

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201213010**
Release Date: 3/30/2012

Third Party Communication: Congressional
Date of Communications:

Index Number: 103.00-00, 141.00-00

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Refer Reply To:
CC:FIP:BR5
PLR-128767-11

Date:
December 20, 2011

LEGEND:

Issuers =
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State =

Board =

Airport =

Train Connector =

Bus Connector =

Corporation =

Bond =

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Dear _____ :

This responds to the request by the Issuers for a ruling that the interest on the Bond will be excludable from gross income under § 103(a) of the Internal Revenue Code (the “Code”). Your request is submitted under § 4 of Rev. Proc. 96-16, 1996-1 C.B. 630, as a ruling subject to review under the declaratory judgment provisions of § 7478.

Facts and Representations

You make the following factual representations. The Issuers are political subdivisions of State. The Issuers jointly own Airport, the principal commercial air carrier facility serving the area in which the Issuers are located. Pursuant to a joint-action agreement between the Issuers, the Issuers created Board to develop, construct, operate, regulate, and police Airport on behalf of the Issuers. Board is composed of the elected chief executive officers of the Issuers serving ex-officio and members appointed by the Issuers. Board may enter into contracts without the approval of either of the Issuers, but the Issuers’ approvals are required for its annual budget, bond sales, and other similar measures. All assets of Board are held in trust and may not be disposed of without the consent of the Issuers. All Board members serve without compensation.

Airport has a scheduled-carrier passenger terminal buildings (the “Terminals”) with a total of b gates that are used to enplane and deplane aircraft passengers. Currently, over c airlines regularly use the Terminals to enplane and deplane passengers and their luggage at designated locations, with, typically, over d daily non-stop departures for passenger service. Over e concessionaires use designated locations in the Terminals to sell food, beverages, books, magazines, and other goods and services. Airport estimates, based on annual data, that well over f people are present in the Terminals for varying periods during an average day. An Airport-owned hotel (the “Hotel”) is physically integrated with one of the Terminals.

Airport owns parking facilities that provide approximately g public parking spaces available at hourly/daily rates on a first-come, first-served basis. Slightly more than two-thirds of these public parking spaces are located in parking garages and lots the pedestrian entrances and exits to which are immediately adjacent to one of the Terminals (the “Adjacent Parking Facilities”). The remaining parking spaces are in lots that are located one-half mile or more from the closest Terminal. We refer to the Terminals, the Hotel, and the Adjacent Parking Facilities, collectively, as the “Complex”.

Train Connector is a Board-owned, elevated, automated people-mover-transportation system located at Airport that transports airline passengers and others (as described below) among the Terminals. People pay no charge to ride Train Connector. Train Connector is comprised of h vehicles (coupled together in pairs of “trains”), two sets of tracks each of which is a loop (an inner and an outer) of approximately i miles, j stations (k per terminal building), and other supporting equipment. Train Connector was designed as a free-standing structure; however, Train Connector boarding areas are on the upper level of each Terminal. The upper levels were designed and constructed especially for Train Connector boarding.

The Train Connector boarding areas can be accessed only through the secure areas of the Terminals, such that all persons using Train Connector must have cleared security screening (at Airport or another airport from which that person departed). In general, to clear security, a person must be (i) a person holding a ticket on a flight that is departing from, or has arrived at, Airport, or (ii) a badged employee of Board, a Board-hired independent contractor, an airline, a concessionaire, or some other employer with an authorized presence in the Terminals. Guests of the Hotel can also obtain passes from Hotel personnel (after verification by a law enforcement officer) that allow them to clear security. Other persons (e.g., parents of unaccompanied minors) can obtain passes from authorized Board or Terminal airline employees, or other authorized personnel, that allow them to clear security, but which generally require accompaniment by a badged employee. Anyone within the secure area of the Terminals is eligible to ride the Train Connector. Users of the Terminals have no legal rights with respect to the use or operation of Train Connector.

Board employees manage and operate Train Connector. Board also entered into an operation and maintenance agreement (the “Service Agreement”) with Corporation, for

Corporation to perform services with respect to Train Connector. The Service Agreement provides for a stated amount of annual compensation that generally is subject to annual economic price adjustment based on the Consumer Price Index for the labor component of the compensation and the Producer Price Index for the parts and materials component.

Bus Connector is a transportation system of approximately 1 Board-owned, driver-operated motor vehicles (buses) and associated equipment. The buses travel on roadways throughout Complex for the purpose of transporting people in and around the Complex. Board employees manage, operate, and maintain Bus Connector. People pay no charge to ride a Bus Connector bus. Riders can get on and off Bus Connector buses at j curbside locations or roadways throughout Complex (k locations per Terminal). Pedestrian entrances/exits at the Hotel and Adjacent Parking Facilities are no farther than approximately 100 yards from a pickup/drop-off point and many are closer. In contrast to Train Connector, riders of Bus Connector buses need not have cleared security. Anyone standing at one of the curbside locations is eligible to ride Bus Connector. Bus Connector is available on a first-come, first-served basis. No nongovernmental persons have, or are expected to have, legal rights or other preferential benefits with respect to Bus Connector.

In addition to these transit systems that operate within Complex, Airport owns and operates buses to transport people between the remote parking facilities and the Complex; buses to transport Airport employees, employees of the airlines, and employees of other employers between employee parking lots and the Complex; and buses to transport people between the Complex and an Airport-owned rental car center.

Certain common-carrier aircraft operators that regularly use Airport have signed agreements with Airport governing their use (the "Airline Agreements"). Most of these operators (the "Signatory Airlines"), which are all private, commercial air carriers, have special contractual rights with respect to use of parts of the Terminals for which they pay formulaically-determined charges based on costs and revenues associated with the Terminals (the "Terminal Rents"). Terminal Rents are unaffected by costs and revenues associated with Train Connector and Bus Connector.

Some of the original debt-financed capital costs of Train Connector are recovered from the passenger facility charges (the "PFCs") which Airport charges the passengers that enplane at Airport. In obtaining approval from the Federal Aviation Administration (the "FAA") for PFCs to finance Train Connector, Airport was required to give written assurances to the FAA that it will neither (i) treat the PFCs as airport revenue for the purpose of establishing a rate, fee, or charge pursuant to a contract with an air carrier, nor (ii) include Train Connector capital costs in its rate base for purposes of establishing rates, fees, or charges pursuant to a contract with air carriers.

All Bus Connector and Train Connector operating costs are effectively absorbed by Airport or paid for with revenues Airport derives from operation of its parking facilities,

rental car facilities, and other concession revenues. In the unlikely event those revenues are insufficient to cover Train Connector and Bus Connector costs, Airport would seek to recover any shortfall by increasing its generally applicable landing fees charged to all operators of aircraft landing at Airport.

The Issuers intend to issue the Bond to finance approximately \$m of capital improvements to Train Connector, approximately \$n of acquisition costs of four buses to be dedicated solely to service Bus Connector, and costs of issuance of the Bond. More than two percent of the proceeds of the Bond will be used to pay issuance costs (within the meaning of § 147(g)). The Bond will be repaid with Airport revenues.

Law and Analysis

Under § 103(a), gross income does not include interest on any state or local bond. Section 103(b)(1) provides, however, that § 103(a) does not apply to any private activity bond which is not a qualified bond (within the meaning of § 141), any arbitrage bond (within the meaning of § 148), or any bond unless such bond meets the applicable requirements of § 149.

Based on the Issuers' representations, the Bond will not be an arbitrage bond and the Bond meets the applicable requirements of § 149. The issue is whether the Bond will be a private activity bond. Because more than two percent of the proceeds of the Bond will be used to pay issuance costs, the Bond cannot be a qualified bond under § 141. Thus, for the interest on the Bond to be exempt under § 103, the Bond cannot be a private activity bond.

Section 141(a) defines a private activity bond as any bond issued as part of an issue that meets either (1) the private business use test of § 141(b)(1) and the private security or payment test of § 141(b)(2), or (2) the private loan financing test of § 141(c).

Section 141(b)(1) provides that generally a bond issue meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Section 141(b)(6)(A) provides that the term "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For this purpose, use as a member of the general public shall not be taken into account. Section 141(b)(6)(B) provides that, for purposes of § 141(b)(6)(A), any activity carried on by a person other than a natural person shall be treated as a trade or business.

Section 141(b)(2) provides that generally a bond issue meets the private security or payment test if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of the issue is directly or indirectly (1) secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or (2) 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 1.141-3(a) provides that the private business use test of § 141(b)(1) is met if more than 10 percent of the proceeds of an issue is used in a trade or business of a nongovernmental person. For this purpose, the use of financed property is treated as the direct use of proceeds. Any activity carried on by a person other than a natural person is treated as a trade or business. Section 1.141-3(a)(2) provides that in determining whether an issue meets the private business use test, it is necessary to look to both the indirect and direct use of proceeds.

Section 1.141-1(b) defines a nongovernmental person as a person other than a governmental person, and a governmental person as a state or local governmental unit as defined in § 1.103-1 or any instrumentality thereof. Section 1.103-1(a) defines a state or local governmental unit as a state, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof.

Section 1.141-3(b)(1) provides that both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private business user of proceeds and financed property as a result of ownership; actual or beneficial use of property pursuant to a lease, or a management or incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract. Section 1.141-3(b)(7)(i) provides that any other arrangement that conveys special legal entitlements for beneficial use of the bond proceeds or of financed property comparable to those mentioned results in private business use. For example, an arrangement that conveys priority rights to the use or capacity of a facility generally results in private business use.

Section 1.141-3(b)(4)(i) provides generally that a management contract (within the meaning of paragraph (b)(4)(ii)) with respect to financed property may result in private business use of that property, based on all of the facts and circumstances. A management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility. Section 1.141-3(b)(4)(ii) provides that for purposes of this section, a management contract is a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility.

Section 1.141-3(b)(7)(ii) provides that in the case of financed property that is not available for use by the general public, private business use may be established solely on the basis of a special economic benefit to one or more nongovernmental persons, even if those nongovernmental persons have no special legal entitlements to use of the property. In determining whether special economic benefit gives rise to private business use it is necessary to consider all of the facts and circumstances, including

one or more of the following factors – (A) Whether the financed property is functionally related to or physically proximate to property used in the trade or business of a nongovernmental person; (B) Whether only a small number of nongovernmental persons receive the special economic benefit; and (C) Whether the cost of financed property is treated as depreciable by any nongovernmental person.

Section 1.141-3(c)(1) provides that use of a bond-financed facility as a member of the general public (general public use) is not private business use. Use of financed property by nongovernmental persons in their trades or businesses is treated as general public use only if that property is intended to be available and in fact is reasonably available for use by natural persons not engaged in a trade or business. Under § 1.141-3(c)(2), generally use under an arrangement that conveys priority rights or other preferential benefits is not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits.

Section 1.141-3(f) Example 9 illustrates general public use of an airport parking garage. City S issues bonds and uses all of the proceeds to finance construction of a city-owned parking garage at the city-owned airport. S reasonably expects that more than 10 percent of the actual use of the parking garage will be by employees of private air carriers in connection with their use of the airport terminals leased by those carriers. The air carriers' use of the parking garage, however, will be on the same basis as passengers and other members of the general public using the airport. The leases for the use of the terminal space provide no priority rights to the air carriers for use of the parking garage, and the lease payments are determined without taking into account the revenues generated by the parking garage. Although the lessee air carriers receive a special economic benefit from the use of the parking garage, this economic benefit is not sufficient to cause the air carriers to be private business users, because the garage is available for general public use. The issue does not meet the private business test.

Section 1.141-3(f) Example 11 illustrates general public use of a port road. Highway Authority W uses all of the proceeds of its bonds to construct a 25-mile road to connect an industrial port owned by Corporation Y with existing roads owned and operated by W. Other than the port, the nearest residential or commercial development to the new road is 12 miles away. There is no reasonable expectation that development will occur in the area surrounding the new road. W and Y enter into no arrangement (either by contract or ordinance) that conveys special legal entitlements to Y for the use of the road. Use of the road will be available without restriction to all users, including natural persons not engaged in a trade or business. The issue does not meet the private business use test because the road is treated as used only by the general public.

Section 1.141-3(g)(1) provides that, in general, the private business use of proceeds is allocated to property under § 1.141-6. Section 1.141-6(a) provides that allocations

generally may be made using any reasonable, consistently applied method, and that allocations under § 141 and § 148 must be consistent with each other.

Section 1.141-3(g)(4)(iv) provides that the measurement of the use of proceeds allocated to a discrete portion of a facility is determined by treating that discrete portion as a separate facility. Section 1.141-1(b) defines the term “discrete portion” to mean a portion of a facility that consists of any separate and discrete portion of a facility to which use is limited, other than common areas. A floor of a building and a portion of a building separated by walls, partitions, or other physical barriers are examples of a discrete portion. Section 1.141-1(b) defines the term “common areas” to mean portions of a facility that are equally available to all users of a facility on the same basis for uses that are incidental to the primary use of the facility. For example, hallways and elevators generally are treated as common areas if they are used by the different lessees of a facility in connection with the primary use of that facility.

Section 1.141-3(g)(5) provides in part that the amount of private business use of common areas within a facility is based on a reasonable method that properly reflects the proportionate benefit to be derived by the users of the facility. For example, in general, a method that is based on the average amount of private business use of the remainder of the entire facility reflects proportionate benefit.

Section 1.141-3(g)(8) Example 3 illustrates airport terminal areas treated as common areas. City N issues bonds to finance construction of an airport terminal. Eighty percent of the leasable space of the terminal will be leased to private air carriers. The remaining 20 percent of the leasable space will be used for the term of the bonds by N for its administrative purposes. The common areas of the terminal, including waiting areas, lobbies, and hallways are treated as 80 percent used by the air carriers for purposes of the private business use test.

The Issuers intend to use Bond proceeds to finance the acquisition costs of four Bus Connector buses and capital improvements to Train Connector. We first consider the use of the buses. Employees of the Board, a governmental person, manage, operate, and maintain Bus Connector. Bus Connector buses travel throughout the Complex for the purpose of transporting people in and around the Complex with pickup and drop-off points that serve the Terminals, Hotel, and Adjacent Parking Facilities. Anyone standing at one of the curbside locations is eligible to ride Bus Connector at no cost on a first-come, first-served basis. Thus, the buses will be available for general public use. No nongovernmental persons have, or are expected to have, legal rights or other preferential benefits with respect to Bus Connector. We, therefore, conclude that the portion of the Bond proceeds to be used for the Bus Connector buses will not be used for private business use.

We next consider the use of Train Connector. Anyone within the secure areas of the Terminals is eligible to ride Train Connector. Over c airlines regularly use the Terminals with d daily departures for passenger service. With this volume of passengers, we

conclude that the passengers using the Terminals are members of the general public. Passengers and employees of the airlines, concessionaires, and other businesses serving the Terminals may all ride Train Connector at no cost and with no preferential treatment. Thus, with respect to its riders, Train Connector is available to the general public on the same basis as to the nongovernmental persons in their trades or businesses.

The users of the Terminals do not have special legal entitlements to use Train Connector. The costs associated with Train Connector will not enter into the calculation of the Terminal Rents paid by the Signatory Airlines and, because persons using Train Connector do so at no cost, there are no revenues to affect the Terminal Rents. Because the Train Connector is used for general public use, neither the Signatory Airlines nor the other Terminal businesses will receive a special economic benefit from Train Connector that results in private business use.

Further, based on the facts and circumstances, we conclude that the Service Agreement will not result in private business use of Train Connector. All of Corporation's compensation under the Maintenance Agreement is based on a periodic fixed fee, with no part of Corporation's compensation based on a share of net profits.

We conclude that Train Connector, if viewed separately, would not be used for private business use. However, because Train Connector is accessible only through the Terminals, serves stations located exclusively at the Terminals, and its riders must be users of the Terminals, we consider whether the Train Connector should be viewed as a common area of the Terminals or as a separate facility from the Terminals (or a discrete portion of the Terminals that is treated as a separate facility).

The regulations do not define a separate facility for this purpose. Section 1.141-1(b) defines the term "discrete portion" to mean a portion of a facility that consists of any separate and discrete portion of a facility to which use is limited, other than common areas. Section 1.141-1(b) defines "common areas" to mean portions of a facility that are equally available to all users of a facility on the same basis for uses that are incidental to the primary use of the facility, and goes on to use hallways and elevators as examples of common areas if they are used by the different lessees of a facility in connection with the primary use of that facility.

Train Connector is equally available to all users of the Terminals on the same basis. However, Train Connector is a vehicular transportation system that serves the employees and customers of over c airlines and over e concessions. It was designed as a free-standing structure and, except for the boarding areas, is located outside of the Terminals. Train Connector is more similar to a public transit system serving a central business district than to a hallway or elevator. Accordingly, we determine, based on the specific facts of this case, that Train Connector is not a common area of the Terminals and may be treated as a separate facility. Therefore, we conclude that the portion of

the proceeds of the Bonds to be used for expenses related to Train Connector will not be used for private business use.

Conclusion

Because the Bond will not meet the private business use test, we conclude that the Bond will not be a private activity bond and, accordingly, the interest on the Bond will be excludable from gross income under § 103(a).

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

In accordance with Powers of Attorney on file with this office, copies of this letter are being sent to the authorized representatives of the Issuers.

The ruling contained in this letter is based upon information and representations submitted by the Issuers and accompanied by penalty of perjury statements executed by the appropriate parties. 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)

By: _____
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