

Internal Revenue Service

Department of the Treasury

Number: **200307004**
Release Date: 2/14/2003
Index Number: 103.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:TEB-PLR-147842-02

Date:

September 27, 2002

In Re:

Legend

Corporation =
Bonds =

State =
City =
Authority =
Governor =
Mayor =
Law A =

Law B =

Code Section =

Dear :

This responds to your request for rulings, submitted by your authorized representative, on behalf of the Corporation that: (1) Bonds issued by the Corporation will be treated as issued on behalf of the State for purposes of § 103 of the Internal Revenue Code, and (2) Bonds may be issued by an entity that is acting on behalf of the State for purposes of Code Section.

FACTS AND REPRESENTATIONS

The Authority was created under Law A as a body corporate and politic constituting a public benefit corporation. The Authority's purposes, among others, are to assist, promote, encourage, develop, and advance the general prosperity and economic welfare of the people of the State and to improve their standard of living. The

PLR-147842-02

governing body of the Authority (the "Authority Board") has 11 members. Four members are State commissioners, serving ex-officio, and seven members are appointed by the Governor with the advice and consent of the State Senate. Members of the Authority Board may be removed by the Governor after a hearing and upon 10 days notice for inefficiency, neglect of duty, or misconduct in office.

Law B permits the Authority (but not the State) to create a not-for-profit local development corporation for certain delineated purposes, which include relieving and reducing unemployment, promoting maximum employment, bettering and maintaining job opportunities and lessening the burdens of government. Pursuant to Law B, the Authority filed the Corporation's certificate of incorporation with the appropriate governmental office causing the Corporation to be created.

The Corporation has two members: the Governor and the Authority (each, a "Member"). The board of directors of the Corporation (the "Corporation Board") has six directors (the "Directors"). The Governor and the Authority each select three of the six Directors. Each Director serves at the pleasure of the electing Member and may be removed with or without cause by such Member on 10 days written notice to that Director. In addition, the Governor and the Authority entered into an agreement pursuant to which the Authority will act as directed by the Governor with respect to the removal of any or all Directors appointed by the Authority, with or without cause, on 10 days written notice. Both the Corporation's by-laws and certificate of incorporation are structured such that no action or inaction can prevent the Governor from exercising this power. The Directors appoint the executive officers of the Corporation to conduct its business.

Private inurement and diversion of the Corporation's assets to any private persons either during the course of its operations or upon its dissolution are prohibited. Upon its dissolution, the Corporation's assets must be distributed to the Authority or as otherwise ordered by the Supreme Court of the State. Income from the Corporation's activities is exempt from State and local taxation.

The Corporation's certificate of incorporation authorizes it to issue Bonds in furtherance of its purposes. Interest on Bonds will be exempt from State and local taxation.

The Corporation proposes to issue Bonds designated by the Governor of the State or, if requested, by the Mayor of the City, in accordance with the provisions of Code Section. The Corporation will act as a conduit issuer of Bonds and may engage in related taxable financings and other activities for the ultimate borrowers. The ultimate borrowers of Bond proceeds will be individuals and entities who commit to use the proceeds of the Bonds in the manner described in the Code Section. The sale of Bonds will be based entirely upon any or all of the borrower's credit, the borrower's project or credit enhancement obtained by borrower. Bonds will be non-recourse to the

PLR-147842-02

Corporation, the State and the City. The Governor will provide the approval under § 147(f) for all Bonds.

LAW AND ANALYSIS

In general, § 103 provides that gross income does not include interest on any obligation of a state or political subdivision thereof. However, this exclusion generally does not apply to private activity bonds. An exception is provided for a private activity bond that is a qualified bond within the meaning of § 141(e) of the Code. Section 141(e) provides that a qualified bond includes an exempt facility bond. Section 142 describes certain exempt facility bonds.

Code Section provides that certain bonds designated by the Governor of the State or the Mayor of the City and issued by the State or any political subdivision of the State are treated as exempt facility bonds under § 142.

Section 1.103-1(b) of the Income Tax Regulations provides that obligations issued by or on behalf of any state or local governmental unit by constituted authorities empowered to issue such obligations are obligations of such a unit.

Revenue Ruling 57-187, 1957-1 C.B. 65, holds that bonds issued by an industrial development board (the "Board") are considered issued on behalf of a political subdivision of the state where the following factors are present: (1) the Board is formed only after the governing body of the political subdivision concerned has given its formal approval to the creation of the Board and to the form of certificate of incorporation; (2) the board of directors of the Board is elected by the governing body of the political subdivision concerned and serves without compensation; (3) the Board's corporate powers include the power to acquire, improve, maintain, equip and furnish projects, to lease such projects and collect rent; to sell and convey any and all of its property whenever the board of directors shall find such action to be in furtherance of the purposes for which it was organized; and to issue bonds for the purpose of carrying out any of its powers; (4) all bonds are payable solely out of revenues and receipts derived from the leasing or sale by the Board of its projects; (5) the political subdivision is not liable for the payment of principal or interest on any of the bonds of the Board; (6) the Board is exempt from all state taxation, and interest on bonds issued by the Board is exempt from state taxes; (7) the Board is a nonprofit corporation and no part of its net earnings may inure to the benefit of any private person; and (8) upon dissolution of the Board, the title to all property owned by it shall vest in and become the property of the political subdivision in which the Board is located.

Applying the criteria of Rev. Rul. 57-187 to the facts, we conclude that the Corporation qualifies as an "on behalf of" issuer for purposes of §1.103-1(b). The Corporation was created by a State-controlled entity—the Authority—pursuant to Law B that specifically provides for its creation. The Corporation is authorized to issue Bonds

PLR-147842-02

in furtherance of its purposes. Bonds will be paid from any or all of the borrower's credit, the borrower's project or credit enhancement obtained by borrower and will be non-recourse to the Corporation, the State and the City. The Corporation's income, as well as interest on the Bonds, are not subject to State and local taxation. The Corporation is organized as a nonprofit corporation, and private inurement and diversion of the Corporation's assets to any private persons either during the course of its operations or upon its dissolution is prohibited. Upon its dissolution, the Corporation's assets must be distributed to a State-controlled entity—the Authority—or as otherwise ordered by the Supreme Court of the State.

In addition, the State, through the Governor, has ultimate control over Corporation. First, the Governor has the right to appoint and remove (with or without cause) three of the Directors. Under the Voting Agreement, the Governor has the right to dismiss any or all of the three Directors appointed by the Authority, with or without cause. Both the By-Laws of the Corporation and the certificate of incorporation are structured such that no action or inaction can prevent the Governor from exercising this power. Second, the Governor must provide the public approval required under § 147(f) for each issue of Bonds issued by the Corporation.

We also conclude that for purposes of Code Section, Bonds issued by the Corporation will be treated as issued by the State for purpose of Code Section. While the Code Section provides that the Bonds must be issued by the State or a political subdivision thereof, treating Corporation's Bonds as issued by the State is analogous to the conclusion that, for purposes of satisfying § 103 (*i.e.*, gross income does not include interest on any obligation of a state or political subdivision thereof), obligations issued by or on behalf of any state or local government by certain constituted authorities are treated as obligations of the state or local government.

CONCLUSION

Based on the information submitted and representations made, we conclude that:

1. Bonds issued by Corporation will be treated as issued on behalf of the State for purposes of § 103; and
2. Bonds issued by the Corporation will be treated as issued by the State for purposes of Code Section.

These conclusions are based upon information and representations submitted by the Issuer and under a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request for rulings, it is subject to verification on examination.

PLR-147842-02

Except as specifically ruled above, no opinion is expressed concerning this transaction under any other provision of the Internal Revenue Code or regulations, including §§ 103 and 141 through 150. Specifically, no opinion is expressed concerning whether interest on the Bonds is excludable from gross income under § 103(a) or the Code Section.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that this ruling 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 the taxpayer's representative.

Sincerely yours,

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

By: _____
Bruce M. Serchuk
Senior Technician Reviewer
Tax Exempt Bond Branch

Enclosure:
Copy for § 6110 purposes