

PLR-145584-03

Y Transportation Corridor =

County =

State =

Cities X =

Cities Y =

Issuer City Board
Members =

Overlapping Members =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Revenue X Bonds =

PLR-145584-03

Refunding X Bonds =

Revenue Y Fixed Rate
Bonds =

Revenue Y Variable
Rate
Bonds =

Refunding Y Bonds =

Proposed Bonds =

Project X =

Project Y =

Asset Purchase
Agreement =

Dear

PLR-145584-03

This letter is in response to your request on behalf of the Issuer for a ruling that the Issuer will be not treated as a “related party” to either X or Y for purposes of § 1.150-1(b) and § 1.150-1(d)(2)(ii)(A) of the Income Tax Regulations.

Facts and Representations:

X is a joint exercise of powers agency under State law that was created by Agreement 1. Under State law, X is a “public entity” separate from the parties to its agreement. The member agencies of X are County and 12 cities (Cities X) within the State. X’s primary purpose is to fund, plan, acquire and construct the major thoroughfares and bridges in the X Transportation Corridor. X has the power of eminent domain and the power to issue bonds, but does not possess substantial taxing and police powers.

X has the following specific powers: the power to exercise jointly the common powers of its member agencies in studying and planning ways and means to provide for the financing and construction of the X Transportation Corridor; to make and enter into contracts; to contract for services; to appoint agents; to lease, acquire, construct, manage, maintain and operate any buildings, works or improvements; to acquire, hold or dispose of property by any lawful means; to incur debts, liabilities or obligations; to receive gifts; to sue and be sued in its own name; to apply for grants; to adopt rules and regulations governing the operation of the agency; to exercise certain powers authorized under State law; and to enter into a joint powers agreement with other State public agencies.

X is governed by a 14 member board consisting of 12 board members appointed respectively by the legislative bodies of Cities X and two board members appointed by the County. Each board member is entitled to one vote and generally a majority of the board members present and qualified to vote is necessary to adopt any motion, resolution, or order and take any action. Board members may be removed only at the sole discretion of the legislative body of the public agency such board members represent.

X issued its Revenue X Bonds on Date 1 to finance Project X, a transportation corridor in the County. The Revenue X Bonds were advance refunded on Date 2 by the Refunding X Bonds. The Refunding X Bonds are primarily secured by tolls payable from Project X.

Y is a joint exercise of powers agency under State law that was created by Agreement 2. Under State law, Y is a “public entity” separate from the parties to its agreement. The member agencies of Y are 12 cities (Cities Y) and the County. Y has the power of eminent domain and the power to issue bonds, but does not possess substantial taxing and police powers. Y’s primary purpose is to fund, plan,

PLR-145584-03

acquire and construct major thoroughfares and bridges in the Y Transportation Corridor. Y has the same specific powers as X.

Y is governed by a 15 member board, 12 board members are appointed respectively by the legislative bodies of Cities Y and three board members are appointed by the County. Eight of Y's board members are also on X's board (collectively, the Overlapping Members).¹ Each board member on Y's board is entitled to one vote and generally a majority of the board members present and qualified to vote is necessary to adopt any motion, resolution, or order and take any action. Board members may be removed only at the sole discretion of the legislative body of the public agency such board members represent.

Y issued its Revenue Y Fixed Rate Bonds on Date 3 and its Revenue Y Variable Rate Bonds on Date 4 to finance Project Y, a transportation corridor in the County. The Revenue Y Fixed Rate Bonds and the Revenue Y Variable Rate Revenue Bonds are collectively referred to as the New Money Bonds. The New Money Bonds were advance and currently refunded on Date 5 by the Refunding Y Bonds. The Refunding Y Bonds are primarily secured by tolls payable from Project Y.

Issuer is a joint exercise of powers agency under State law that was created by X and Y under Agreement 3. Issuer has the power of eminent domain and the power to issue bonds but Issuer does not possess substantial taxing and police powers. Issuer also has certain additional powers under Agreement 3. The Issuer represents that that it was created to provide a more regional transportation corridor agency within the State. Issuer's primary purposes are: (a) to finance the acquisition by Issuer of certain of X and Y's assets that are used in connection with the X Transportation Corridor and the Y Transportation Corridor (collectively referred to as the "Transportation Corridors"); and (b) to fund, plan, acquire and construct additional transportation improvements to the Transportation Corridors.

Issuer is governed by a 21 member board consisting of 18 members appointed by the legislative board of each city (Issuer City Board Members) and three board members from the County. Of the total twenty-one members on Issuer's board, six of those members are also on X's board, seven members are also on Y's board and the remaining eight members are the Overlapping Members. Issuer's board members may not be removed by a vote of the board. Board members may be removed only at the sole discretion of the legislative body of the city such board member represents.

Each board member is entitled to one vote. In order for the Issuer to perform a "substantial action" as defined below, a vote of at least 16 board members is required.

¹ The Overlapping Members consist of the same six city board members and two members from the County.

PLR-145584-03

A “substantial action” is defined in Issuer’s Agreement 3 as any of the following: approving or amending the budget, approving any expenditure not described in the budget, issuing debt or other borrowing, setting tolls, authorizing the filing or settling of any lawsuit concerning a substantial action, dissolving Issuer, distributing or transferring assets other than pursuant to the budget, amending Issuer’s agreement, and approving annual financial statements.

Issuer plans to issue Bonds to acquire X’s and Y’s capital assets under the terms of an Asset Purchase Agreement between the Issuer, X and Y. X and Y intend to use funds they receive from the sale of their assets to the Issuer to redeem or defease the Refunding X Bonds and Refunding Y Bonds, respectively. X and Y will continue to exist as joint exercise of powers agencies within the State after their assets are transferred to the Issuer. Other than the assets transferred under the Asset Purchase Agreement, Issuer has no right or power to require the use of the funds or any of the remaining assets of either X and Y. X and Y will be involved in transportation planning for their respective member entities. Both entities will be responsible for the administration of the development impact fees in their areas of benefit and in the procurement of environmental impact studies.

Law and Analysis:

Section 103(a) of the Internal Revenue Code (the Code) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond.

Section 149(d)(1) generally 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 described in § 149(d)(3). Section 149(d)(3)(A) provides that in general an issue is described in § 149(d)(3) if any bond (issued as part of that issue) referred to as the “refunding bond” is issued to advance refund a bond unless the refunding bond is only the first advance refunding of the original bond and the original bond is issued after 1985.

Under § 1.150-1(a)(1), except as otherwise provided, the definitions in § 1.150-1 apply for all purposes of §§ 103 and 141 through 150. Section 1.150-1(d)(1) defines a “refunding issue” as an issue of obligations the proceeds of which are used to pay principal, interest, or redemption price on another issue including the issuance costs, accrued interest, capitalized interest on the refunding issue, a reserve or replacement fund, or similar costs, if any, properly allocable to that refunding issue.

Section 1.150-1(d)(2)(ii)(A) provides that an issue is not a refunding issue to the extent that the obligor of one issue is neither the obligor nor a related party with respect to the obligor of the other issue. Section 1.150-1(d)(2)(ii)(B) generally defines an

PLR-145584-03

“obligor” of an issue as the actual issuer of the issue. Section 1.150-1(b) provides, in part, that “related party” means, in reference to a governmental unit or a 501(c)(3) organization any member of the same controlled group.

A “controlled group” is defined in § 1.150-1(e) as a group of entities controlled directly or indirectly by the same entity or group of entities. Section 1.150-1(e)(1) provides that the determination of direct control is made on the basis of all the facts and circumstances. One entity or group of entities (the controlling entity) generally controls another entity or group of entities (the controlled entity) if the controlling entity possesses either of the following rights or powers and the rights or powers are discretionary and non-ministerial -- (i) the right or power both to approve and to remove without cause a controlling portion of the governing body of the controlled entity; or (ii) the right or power to require the use of funds or assets of the controlled entity for any purpose of the controlling entity.

Section 1.150-1(e)(2) states that if a controlling entity controls a controlled entity under this test, then the controlling entity also controls all entities controlled, directly or indirectly, by the controlled entity or entities.

An entity is not a controlled entity under § 1.150-1(e)(3) if the entity possesses substantial taxing, eminent domain, and police powers. For example, a city possessing substantial amounts of each of these sovereign powers is not a controlled entity of the state.

Section 1.150-1(d)(2)(iv) states that in the absence of other applicable controlling rules under § 1.150-1(d), the determination of whether an issue is a refunding issue is based on the substance of the transaction in light of all the facts and circumstances.

Section 1.150-1(d)(2)(v) provides that if, within six months before or after a person assumes (including taking subject to) obligations of an unrelated party in connection with an asset acquisition (other than a transaction to which § 381(a) applies if the person assuming the obligation is the acquiring corporation within the meaning of § 381(a)), the assumed issue is refinanced, the refinancing issue is not treated as a refunding issue.

The obligor of the Refunding X Bonds is X, the obligor of the Refunding Y Bonds is Y and the obligor of the Bonds will be Issuer. Therefore, the issue is whether Issuer is a related party to either X or Y.

Section 1.150-1(e)(3), which provides an entity is not a “controlled entity” if it possesses substantial taxing, eminent domain, and police powers is not applicable in this case. Issuer possesses eminent domain powers but does not possess substantial

PLR-145584-03

taxing and police powers. Thus, in order to determine whether the Issuer is controlled by X or Y under § 1.150-1(e), we must examine all the relevant facts and circumstances.

Here, Issuer represents that it will serve as a regional transportation authority and that its duties will include making decisions regarding expansion of the existing transportation system, including the X and Y Transportation Corridors, undertaking new construction projects, setting and collecting tolls for the regional system and making decisions regarding high vehicle occupancy. Issuer represents that its reason for acquiring the assets is to permit it to operate the entire regional toll road system, including future expansions and modifications on a regional basis. X and Y will each continue to exist as separate joint exercise of powers agencies within the State. X and Y will be involved in transportation planning for their respective member entities and both entities will be responsible for the administration of the development impact fees in their respective areas of benefit and in the procurement of environmental impact studies.

In this case, neither X nor Y have the right or power to approve and remove without cause a controlling portion of Issuer's governing board or require the use of funds or assets of the Issuer. A board member of the Issuer may be removed only at the sole discretion of the city such board member represents. Moreover, because at least 16 of Issuer's board members are required for a "substantial action", board members from X and Y collectively do not have the right or power to approve and remove without cause a controlling portion of Issuer's governing board or require the use of funds or assets of the Issuer. For example, if the members on Issuer's board that are also on X's board decide to vote to amend Issuer's budget or transfer assets, there will only be 14 board members (counting the Overlapping Members) and this number will be insufficient to meet the number of votes required for such action. Similarly if all the members on Issuer's board that are also on Y's board decide to vote to amend the Issuer's budget or transfer assets there will only be 15 board members (counting the Overlapping Members) and that number will be insufficient to meet the number of votes required for such an action.

Lastly, Issuer has no ability to control X or Y. Issuer can not approve or remove without cause a controlling portion of X's or Y's board because a board member of either may only be removed by the city the member represents. In addition, other than the assets transferred under the Asset Purchase Agreement, Issuer has no right or power to require the use of funds or any of the remaining assets of either X or Y.

Accordingly, based on all the relevant facts and circumstances, Issuer is not controlled within the meaning of § 1.150-1(e) by either X or Y or board members from X

PLR-145584-03

or Y collectively. Therefore, Issuer will not be a related party as described in § 1.150-1(b) to either X or Y.

Conclusion:

We conclude that Issuer will not be a related party to either X or Y for purposes of § 1.150-1(b) and § 1.150-1(d)(2)(ii)(A).

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.

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 taxpayer.

Sincerely,

Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

By: _____

Timothy L. Jones
Senior Counsel
Tax Exempt Bond Branch

cc: