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Date:
October 22, 2014

Legend

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Dear :

This letter is being sent to modify our private letter ruling (PLR 201338029), dated May 23, 2013 (the "PLR"). We are modifying the PLR to correct certain statements under the headings FACTS and LAW AND ANALYSIS. The PLR contains a ruling that Company's income is excludible from gross income under Internal Revenue Code ("IRC") § 115 because the income of Company derives from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof. In conjunction with our modification of the PLR, Company requested a ruling that Company is not required to file Form 990. This ruling modifies and supersedes the PLR.

We make the following modifications to the PLR:

The last sentence of the sixth full paragraph under the heading FACTS is deleted in its entirety.

The ninth full paragraph under the heading FACTS is modified to read as follows:

> Company from time-to-time generates revenues from sales to non-members. Savings or positive net margin, if any, from non-member sales are used to lower the costs of the member whose assets or contracts are involved. These sales could be accomplished by the member directly instead of through Company. Non-member sales have generally included (i) sales of T assets; (ii) sales of U with respect to supply contracts; (iii) miscellaneous transactions (swaps/trade and "book out" transactions); and (iv) transactions resulting from AA mandates. With respect to these sales to non-members, Company

represents that any benefit to nonmembers involved in the sales transactions is no different from the benefit that would be provided if the member itself performed the sale.

The first sentence of the eleventh full paragraph under the heading FACTS is modified to become two sentences that read as follows No private interests participate in the operation of Company. Except for the incidental benefit received by nonmembers as described above, no private interests benefit from the operation of Company other than for reasonable payment as providers of goods or services.

The second sentence of the third full paragraph under the heading LAW AND ANALYSIS is modified to become two sentences that read as follows: The revenue ruling states that the income of such an organization is excluded from gross income so long as private interests do not participate in the organization or benefit more than incidentally from the organization. The benefit to the employees of the insurance coverage obtained by the member political subdivisions was deemed incidental to the public benefit.

The second sentence of the fifth full paragraph under the heading LAW AND ANALYSIS is modified to read as follows: Private interests do not participate in Company or benefit more than incidentally (e.g., the benefit to nonmembers from the sales discussed above or as providers of goods or services) from the operation of Company.Under the heading LAW AND ANALYSIS, we also added discussion regarding the request to be excluded from filing Form 990.

The PLR, as modified, reads as follows:

FACTS

Company is a State non-profit corporation and, by terms of Company's A, only municipalities owning or initiating B utility system may be members. Company has over V members. All of Company's present members are political subdivisions that own and/or operate C utility systems.

Company has two classes of members, D members and E members. D members must be political subdivisions within the meaning of Treas. Reg. § 1.103-1 and own or be in the process of initiating B utility system. E members must be (i) political subdivisions within the meaning of Treas. Reg. § 1.103-1, such as some public universities, and consume W, but the entity may also distribute such F to others or the entity qualifies as a D member, and (ii) be geographically remote from Company's general area of operations such that in Company's sole opinion, Company cannot economically provide services other than G to such member. In the event of dissolution of Company, E members share in the distribution of assets (after the payment of debts and the

repayment of initial capital contributions and membership fees, including dues) on the same basis as D members.

The Internal Revenue Service ("IRS") issued Company a determination letter that it was exempt from federal income taxation because it was a cooperative described in IRC § 501(c)(12) on Date X . Company is a cooperative H, 85 percent or more of the income of which consists of amounts collected from members for the sole purpose of meeting losses and expenses within the meaning of IRC § 501(c)(12). Company represents that it has never been in violation of the 85/15 requirement. The IRS also previously issued Company a favorable private letter ruling that its income was excluded from gross income within the meaning of IRC § 115 on Date Y, and a favorable letter ruling that Company is an instrumentality within the meaning of IRC § 141 on Date Z.

Company is organized to help its members in procuring economical and reliable wholesale I on an individual basis and on a "pool" basis for groups of members. Company also arranges for and provides technical services and training and safety training for members, acts as a clearinghouse for information, and assists members with project financings and telecommunication and other utility related issues. Company also coordinates "mutual aid" among members so J crews from members can be voluntarily dispatched to other members to assist in emergency or disaster situations. While the scope and nature of the services provided by Company may evolve over time as the needs of members change, they will remain consistent with Company's governmental purposes.

Company is governed by a board of trustees consisting of twenty of its members. No individuals, non-member municipalities, or other entities or organizations are eligible to serve as trustees. Members elected as trustees appoint an individual to represent them on the board. The president and general counsel serve as nonvoting, ex officio, trustees. Presently, Company has twenty trustees, twelve elected from member service groups and eight elected at-large by members. The trustees serve three-year staggered terms. In the event of a vacancy of an at-large trustee, the remaining trustees fill such vacancy until the next members meeting from among the members of either D or E, according to the open seat. At the next members meeting after such vacancy, the same shall be filled for the unexpired term by an at-large election. In the event of a vacancy of a service group trustee, the vacancy shall be filled at a special caucus of the service group for the purpose of electing its representative.

Company has one wholly-owned for-profit subsidiary, K and is the sole member of two active limited liability companies, L and M, both of which are treated as disregarded entities for federal tax purposes. K was formed to provide N services to municipalities in State. Currently, its services are limited to providing aggregation-consulting services to municipalities.

Company has undertaken a substantial number of O-related projects with one or more of its members. These projects are either owned by Company or jointly-owned by Company's members. The members determine if and the extent to which they wish to participate in each project.

Company has entered into two separate projects involving joint ownership arrangements. Through L, Company has a joint ownership interest in P, the Q, and, through M, Company has a joint ownership interest in R, the S. In each of these projects, each owner has an "undivided ownership interest" in the project. Each of the co-owners effectively owns a ratable portion of the entire facility (and each of its components) and is responsible for its ratable share of the capital and operating and maintenance costs of the facility and is also entitled to a ratable share of the J output of the facility. Each co-owner has issued its own debt (rather than a joint issuance of debt) or used some other means to raise its share of the capital cost of the facility.

Company from time-to-time generates revenues from sales to non-members. Savings or positive net margin, if any, from non-member sales are used to lower the costs of the member whose assets or contracts are involved. These sales could be accomplished by the member directly instead of through Company. Non-member sales have generally included (i) sales of T assets; (ii) sales of U with respect to supply contracts, (iii) miscellaneous transactions (swap/trades and "book out" transactions, and (iv) transactions resulting from AA mandates. With respect to these sales to non-members, Company represents that any benefit to nonmembers involved in the sales transactions is no different from the benefit that would be provided if the member itself performed the sale.

Including investment income, the income of Company also consists of capital contributions and dues from members, revenue from the sales of power to members, the payment by members to Company of consulting fees for technical services and training, operating as a clearinghouse for information and assisting members with project financings and telecommunication and other utility related issues, revenue derived through Company's for-profit subsidiary, K, and revenue from incidental non-member sales. The project financings provide a cost-effective manner for members to finance J utility projects, whereby Company issues tax-exempt debt on behalf of participant member communities. All annual revenues in excess of expenses of Company accrue to the benefit of its members because they are either applied to reduce costs of services to members or are treated as increases to members' patronage capital.

No private interests participate in the operation of Company. Except for the incidental benefit received by nonmembers as described above or for reasonable payment as providers of goods or services, no private interests benefit from the operation of Company. The A provide that upon dissolution or liquidation of Company any assets

remaining after payment of all debts and initial capital contributions of members shall be disposed of (i) by refund in order of receipt of membership fees, including dues paid by members, and (ii) remaining assets, if any, shall be distributed to members and former members on the basis of their “patronage” while they were members. Upon dissolution the assets revert to entities that are political subdivisions.

LAW AND ANALYSIS

IRC §115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a state or any political subdivision thereof.

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income generated by an investment fund that is established by a state to hold revenues in excess of the amounts needed to meet current expenses is excludable from gross income under IRC § 115(1), because such investment constitutes an essential governmental function. The ruling explains that the statutory exclusion is intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of an entity engaged in the operation of a public utility or the performance of some governmental function that accrues to either a state or political subdivision of a state. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state’s participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and that are within the ambit of a sovereign to conduct.

Rev. Rul. 90-74, 1990-2 C.B. 34, holds that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (e.g., casualty, public liability, workers’ compensation, and employees’ health) is excludable from gross income under IRC §115(1) because the organization is performing an essential governmental function. The revenue ruling states that the income of such an organization is excluded from gross income so long as private interests do not participate in the organization or benefit more than incidentally from the organization. The benefit to the employees of the insurance coverage obtained by the member political subdivisions was deemed incidental to the public benefit.

IRC § 6033(a) generally provides that every organization exempt from tax under IRC § 501(a) shall file an annual return stating its gross income, receipts and disbursements and such other information as the regulations require. IRC § 6033(a)(2)(B) provides that the Secretary may relieve any organization from filing such return when he determines that such filing is not necessary to the efficient administration of the internal revenue laws.

Treas. Reg. § 1.6033-2(a)(2)(i) provides that every organization exempt from taxation under section 501(a) and required to file a return under IRC § 6033 shall file its annual

return on Form 990.

Rev. Proc. 95-48, 1995-2 C.B. 418, exempts an organization that is an affiliate of a governmental unit from the requirement of filing Form 990, *Return of Organization Exempt From Income Tax.* Section 4.02 of Rev. Proc. 95-48 provides that an organization is treated as an affiliate of a governmental unit if it is described in IRC § 501(c) and it meets the requirements of either Section 4.02(a) or (b). Section 4.02(a)(i) of Rev. Proc. 95-48 states that an organization is treated as an affiliate of a governmental unit if it has a ruling or determination from the Service that its income, derived from activities constituting the basis for its exemption under IRC § 501(c), is excluded from gross income under IRC § 115.

Company procures economical and reliable wholesale I. Providing for a pooling of resources to procure F supplies and transmission services for municipalities and their residents constitutes the performance of an essential governmental function within the meaning of IRC §115(1). See Rev. Rul. 77-261 and Rev. Rul. 90-74.

In addition, the income of Company accrues to the members. Private interests do not participate in Company or benefit more than incidentally (e.g., the benefit to non-members from the sales discussed above or as providers of goods or services) from the operation of Company The Company dedicates its assets and income exclusively for the benefit of the members and their mutual benefit. See Rev. Rul. 90-74.

On June 25, 2012, the IRS issued a general information letter concluding that the fact that an entity is the co-owner of an electric generating plant with a non-governmental co-owner will not prevent that governmental entity from satisfying the requirements of IRC § 115 provided that the ownership interest is consistent with the description of such an arrangement in Example 1 of Treas. Reg. § 1.141-7(i). That example states that a co-ownership structure does not result in "private business use" by the nongovernmental co-owner of the governmental co-owner's tax-exempt bond financed portion of the facility. Specifically, the example describes the ownership structure as joint ownership as tenants in common, with each of the participants sharing in the ownership, output, and operating expenses of the facility in proportion to its contribution to the cost of the facility. Company's joint ownership interests in the Q and the S, O facilities, are consistent with the arrangement described in section 1.141-7(i), Example 1.

Q involves (1) joint ownership as tenants in common, (2) each of the co-owners shares in the ownership, output and operating expenses of the facility in proportion to its contribution to the cost of the facility, (3) Company's bonds related to these facilities are secured by the revenue to be derived from its share of the annual output of the facility, and (4) other than Company's members, no person will make payments that will result in a transfer of the burdens of paying the debt service on Company's bonds that were used, directly or indirectly, to provide Company's share of the facility.

A similar conclusion applies to S: (1) the third party interest is substantively similar to a joint ownership interest but provides the third party with a lesser interest (when compared to co-ownership) in that facility through a BB purchase contract, (2) each participant shares in the output and operating expenses of the facility in proportion to their contribution to the cost of the facility, (3) Company's bonds related to these facilities are secured by the revenue to be derived from its share of the annual output of the facility, and (4) other than Company's members, no person will make payments that will result in a transfer of the burdens of paying the debt service on Company's bonds that were used, directly or indirectly, to provide Company's share of the facility. Accordingly, the fact that Company is the co-owner of O facilities with non-governmental co-owners does not prevent Company from satisfying the requirements of IRC § 115.

Company is an affiliate of a governmental unit within the meaning of Section 4.02(a)(i) of Rev. Proc. 95-48.

Based on the information and representations submitted on behalf of Company, we conclude that:

1. Because the income Company derives is from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof, Company's income is excludable from gross income under IRC §115(1).

2. Because Company is an affiliate of a governmental unit within the meaning of Section 4.02(a)(i) of Rev. Proc. 95-48, Company is not required to file Form 990.

No opinion is expressed concerning the Federal tax consequences under any IRC provision other than the one specifically cited above and in the PLR.

This modification relates to our statement of certain facts and applies retroactively to May 23, 2013, the date of the PLR, because the changed statement of facts does not affect our previous conclusion. Except as noted above, the analysis and conclusion of the PLR remain the same.

Except as expressly provided herein and in the PLR, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter or the PLR.

This modification letter, as well as the PLR, is directed only to you, the taxpayer that requested it. IRC § 6110(k)(3) 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.

A copy of this letter and the PLR must be attached to any income tax return to which they are relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this modification letter and the PLR.

The ruling contained in this modification letter and the PLR is 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 ruling, it is subject to verification on examination.

Sincerely,

Casey Lothamer
Senior Technician Reviewer, Exempt Organizations
(Tax Exempt & Government Entities)