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April 20, 2016

Legend

City =

Authority =

Bonds =

Company =

State =

Date 1 =

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Dear :

This is in response to the request for a ruling submitted by City that the use of the proceeds of the Bonds by Authority, an instrumentality of City, to acquire an undivided ownership interest in an electric generating facility and related assets and property (Facility) under the circumstances described below will not result in private business use of the Bonds (as defined in § 141(b)(6) for purposes of § 141(b)(1) of the Internal Revenue Code (Code)).

City's combined electric, water and wastewater system is managed, operated, and maintained by Authority. Company is a limited liability company that is a partnership for federal income tax purposes.

On Date 1, Authority and Company entered into an agreement (Agreement) for the sale to Authority of an undivided ownership interest (Authority Ownership Interest) in the Facility to be constructed by Company in State. City will issue the Bonds to enable the Authority to finance the purchase of the Authority Ownership Interest, which will serve as a base-load plant for the Authority. Company will own the remaining interest in the Facility as an undivided ownership interest (Company Ownership Interest) (collectively with Authority Ownership Interest, referred to as Ownership Interests). The Agreement will create a tax partnership between Authority and Company (Partnership) with the Facility comprising the partnership assets.

The respective Ownership Interests will be established based on the Facility's total power generating capacity (as defined in the Agreement), which is to be determined as of the completion date of the Facility. The amount of Authority Ownership Interest will be equal to a megawatts of capacity out of the total capacity of the Facility, expressed as a percentage. The amount of Company Ownership Interest of the Facility will be the remaining percentage of the capacity.

The agreed upon purchase price for the Authority Ownership Interest (Purchase Price) was determined after, and as a result of, arm's length negotiations between Authority and Company. The fair market value of the Facility will be allocated to Authority's and Company's respective fair market value capital accounts, kept pursuant to § 704(b) of the Code, in proportion to the fair market value of their respective Ownership Interests. The fair market value capital accounts of Authority and Company will be maintained in proportion to the ratio of their respective ownership interests (Ownership Ratio) during the entire term of the Partnership. The Agreement provides that the allocation of tax partnership items of income, gain, loss, or deduction will be made in accordance with the Ownership Ratio.

LAW AND ANALYSIS

Section 103(a) of the Code provides that gross income does not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) does not apply to any private activity bond which is not a qualified bond within the meaning of § 141.

Section 141(a) provides that a private activity bond is 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.

Section 1.141-1(b) of the Income Tax Regulations defines a nongovernmental person as a person other than a governmental person. A governmental person means a state or local governmental unit as defined in § 1.103-1 or any instrumentality thereof. Section 1.141-1(b) defines an output facility as an electric and gas generation, transmission, distribution, and related facilities, and water collection, storage, and distribution facilities. Section 1.141-1(e) provides that a partnership (as defined in section 7701(a)(2)) is treated as an aggregate of its partners, rather than as an entity.

Section 1.141-2(a) provides, in part, that the private activity bond tests serve to identify arrangements that have the potential to transfer the benefits of tax-exempt financing, as well as arrangements that actually transfer these benefits. The regulations under § 141 may not be applied in a manner that is inconsistent with these purposes.

Under § 1.141-3(b)(1) both actual and beneficial use by a nongovernmental person may be treated as private business use. 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(g)(2)(i) provides that, in general, the measurement period of property financed by an issue begins on the later of the issue date of that issue or the date the property is placed in service and ends on the earlier of the last date of the reasonably expected economic life of the property or the latest maturity date of any bond of the issue financing the property (determined without regard to any optional redemption dates).

Section 1.141-3(g)(2)(iv) provides that the amount of private business use resulting from ownership by a nongovernmental person is the greatest percentage of private business use in any 1-year period during the measurement period; however, § 1.141-3(g)(2)(v)(A) sets forth a special rule for partners that are nongovernmental persons. Under this rule, the amount of private business use by a nongovernmental partner is the partner's share of the amount of use of the property by the partnership. Except as otherwise provided in § 1.141-3(g)(2)(v)(B), a nongovernmental partner's share of the partnership's use of the property is the nongovernmental partner's greatest percentage share under § 704(b) of any partnership item of income, gain, loss, deduction, or credit attributable to the period that the partnership uses the property during the measurement period.

Under § 1.141-3(g)(1), the private business use of proceeds is allocated to property under § 1.141-6. Section 1.141-6(a)(3)(ii) provides that if an output facility has multiple

undivided ownership interests (respectively owned by governmental and nongovernmental persons), each owner's interest in the facility is treated as a separate facility for purposes of § 1.141-6, if all owners of the undivided ownership interests share the ownership and output in proportion to their contributions to the capital costs of the output facility.

In this case, for purposes of § 1.141-6, the Facility is an output facility under § 1.141-1(b). As an output facility, the Authority Ownership Interest may be treated as a separate facility for purposes of § 1.141-6. Authority purchased Authority Ownership Interest in an arm's length transaction, and Authority and Company will share the output of the Facility in proportion to their respective Ownership Interests.

Further, we must determine whether use of the Facility by the Partnership will result in use of the Authority Ownership Interest that is attributable to Company as a partner. In this case, during the term of the Partnership, Authority and Company will allocate partnership items of income, gain, loss and deductions under § 704(b) according to the Ownership Ratio. Thus, no private business use of the Bond-financed Authority Ownership Interest by Partnership will be attributable to Company.

CONCLUSION

Based on the foregoing, we conclude that the use of the proceeds of the Bonds to acquire the Authority Ownership Interest under the Agreement will not result in private business use of the Bonds.

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, including the effects of the termination of the Partnership or a change in the allocation of tax partnership items of income, gain, loss, or deduction under section 704(b) of the Code during the measurement period on the tax-exempt status of the Bonds, or whether the interest on the Bonds is excludable under § 103 of the Code.

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.

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,

/S/

Timothy L. Jones
Senior Counsel
(Financial Institutions & Products)