

# THE BOND BUYER

## IRS finds \$5.4 million Arkansas issuance taxable

By

[Scott Sowers](#)

Published

November 14, 2023, 2:11 p.m. EST

A tranche of economic development revenue refinancing bonds issued by the Arkansas Development Finance Authority has been found to be taxable by the Internal Revenue Service.

The ruling affects \$5.43 million of paper issued by the ADFA in 2016.

The issuer has received [notice](#) from the IRS via form 5701-B that includes a proposed adverse determination, that is not necessarily a final determination. The issuer is disputing the findings. Per the notice, "the Authority believes it has complied with applicable portions of the federal Internal Revenue Code and intends to engage in discussions with the IRS regarding this determination."



A tranche of economic development revenue refinancing bonds issued by the Arkansas Development Finance Authority has been found by the Internal Revenue Service to be not excludable from gross income of the holders for federal income purposes. *Bloomberg News*

"We are represented by counsel, are in ongoing discussions with the IRS on this issue and look forward to reaching an appropriate resolution," said Jake Bleed, general counsel, Arkansas Development Finance Authority. "Given that those discussions are actively under way and no final resolution has been reached, we will not have any further comment at this time."

Stephens Inc. was the underwriter on the deal. Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., of Little Rock, which served as bond counsel did not respond to a request for comment.

According to the official statement "the proceeds to be received by the Authority from the sale of the bonds will be used by the Authority to refinance and refund a portion of the Authority's Tax-Exempt Economic Development Revenue and Refunding Revenue Bonds."

"The prior bonds were issued for the purpose of making loans to three entities to finance projects owned by such entities and qualifying for assistance through the Authority as industrial enterprises to finance 180 industrial projects located in the state for 144 separate borrowers."

The actual nuts and bolts of the disagreement remain under wraps. A bond lawyer not involved with the case who asked not to be identified noted that the debt was defined as small issue-manufacturing bonds, which are subject to the most stringent set of rules of any type of tax-exempt bond.

Per the rules, the bonds can't be tax-exempt if the capital expenditures paid by the borrower or any related parties in the surrounding jurisdictions before and after the deal exceed a certain amount.

The IRS examines bonds at random and initiates an audit by sending a request for documents. If something further piques their interest, they follow up with a phone call, but may instead fire off a 5701-B.

The issuer has thirty days to respond but can also request an extension. Cases often end via a negotiated settlement with the issuer agreeing to pay the tax or take the bond off the market. In rare cases the dispute gets elevated to the IRS Office of Appeals.