

Bond Case Briefs

Municipal Finance Law Since 1971

IRS LTR: Change in Proposed Bond Use Meets Notice and Approval Requirements.

The IRS ruled that a taxpayer's proposed use of bond proceeds for construction on a different site than what was published in a public notice was an insubstantial deviation and will not cause the bonds to fail to meet the public notice and approval requirements.

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact: * * *

Telephone Number: * * *

Index Number: 147.00-00, 147.06-00

Release Date: 7/25/2014

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Refer Reply To: CC:FIP:B05 - PLR-103353-14

LEGEND:

Authority = * * *

Borrower = * * *

State = * * *

University = * * *

Bonds = * * *

Date 1 = * * *

Date 2 = * * *

Project 1 = * * *

Project 2 = * * *

Project 3 = * * *

Dear * * *:

This is in response to your request for a ruling that the use of bond proceeds as described below will be an insubstantial deviation for purposes of the public notice and approval requirements set forth in § 147(f) of the Internal Revenue Code (the "Code") and § 5f.103-2 of the temporary Income Tax Regulations.

FACTS AND REPRESENTATIONS

You make the following factual representations. Authority is a public trust and public corporation of State, created in part to assist in financing educational services and facilities through loans to nonprofit corporations.

Borrower is a State nonprofit corporation and an organization described in § 501(c)(3). One purpose of Borrower is to plan, finance, construct, develop, maintain, and operate sports stadiums, pavilions,

field houses, or other buildings, for the exclusive use of University and University's Department of Athletics.

On Date 1, Authority published a public notice (the "TEFRA Notice") in newspapers of general circulation covering State and the localities in which the projects described in such Notice were to be located. The TEFRA Notice provided the place, date, and time of the public hearing relating to the proposed issuance of the Bonds, which were issued on Date 2. The TEFRA Notice also set forth the maximum aggregate principal amount of the Bonds and indicated that the proceeds of the Bonds would be loaned to Borrower and used to finance the costs to acquire, construct, expand, install, and equip certain improvements to Project 1, Project 2, and Project 3, all athletic facilities and collectively referred to herein as the "Projects", on the campus of University.

More specifically, the TEFRA Notice provided general descriptions designed to inform the public of the location of the site for Project 1, two potential site locations for Project 2, and two potential site locations for Project 3. All sites were identified by references to street boundaries and/or proximity to well-known facilities within the campus of University. With respect to Project 3, Borrower and University have subsequently, after the publication of the TEFRA Notice and issuance of the Bonds, determined that the site of Project 3 must be relocated to a different location (the "Revised Location") on the campus of University. The Revised Location is no more than one-tenth of a mile from one of the potential sites of Project 3 described in the TEFRA Notice. The portion of the Bond proceeds available for Project 3 will be used to construct the same type of athletic facility as stated in the TEFRA Notice the same as originally approved.

LAW AND ANALYSIS

Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b) provides, in part, that § 103(a) shall not apply to any private activity bond that is not a qualified bond within the meaning of § 141. Section 141(e)(1)(A) provides, in part, that the term "qualified bond" means any private activity bond that is a qualified 501(c)(3) bond, is part of an issue that meets the applicable requirements of § 146, and meets the applicable requirements of § 147.

Section 147(f)(1) provides that a private activity bond is not a qualified bond unless it satisfies the requirements of paragraph (2). Section 147(f)(2)(A)(i) provides that a bond satisfies the requirements of paragraph (2) if the bond is issued as part of an issue that has been approved by the governmental unit that issued the bond or by the governmental unit on whose behalf the bond was issued. Section 147(f)(2)(B) treats an issue as having been approved by a governmental unit if the issue is approved by the applicable elected representative of the governmental unit after a public hearing following reasonable public notice.

Under § 5f.103-2(f)(2), a facility is within the scope of an approval if the notice of public hearing and the approval contain all of the following: (i) a general functional description of the type and use of the facility to be financed; (ii) the maximum aggregate face amount of obligations to be issued with respect to the facility; (iii) the initial owner, operator, or manager of the facility; and (iv) the prospective location of the facility by its street address or, if none, by a general description designed to inform readers of its specific location. The term "facility" as defined in § 5f.103-2(f)(4) includes a tract or adjoining tracts of land, improvements thereon and any personal property used in connection with such real property. Separate tracts of land (including improvements and connected personal property) may be treated as one facility only if they are used in an integrated operation.

Section 5f.103-2(f) further provides that an approval is valid with respect to any issue used to provide publicly approved facilities, notwithstanding insubstantial deviations with respect to the

maximum aggregate face amount of the bonds issued under the approval for the facility, the name of its initial owner, manager, or operator, or the type or location of the facility from that described in the approval. An approval or notice of public hearing is not adequate if any of the items in § 5f.103-2(f)(2)(i) through (iv), with respect to the facility to be financed, are unknown on the date of the public notice or the date of the approval.

Section 5f.103-2(g)(2) provides, in part, that a public hearing means a forum providing a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the proposed issue of bonds and the location and nature of a proposed facility to be financed. Section 5f.103-2(g)(3) provides that reasonable public notice means published notice reasonably designed to inform residents of the affected governmental units, including residents of the issuing unit and the governmental unit where a facility is to be located, of the proposed issue. The notice must state the time and date for the hearing and contain the information contained in § 5f.103-2(f)(2).

The purpose of the public notice and approval requirement of § 147(f) is to ensure that the affected members of the general public will be notified of a pending bond issue and made aware of the intended use of the proceeds. In this case, the Revised Location of Project 3 is no more than one-tenth of a mile from one of the potential sites of Project 3 described in the TEFRA Notice. The Revised Location of Project 3 remains on the campus of University. The portion of the Bond proceeds available for Project 3 will still be used for the same purpose as originally stated in the TEFRA Notice, i.e., to construct the same type of athletic facility the same as originally approved.

While the use of Bond proceeds to construct Project 3 at the Revised Location was not expected or foreseen at the time the Bonds were issued, the Notice did not fail to put the public in the affected area on notice as to Borrower's intention to use the Bond proceeds to finance projects that consist of improvements to certain athletic facilities located on the campus of University. Thus, the TEFRA Notice originally published in newspapers of general circulation covering State and the affected localities provided the general public in those localities with all of the pertinent information regarding the Projects as required by § 147(f) and § 5f.103-2(f).

CONCLUSION

Based on the factual representations set forth above, we conclude that the proposed use of Bond proceeds to construct Project 3 at the Revised Location constitutes an insubstantial deviation from the uses of the Bond proceeds described in the TEFRA Notice, and will not cause the Bonds to fail to meet the public notice and approval requirements of § 147(f) and § 5f.103-2(f).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to Authority's authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Authority and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions and
Products)

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