

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201519015**  
Release Date: 5/8/2015  
Index Number: 141.01-02

Third Party Communication: None  
Date of Communication: Not Applicable

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 , ID No.

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Refer Reply To:  
CC:FIP:05  
PLR-133989-14  
Date:  
February 03, 2015

**Legend**

Issuer =

Bonds =

State =

a =

Dear :

This letter is in response to your request for a ruling that the Fare Revenues collected by Issuer for bus service along the Managed Lanes are not payments in respect of the Managed Lanes under section 141(b)(2)(B) of the Internal Revenue Code (the Code) and § 1.141-4 of the Income Tax Regulations.

**Facts and Representations**

Issuer is a political subdivision of State. Issuer provides bus transportation services to members of the general public within a defined service area, which includes a portion of a U.S. highway (the Highway). Issuer operates many bus routes throughout its service area, including some routes that use the Highway.

Members of the general public pay Issuer certain published fares to ride on Issuer’s busses (the Fare Revenues). Some riders pay for each individual ride, while others purchase monthly or annual passes that permit unlimited rides during the relevant period. The price of each individual ride or pass varies depending on whether the rider will travel on local, express, or regional routes.

State's department of transportation and one of its divisions (together, SDOT) have begun a project to improve the Highway. This project will include the segregation and construction of one managed lane running in each direction on the Highway (these two lanes collectively are the Managed Lanes). A private concessionaire will operate the Managed Lanes pursuant to a management contract that Issuer represents will result in private business use under § 1.141-3(b)(4).

On some of its regional and express routes, Issuer's busses will transport passengers over the Managed Lanes. The distance traveled over a Managed Lane may constitute only a portion of the total distance travelled over a specific route. Thus, on certain routes, a passenger that travels over a Managed Lane may continue to be transported beyond the Managed Lane.

The fares that Issuer charges for travel on its bus routes over the Managed Lanes will be the same as the fares that it charges for travel on its express and regional routes that do not travel on the Managed Lanes. Thus, Issuer will not charge passengers a premium to travel by bus over a Managed Lane.

Pursuant to an agreement with SDOT, Issuer will contribute approximately \$a to the construction of the Managed Lanes and will finance certain equipment along the Managed Lanes that will be owned and used by Issuer in its bus operations. Issuer intends to use proceeds of the Bonds to finance a portion of these expenses.

### **Law and Analysis**

Section 54AA(d)(1) defines the term "build America bond" for purposes of § 54AA as any obligation (other than a private activity bond) if the interest on such obligation would (but for § 54AA) be excludable from gross income under § 103, such obligation is issued before January 1, 2011, and the issuer makes an irrevocable election to have this section apply.

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 that § 103(a) shall not apply to any private activity bond which is not a qualified bond (within the meaning of § 141). Section 141(a) provides in part that the term "private activity bond" means any bond issued as part of an issue which meets the private business use test of § 141(b)(1) and the private security or payment test of § 141(b)(2). Section 141(b)(2) provides in part that an 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 such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly 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 1.141-4(a)(1) provides in part that the private payment portion of the private security or payment test takes into account the payment of the debt service on the issue that is directly or indirectly to be derived from payments (whether or not to the issuer or any related party) in respect of property, or borrowed money, used or to be used for a private business use. Section 1.141-4(c)(2)(i)(A) provides that both direct and indirect payments made by any nongovernmental person that is treated as using proceeds of the issue are taken into account as private payments to the extent allocable to the proceeds used by that person. Payments for a use of proceeds include payments (whether or not to the issuer) in respect of property financed (directly or indirectly) with those proceeds, even if not made by a private business user.

The Fare Revenues will have little connection to the Managed Lanes. The fares Issuer charges for travel on its bus routes over the Managed Lanes will be the same as the fares it charges for travel on its express and regional routes that do not travel on the Managed Lanes. Issuer operates many bus routes throughout its service area, only some of which will travel over the Managed Lanes. Even for those routes on which passengers will travel over Managed Lanes, the distance traveled over a Managed Lane may constitute only a portion of the total distance travelled during that trip.

### **Conclusion**

Based strictly on the information submitted and representations made, we conclude that the Fare Revenues collected by Issuer for bus service along the Managed Lanes are not payments in respect of the Managed Lanes under section 141(b)(2)(B) and § 1.141-4.

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 authorized representative.

The rulings contained in this letter are 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 rulings, it is subject to verification on examination.

Sincerely,

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James A. Polfer  
Branch Chief  
(Financial Institutions & Products)