

As part of an economic development plan, the Issuer issued the Prior Bonds on Date 1 and used the proceeds to provide land to the Corporation on which the Corporation constructed its home office complex and related businesses. The Corporation's use constitutes private business use under § 141(b)(1).

The Prior Bonds were secured by property taxes assessed against the increase in value of the financed property from a base year. The Issuer and the Corporation also entered into agreements that caused the Corporation's property tax payments to fail to constitute generally applicable taxes as defined in the regulations applicable to the Prior Bonds (the "impermissible agreements"). As a result, the Corporation's property tax payments satisfied the private security or payments test under § 141(b)(2) and the Prior Bonds were private activity bonds under § 141(a)(1).

On Date 2, the Issuer issued the Advance Refunding Bonds to advance refund the Prior Bonds. There was no change in the Corporation's use of the property financed with the proceeds of the Prior Bonds or the security for those Bonds following the issuance of the Advance Refunding Bonds. However, the Issuer represents that, as of Date 2, the impermissible agreements that caused the property taxes to be other than generally applicable taxes had been terminated (the "Termination Events") and that there have been and continue to be no private payments under § 141(b)(2) regarding the Advance Refunding Bonds.

The Prior Bonds were redeemed not later than Date 3.

The Issuer plans to issue the Proposed Bonds to current refund the Advance Refunding Bonds. The Issuer reasonably expects that the Corporation's use of the financed property will not change and that debt service for the Proposed Bonds will be paid from the same source of funds as the Prior Bonds and the Advance Refunding Bonds. The Issuer will apply the 1997 private activity bond regulations (T.D. 8712, 1997-1 C.B. 15) to the Proposed Bonds.

LAW AND ANALYSIS

Under § 103(a) and (b)(1), gross income does not include interest on any State or local bond unless the bond is a private activity bond that is not a qualified bond (within the meaning of § 141). Under § 141(a), a bond is a private activity bond if the private business use test under § 141(b)(1) and the private security or payments test under § 141(b)(2) are satisfied.

Section § 141(b)(1) provides, in part, that the private business use test is satisfied if more than 10 percent of the proceeds of the issue are to be used for any private business use. Section 141(b)(2) provides, in part, that the private security or payments test is satisfied 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 secured by any interest in property used or

to be used for a private business use, or payments in respect of such property, or 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.

Under § 1.141-4(e)(1) of the Income Tax Regulations, for purposes of the private security or payment test, generally applicable taxes are not taken into account (that is, are not payments from a nongovernmental person and are not payments in respect of property used for a private business use). Section 1.141-4(e)(4)(i) provides that a tax does not have a generally applicable manner of determination and collection to the extent that one or more taxpayers make any impermissible agreements relating to payment of those taxes.

Under § 1.141-4(b)(2)(i), in determining whether an issue meets the private security or payment test, the present value of the payments or property taken into account is compared to the present value of the debt service to be paid over the term of the issue.

Section 1.103-7(d)(1) provides, in part, that, in the case of an issue of obligations issued to refund the outstanding face amount of an issue of obligations, the proceeds of the refunding issue will be considered to be used for the purpose for which the proceeds of the issue to be refunded were used.

Under § 1.103-7(d)(1), the proceeds of the Proposed Bonds will be used to provide land to the Corporation. Therefore, the Proposed Bonds will satisfy the private business use test under § 141(b)(1). However, based on the Issuer's representations, including the representation that, as of Date 2, the Termination Events had effectively caused the Corporation's property tax payments to no longer fail to constitute generally applicable taxes, we conclude that the Proposed Bonds will not satisfy the private security or payments test under § 141(b)(2). Accordingly, we conclude that the Proposed Bonds will not be private activity bonds under § 141(b).

Proposed regulations under § 1.141-13 regarding the application of the private business tests and the private loan financing test to refunding issues were published in the Federal Register on May 14, 2003 (68 F.R. 25845). We express no opinion as to the effect that these regulations, when finalized, may have on the Proposed Bonds.

This ruling is directed only to the taxpayer(s) 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,
Assistant Chief Counsel (Exempt
Organizations/Employment
Tax/Government Entities)

BY: _____
Timothy L. Jones
Senior Counsel
Tax Exempt Bond Branch

Enclosure (1)

cc: