. **Bloomberg News***

The Internal Revenue Service Tax-Exempt Bonds unit closed around 200 fewer examinations in fiscal 2020 than had been expected because of the interruption caused by the pandemic.

New examinations were suspended between March and July because of COVID-19.

As a result, the TEB unit closed nearly 300 cases instead of attaining its earlier goal of around 500 cases.

The earlier goal had been reported by The Bond Buyer more than a year ago but was not mentioned when the IRS announced its 2020 achievements Monday.

Mike Bailey, a board member of the National Association of Bond Lawyers and a tax attorney based in Wilmette, Illinois, said Monday's announcement was more sparse on details than in the past.

Bailey said his takeaway from the announcement is that the compliance program remains active, but on a smaller scale than in the past.

"They are still are conducting examinations and still have an active program," he said. "It's just more modest in scale than it used to be."

The exams that TEB did close involved a combination of "compliance strategies and referrals, claims and other casework," the IRS said in a [summary published by Edward Killen](#), the acting commissioner for Tax Exempt & Government Entities group.

The majority of those cases -- 170 -- involved compliance strategies that "resulted in a written advisory to the bond issuer, including issues such as private business use and issuance costs," the IRS said.

The service's 2020 compliance strategy had four areas of focus:

- Public safety bonds. Determining whether federal government use and management contracts cause excessive private business use that adversely affects the tax-exempt status of public safety bonds.
- Sinking fund over-funding. Determining whether over-funding caused the bonds to be arbitrage bonds, which negatively impacts their qualification as Tax Credit Bonds.
- Variable-rate bonds. Determining whether the issuances complied with the rebate and yield restriction rules under IRC Section 148, the bond and investment yields were properly computed and rebate or yield reduction liability (if any) was correctly determined.
- The fair market value of open market securities. Determining arbitrage violations under IRC Section 148, specifically as to the fair market value requirements for yield restricted defeasance escrows under Treasury Regulation 1.148-5(d)(6).

Bailey noted that public safety bonds and sinking fund overpayments for Tax Credit Bonds apply to a limited group of bonds.

The other two compliance areas cover a broad range of bonds.

“So it’s a mix of a limited compliance strategy and a very general one,” Bailey said.

In addition to those 170 cases, the TEB unit closed over 100 examinations that were largely referrals and a project examining private activity bonds issued by 501(c)(3) organizations. “The most prominent issues found in the cases examined were arbitrage – claims for refund, rebates and yield restriction – and private benefit,” the IRS said.

The final portion of cases involved fraud-related casework, including cases referred for criminal investigation.

Elsewhere, Killen said the TE/GE unit “introduced a new electronic examinations process, part of a multi-year Lean Six Sigma project, to provide seamless internal information sharing and improved case management.”

Killen said his division “expanded use of digital signatures and electronic transmission of documents between exam agents and taxpayers.”

In December the IRS expanded the use of electronic signatures to include Forms 8038 used for the issuance of private activity bonds, 8038G for government-issued municipal bonds, and Form 8038GC is for small issuances. That measure runs through June 30, although the National Association of Bond Lawyers requested last year in a letter unrelated to the pandemic that it should be made permanent.

TE/GE also hired 188 employees in fiscal 2020, including 149 revenue agents, 4 tax compliance officers, 5 tax examiners, and 30 other positions. Total staffing for the group rose nearly 3.5% to 1,602.

More hires are expected this year because Congress [increased the IRS budget](#) to \$11.9 billion for fiscal 2021 from \$11.5 billion the year before, including a \$203 million increase for enforcement.

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