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LEGEND

Issuer =
Notes =

Date 1 =
Date 2 =
Date 3 =
x =

This is in response to your authorized representatives' letter dated December 21, 2009, requesting a ruling that (1) § 56(g)(4)(B)(i) of the Internal Revenue Code will not apply to the interest on bonds issued after December 31, 2008, and before January 1, 2011, to refund commercial paper, the issue date of which is after December 31, 2003, and before January 1, 2009; and (2) such bonds will not be treated as private activity bonds under § 57(a)(5)(C)(i).

FACTS AND REPRESENTATIONS

On Date 1 (which occurred after December 31, 2003, and before January 1, 2009), Issuer executed a single master legal document ("Master Document") that governs Notes, which are exempt facility private activity bonds having a maturity of 270 days or less and are issued pursuant to the same commercial paper program to finance or refinance the same governmental purpose. On the same date the Master Document was executed, Issuer issued x dollars of Notes (which amount exceeds $50,000).

After Date 1, Issuer issued both new money Notes and refunding Notes pursuant to the commercial paper program. The last date on which Issuer issued new money Notes was Date 2 (which is less than eighteen months after Date 1).

Since Date 2, only refunding Notes have been issued, and none of the refunding Notes issued since Date 2 have increased the principal amount of the outstanding Notes. The term of the commercial paper program for Notes will not extend beyond Date 3 (which is less than 30 years from Date 1).

In its tax certificates, Issuer elected to treat Notes as a single issue, the issue date of which is Date 1, pursuant to § 1.150-1(c)(4)(ii)(A) of the Income Tax Regulations.

Issuer intends to issue bonds ("Bonds") to refund all outstanding Notes. The Issuer intends to issue the Bonds after December 31, 2008, and before January 1, 2011.

REQUESTED RULINGS

(1) Section 56(g)(4)(B)(i) will not apply to the interest on the Bonds.

(2) The Bonds will not be treated as private activity bonds under § 57(a)(5)(C)(i).

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.

In addition to the other taxes imposed by subtitle A of the Internal Revenue Code, § 55 imposes the alternative minimum tax. To calculate the alternative minimum tax imposed by § 55, a taxpayer must calculate its alternative minimum taxable income.

Section 55(b)(2) of the Code provides that the term "alternative minimum taxable income" means the taxable income of the taxpayer for the taxable year determined with the adjustments provided in §§ 56 and 58 and increased by the amount of the items of tax preference described in § 57.

Section 57(a)(5)(A) provides that one item of tax preference is tax-exempt interest on specified private activity bonds reduced by any deduction (not allowable in computing the regular tax) which would have been allowable if such interest were includible in gross income.

Section 57(a)(5)(C)(i) provides that, generally, a specified private activity bond is any private activity bond (as defined in § 141) which is issued after August 7, 1986, and the interest on which is not includible in gross income under § 103.

One of the adjustments taken into account in determining the alternative minimum taxable income of a corporation is the adjusted current earnings adjustment. Section 56(g)(1) provides that the alternative minimum taxable income of any corporation for any taxable year shall be increased by 75 percent of the excess (if any) of the adjusted current earnings of the corporation, over the alternative minimum taxable income, determined without regard to § 56(g) and the alternative tax net operating loss deduction (the ACE adjustment).

Section 56(g)(3) provides that, for purposes of § 56(g), the term "adjusted current earnings" means the alternative minimum taxable income for the taxable year determined with the adjustments provided in § 56(g)(4), and determined without regard to the alternative tax net operating loss deduction or the ACE adjustment.

Section 56(g)(4)(B)(i)(I) includes in adjusted current earnings amounts that are otherwise excludable from gross income for purposes of computing alternative minimum taxable income if such amounts are includable in determining the amount of earnings and profits. For this purpose, Treas. Reg. § 1.56(g)-1(c)(1) makes clear that amounts are treated as excludable from gross income for purposes of computing alternative minimum taxable income only if such amounts are permanently excludable from inclusion in gross income for alternative minimum tax purposes. Section 56(g)(4)(B)(i)(II) reduces the amount of income included in adjusted current earnings under 56(g)(4)(B)(i)(I) by any deduction which would have been allowable in computing alternative minimum taxable income if such amount had been includible in gross income.

Treas. Reg. § 1.56(g)-1(c)(6) provides a partial list of income items excluded from gross income for purposes of computing alternative minimum taxable income prior to taking into account the ACE adjustment but that are included in earnings and profits, which list includes interest excluded under § 103.

Consequently, unless an exception applies, interest on a bond that is excludable from gross income in computing regular taxable income may be includible in alternative minimum taxable income either as interest on a specified private activity bond pursuant to § 57(a)(5)(A) or as a result of an increase in adjusted current earnings pursuant to § 56(g)(4)(B).

Section 57(a)(5)(C)(vi) provides: (I) for purposes of § 57(a)(5)(C)(i), the term "private activity bond" shall not include any bond issued after December 31, 2008, and before January 1, 2011; (II) for purposes of § 57(a)(5)(C)(vi)(I), a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond); and (III) § 57(a)(5)(C)(vi)(II) shall not apply to any refunding bond which is issued to refund any bond which was issued after December 31, 2003, and before January 1, 2009.

Section 56(g)(4)(B)(iv) provides: (I) § 56(g)(4)(B)(i) shall not apply in the case of any interest on a bond issued after December 31, 2008, and before January 1, 2011; (II) for purposes of § 56(g)(4)(B)(iv)(I), a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond); and (III) § 56(g)(4)(B)(iv)(II) shall not apply to any refunding bond which is issued to refund any bond which was issued after December 31, 2003, and before January 1, 2009.

Section 103(b)(1) provides that interest on a State or local bond is not excluded from gross income if the bond is a private activity bond that is not a qualified bond within the meaning of § 141.

Under § 141(e), a qualified bond includes an exempt facility bond, so long as other applicable requirements are satisfied.

Section 150(a)(1) provides that, for purposes of §§ 141 through 150, the term "bond" includes any obligation.

Section 1.150-1(b) provides that, generally, issue date, in reference to an issue, is the first date on which the issuer receives the purchase price in exchange for delivery of the evidence of indebtedness representing any bond included in the issue; issue date, in reference to a bond, is the date on which the issuer receives the purchase price in exchange for that bond; and in no event is the issue date earlier than the first day on which interest begins to accrue on the bond or bonds for Federal income tax purposes.

Section 1.150-1(c)(1) provides that, generally, the term issue means two or more bonds that: (1) are sold at substantially the same time, (2) are sold pursuant to the same plan of financing, and (3) are reasonably expected to be paid from substantially the same source of funds.

Section 1.150-1(c)(4) provides that short-term bonds having a maturity of 270 days or less (commercial paper) issued pursuant to the same commercial paper program may be treated as part of a single issue, the issue date of which is the first date the aggregate amount of commercial paper issued under the program exceeds the lesser of $50,000 or 5 percent of the aggregate issue price of the commercial paper in the program. A commercial paper program is a program to issue commercial paper to finance or refinance the same governmental purpose pursuant to a single master legal document. Commercial paper is not part of the same commercial paper program unless issued during an 18-month period, beginning on the deemed issue date. In addition, commercial paper issued after the end of this 18-month period may be treated as part of the program to the extent issued to refund commercial paper that is part of the program, but only to the extent that: (1) there is no increase in the principal amount outstanding; and (2) the program does not have a term in excess of (i) 30 years; or (ii) the period reasonably necessary for the governmental purposes of the program.

Issuer executed the Master Document on Date 1. Also on Date 1, Issuer issued Notes in excess of $50,000. Issuer has subsequently issued other Notes pursuant to the same commercial paper program, but all new money Notes were issued within the 18-month period beginning on Date 1. Only refunding Notes were issued outside this 18-month period, and none of these Notes increased the principal amount of Notes outstanding. The term of Issuer's commercial paper program does not exceed 30 years. In its tax certificates, Issuer elected to treat Notes as a single issue, the issue date of which is Date 1, pursuant to § 1.150-1(c)(4)(ii)(A). Thus, pursuant to § 1.150-1(c)(4)(ii)(A), the issue date of the Notes is Date 1.

Section 1.56(g)-1(c)(6) specifically lists interest that is excluded under § 103 as an item to be included in a corporation's adjusted current earnings for purposes of calculating alternative minimum taxable income. Section 103 specifically references § 141 in determining which private activity bonds are qualified bonds. Because the provisions of § 150 and the regulations thereunder (including § 1.150-1) otherwise apply to private activity bonds under § 141, and because § 141 (through application of § 103) is used as the basis for determining adjusted current earnings for purposes of calculating alternative minimum taxable income, we conclude that the special rule for commercial paper financings applies for the purpose of determining the issue date of an issue under § 56(g)(4)(B)(iv).

Because the issue date of the Notes pursuant to § 1.150-1(c)(4)(ii)(A) is Date 1, the issue date of the Notes for purposes of § 56(g)(4)(B)(iv) is Date 1. Under § 56(g)(4)(B)(iv)(III), § 56(g)(4)(B)(iv)(II) will not apply to Bonds because Bonds will be issued to refund Notes, which were issued on Date 1, and Date 1 is after December 31, 2003, and before January 1, 2009. Because § 56(g)(4)(B)(iv)(II) will not apply to Bonds, for purposes of § 56(g)(4)(B)(iv), the issue date of the Bonds is determined pursuant to the general rules contained in §§ 1.150-1(b) and (c)(1). Based on Issuer's representations that the Bonds will be issued after December 31, 2008, and before January 1, 2011, for purposes of § 56(g)(4)(B)(iv), the issue date of the Bonds will be after December 31, 2008, and before January 1, 2011. Section 56(g)(4)(B)(iv)(I) states that § 56(g)(4)(B)(i) shall not apply in the case of any interest on a bond issued after December 31, 2008, and before January 1, 2011. Therefore, if Bonds are issued after December 31, 2008, and before January 1, 2011, § 56(g)(4)(B)(i) will not apply to the interest on the Bonds.

Section 57(a)(5) includes as items of tax preference private activity bonds, as defined in § 141, the interest on which is excluded under § 103. Because the provisions of § 150 and the regulations thereunder (including § 1.150-1) otherwise apply to private activity bonds under § 141, and because § 141 (through the application of § 103 and otherwise) is also used as the basis for inclusion of certain interest as an item of tax preference for purposes of calculating alternative minimum taxable income, we also conclude that the special rule for commercial paper financings applies for the purpose of determining the issue date of an issue under § 57(a)(5)(C)(vi).

Because the issue date of the Notes pursuant to § 1.150-1(c)(4)(ii)(A) is Date 1, the issue date of the Notes for purposes of § 57(a)(5)(C)(vi) is Date 1. Under § 57(a)(5)(C)(vi)(III), § 57(a)(5)(C)(vi)(II) will not apply to Bonds because Bonds will be issued to refund Notes, which were issued on Date 1, and Date 1 is after December 31, 2003, and before January 1, 2009. Because § 57(a)(5)(C)(vi)(II) will not apply to Bonds, for purposes of § 57(a)(5)(C)(vi), the issue date of the Bonds is determined pursuant to the general rules contained in §§ 1.150-1(b) and (c)(1). Based on Issuer's representations that the Bonds will be issued after December 31, 2008, and before January 1, 2011, for purposes of § 57(a)(5)(C)(vi), the issue date of the Bonds will be after December 31, 2008, and before January 1, 2011. Section 57(a)(5)(C)(vi)(I) states that, for purposes of § 57(a)(5)(C)(i), the term "private activity bond" shall not include any bond issued after December 31, 2008, and before January 1, 2011. Therefore, if Bonds are issued after December 31, 2008, and before January 1, 2011, the Bonds will not be treated as private activity bonds under § 57(a)(5)(C)(i).

CONCLUSIONS

Based on the facts presented and representations made, if Bonds are issued after December 31, 2008, and before January 1, 2011:

(1) Section 56(g)(4)(B)(i) will not apply to the interest on the Bonds.

(2) The Bonds will not be treated as private activity bonds under § 57(a)(5)(C)(i).

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.

This ruling is directed only to Issuer. 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 Issuer 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,

Jeffrey Rodrick
Senior Technician Reviewer, Branch 5
(Income Tax & Accounting)

cc: