A DEEP DIVE INTO TAX INCREMENT FINANCING

ABA Committee on Tax-Exempt Financing

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Tax increment financing (TIF) bonds come with a number of important variations in the facts. As the name implies, these bonds are to be paid from the incremental increase in tax revenues over some baseline amount, and thus these bonds typically are issued for economic development purposes. The taxes in question are usually ad valorem property taxes but can also include sales and other taxes. TIF bonds share some interesting similarities with assessment bonds, but the revenue stream for TIF bonds comes from taxes that are generally imposed rather than special assessments or charges. Payments in lieu of taxes (PILOTs) are, in effect, a type of tax increment. As discussed below, the assets financed can be public or private, and it may be important for the parties paying and collecting the taxes not to agree to “impermissible agreements” with respect to the amount of manner of collection of the taxes.

The goal of this outline is to identify the relevant regulatory rules and apply them to different fact patterns in order to develop a more comprehensive understanding of how these rules fit together.

Important concepts are:

i) generally applicable taxes (defined in Treasury Regulations Section 1.141-4(e)), including the exclusion of such taxes from being private payments, impermissible agreements that cause taxes not to be generally applicable, and PILOTs qualifying as generally applicable taxes;

ii) private loan restrictions (defined in Treasury Regulations Section 1.141-5), including the special rules for tax increment financing and assessment bonds; and

iii) anti-abuse rules (set forth in Treasury Regulations Section 1.141-14).

The attached appendix sets forth the full text of the cited legal authorities.

I. Discussion Hypothetical: Public Project

Basic Facts: A traditional, tax-exempt TIF bond issue for a public (no private business use) project might be described as follows: City issues bonds and uses proceeds to construct public infrastructure (Project) to facilitate economic development. The bonds are secured and to be paid only by a portion of the ad valorem property taxes collected throughout a redevelopment district of City in which Project is located. No special arrangements are entered into between City and the property owners/taxpayers in the redevelopment district with respect their property tax obligations. This transaction has no private business use and no private payments or private security and no facts suggest that there is a private loan, since no individual taxpayer is even indirectly responsible for paying the bonds.

Variation #1 (Single Taxpayer): What if the bonds will be paid and secured only by ad valorem property taxes paid by a single property owner (Developer), and that property owner is expected to be the primary private beneficiary of the construction of the Project? The transaction may look a little bit like a loan to Developer, because the payments by Developer fully pay the bonds, but Developer is simply paying normal taxes. There is nothing in the regulations that limits a favorable conclusion to situations in which there are multiple taxpayers. In fact, Treasury Regulations Section 1.141-5(c)(3) specifically...
contemplates and generally approves of a single taxpayer TIF transaction. See also the appendix for the
discussions in the legislative history for the Tax Reform Act of 1986 that effectively states there is never a
private loan if there is no private use of the financed asset.

**Variation #2 (PILOTs):** Assume a single property owner, like Variation #1, but that the
Developer is exempt from normal ad valorem taxes because Developer only owns the real property
improvements and has entered into a long-term ground lease with City for the land. Assume further that
Developer enters into a PILOT agreement with City that allows City to impose payments in lieu of tax that
are identical to the ad valorem property taxes that otherwise would have been collected. The transaction
looks even more like a loan to Developer than Variation #1, but the rules in Treasury Regulations Section
1.141-4(e)(5) state that properly structured PILOTs are treated the same as generally applicable taxes.
Note how the PILOT rule reinforces the conclusion for Variation #1. The PILOT requirements are: the
amount of the PILOTs cannot be more than the generally applicable tax, the manner in which the PILOT
is determined, paid and enforced must be commensurate with the generally applicable tax, the bond
proceeds must be used for governmental or public purposes, and the PILOT arrangement must not
include any impermissible agreement.

As a practical matter, satisfying the “commensurate” requirement would seem to always result in
a conclusion that there is no private loan, because the amount of the PILOTs will not match up too closely
with the debt service on the bonds. For example, if the PILOT rate is set at a fixed percentage of the tax
rate, then the actual amount of PILOT revenues will vary with changes in the underlying assessed
property value, and the debt service on bonds would have to be structured to allow for some coverage to
manage the variations in the PILOT revenue. Perhaps this point provides some insight as to the IRS’
thinking about what arrangements should be treated as loans in this context.

**Variation #3 (Impermissible Agreement = Assessment):** Treasury Regulations Section 1.141-
4(e)(4) sets forth rules relating to agreements between a tax collector and taxpayer that cause an
otherwise generally applicable tax to be a special charge. Special charges are private payments, so the
TIF bonds must avoid private business use. An impermissible agreement may also raise private loan
issues. In this set of facts, there is no private business use of the Project, so private payments do not
matter, but what about a private loan? Based on the legislative history referenced above, public facilities
results in no private loan. Even if that does not carry the day, isn’t a TIF bond with impermissible
agreements just an assessment bond that can be tax-exempt if it satisfies the tax-exempt assessment
bond requirements? Those requirements are the tax/assessment must be imposed on an equal basis
and pursuant to a state law of general application, and the proceeds must be spent on essential
governmental function facilities with no significant private business use. See Treasury Regulations
Section 1.141-5(d). Note that assessment bonds are private loan bonds, so the impermissible agreement
can create a private loan without impacting the tax status of the bonds. There seems to be some tension
between the conclusion that there is are deemed private loans in an assessment bond transaction and
the legislative history for the Tax Reform Act of 1986 that effectively states there is never a private loan if
there is no private use of the financed asset. Either way, however, the impermissible agreement does not
prevent tax exemption.

**Anti-Abuse Analysis (Variation #4?):** With a public Project, anti-abuse issues do not obviously
arise. City is issuing bonds to construct public facilities. Further, the PILOT rules require that the
proceeds be spent on governmental or public purposes and the assessment rules require the proceeds to
be spent on essential government function facilities. Treasury Regulations Section 1.141-14
contemplates that an abuse occurs if private persons obtain “significant benefits of tax-exempt financing in a manner that is inconsistent with the purposes of section 141.” It is the emphasized phrase that is the key to the analysis. In each of the above Variations, Developer benefits from the bond transaction, yet each of the Variations describes a transaction that is specifically contemplates and approved of in the substantive rules. Thus, the transactions are not “inconsistent with the purposes of section 141.” By analogy, see also Treasury Regulations Section 1.148-10(a) (“[a]ny action that is expressly permitted by section 148 or sections 1.148-1 through 1.148-11 is not an abusive arbitrage device”). Note also that local governments must be significantly involved in these economic development projects in order to devote the tax revenues to the desired projects.

II. Discussion Hypothetical: Private Project

Basic Facts: A traditional, tax-exempt TIF bond issue for a private project might be described as follows: City issues bonds and grants money to Developer pursuant to a development agreement that obligates Developer to construct a privately-owned Project. The bonds are secured and to be paid only by a portion of the ad valorem property taxes collected throughout a redevelopment district of City in which Project is located. Property owners/taxpayers in the redevelopment district do not enter into “impermissible agreements” with respect their property tax obligations. This transaction has private business use but has no private payments or private security and does not constitute a private loan. The proceeds of the bonds are treated as spent at the time granted to the developer. See Treasury Regulations Section 1.150-1(f) for the definition and treatment of a grant.

Variation #1 (Single Taxpayer): What if the bonds will be paid and secured only by ad valorem property taxes paid solely by Developer? The transaction looks a lot more like a loan to Developer, but again there is nothing in the regulation references above that limit the favorable conclusion to situations in which there are multiple taxpayers. In fact, 1.141-5(c)(3) specifically contemplates and generally approves of a single taxpayer TIF transaction in which the proceeds are granted to the single taxpayer! The legislative history argument does not apply because the bonds finance private property, but the analogy to the PILOT rules (and related rulings) continues to be very strong. When does such a transaction have a private loan problem? Assuming no private loan, is there anything about this variation that raises private security or payment concerns?

Variation #2 (Existing Development Agreement): Assume that the development agreement was executed years before the bonds are issued and provided that Developer might receive its grant over time directly from tax increment receipts collected by City or might instead receive bond proceeds. Assume also that the amount of the grant is specified and increases over time based on a 6% interest rate, so that if at the time any of the grant is made from bond proceeds, the interest accrual for that amount stops and the gross amount of the grant is reduced to reflect the time value of money. Is it a problem that the development agreement was executed years before the bonds are issued?

Unlike the reimbursement rules, the grant rules do not provide a timing limitation that would require the grant to be made within a specified and limited period of time after Developer’s expenditures. Could there be an implication that the existence of the development agreement significantly before the bonds are issued somehow changes the private payment/private loan/generally applicable tax analysis (e.g., does the pre-existing development agreement mean that the generally applicable taxes are now private payments for any bonds paid from those taxes)? That seems absurd. Development agreements are always executed before, and usually well before, any bonds are issued, and the ability of City to issue
tax-exempt bonds should not be impacted by reasonable business practices. Moreover, there is no substantive difference between development agreements executed before or after bonds are issued, except that one executed before bonds are issued is much more consistent with the requirements of sections 148 and 149(g).

**Variation #3 (Renegotiated Development Agreement):** Continue to assume that the amount of the grant is specified, such amount increases over time based on a 6% interest rate, and the development agreement only contemplates that the grant would be paid over time from tax increment receipts collected by City. What if City later agrees with Developer to make the grant from bond proceeds in an amount that reflects the early payment and the time value of money? Are these facts even relevant to the private payment/private loan/generally applicable tax analysis? It is important to conclude that the revenue stream used to pay the bonds is owned by City and is not owned by Developer (otherwise, the bonds look like a secured loan to Developer), but doesn’t the negotiation between City and Developer mean that City owns the revenue stream? If City is simply retaining its tax receipts to pay its bonds, how can Developer own the revenue stream?

**Variation #4 (Developer Bonds):** Go back to the basic facts or to Variation #1 (Single Taxpayer). Are there any tax concerns if some of the TIF bonds are owned by Developer? These are not private activity bonds, so the Section 147(a) substantial user limitation does not apply. Section 265 could limit Developer’s tax deductions if it borrows to acquire the bonds, or perhaps if it borrows to construct the entire Project. Assume that the pricing of the bonds is at fair market value and that the requirements for tax exemption are otherwise satisfied, is there any special abuse to attack here? Certainly, bond counsel must diligence and analyze whether the Developer bonds are truly debt instruments for federal tax purposes, but that is no different than any other transaction. The issuer of the bonds is paying the bonds from its tax revenues, and there is no private loan. Thus, it is not at all fair to conclude that Developer is the true obligor on the bonds and no borrowing has occurred.

**Anti-Abuse Analysis (Variation #5?):** With a private Project, anti-abuse issues may more obviously arise, but the same analysis set forth above applies with equal strength. To start with a simpler set of facts, assume State issues general obligation bonds to make a grant to a private business. Does the private business benefit from the grant? Of course it does, but this common fact pattern has never been thought to be an abuse because it is not “inconsistent with the purposes of section 141.” For a specific (and unsympathetic) example, consider the two very similar private letter rulings from 2006 that concluded bonds issued to finance privately used professional sports stadiums are tax-exempt. These were bonds using a PILOT structure, which then, as now, included a “public purpose” requirement. The IRS specifically found that a public purpose existed. See private letter rulings 200640001 and 200641002 (the latter is included in the appendix). Although the PILOT rules were revised after those private letter rulings, the public purpose requirement existed in the earlier rules as well. Does the anti-abuse rule ever apply in this context?
APPENDIX OF LEGAL AUTHORITIES

Legislative History from Tax Reform Act of 1986

[House Ways and Means Committee Report]

Concept of Loan

In addition to the concept of use, present law uses the concept of loan to determine whether interest on bonds of qualified governmental units is tax-exempt (i.e., the private loan bond restriction). A loan may result from the direct lending of bond proceeds or may arise from transactions in which indirect benefits that are the economic equivalent of a loan are conveyed. Thus, the determination of whether a loan is made depends on the substance of a transaction, as opposed to its form. For example, a lease or other contractual arrangement (e.g., a management contract or an output or take-or-pay contract) may in substance constitute a loan even if on its face, such arrangement does not purport to involve the lending of bond proceeds. The concepts of loan and use are related in that in every case in which a loan is present, the borrower is a user of bond proceeds or bond-financed property. On the other hand, certain limited uses of bond proceeds or bond-financed property may not give rise substantially to a loan (emphasis added). HR Rept. No. 99-426, at 495 (1985).

[Conference Report]

The conferees intend that, as under present law, a loan may arise from the direct lending of bond proceeds or may arise from transactions in which indirect benefits that are the economic equivalent of a loan are conveyed. Thus, the determination of whether a loan is made depends on the substance of a transaction, as opposed to its form. For example, a lease or other contractual arrangement (e.g., a management contract or an output or take-or-pay contract) may in substance constitute a loan, even if on its face, such an arrangement does not purport to involve the lending of bond proceeds. However, a lease or other deferred payment arrangement with respect to bond-financed property that is not in form a loan of bond proceeds generally is not treated as such unless the arrangement transfers tax ownership to a nongovernmental person. Similarly, an output or management contract with respect to a bond financed facility generally is not treated as a loan of bond proceeds unless the agreement in substance shifts significant burdens and benefits of ownership to the purchaser or manager of the facility (emphasis added). H.R. Rep. No. 99-841, Vol. II at 692 (1986) (Conf. Rep.).

Treasury Regulations

1.141-4(e). Generally applicable taxes.

(1) General rule. 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).

(2) Definition of generally applicable taxes. A generally applicable tax is an enforced contribution exacted pursuant to legislative authority in the exercise of the taxing power that is imposed and collected for the purpose of raising revenue to be used for governmental or public purposes. A generally applicable tax must have a uniform tax rate that is applied to all persons of the same classification in the appropriate jurisdiction and a generally applicable manner of determination and collection.
(3) Special charges. A special charge (as defined in this paragraph (e)(3)) is not a generally applicable tax. For this purpose, a special charge means a payment for a special privilege granted or regulatory function (for example, a license fee), a service rendered (for example, a sanitation services fee), a use of property (for example, rent), or a payment in the nature of a special assessment to finance capital improvements that is imposed on a limited class of persons based on benefits received from the capital improvements financed with the assessment. Thus, a special assessment to finance infrastructure improvements in a new industrial park (such as sidewalks, streets, streetlights, and utility infrastructure improvements) that is imposed on a limited class of persons composed of property owners within the industrial park who benefit from those improvements is a special charge. By contrast, an otherwise qualified generally applicable tax (such as a generally applicable ad valorem tax on all real property within a governmental taxing jurisdiction) or an eligible PILOT under paragraph (e)(5) of this section that is based on such a generally applicable tax is not treated as a special charge merely because the taxes or PILOTs received are used for governmental or public purposes in a manner which benefits particular property owners.

(4) Manner of determination and collection.

   (i) In general. 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. An impermissible agreement relating to the payment of a tax is taken into account whether or not it is reasonably expected to result in any payments that would not otherwise have been made. For example, if an issuer uses proceeds to make a grant to a taxpayer to improve property, agreements that impose reasonable conditions on the use of the grant do not cause a tax on that property to fail to be a generally applicable tax. If an agreement by a taxpayer causes the tax imposed on that taxpayer not to be treated as a generally applicable tax, the entire tax paid by that taxpayer is treated as a special charge, unless the agreement is limited to a specific portion of the tax.

   (ii) Impermissible agreements. The following are examples of agreements that cause a tax to fail to have a generally applicable manner of determination and collection: an agreement to be personally liable on a tax that does not generally impose personal liability, to provide additional credit support such as a third party guarantee, or to pay unanticipated shortfalls; an agreement regarding the minimum market value of property subject to property tax; and an agreement not to challenge or seek deferral of the tax.

   (iii) Permissible agreements. The following are examples of agreements that do not cause a tax to fail to have a generally applicable manner of determination and collection: an agreement to use a grant for specified purposes (whether or not that agreement is secured); a representation regarding the expected value of the property following the improvement; an agreement to insure the property and, if damaged, to restore the property; a right of a grantor to rescind the grant if property taxes are not paid; and an agreement to reduce or limit the amount of taxes collected to further a bona fide governmental purpose. For example, an agreement to abate taxes to encourage a property owner to rehabilitate property in a distressed area is a permissible agreement.

(5) Payments in lieu of taxes. A tax equivalency payment or other payment in lieu of a tax ("PILOT") is treated as a generally applicable tax if it meets the requirements of paragraphs (e)(5)(i) through (iv) of this section—
(i) Maximum amount limited by underlying generally applicable tax. The PILOT is not greater than the amount imposed by a statute for a generally applicable tax in each year.

(ii) Commensurate with a generally applicable tax. The PILOT is commensurate with the amount imposed by a statute for a generally applicable tax in each year under the commensurate standard set forth in this paragraph (e)(5)(ii). For this purpose, except as otherwise provided in this paragraph (e)(5)(ii), a PILOT is commensurate with a generally applicable tax only if it is equal to a fixed percentage of the generally applicable tax that would otherwise apply in each year or it reflects a fixed adjustment to the generally applicable tax that would otherwise apply in each year. A PILOT based on a property tax does not fail to be commensurate with the property tax as a result of changes in the level of the percentage of or adjustment to that property tax for a reasonable phase-in period ending when the subject property is placed in service (as defined in §1.150-2(c)). A PILOT based on a property tax must take into account the current assessed value of the property for property tax purposes for each year in which the PILOT is paid and that assessed value must be determined in the same manner and with the same frequency as property subject to the property tax. A PILOT is not commensurate with a generally applicable tax, however, if the PILOT is set at a fixed dollar amount (for example, fixed debt service on a bond issue) that cannot vary with changes in the level of the generally applicable tax on which it is based.

(iii) Use of PILOTs for governmental or public purposes. The PILOT is to be used for governmental or public purposes for which the generally applicable tax on which it is based may be used.

(iv) No special charges. The PILOT is not a special charge under paragraph (e)(3) of this section.

1.141-5. Private Loan Financing Test

(a) In general. Bonds of an issue are private activity bonds if more than the lesser of 5 percent or $5 million of the proceeds of the issue is to be used (directly or indirectly) to make or finance loans to persons other than governmental persons. Section 1.141-2(d) applies in determining whether the private loan financing test is met. In determining whether the proceeds of an issue are used to make or finance loans, indirect, as well as direct, use of the proceeds is taken into account.

(b) Measurement of test. In determining whether the private loan financing test is met, the amount actually loaned to a nongovernmental person is not discounted to reflect the present value of the loan repayments.

(c) Definition of private loan.

(1) In general. Any transaction that is generally characterized as a loan for federal income tax purposes is a loan for purposes of this section. In addition, a loan may arise from the direct lending of bond proceeds or may arise from transactions in which indirect benefits that are the economic equivalent of a loan are conveyed. Thus, the determination of whether a loan is made depends on the substance of a transaction rather than its form. For example, a lease or other contractual arrangement (for example, a management contract or an output contract) may in substance constitute a loan if the arrangement transfers tax ownership of the facility to a nongovernmental person. Similarly, an output contract or a management contract with respect to a financed facility generally is not treated as a loan of proceeds unless the agreement in substance shifts significant burdens and benefits of ownership to the nongovernmental purchaser or manager of the facility.
(2) Application only to purpose investments.

(i) In general. A loan may be either a purpose investment or a nonpurpose investment. A loan that is a nonpurpose investment does not cause the private loan financing test to be met. For example, proceeds invested in loans, such as obligations of the United States, during a temporary period, as part of a reasonably required reserve or replacement fund, as part of a refunding escrow, or as part of a minor portion (as each of those terms are defined in §1.148-1 or §1.148-2) are generally not treated as loans under the private loan financing test.

(ii) Certain prepayments treated as loans. [Not Included]

(3) Grants.

(i) In general. A grant of proceeds is not a loan. Whether a transaction may be treated as a grant or a loan depends on all of the facts and circumstances.

(ii) Tax increment financing.

(A) In general. Generally, a grant using proceeds of an issue that is secured by generally applicable taxes attributable to the improvements to be made with the grant is not treated as a loan, unless the grantee makes any impermissible agreements relating to the payment that results in the taxes imposed on that taxpayer not to be treated as generally applicable taxes under §1.141-4(e).

(B) Amount of loan. If a grant is treated as a loan under this paragraph (c)(3), the entire grant is treated as a loan unless the impermissible agreement is limited to a specific portion of the tax. For this purpose, an arrangement with each unrelated grantee is treated as a separate grant.

(4) Hazardous waste remediation bonds. [Not Included]

(d) Tax assessment loan exception.

(1) General rule. For purposes of this section, a tax assessment loan that satisfies the requirements of this paragraph (d) is not a loan for purposes of the private loan financing test.

(2) Tax assessment loan defined. A tax assessment loan is a loan that arises when a governmental person permits or requires property owners to finance any governmental tax or assessment of general application for an essential governmental function that satisfies each of the requirements of paragraphs (d)(3) through (5) of this section.

(3) Mandatory tax or other assessment. The tax or assessment must be an enforced contribution that is imposed and collected for the purpose of raising revenue to be used for a specific purpose (that is, to defray the capital cost of an improvement). Taxes and assessments do not include fees for services. The tax or assessment must be imposed pursuant to a state law of general application that can be applied equally to natural persons not acting in a trade or business and persons acting in a trade or business. For this purpose, taxes and assessments that are imposed subject to protest procedures are treated as enforced contributions.
(4) Specific essential governmental function.

(i) In general. A mandatory tax or assessment that gives rise to a tax assessment loan must be imposed for one or more specific, essential governmental functions.

(ii) Essential governmental functions. For purposes of paragraph (d) of this section, improvements to utilities and systems that are owned by a governmental person and that are available for use by the general public (such as sidewalks, streets and street-lights; electric, telephone, and cable television systems; sewage treatment and disposal systems; and municipal water facilities) serve essential governmental functions. For other types of facilities, the extent to which the service provided by the facility is customarily performed (and financed with governmental bonds) by governments with general taxing powers is a primary factor in determining whether the facility serves an essential governmental function. For example, parks that are owned by a governmental person and that are available for use by the general public serve an essential governmental function. Except as otherwise provided in this paragraph (d)(4)(ii), commercial or industrial facilities and improvements to property owned by a nongovernmental person do not serve an essential governmental function. Permitting installment payments of property taxes or other taxes is not an essential governmental function.

(5) Equal basis requirement.

(i) In general. Owners of both business and nonbusiness property benefiting from the financed improvements must be eligible, or required, to make deferred payments of the tax or assessment giving rise to a tax assessment loan on an equal basis (the equal basis requirement). A tax or assessment does not satisfy the equal basis requirement if the terms for payment of the tax or assessment are not the same for all taxed or assessed persons. For example, the equal basis requirement is not met if certain property owners are permitted to pay the tax or assessment over a period of years while others must pay the entire tax or assessment immediately or if only certain property owners are required to prepay the tax or assessment when the property is sold.

(ii) General rule for guarantees. A guarantee of debt service on bonds, or of taxes or assessments, by a person that is treated as a borrower of bond proceeds violates the equal basis requirement if it is reasonable to expect on the date the guarantee is entered into that payments will be made under the guarantee.

(6) Coordination with private business tests. See §§1.141-3 and 1.141-4 for rules for determining whether tax assessment loans cause the bonds financing those loans to be private activity bonds under the private business use and the private security or payment tests.


(a) Authority of Commissioner to reflect substance of transactions. If an issuer enters into a transaction or series of transactions with respect to one or more issues with a principal purpose of transferring to nongovernmental persons (other than as members of the general public) significant benefits of tax-exempt financing in a manner that is inconsistent with the purposes of section 141, the Commissioner may take any action to reflect the substance of the transaction or series of transactions, including—

(1) Treating separate issues as a single issue for purposes of the private activity bond tests;
(2) Reallocating proceeds to expenditures, property, use, or bonds;

(3) Reallocating payments to use or proceeds;

(4) Measuring private business use on a basis that reasonably reflects the economic benefit in a manner different than as provided in §1.141-3(g); and

(5) Measuring private payments or security on a basis that reasonably reflects the economic substance in a manner different than as provided in §1.141-4.

Private Letter Ruling 200641002, 10/13/2006

Dear [Redacted Text]:

This is in response to your request for a ruling that the Bonds are not private activity bonds within the meaning of §141 of the Internal Revenue Code because the private security or payment test is not satisfied and the private loan financing test is not met.

FACTS AND REPRESENTATIONS

Agency is a governmental agency and a public benefit corporation of the State organized and existing under the Agency Act for the purpose of promoting the economic welfare of the inhabitants of the City and promoting, developing, encouraging and assisting in certain projects to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, and to improve their recreation opportunities, prosperity and standard of living.

Agency proposes to issue tax-exempt bonds (the "Bonds") and two series of taxable bonds (the "Taxable Bonds") the proceeds of which will be used in part to pay the costs of constructing a Stadium and/or a parking garage. The City and State will also provide additional financial assistance for the construction of facilities related to the Stadium. The City and State expect that the Stadium will create significant tax revenues, employment opportunities and help spur economic development in the area. It is also expected that the Stadium will help to attract increased tourism to the City and State.

City is the owner of the premises on which the Stadium will be located (the "Stadium Site"). City will lease the Stadium Site under a ground lease to the Agency. Agency will lease the Stadium Site to Company under a Lease Agreement, and Company will construct the Stadium as agent of the Agency. Company will grant a license to Team, an affiliate of Company, to use the Stadium. Agency will be the fee owner of the newly constructed Stadium, and Company will operate and maintain the Stadium.

Agency will construct or have constructed a parking garage (the "Parking Garage") with funds other than the Bonds on land owned by the City and leased to the Agency (the "Parking Garage Site"). The Parking Garage will be owned by Agency and operated by Company under a parking facilities agreement. Under the parking facilities agreement, Company will retain a certain amount of net revenues from the Parking Garage and pay the Agency a percentage of net revenues above that amount. Revenues paid to the Agency under this revenue sharing arrangement will be allocated to operation and maintenance costs of the Stadium.
Team will enter into a Non-Relocation Agreement with the City, Agency and a public benefit corporation of the State. Under the Non-Relocation Agreement, the Team will agree to play substantially all of its home games at the Stadium. If the Team violates the agreement, it will be subject to certain remedies which include specific performance and liquidated damages. The amount of the liquidated damages will be unrelated to and in excess of the Bonds and may be pledged to pay debt service on the Bonds. Agency represents that it does not expect that any liquidated damages will be paid under the Non-Relocation Agreement.

Under various agreements, the Company will make several types of payments to the Agency, including rent for the Stadium under the Lease Agreement, payments under an Installment Sale Agreement, and payments in lieu of taxes (the "PILOTs") under a PILOT Agreement (the "PILOT Agreement"), all of which are further described below. Agency has represented that any payments not further described below will either not be private payments or will not, in the aggregate, exceed 10 percent of the debt service on the Bonds.

Under the Lease Agreement between Company and Agency, Company will pay annual rent to Agency for its use of the Stadium. The rent has been determined in an arm's length negotiation between the Agency and the Company and is comparable to rent paid on other professional sports stadiums. The Lease Agreement will be entered into during the three-year period beginning 18 months before the issue date of the Taxable Bonds. The rent payments made by Company to Agency will be allocated to, and sufficient to, pay the debt service on one series of Taxable Bonds. Company will also make payments to Agency under an Installment Sale Agreement that will be entered into during the three-year period beginning 18 months before the issue date of the Taxable Bonds. These payments will be allocated to, and sufficient to, pay the debt service on the second series of Taxable Bonds. Payments under the Lease Agreement and the Installment Sale Agreement will not be used or pledged to pay debt service on the Bonds.

The Company will also make PILOT payments to the Agency under a PILOT Agreement entered into between the Agency and the Company. State law authorizes municipalities in State to impose real property taxes and to abate such taxes. Under State law, all real property located within the State is subject to real property tax unless an exemption is provided by law. Other sections of State law abate real property taxes to varying degrees for different reasons, including providing incentives to induce certain types of development in the State, including commercial, business or industrial activity. State law also authorizes certain agencies, including the Agency, to enter into PILOT agreements. As further described below, property leased to, or owned by the Agency is exempt from real property taxes upon filing of the appropriate documents, including a description of a PILOT agreement. The Agency's exemption from real property taxes combined with its authority to enter into PILOT agreements enable it, in effect, to abate property taxes in a flexible manner that allows the Agency to promote economic development consistent with its charge.

The City's Department of Finance (the "Department") is the agency responsible for the administration and collection of all taxes, assessments and charges imposed by the City. The Department assesses all real property within the City, which includes taxable as well as tax-exempt property. Assessing each parcel of real property in the City is a three-step process. First, the Department assigns each parcel to one of four tax classes, one of which is commercial property. The Department then estimates the actual full value of each parcel. Finally, the Department applies an equalization rate to each class of property to adjust the full value of each parcel within the class to arrive at an assessed value. The City Council fixes the annual
tax rate after establishing the amount of revenue necessary to be raised through property taxes in order to balance the City's budget.

Under State law, real property owned by, or leased to, the Agency is taxable if such property is leased to or operated by a private business unless an application for an exemption is filed, along with the material provisions of any associated agreement obligating another party to pay PILOTs. The filing of the application for exemption is within the discretion of the Agency. If the Agency does not file the application, the property will be subject to real property tax. The Agency is permitted to enter into agreements requiring PILOTs equal to the amount, or a portion of, real property taxes that the Agency would otherwise owe on the property. The Agency's exemption from real property taxes and its concomitant authority to enter into PILOT arrangements serves the same function as a property tax abatement. The City is receiving less revenue with respect to a particular piece of real property in recognition of certain economic benefits derived from inducing private parties to use the property. The PILOT agreements function as an inducement because the private parties paying the PILOTs expect that they would otherwise bear the economic burden of the property taxes. Therefore, the difference between the amounts of the PILOTs and the amounts of the property taxes represent a lower cost to them.

State law requires the Agency to establish a uniform tax exemption policy (the "Exemption Policy"), which it has done. The Exemption Policy sets consistent standards and procedures the Agency follows when agreeing to exempt specific project property from a tax, including the real property tax. The Exemption Policy requires that before the Agency agrees to exempt a specific property from real property taxes, the Agency must enter into a PILOT agreement with the private party receiving the financial benefit of the exemption. The Exemption Policy provides standard formulas for PILOTs available to certain projects in order to induce development within the Agency's jurisdiction. The Exemption Policy also contains procedures under which the Agency may negotiate PILOTs with certain entities and permits deviations from the Exemption Policy if certain procedures are followed.

The Agency has used its authority to enter into over 200 PILOT arrangements for projects located in the City. While most of the PILOT payments under these agreements follow the standard levels of abatement in the Exemption Policy, some are negotiated under the Exemption Policy. The Agency has negotiated a variety of different payment formulas and schedules. In multiple instances, it has negotiated fixed payments of PILOTs. The Agency says that with respect to these PILOT arrangements, the difference between the amount of the PILOT and the amount of the property tax that would otherwise be owed on the property reflects the Agency's view of the financial benefit necessary to induce the expected economic benefits from the project. The Agency has entered into more than 20 agreements in which the amount of the PILOTs have been negotiated.

The Agency has decided to use its authority in this case to reduce real property taxes on the Stadium, the Stadium Site, the Parking Garage and the Parking Garage Site through the PILOT mechanism. Company and Agency will enter into the PILOT Agreement under which the Company will make annual PILOT payments for so long as the Company leases the Stadium and operates the Parking Garage. The PILOT Agreement will deviate from the Exemption Policy, but the Exemption Policy procedures for authorizing and approving the deviation have been followed. After execution of the PILOT Agreement, Agency will file an application for exemption from real property tax for the Stadium, the Stadium Site, the Parking Garage and the Parking Garage Site with the City assessor, along with the material provisions of the PILOT Agreement.
Under the PILOT Agreement, the Agency and the Company are agreeing that Company will pay a fixed amount of PILOTs each year. The Agency represents that the agreement reflects a reduction from the amount of the real property taxes that would have been imposed that the Agency believed was necessary to induce the Team to remain in the City. The PILOT payments in any given year are expected to exceed the debt service on the Bonds, but may not exceed the amount of the real property taxes for such year that would have been levied on the Stadium, the Stadium Site, the Parking Garage and the Parking Garage Site absent the PILOT Agreement (the "cap"). The cap will be determined on an annual basis using the same assessment method for the Stadium, the Stadium Site, the Parking Garage and the Parking Garage Site as is used for assessing properties of the same class within the City, and thus will be equal to the value of these properties times the current equalization rate times the current applicable tax rate.

The City and the Agency have determined that the PILOTs paid under the PILOT Agreement should be used to finance the Stadium, and have assigned the PILOTs to pay the debt service on the Bonds. The Bonds will be payable out of and secured by the revenues from the PILOTs made under the PILOT Agreement. The PILOTs in excess of the debt service on the Bonds will be properly allocable to the payment of ordinary and necessary expenses directly attributable to the operation and maintenance of the Stadium, used for renewal and replacement costs of the Stadium or deposited into the City's general fund to be used for governmental purposes.

The PILOT Agreement requires the Agency to submit annual statements to the Company specifying the amount and due date of the PILOT payments in the same manner that tax bills are mailed by the City to owners of privately owned property. If Company fails to make a PILOT payment, the Agency will have remedies substantially similar to remedies available to the City when a property owner fails to pay its real property taxes, which include foreclosure and public sale of Company's leasehold interest in the Stadium or Company's rights under the parking facilities agreement.

LAW

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 either the private business use test under §141(b)(1) and the private security or payments test under §141(b)(2) are satisfied, or the private loan financing test under §141(c) is satisfied.

Private Security or Payment Test - General

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 A) secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or B) 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) of the Income Tax Regulations provides that the private security or payment test relates to the nature of the security for, and the source of, the payment of debt service on an issue. The
private payment portion of the 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. The private
security portion of the test takes into account the payment of the debt service on the issue that is directly
or indirectly secured by any interest in property used or to be used for a private business use or payments
in respect of property used or to be used for a private business use.

Section 1.141-4(c)(2)(i)(A) provides, in part, 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.

Section 1.141-4(c)(2)(i)(C) provides that payments by a person for a use of proceeds do not include the
portion of any payment that is properly allocable to the payment of ordinary and necessary expenses (as
defined under §162) directly attributable to the operation and maintenance of the financed property used
by that person. For this purpose, general overhead and administrative expenses are not directly
attributable to those operations and maintenance.

Section 1.141-4(c)(3)(i) provides that private payments for the use of property are allocated to the source
or different sources of funding of property. The allocation to the source or different sources of funding is
based on all of the facts and circumstances, including whether an allocation is consistent with the
purposes of §141. For this purpose, different sources of funding may include different tax-exempt issues,
taxable issues and equity.

Section 1.141-4(c)(3)(iii) provides in part that, except as provided in paragraphs (c)(3)(iv), if a payment is
made for the use of property financed with two or more sources of funding, that payment must be
allocated to those sources of funding in a manner that reasonably corresponds to the relative amounts of
those sources of funding that are expended on that property.

Section 1.141-4(c)(3)(iv) provides that if an issuer enters into an arrangement in connection with the
issuance of the bonds, payments under that arrangement are generally allocated to that issue. Generally
an arrangement is treated as entered into in connection with the issuance of an issue if: (A) the issuer
enters into the arrangement during the three-year period beginning 18 months before the issue date, and
(B) the amount of payments reflects all or a portion of the debt service on the issue.

Section 1.141-4(d)(4) provides that property used or to be used for a private business use and payments
in respect of that property are treated as private security if any interest in that property or payments
secures the payment of debt service on the bonds. Generally, the rules in (c)(2)(i)(A) and (B) apply to
determine the amount of payment treated as payments in respect of property used or to be used for a
private business use.

Generally Applicable Taxes

Section 1.141-4(e)(1) provides that 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)(2) defines a generally applicable tax as an enforced contribution exacted pursuant to
legislative authority in the exercise of the taxing power that is imposed and collected for the purpose of
raising revenue to be used for governmental purposes. A generally applicable tax must have a uniform tax rate that is applied to all persons of the same classification in the appropriate jurisdiction and a generally applicable manner of determination and collection.

Section 1.141-4(e)(3) provides that a payment for a special privilege granted or service rendered is not a generally applicable tax. Special assessments paid by property owners benefiting from financed improvements are not generally applicable taxes. For example, a tax or a payment in lieu of tax that is limited to the property or persons benefited by an improvement is not a generally applicable tax.

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.

Section 1.141-4(e)(4)(ii) provides the following examples of impermissible agreements that cause a tax to fail to have a generally applicable manner of determination and collection: an agreement to be personally liable on a tax that does not generally impose personal liability, to provide additional credit support such as a third party guarantee, or to pay unanticipated shortfalls; an agreement regarding the minimum market value of property subject to property tax; and an agreement not to challenge or seek deferral of the tax.

Section 1.141-4(e)(4)(iii) provides the following examples of agreements that do not cause a tax to fail to have a generally applicable manner of determination and collection: an agreement to use a grant for specified purposes (whether or not that agreement is secured); a representation regarding the expected value of the property following the improvement; an agreement to insure the property and, if damaged, to restore the property; a right of a grantor to rescind the grant if property taxes are not paid; and an agreement to reduce or limit the amount of taxes collected to further a bona fide governmental purpose. For example, an agreement to abate taxes to encourage a property owner to rehabilitate property in a distressed area is a permissible agreement.

Payments in Lieu of Taxes

Section 1.141-4(e)(5) provides that a tax equivalency payment and any other payment in lieu of a tax is treated as a generally applicable tax if - (i) the payment is commensurate with and not greater than the amounts imposed by a statute for a tax of general application; and (ii) the payment is designated for a public purpose and is not a special charge (as described in Treas. Reg. §1.141-4(e)(3)). For example, a payment in lieu of taxes made in consideration for the use of property financed with tax-exempt bonds is treated as a special charge.

Private Loan Financing Test

Section 141(c)(1) provides, in part, that the private loan financing test is satisfied if the amount of the proceeds of the issue to be used (directly or indirectly) to make or finance loans to persons other than governmental units exceeds the lesser of 5 percent of such proceeds or $5,000,000.

Section 1.141-5(c) provides that any transaction that is generally characterized as a loan for federal income tax purposes is a loan for purposes of this section. In addition, a loan may arise from the direct lending of bond proceeds or may arise from transactions in which indirect benefits that are the economic equivalent of a loan are conveyed. Thus, the determination of whether a loan is made depends on the
substance of a transaction rather than its form. For example, a lease or other contractual arrangement (for example, a management contract or an output contract) may in substance constitute a loan if the arrangement transfers tax ownership of the facility to a nongovernmental person.

Section 1.141-5(c)(3) provides that a grant of proceeds is not a loan. Whether a transaction may be treated as a grant or a loan depends on all of the facts and circumstances. Generally, a grant using proceeds of an issue that is secured by generally applicable taxes attributable to the improvements to be made with the grant is not treated as a loan, unless the grantee makes any impermissible agreements relating to the payment that results in the taxes imposed on that taxpayer not to be treated as generally applicable taxes under Treas. Reg. §1.141-4(e).

ANALYSIS

Private Use Test

The Agency concedes that the private use test is met. Because the private use test is met, the Bonds will be private activity bonds if the private security or payment test is met. Alternatively, the Bonds will be private activity bonds if the private loan financing test is met.

Private Security or Payment Test

There are a number of payments that Company will make with respect to this transaction. Under the regulations, it is clear that certain of these payments will not give rise to private payments or private security. Payments of rent under the Lease Agreement and payments under the Installment Sale Agreement will not be used or be available to pay debt service on the Bonds and will not secure the Bonds. These payments are properly allocable to the Taxable Bonds in accordance with Treas. Reg. §1.141-4(c)(3), and therefore are not private security or payments for the Bonds. The Company and/or Team will make additional payments other than the payments of rent under the Lease Agreement, payments under the Installment Sale Agreement and the PILOTs, but the Agency has represented that those payments in the aggregate will be less than 10 percent of the debt service on the Bonds or will be allocable to the payment of ordinary and necessary expenses directly attributable to the operation and maintenance of the Stadium within the meaning of Treas. Reg. §1.141-4(c)(2)(i)(C). Thus, even though these may be private payments with respect to the Bonds, they do not cause the Bonds to fail the private security or payment test. The Team is also required to pay liquidated damages if it violates the Non-Relocation Agreement. Because the Agency reasonably expects that these payments will never be made, we do not take them into account as private security or payments for the Bonds.

The payments that require analysis are the PILOT payments. The Company will make PILOT payments to the Agency that will be used to pay debt service on the Bonds. Any excess will be used to pay for operation and maintenance of the Stadium, payment of replacement and renewals costs on the Stadium, or deposited into the City's general fund to be used for governmental purposes. To the extent that the PILOT payments are used for operation and maintenance, they are not private payments under §1.141-4(c)(2)(i)(C). The portion of the PILOT payments used to pay debt service, replacement and renewal costs or deposited into the City's general fund will not be private payments if they are considered generally applicable taxes as defined by Treas. Reg. §1.141-4(e)(5).

The regulations specifically provide that PILOTs are considered generally applicable taxes if (i) they are commensurate with and not greater than the amounts imposed by a statute for a tax of general
application and (ii) they are designated for a public purpose and do not constitute a special charge. The PILOTs Company will pay cannot be greater than the amounts imposed by a statute for a tax of general application. Under State law, a real property tax is imposed on all property in the State at a uniform rate and therefore is a tax of general application within the meaning of Treas. Reg. §1.141-4(e)(5)(i) (the "real property tax"). The PILOT Agreement caps the PILOTs at the amount of the real property tax, and uses the same assessment procedure and tax rate as is used to set property taxes each year to determine the cap. The PILOTs are also commensurate with the real property tax.

The word "commensurate" is not defined in the regulations. When the §141 regulations were originally proposed in 1994, the language in the first of the two parts of the provision on PILOTs required that PILOTs be measured by and equal to the amounts imposed by a regular statute for a tax of general application. When the regulations were finalized, the phrase "measured by and equal to" was dropped in favor of the term commensurate, and the preamble stated that the modifications were made in response to comments to make the regulations "more flexible for arrangements that reduce the amount of tax paid and permit a wider range of tax equivalency payments." Commensurate has been defined to mean "equal in measure or extent" or "corresponding in size, extent, amount, or degree," or "proportionate." Merriam Webster's Collegiate Dictionary (11th Edition, 2003). In light of the history of the regulations and the note from the preamble to the final regulations, commensurate is most appropriately defined here not as equal in measure but corresponding or proportionate in measure. The Agency determined the amount of the PILOTs it would accept with respect to the property by starting with the amount of the property taxes and considering the reduction that would correspond to the benefits to be expected from the project and that would induce the Company to go forward with the project on a basis that would secure those benefits. Generally, the PILOTs are of the same order of magnitude as the property taxes are initially projected to be and although the proportion between the PILOTs and the projected property taxes varies from year to year, the language of the regulations does not require the proportion to be consistent. In sum, the PILOTs are commensurate with and not greater than the real property tax, which is a tax of general application imposed by statute.

The second requirement that must be satisfied under Treas. Reg. §1.141-4(e)(5)(ii) is that the payment is designated for a public purpose and is not a special charge (as described in Treas. Reg. §1.141-4(e)(3)). Here the payments are designated for a public purpose. The PILOTs are being used to pay the debt service on the Bonds which were issued specifically for the purpose of financing the Stadium to promote and encourage economic development and recreational opportunities in City. To the extent that the PILOTs are not used to pay the Bonds (or for operation and maintenance) they are being used to renew and renovate the Stadium, which furthers the same purpose, or are being deposited in the City's general fund to be used for governmental purposes. See Rev. Rul. 72-194, 1972-1 C.B. 94 (money expended by a state in promoting tourism is for an exclusively public purpose).

The PILOTs are not a special charge as described in Treas. Reg. §1.141-4(e)(3). A special charge is a payment for a privilege granted or service rendered. Treas. Reg. §1.141-4(e)(3). Without the PILOT Agreement, and the exemption from property tax that follows from it, Agency would owe property taxes on the Stadium and the Parking Garage, a cost Company can expect it would ultimately bear. The PILOT Agreement effectively reduces the amount of generally applicable tax that Agency will have to pay and passes, consistent with State law, the obligation of paying that reduced tax to the Company. The structure of the tax and the PILOT system means that similar to Rev. Rul. 71-49, 1971-1 C.B. 103, the character of the payment from the Company to the Agency remains a payment of tax.
The PILOT Agreement does not create a new charge separate and apart from the system of real property taxes that Company has to pay for use of the Stadium and the Parking Garage. State law, City law and the Exemption Policy conceive of the system of property taxes, abatements and PILOTs as functionally integrated. PILOTs give Agency greater flexibility than is available with respect to abatements, but the function remains the same. The City authorizes a reduction in the revenues it would otherwise receive with respect to a piece of real property in exchange for benefits it expects to receive as a result of a particular use of the property. Agency has made widespread use of PILOT agreements. The Agency's practice with PILOTs lends credibility to its description of PILOTs as an integral part of the overall system connecting real property taxes and economic development.

The fact that the amount of the PILOTs is negotiated, is less than the amount of real property taxes that would otherwise be owed, and is different than the amounts other parties are paying on PILOT agreements does not negate this conclusion. Under Treas. Reg. §1.141-4(e)(4)(iii), it is clear that a real property tax with a uniform rate and a proper system of classifying properties remains a generally applicable tax even if the jurisdiction imposing the tax makes an agreement to reduce or limit the amount of taxes paid with respect to a particular piece of property in order to further a bona fide governmental purpose.

Based on the foregoing, we conclude that the PILOT payments satisfy the requirements of Treas. Reg. §1.141-4(e)(5)(i) and (ii) and therefore will be treated as generally applicable taxes that are not taken into account for purposes of the private security or payment test.

Private Loan Financing Test

Agency will spend the Bond proceeds on the costs of construction of the Stadium, which in turn will be leased to Company. Company will pay Agency rent under the Lease Agreement, parking revenues under the parking facilities agreement and also PILOTs. The PILOTs will be used to pay the debt service on the Bonds. The Bonds will be payable out of and secured by the PILOTs. Whether or not this arrangement constitutes a loan of the Bond proceeds depends upon whether all the facts and circumstances give rise to the indicia of a loan for tax purposes. Does Agency have a legally enforceable right to be repaid a fixed amount with a fixed maturity? Generally applicable taxes are not repayment of a loan. For example, under Treas. Reg. §1.141- 5(c)(3), a grant of proceeds that is secured by generally applicable taxes attributable to the improvements to be made with the grant is not treated as a loan absent an impermissible agreement that would cause the taxes not to be treated as generally applicable taxes under Treas. Reg. §1.141-4(e). The regulations do not specify whether PILOTs treated as generally applicable taxes for purposes of the private security or payment test are also to be treated as generally applicable taxes for purposes of the private loan financing test. However, it seems reasonable to do so, given the cross-reference to the provision on generally applicable taxes in the private loan financing test regulations and the fact that both tests are components of a single specialized Code provision which distinguishes private activity bonds from governmental bonds. Moreover, certain features of the PILOT agreement are the same or substantially the same as features of generally applicable taxes. For example, as discussed in detail above, the PILOTs are authorized under State law as an alternative and replacement to real property taxes and will be used for a governmental purpose. In addition, procedures for assessment, collection and default for failure to pay PILOTs are created to be the same or similar to those provisions for real property taxes. Accordingly, the Bond proceeds are not loaned to the Company because they are secured by PILOTs which are treated as generally applicable taxes. Moreover, the revenues from the Parking Garage are not repayments of a loan. These payments are based on a percentage of revenues
above a certain amount; there is no fixed amount being repaid by a specified date. Therefore, the private loan financing test is not met with respect to the Bond transaction because the Bond proceeds are not loaned to Company.

CONCLUSION

Based solely on the facts described herein and representations made, we rule that the Bonds will not meet the private security or payment test of §141(b)(2) or the private loan financing test of §141(c). Therefore, the Bonds will not be private activity bonds within the meaning of §141.

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.

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.

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 representatives.

Sincerely,

Assistant Chief Counsel (Exempt Organizations/Employment)

Tax/Government Entities)

By: Rebecca L. Harrigal

Chief, Tax Exempt Bond Branch