

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:TEB-PLR-110746-01

Date:

June 26, 2001

LEGEND

Issuer =

State =

City =

Parking Authority =

Prior Bonds =

Refunding Bonds =

Date 1 =

Dear

This is in response to your request for a ruling that § 149(d)(2) of the Internal Revenue Code does not preclude the exclusion from gross income under § 103(a) of interest on bonds issued to advance refund taxable private activity bonds.

FACTS AND REPRESENTATIONS

The Issuer is a joint powers authority created under State law by the City and the Parking Authority and is authorized to issue debt on behalf of the City. On Date 1, the Issuer issued the Prior Bonds to provide a portion of the cost of construction of a multi-level parking structure ("the Project"). The Prior Bonds were issued as taxable bonds and would be private activity bonds under § 141.

The Issuer proposes to issue the Refunding Bonds, a portion of which is intended to advance refund the Prior Bonds. The principal purpose for the advance refunding is to reduce the payments the City is required to make to support debt service on the bonds. The Issuer proposes to issue the Refunding Bonds at this time to take advantage of lower interest rates. Under State law, the Issuer could issue new money tax-exempt bonds for the Project. The Issuer represents that, because of events occurring after the issuance of the Prior Bonds, payments that resulted in the Prior

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Bonds meeting the private security or payment test in § 141(b)(2) will no longer be received. The Issuer expects that, disregarding the private payments and security on the Prior Bonds and looking only at the private payments and security on the Refunding Bonds, the Refunding Bonds will not meet the private payment or security test and, accordingly, the Refunding Bonds will not be private activity bonds under § 141.

LAW AND ANALYSIS

Section 103(a) provides generally that 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 which is not a qualified bond (within the meaning of § 141), or to any bond unless such bond meets the applicable requirements of § 149.

Section 141 defines “private activity bond” to include any bond issued as part of an issue that meets the private business use test of § 141(b)(1) and the private security or payment test of § 141(b)(2). An issue meets the private business use test of § 141(b)(1) if more than 10 percent of the proceeds of the issue are to be used for any private business use. An issue meets the private security or payment test of § 141(b)(2) if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly (A) secured by any interest in property used or to be used for a private business use, or in payments in respect of such property, or (B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

Section 149(d)(1) provides that nothing in § 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued as part of an issue described in § 149(d) (2), (3), or (4). An issue is described in § 149(d)(2) if any bond (issued as part of such issue) is issued to advance refund a private activity bond (other than a qualified 501(c)(3) bond). The rule does not consider whether the refunding bond is a governmental bond or a private activity bond. Accordingly, the fact that the Issuer expects that the Refunding Bonds may be governmental bonds does not prevent the application of § 149(d)(2).

In the instant case, however, the Prior Bonds are taxable bonds. The only authority that discusses refunding taxable bonds with tax-exempt bonds is found in § 1.149(d)-1(e) of the Income Tax Regulations. That section provides that for advance refundings of governmental bonds, an advance refunding of a taxable issue is generally not taken into account under § 149(d)(3)(A)(i). No parallel provision exists for advance refundings of private activity bonds. Thus, we consider whether permitting an advance refunding of a taxable prior bond, under the facts of this case, is inconsistent with the purposes of § 149(d).

The primary concern with an advance refunding is that it results in two issues of tax-exempt bonds being outstanding for a single facility. The Senate Report to the 1986 Act states that “[a]dvance refunding results in multiple issues of bonds

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outstanding simultaneously, and thereby results in multiple indirect Federal subsidies attributable to tax-exempt financing for a single activity..." S. Rep. No. 99-313, at 828 (1986), 1986-3 (Vol. 3) C.B. 828. Similarly, the House Report states that "[a]dvance refunding is inefficient in that it often results in many times the original volume of a single bond issue being outstanding simultaneously. Given the committee's desire to control the volume of tax-exempt obligations and to eliminate economic inefficiencies, the bill extends the present-law prohibition on advance refunding..." H.R. Rep. No. 99-426, at 518 (1986), 1986-3 (Vol. 2) C.B. 518. The current facts do not present this concern. When the Prior Bonds are advance refunded, there will be only one set of tax-exempt bonds outstanding.

CONCLUSION

Accordingly, we conclude that § 149(d)(2) does not preclude the exclusion from gross income under § 103(a) of interest on the Refunding Bonds.

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

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. We express no opinion about whether the Refunding Bonds will meet the requirements of § 103 and §§ 141 through 150, other than § 149(d)(2), including whether any management contracts cause the tests of § 141 to be met.

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

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

Sincerely,
Assistant Chief Counsel
(Exempt Organization/Employment
Tax/Government)
By: Rebecca L. Harrigal
Branch Chief
Tax Exempt Bond Branch