

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:TEB; PLR-109815-03

Date:

June 9, 2003

Legend:

Authority =
State =
x =
y =

Dear

This letter is in response to your request for a ruling that Company is an instrumentality of Authority for the purposes of § 141 of the Internal Revenue Code (the "Code").

Facts and Representations:

Authority is a political subdivision and each of its y members are political subdivisions. A company (the "Company") will be created as a non-member, non-profit corporation organized under the laws of State for the purpose of assisting Authority in meeting its obligations to provide electric energy to Authority's members. Company will be formed to manage the operation of electric and utility resources and the purchase and sale of electric power and energy for or on behalf of Authority and Authority's members.

Company's activities are expected to include: (1) providing general administrative and management services for governmental entities; (2) planning, development and administration of long-term energy and power projects for government entities; (3) securing or facilitating the transfer of electric power and energy or transmission capacity

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for governmental entities and, to a limited extent, non-governmental entities; (4) exploring renewable energy options; (5) monitoring and advocating for relevant state and national legislation; (6) providing services with respect to energy resources to a non-governmental entity for the benefit of a governmental entity; (7) performing retail rate studies, load forecasts and cost unbundling services for governmental entities; (8) managing the consolidated billing for governmental entities; (9) advertising and marketing programs for governmental entities; and (10) performing other services as requested by Authority.

Company expects that at least 90 percent of its gross receipts each year will be from transactions with respect to governmental activities. Company will engage in transactions with non-governmental entities in order to provide additional cost sharing, efficiency or utilization of assets. Authority represents that any transactions with non-governmental entities will be conducted at arm's-length for fair market value.

Authority represents that most of the initial capitalization, up to \$ x, will come from Authority in the form of cash advances. In addition, in order for Company to assist Authority in meeting its obligations to members it may be necessary for Company to acquire some of Authority's assets, liabilities, rights and obligations. A large portion of Company's operating income and expenses will be derived from monthly fees collected from Authority for management services rendered to Authority and its members and from purchases and sales made with Authority and its members.

Company's governing documents require that Authority or any other party that receives a financial benefit from Company to be a state or political subdivision of a state for Federal income tax purposes or to be an entity the income of which is excluded under § 115. Authority represents that Company will not enter into any joint venture, partnership or other arrangement that will be treated as a partnership for Federal income tax purposes with any entity, unless that entity is a state or political subdivision of a state or is an exempt entity under § 115. Company's governing documents also provide that Authority will consult with Company regarding Company's budget and service charges. Annual adjustments to the fees charged by Company will also be made in consultation with Authority.

Company will be controlled by a board of directors (the "Board"). Directors will be appointed by majority vote of Authority's board of directors. There will be seven directors; six will serve staggered three year terms. The chief executive officer of Company will also be a director and will be a standing member of the Board. Directors may be removed for any reason by a majority vote of the Board or by majority vote of Authority's board of directors. Vacancies will be filled by a majority vote of Authority's board of directors. Directors will serve without compensation. The Board will maintain and make available all financial records to Authority. The Board will also arrange for annual audits of Company's financial records that it will make available to Authority.

In the event of dissolution, Company's assets will be distributed to Authority. No income of Company will inure to the benefit of any private person.

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Law and Analysis:

Interest from state or local bonds is excluded from gross income under § 103(a) of the Code. Under § 103(c)(1), a state or local bond is defined as an obligation of a state or political subdivision thereof.

Section 1.103-1 defines “governmental unit” to mean a state, territory, a possession of the United States, or any political subdivision thereof. Generally, under § 1.103-1(b), obligations issued by or on behalf of any state or local governmental unit by constituted authorities empowered to issue such obligations are the obligations of such a unit. For purposes of § 1.103-1, the term “political subdivision” denotes any division of any state or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.

Section 1.141-1(b) provides in part that a governmental person means a state or local governmental unit as defined in § 1.103-1 or any instrumentality thereof.

Under Rev. Rul. 57-128, 1957-1 C.B. 311, the following factors are taken into account to determine whether an entity is an instrumentality of one or more governmental units: (1) whether the organization is used for a governmental purpose and performs a governmental function; (2) whether performance of its function is on behalf of one of more states or political subdivisions; (3) whether there are any private interests involved, or whether the states or political subdivisions involved have the powers and interest of an owner; (4) whether control and supervision of the organization is vested in a public authority or authorities; (5) whether express or implied statutory or other authority exists; and (6) the degree of financial autonomy of the entity and the source of its operating expenses.

Company will be used for a governmental purpose and will perform a governmental function. Company’s purpose is to enable political subdivisions to maximize efficient use of energy resources, reduce operating costs, and increase operating revenues. Company’s functions will be those that have been performed historically by Authority and its members.

Company will be performing its function on behalf of states or political subdivisions. At least 90 percent of Company’s gross receipts will be derived from transactions with governmental entities. Company will engage in transactions with non-governmental entities in order to provide for efficient use of the assets of Authority and its members. Authority represents that Company will not enter into any joint ventures or partnerships with any entity, unless that entity is either a state, political subdivision of a state, or an entity subject to § 115. All transactions with non-governmental entities will be conducted at arm’s-length for fair market value.

With the exception of amounts necessary to repay debt and capital contributions, all of Company’s assets accrue to Authority upon Company’s dissolution. Therefore Authority has the power and interests of an owner of Company. There are no private

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interests involved in Company. Company will retain a limited degree of financial autonomy from Authority, although fees paid by Authority and its members will be the primary source of Company's operating expenses. Most of Company's initial capital will come from Authority.

Control and supervision of the Company is vested in the Authority, a political subdivision. Authority will provide the majority of Company's initial capitalization and will consult with the Board in determining Company's fees and annual budget. Company will also conduct an annual audit and make all financial statements available to Authority's directors. Authority appoints the Board members and may remove Board members at any time, with or without cause.

Conclusion:

Based on the above factors, we conclude that Company is an instrumentality of Authority for the purpose 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.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

By: _____
Timothy L. Jones
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Tax Exempt Bond Branch