

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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Date:  
January 22, 1999

City =

Utility =

State =

Ordinance =

Date 1 =

Dear

This is in response to your October 22, 1998 request for a ruling under §§ 336 and 337 of the Internal Revenue Code regarding the proposed transaction described below. A prior ruling letter was issued in this matter on December 1, 1998 (PLR-111768-98) (the "Prior Ruling Letter").

City and Utility represent that the facts and representations submitted in support of the Prior Ruling Letter have remained unchanged since issuance of that letter. Accordingly, the facts and representations contained in the Prior Ruling Letter are incorporated by reference into this letter. Portions of that information as well as the information submitted in support of the instant request are summarized below.

### **Summary of Facts**

City is a municipal corporation under the laws of State and as such is a political subdivision of State. Utility is a for-profit stock corporation organized under the laws of State. Utility supplies water to City pursuant to Ordinance.

Due to City's substantial population growth in recent years and the corresponding demand for adequate public water supply created by this growth, officials of City deem it essential for City to acquire Utility.

### **Proposed Transaction**

To acquire Utility, the following transaction has been proposed:

- (i) City will issue utility revenue bonds, the proceeds of which it will use to purchase all of the outstanding stock of Utility (the "Stock Acquisition"). No § 338 election will be made. The Stock Acquisition will occur on January 27, 1999 pursuant to a stock purchase agreement entered into on Date 1.
- (ii) Concurrent with step (i), Utility's articles of incorporation will be amended to make it a not-for-profit corporation under the laws of State as described in the Prior Ruling Letter (the "Amendment"). For purposes of State law, Utility will be the same legal entity before and after the Amendment.

Following the Stock Acquisition and Amendment (collectively, the "Proposed Transaction"), Utility will operate as a wholly owned subsidiary of City and its board of directors will consist solely of City's publicly elected council members and mayor.

The Prior Ruling Letter concluded that Utility is not and will not be an integral part of State or any political subdivision, and that the income derived from the water utility service operations and activities of Utility following the Proposed Transaction will be excludable from gross income under § 115(1). The Proposed Transaction will result in Utility's change in status from a taxable corporation (as defined in § 1.337(d)-4(c)(1) of the Income Tax Regulations) to a tax-exempt entity (as defined in § 1.337(d)-4(c)(2)(vii)) (the "Conversion").

### **Representations**

The following representations have been submitted in connection with the instant request for a ruling:

- (a) Utility will continue to conduct its historic business after the Proposed Transaction.

(b) Utility has no plan or intention to sell or otherwise dispose of its assets after the Proposed Transaction, except in the ordinary course of business.

(c) City has no plan or intention to liquidate or merge Utility into another entity after the Proposed Transaction.

(d) City will not act as an agent of any person or entity in the Proposed Transaction.

(e) The Conversion will not cause Utility's dissolution under State law.

(f) At the time of the Proposed Transaction, there will not have been any change in the facts and representations submitted in support of the Prior Ruling Letter.

### **Ruling**

Based solely on the facts and representations contained in the Prior Ruling Letter and those set forth above, and provided the Conversion is effective on or before January 28, 1999, we rule that the Conversion will not result in the recognition of gain or loss under §§ 336 and 337.

### **Caveats**

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not covered by the above ruling. Specifically, we express no opinion on (1) whether Utility will satisfy all requirements to effect a change in status from a taxable corporation to a tax-exempt entity, (2) the date on which any change in status will become effective, (3) whether Utility can rely on the binding written agreement exception of § 1.337(d)-4(e) if its change in status is not effective on or before January 28, 1999, and (4) the tax treatment to Utility's shareholders due to the Stock Acquisition. In addition, all caveats contained in the Prior Ruling Letter remain in effect.

### **Procedural Statements**

This ruling letter and the Prior Ruling Letter are directed only to the taxpayer who requested them. Section 6110(k)(3) provides that they may not be used or cited as precedent.

The rulings in this letter and the Prior Ruling Letter are based on facts and representations submitted under penalties of perjury. Verification of that information may be required as part of the audit process.

A copy of this letter and the Prior Ruling Letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the Proposed Transaction is consummated.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Assistant Chief Counsel (Corporate)

By: \_\_\_\_\_  
Robert T. Hawkes  
Assistant to the Chief  
Branch 4