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Person To Contact:  
, ID No.

Telephone Number:

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Date:  
August 09, 2018

LEGEND:

Issuer =

Airport =

Terminal Complex =

Boarding Area =

City =

State =

Bonds =

Dear :

This responds to your request for a ruling that, for purposes of compliance with § 147(e) of the Internal Revenue Code (Code), the Issuer may allocate proceeds of the Bonds and Equity (as defined below) to the Boarding Area on an undivided portion basis, such that it may allocate the proceeds and Equity to qualified and non-qualified uses (as

defined below), respectively, regardless of the location of those uses within the Boarding Area during the term of the Bonds.

### **Facts and Representations**

Issuer owns and operates the Airport. The Airport includes the Terminal Complex, as well as runways, taxiways, and support facilities. The Terminal Complex includes boarding areas, which have a wide variety of retail shops, bars, restaurants, coffee shops, and similar passenger amenities (“Terminal Shops”) that are operated by third-party private operators under leases from Issuer. The nature, size, variety, and scope of Terminal Shops change over time based on consumer trends, style and overall economic conditions; however, none of the Terminal Shops will be described in § 142(c)(2).

Issuer is in the process of making substantial renovations to portions of the Terminal Complex (the “Renovations”), including the complete demolition and reconstruction of the Boarding Area, and will finance part of the costs of the Renovations with the proceeds of the Bonds. Issuer expects to receive proposals from private concessionaires for one or more Terminal Shops to be located within the reconstructed Boarding Area and expects that such Terminal Shops will include retail locations the principal business of which is the sale of alcoholic beverages for consumption off premises within the meaning of § 147(e) (“non-qualified use”; use not described in § 147(e) is referred to herein as “qualified use”). Issuer expects that, during the expected term of the Bonds, Terminal Shops with non-qualified use will be relocated to other Terminal Shop locations within the Boarding Area.

Issuer intends to use funding sources that are not proceeds of any tax-exempt or other tax-advantaged bond (“Equity”) to finance at least the costs of the Renovations allocable to the Terminal Shops in the Boarding Area that it expects to be used for non-qualified use. Issuer intends to use proceeds of the Bonds, which were issued as exempt facility bonds pursuant to § 142(a)(1), to finance costs of the renovations to the Boarding Area. Issuer will allocate the Equity no later than the placed in service date of the Boarding Area. Issuer will allocate the proceeds and the Equity to the qualified and non-qualified uses of the Boarding Area, respectively, on a floating basis over the term of the Bonds, based on the costs of the portions of the Boarding Area being so used, up to, but not exceeding, the amounts of proceeds and Equity allocated to the Boarding Area.

### **Law and Analysis**

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, in part, that § 103(a) shall not apply to any private activity that is not a qualified bond (within the meaning of § 141).

Section 141(a) provides that a bond is a private activity bond if the bond is 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) or the private loan financing test of § 141(c).

Under § 141(b)(1) an issue meets the private business use test if more than 10 percent of the proceeds of an issue are to be used for any private business use. Private business use is defined in § 141(b)(6) as use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For this purpose, any activity carried on by a person other than a natural person is treated as a trade or business.

Section 141(b)(2) provides, in general, 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 an issue is directly or indirectly (1) secured by an interest in property used or to be used for a private business use, (2) secured by an interest in payments in respect of such property, or (3) 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 141(e)(1)(A) defines a qualified bond to include any private activity bond that (1) is an exempt facility bond; (2) meets the applicable requirements of § 146 (volume cap); and (3) meets the applicable requirements of § 147.

Section 142(a)(1) defines an exempt facility bond to include any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide airports.

Section 147(e) states that a private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is to be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

The statutory predecessor to § 147(e) is § 103(b)(18) of the Internal Revenue Code of 1954 (1954 Code), which was added by § 627(c) of the Deficit Reduction Act of 1984, Pub. L. 98-367, 98 Stat. 630 (1984). The legislative history to § 103(b)(18) includes the following language in reference to the prohibition on the use of bond proceeds for any skybox or other private luxury box:

In the case of skyboxes or other private luxury boxes, the committee does not intend to prohibit the use of [Industrial Development Bonds (IDBs)] to finance the construction, renovation or refurbishing of a facility solely because skyboxes are included in the project, so long as the

project otherwise qualifies for tax-exempt financing. Rather, no portion of the proceeds of the IDB may be used to provide any skybox. For this purpose, the skybox shall be deemed to include the interior furnishings of the box (e.g., the box's plumbing, electrical and decorating costs) and the structural components required for the box (e.g., the box's walls, ceilings, special enclosures), but does not include the normal components of the stadium, such as structural supports, to the extent they would have been required for the remaining portion of the stadium if no skyboxes (and no regular seats in lieu of skyboxes) had been built. House Supplemental Report, H.R. Rep. No. 98-432, pt. 2, at 1693 (1984).

See *also* H. R. Rep. No. 99-426, at 528 (1985) (discussing financing of mixed-use airport facilities under § 142).

Issuer expects to have Terminal Shops in the reconstructed Boarding Area that have non-qualified use. Moreover, Issuer expects that such Terminal Shops will, during the term of the Bonds, be relocated to other Terminal Shop locations within the Boarding Area. Issuer will finance the costs allocable to such Terminal Shops with Equity and seeks a ruling that the amount of the Equity may be allocated to the Boarding Area on an undivided basis, rather than to a specific location or discrete portion, to accommodate the relocations of the Terminal Shops with non-qualified use.

The legislative history described above supports applying a reasonable allocation method to avoid using the proceeds of tax-exempt bonds for non-qualified costs while still being able to finance with proceeds of tax-exempt bonds those portions of the facility that otherwise qualify for such financing. Within the Boarding Area, consistent with the legislative history to the predecessor to § 147(e), Issuer will use Bond proceeds only for the costs of the areas to be used for qualified use and will use Equity for the costs of the Terminal Shops with expected non-qualified use. Issuer will allocate the proceeds and the Equity to the qualified and non-qualified uses, respectively, on a floating basis over the term of the Bonds, based on the costs of the portions of the Boarding Area being so used, up to, but not exceeding, the respective amounts of proceeds and Equity allocated to the Boarding Area. Accordingly, we conclude, under the facts described above, that this is a reasonable allocation method.

### **Conclusion**

Under the facts and circumstances of this case, we conclude that for purposes of compliance with § 147(e) of the Code, Issuer may allocate proceeds of the Bonds and the Equity on an undivided portion basis to the Boarding Area, and Issuer may allocate such funds during the term of the Bonds to the qualified and non-qualified uses of the Boarding Area, respectively, regardless of the specific location, based on the costs of the portions of the Boarding Area being so used, up to but not exceeding the amounts of proceeds and Equity allocated to the Boarding Area.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter, including whether the Bonds meet the requirements for the exclusion of interest from gross income under § 103.

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

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to each of Issuer's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by Issuer and accompanied by a penalty of perjury statement executed by an appropriate party. 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 & Products)

By: \_\_\_\_\_  
Timothy L. Jones  
Senior Counsel, Branch 5

cc: