Vinson&Elkins

April 19, 2010

VIA ELECTRONIC MAIL
Internal Revenue Service
Attn: TEB VCAP
1122 Town & Country Commons
St. Louis, MO 63017
tebvcap@irs.gov

Re: Collin County, Texas Limited Tax Public Improvement Bonds, Taxable Series 2009B (Build America Bonds –Direct Payment) and Unlimited Tax Road Bonds, Taxable Series 2009B (Build America Bonds – Direct Payment) (EIN 75-6000873)

Dear Sir or Madam:

Pursuant to the provisions of Notice 2008-31, 2008-11 I.R.B. 592 ("Notice 2008-31") and I.R.M. 7.2.3 (11-01-2008), Collin County, Texas (the "County") respectfully requests that the Internal Revenue Service ("Service") enter into a closing agreement regarding the above-referenced Bonds (collectively, the "Series 2009 Bonds").

The County was informed on February 16, 2010 that the Service has taken the position, based on guidance developed within the Service shortly prior thereto, that the County issued its Series 2009 Bonds with more than a *de minimis* amount of premium. Because the County did not intentionally issue its Series 2009 Bonds with more than a *de minimis* amount of premium and because the County believed it its Series 2009 Bonds to have been issued with an amount of premium that came within the *de minimis* limit based on a good faith interpretation of the Code and Treasury Regulations, the County respectfully requests that Service enter into this Closing Agreement with the County.

I. Factual Background

The Series 2009 Bonds were issued on September 29, 2009, in the aggregate principal amount of $15,580,000. Proceeds of the Limited Tax Public Improvement Bonds, Taxable Series 2009B (the "Limited Series 2009 Bonds") were used to acquire and improve land for park and open space purposes, including joint county-city projects, acquire, construct, improve, renovate and equip juvenile justice alternative education and detention facilities and the acquisition of land thereof, and construct, improve, renovate and equip County courthouse facilities. The Unlimited Tax Road Bonds, Taxable Series 2009B (the "Unlimited Series 2009 Bonds") were used to construct, maintain and operate macadamized, graveled or paved roads and turnpikes, including in the participation in the cost of joint State highway and joint city-county projects.

The Limited Series 2009 Bonds were issued (i) at an issue price of $10,253,278, (ii) with a final maturity date of February 15, 2029, and (iii) with a CUSIP number 1947384S6, all as reported on a Form 8038-G, which is included as part of Exhibit D to this letter. The Unlimited

Series 2009 Bonds were issued (i) at an issue price of $5,736,370, (ii) with a final maturity date of February 15, 2029, and (iii) with a CUSIP number 1947383Y4, all as reported on a Form 8038-G, which is included as part of Exhibit D to this letter.

The Series 2009 Bonds were believed to be priced in accordance with Section 54AA(d)(2)(C). Specifically, because the Series 2009 Bonds were term bonds, the limitation on de minimis premium was computed under Treasury Regulation section 1.1273-1(d) under the following formula:

> De minimis premium = .0025 x stated redemption price at maturity x weighted average maturity (as such term is defined in Treasury Regulation section 1.1273-1(e)(3)).

Using this formula, the County determined the *de minimis* limit (i) for the Limited Series 2009 Bonds to be an amount of 2.13% for the 2019 maturity and 4.39% for the 2029 maturity, based on weighted average maturities of 8.51 and 17.55, respectively, and (ii) for the Unlimited Series 2009 Bonds to be an amount of 2.13% for the 2019 maturity and 4.39% for the 2029 maturity, based on weighted average maturities of 8.51 and 17.55, respectively.

The Series 2009 Bonds were priced at a premium of 0.753% for the 2019 maturity and a premium of 3.284% for the 2029 maturity, each below the amount of allowable premium computed under the above formula. As such, the County believed it had priced its Series 2009 Bonds well within the de minimis premium limitation imposed under Section 54AA(d)(2)(C).

On February 16, 2010, Randal Webb of the Service contacted Jeffry May, the County's Auditor and informed him that the Service was taking the position that the Series 2009 Bonds' 2029 maturities had been priced with premium larger than the allowable de minimis amount of premium.

The County immediately took action to work with the Service to resolve this matter. Later that week, on February 18, 2010, the County was made aware of a Q&A document dated February 10, 2010 (the "IRS Q&As") and released by the IRS some time after that date. Of particular import in that document was Q-7, which asked "what does it mean that BABs may not be issued with more than a de minimis amount of premium?" to which A-7 responded by informing the reader that the Service was taking the position that de minimis premium is to be computed by multiplying .0025, stated redemption price at maturity and number of complete years to maturity or *the first optional redemption date for the bond, if applicable*. (Emphasis added). Such guidance was the first guidance released by the Service that would have put the County on notice that its pricing of the Series 2009 Bonds did not comport with the Service's interpretation of the requirements under Section 54AA(d)(2)(C).

The County worked quickly and diligently with the Service to resolve this matter. After discussions with Mr. Webb and his supervisor, Carl Scott, it was agreed that the County should apply for resolution under the voluntary compliance program for resolution of this matter.

II. Discussion of Applicable Authorities

Treasury Regulation section 1.1273-1(d) states that *de minimis* premium is to be computed by multiplying .0025 x stated redemption price at maturity x number of complete years to maturity. This computation is altered if an installment obligation is issued. In the case of an installment obligation, *de minimis* premium is computed by multiplying .0025 x stated redemption price at maturity x weighted average maturity (weighted average maturity is defined in Treasury Regulation section 1.1273-1(e)(3)). *See* Treas. Reg. § 1.1273-1(d)(3).

The words of Treasury Regulations section 1.1273-1(d) yield a straightforward formula for computing *de minimis* premium upon which the County and its bond counsel relied. However, the Service has adopted the position in the IRS Q&As that this formula should be modified for obligations with an optional redemption feature. Specifically, the Service is of the view that the "number of complete years to maturity" should be limited to the number of years to the first optional redemption date for those obligations subject to an optional redemption feature. It appears that the Service also intends for the limitation to apply also in the case of installment obligations subject to optional redemption.

Presumably, the Service supports its position based on a reference to Treasury Regulation section 1.1272-1(c) in Treasury Regulation section 1.1273-1(b). Yet, Treasury Regulation section 1.1273-1(b) refers to Treasury Regulation section 1.1272-1(c) only in the context of the definition of stated redemption price at maturity, which states that "if the payment schedule of a debt instrument is determined under 1.1272-1(c) (relating to certain debt instruments subject to contingencies), that payment schedule is used to determine the instrument's ***stated redemption price at maturity***." (Emphasis added). On its face, that cross reference to Treasury Regulation section 1.1272-1(c) does not purport to modify either (i) the meaning of the term "number of complete years to maturity" as that term is used in Treasury Regulation section 1.1273-1(d) or (ii) the Treasury Regulation section 1.1273-1(e)(3) definition of the term "weighted average maturity" to which Treasury Regulation section 1.1273-1(d) makes cross-reference.

There is no definition in Section 1272 or 1273, or the Treasury Regulations thereunder, of "number of complete years to maturity", as presumably the meaning of that term was considered to be self-evident. In other words, there is no reference to Treasury Regulation section 1.1272-1(c) for purposes of computing "number of complete years to maturity" that can be compared to the Treasury Regulation section 1.1272-1(c) cross reference in the Treasury Regulation section 1.1273-1(b) definition of "stated redemption price at maturity." Moreover, the Treasury Regulations are <u>not</u> silent with respect to how "number of complete years to maturity" is to be computed for installment obligations, providing clearly that weighted average maturity is to be substituted for the term "number of complete years to maturity." Treasury Regulation section 1.1273-1(e)(3) defines the weighted average maturity of a debt instrument as the sum of the following amounts determined for each payment under the instrument (other than qualified stated interest): (i) the number of complete years from the issue date until the payment is made, multiplied by (ii) a fraction, the numerator of which is the amount of the payment and the denominator of which is the debt instrument's redemption price at maturity.

The County and its bond counsel applied what they believed was a plain and straightforward reading of the words used by Treasury Regulations section 1.1273-1(d), and, in good faith, computed the *de minimis* premium limit based on the weighted average maturity of the term bonds. This resulted in a higher limit than had the County computed the limit by substituting the number of years to the first optional redemption date (10 years) for the installment obligations' respective weighted average maturities.

III. Proposed Closing Agreement Terms

Attached as **Exhibit A** hereto is a proposed closing agreement and disclosure statement setting forth the closing agreement terms proposed by the County. In accordance with Notice 2008-31, the terms of the proposed closing agreement incorporate those aspects of the model closing agreement language contained in Internal Revenue Manual 7.2.3 that the County believes are appropriate in this case.

The County's issuance of the Series 2009 Bonds at a premium that was higher than the premium allowable under the Service's interpretation of section 54AA(d)(2)(C) resulted from the Series 2009 Bonds being issued at an interest rate (the "Actual Rate") that is higher than the interest rate (the "Permissible Subsidy Rate") the Bonds would have borne had the Bonds been issued with an amount of premium equal to the permissible premium amount. Thus, the Actual Rate would have generated a subsidy payment under section 54AA that is higher than the subsidy payment that would be paid had the bonds been issued with a rate equal to the Permissible Subsidy Rate. *See generally* Exhibit B.

The differential between the amount of subsidy payments that would have been claimed based on the Actual Rate and the amount that can be claimed based on the Permissible Subsidy Rate (the "Differential") represents an appropriate measurement of the dollar amount of potential "harm" to the federal government attributable to what the Service views as the County's misinterpretation of section 54AA(d)(2)(C).

Attached as Exhibit B is a chart setting forth a calculation of the Differential for each scheduled payment of interest on the Series 2009 Bonds. Had the County issued the Series 2009 Bonds with an interest rate equal to the Permissible Subsidy Rate so as to realize a permissible premium amount in accordance with the Service's interpretation of section 54AA(d)(2)(C), it would have sold an additional principal amount of bonds at the Permissible Subsidy Rate in order to generate the amount of spendable proceeds it needed. Accordingly, the calculation of the Differential on Exhibit B takes into account this additional principal amount of bonds.

The County proposes that this matter be resolved by closing agreement pursuant to which (i) the County agrees to request, by filing Forms 8038-CP in advance of scheduled interest payment dates, payment of amounts as reflected in Exhibit C that reflect the Differential (and are thus less than the amounts that would be claimed based on the Actual Rate), and (ii) the Service agrees to treat the Series 2009 Bonds as having satisfied the requirement of section 54AA(d)(2)(C).

The foregoing explanation of the straightforward, plain-reading interpretation of the Treasury Regulations applied by the County and its bond counsel demonstrates a good faith attempt to determine the allowable amount of *de minimis* premium on the Series 2009 Bonds. Guidance from the Service on this complex issue was issued well after the Series 2009 Bonds were delivered to bondholders and almost contemporaneously with the Service bringing this issue to the County's attention. The County respectfully submits that these facts support the County's request for a Closing Agreement substantially the same as the draft closing agreement attached as Exhibit A hereto.

IV. Certain Procedural Matters

Pursuant to Internal Revenue Manual 7.2.3.1.6(2), certain specific statements must be included in a request under the voluntary closing agreement program. Those statements are set forth below:

1. Information identifying the issuer of the Bond issue. *See* header of letter and introductory section of this letter. Additionally, for more information regarding this matter, the Service may contact Jeffry May, County Auditor at (972) 548-4641.

2. Information identifying the bond issue. *See* Part I.

3. Information identifying the violation. *See* Parts I and II.

4. Description of the proposed settlement terms for resolving the identified violation. *See* Part III.

5. The Series 2009 Bonds are not under examination by the Service.

6. The status of the Series 2009Bonds as "build America bonds" under Section 54AA of the Code is not at issue in any court proceeding and is not being considered by the Office of Appeals.

7. On the date the Series 2009 Bonds were issued, the County reasonably expected to comply with section 54AA of the Code and related provisions of the Code.

8. The violation described herein was not due to willful neglect. The County will apply the Service's method of computation of *de minimis* premium for all future build America bond issuances in accordance with the Service's guidance provided in the Q&As.

9. This request for a closing agreement was promptly undertaken upon notification of the violation (and it has been agreed that although the County did not discover the violation, since the notification occurred prior to the County's receipt of the Service's guidance on this matter, this matter is appropriate for consideration under the Service's voluntary compliance program). Upon receiving notification regarding the miscalculation of *de minimis* premium, the County promptly contacted its attorneys to begin work on a closing agreement, which has been submitted in a timely manner after completion of necessary research.

10. Payment of the Closing Agreement Amount will not be made with proceeds of bonds described in section 54AA or 103(a) of the Code.

The proposed closing agreement is attached hereto as Exhibit A.

Pursuant to Internal Revenue Manual 7.2.3.1.6 (5), for additional information, please contact Meagan Horn, Vinson & Elkins L.L.P., 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201. Ms. Horn's telephone number is (214) 220-7862 and her e-mail address is mhorn@velaw.com. A Form 2848, Power of Attorney, authorizing Ms. Horn to act on behalf of the County in connection with this voluntary request for a closing agreement is included with this submission.

Your consideration of this matter is greatly appreciated. Please contact the undersigned if any additional information is required.

Very truly yours,

Meagan Horn