



Date B

Date C  
Agreement

Dear :

This responds to your request of February 2, 2007, supplemented by letters dated February 16, 2007, October 2, 2007, October 10, 2007, and October 18, 2007, requesting a private letter ruling regarding the federal income tax treatment of certain payments.

#### RULINGS REQUESTED

You ask us to rule that:

- (1) Certain payments in lieu of taxes (PILOT) to be made by Taxpayer will constitute real property taxes deductible under § 164 of the Internal Revenue Code; and
- (2) After the Property is converted to a condominium form of ownership, the unit owners will be entitled to deduct as real property taxes under § 164 of the Code that portion of the common charges paid by them to the condominium board managers as are applied by the board toward PILOT obligations.

#### FACTS

The facts are represented to be as follows. Taxpayer is a limited liability company created and existing under the laws of State 1 to consummate development of the Property. State 2 created Authority, pursuant to the Act, as a State 2 corporate governmental agency, constituting a political subdivision and public benefit corporation,

The legislative purpose of the Act is stated to be as follows:

[T]o promote the safety, health, morals and welfare of the people of the state and to promote the sound growth and development of our municipalities through the correction of such substandard, insanitary [sic], blighted, deteriorated or deteriorating conditions, factors and characteristics by the clearance, replanning, reconstruction, redevelopment, rehabilitation, restoration or conservation of such areas . . . including the provision of

educational, recreational and cultural facilities and the encouragement of participation in these programs by private enterprise . . . .

\* \* \*

The exercise of the powers granted by this act will be in all respects for the benefit of the people of this state, . . . and will constitute the performance of an essential governmental function and

or any of

, . . . and the corporation, its subsidiaries, projects, property and moneys . . . shall at all times be free from taxation of every kind by the state and by the municipalities and all other political subdivisions of the state.

The Act provides that Authority may acquire, construct, reconstruct, rehabilitate, improve, alter or repair lands, buildings, improvements, real and personal properties, including a residential project, an industrial project, a land use project, a civic project or multi-purpose project. The Act also provides that Authority

.” Thus, under the Authority’s originating legislation, Authority real property is exempt from real property taxes.

Authority has the right under the Act to

. Pursuant to this right, Authority formed Corporation on Date A to implement development of X.

With respect to Corporation property within the Project Area that is exempt from real property taxes pursuant to the Act or otherwise, the Act requires payment to the Corporation of periodic amounts equal to the amount of real property taxes that otherwise would be paid or payable if the Corporation were not exempt from real property taxes after giving effect to any real property tax abatements and exemptions which would be applicable to the property if Corporation did not hold title to the property. Under the Act, these payments must be used to improve, operate, and maintain X, as follows: From the period commencing on Date B until the twentieth anniversary thereof, the payments shall be used to improve, operate and maintain X unless the Corporation, City, and State 2 (through an entity designated by the governor of State 2) agree to set aside such payments in appropriate and reasonable reserve accounts, taking into account all other revenue received or anticipated by the Corporation from properties in the Project Area, for expenses to improve, operate and maintain X, or transfer such

payments into the general fund of the City to be used for its general public purposes. Thereafter, the payments are to be used to improve, operate and maintain X, set aside in appropriate and reasonable reserve accounts, taking into account all other revenue received or anticipated by Corporation from properties in the Project Area, for expenses to improve, operate and maintain X, or paid into the general fund of City to be used for its general public purposes, all in accordance with such agreements as may from time to time be entered into among Corporation, City, and State 2 by an entity designated by the governor of State 2.

State 2 and City entered into a Memorandum of Understanding (MOU), dated Date A, in which State 2 and City agreed in principle to jointly create, develop, and operate X as a sustainable park providing recreational, cultural, and educational opportunities for residents and visitors, and for developing portions of X with appropriate commercial uses, provided that all revenues derived therefrom be used exclusively for maintenance and operation of X. The MOU also provides that no less than a percent of X will be reserved as open space and will be dedicated as parkland subject to the protective provisions of State 2 and City law.

Taxpayer and Corporation entered into an Amended and Restated Memorandum of Understanding (Amended MOU), dated Date C, which extended the acreage of the Project Area. The Amended MOU states that Taxpayer is owner of the Property, which is surrounded by X and which Taxpayer desires to develop into a mixed-use condominium project, consisting of residential apartments, commercial space and a parking garage (Development). The Amended MOU states further that Taxpayer and Corporation wish to incorporate Development into Corporation's general plan and design guidelines for X. Under the Amended MOU, Taxpayer will transfer title of the Property to Corporation, and Taxpayer and Corporation will enter into a series of agreements, including Agreement, pursuant to which Taxpayer will pay to Corporation, inter alia, amounts equal to the real property taxes and assessments that City would levy on the Property and Development if Corporation were not exempt from tax. These amounts are referred to as "Payments in Lieu of Taxes" or "PILOT."

Taxpayer and Corporation plan to enter into the Agreement, which will implement the provisions of the Amended MOU and the Act regarding payments of PILOT. Specifically, the Agreement will require Taxpayer to pay to Corporation, inter alia, an annual sum equal to the real property taxes that would otherwise be payable if the Property were not Corporation property. Taxpayer, Corporation, and City also will enter into other agreements, under which Taxpayer will undertake development of the Property. These agreements also may provide for the operation of X, and the collection of PILOT, by the City or an agency of the City.

Taxpayer intends to submit its interest in the Property to a condominium regime pursuant to the laws of State 2 and to assign to the condominium purchasers the

Taxpayer's interests in the apartment units and proportionate undivided interests in the common elements of the buildings appertaining to the apartment units. Taxpayer represents that, after the Property is submitted to condominium ownership, the Corporation's exemption under the Act will exempt each unit of the Property from real property tax assessment. The terms of the Agreement provide that, once the Property is submitted to the condominium form of ownership, PILOT shall be paid by the condominium unit owners pro rata in accordance with their common interests, which amounts shall be included with their proportionate rent for their condominium units and paid directly to the condominium board.

### LAW AND ANALYSIS

Section 164 of the Code allows as a deduction the state, local and foreign real property taxes paid or accrued in the taxable year. Section 1.164-3(b) of the Income Tax Regulations defines real property taxes as taxes imposed on interests in real property that are levied for the general public welfare. Assessments for local benefits are not treated as real property taxes. See §§ 1.164-2(g) & 1.164-4 of the Regulations.

Whether a particular charge is a "tax" within the meaning of §164 depends on its true nature as determined under federal law. The designation given by local law is not determinative. A charge will constitute a tax if it is an enforced contribution, exacted pursuant to legislative authority in the exercise of taxing power, and imposed and collected for the purpose of raising revenues to be used for public or governmental purposes. Rev. Rul. 71-49, 1971-1 C.B. 103; Rev. Rul. 61-152, 1961-2 C.B. 42.

Rev. Rul. 71-49 involved tax equivalency payments to the New York City Educational Construction Fund, a public benefit corporation, by a cooperative housing corporation. The payments were applied to debt service on obligations funding public school construction. The ruling holds that the cooperative housing corporation may deduct the payments as real property taxes under § 164 because: (1) The payments are measured by and are equal to the amounts imposed by the regular taxing statutes, (2) the payments are imposed by a specific state statute (even though the vehicle of a lease agreement is used), and (3) the proceeds are designated for a public purpose rather than for some privilege, service, or regulatory function, or for some other local benefit tending to increase the value of the property upon which the payments are made. Accordingly, each tenant-stockholder of the cooperative housing corporation may deduct the payments in the amount of the stockholder's proportionate share.

The PILOT in this case will satisfy the three-prong test of Rev. Rul. 71-49 because they: (1) Are measured by and imposed at the same general rate at which real

property taxes are imposed; (2) are imposed pursuant to the Act as implemented by the Agreement; and (3) may only be used for public purposes.

Accordingly, we hold as follows:

1. The PILOT to be made pursuant to the Act and the Agreement will constitute real property taxes allowable as a deduction to the payor under §164.

2. After the Property is converted to a condominium form of ownership, the unit owners will be entitled to deduct as real property taxes under § 164 that portion of the common charges paid by the unit owners to the condominium board applied by the condominium board toward the PILOT.

A taxpayer may not rely on a private letter ruling that has been issued to another taxpayer, and a private letter ruling addresses only the tax liability of the taxpayers who are parties to the ruling request. Revenue Procedure 2007-1, 2007-1 I.R.B. 1, §12.02. We have entertained Taxpayer's second ruling request here because Taxpayer will be the initial owner of all condominium units from the time its interest in the Property is submitted to condominium ownership until the units are sold.

Caveats:

A copy of this letter must be attached to any income tax return to which it is relevant. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

Sincerely,

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Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: Industry Director  
Heavy Manufacturing & Transportation (LM:HMT)