

Internal Revenue Service

Department of the Treasury

Number: **200126006**
Release Date: 6/29/2001
Index Number: 147.06-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:TEB-PLR-111008-01

Date:

March 30, 2001

LEGEND:

Authority =

State =

Date 1 =

Dear :

This letter is in response to your request on behalf of the Authority for a ruling that the acting governor of the State may be treated as the applicable elected representative for the purpose of satisfying the public approval requirement of § 147(f) of the Internal Revenue Code.

FACTS AND REPRESENTATIONS

The governor of the State is the chief elected executive officer of the State. The State constitution (the "Constitution") provides that, in the event of a vacancy in the office of the governor, the president of the State senate (the "Senate") serves as acting governor until a new governor is elected. This provision of the Constitution was approved by public referendum of the people of the State. Until a new governor is elected, the president of the Senate serves as acting governor only so long as he or she is the president of the Senate.

The president of the Senate is a senator elected by the people of a single district within the State. He or she is voted into to the office of the president of the Senate by a majority vote of the Senate and may be removed from such office by a majority vote of the Senate with or without cause.

The prior governor of the State left office mid-term, creating a vacancy in the office of the governor. The president of the Senate was sworn in as acting governor (the "Acting Governor") on Date 1. An election for the office of the governor is scheduled for the current calendar year.

The Authority is a constituted authority of the State and is authorized under State law to issue bonds on behalf of the State. The Authority expects to issue an issue of qualified bonds (within the meaning of § 141(c)), that is subject to the public approval requirement of § 147(f) (the “Bonds”). The Acting Governor approved the Bonds after a public hearing that was preceded by reasonable public notice.

LAW AND ANALYSIS

Generally, under § 103(a), gross income does not include interest on any state or local bond. Section 103(b)(3) provides that § 103(a) does not apply to any private activity bond that is not a qualified bond within the meaning of § 141. One of the requirements in § 141 to be a qualified bond is that the bond meets the applicable requirements of each subsection of § 147.

Section 147(f) contains a public approval requirement. Section 147(f)(2)(A)(i) provides that a private activity bond will not be a qualified bond unless such bond has been approved by the governmental unit which issued such bond or on behalf of which such bond was issued. Section 147(f)(2)(B) provides that an issue shall be treated as having been approved by any governmental unit if such issue is approved by the “applicable elected representative” of such governmental unit after a public hearing following reasonable public notice, or if it is approved by voter referendum of such governmental unit.

Section 147(f)(2)(E)(i) provides that in general the term “applicable elected representative” means with respect to any governmental unit, (I) an elected legislative body of such unit, or (II) the chief elected executive officer, the chief elected state legal officer of the executive branch, or any other elected official of such unit designated for purposes of § 147(f) by such chief elected executive officer or by state law.

The Technical and Miscellaneous Revenue Act of 1988, P.L. 100-647, added flush language to § 147(f)(2)(E)(i) to provide that if the office of any elected official described in subclause (II) of that section is vacated and an individual is appointed by the chief elected executive officer of the governmental unit and confirmed by the elected legislative body of such unit (if any) to serve the remaining term of the elected official, the individual so appointed shall be treated as the elected official for such remaining term.

Section 5f.103-2(e)(1) of the temporary regulations, published prior to the 1988 amendment, provides, “If an official popularly elected at-large by the voters of a governmental unit is appointed or selected pursuant to State or local law to be the chief executive officer of the unit, such official is deemed to be an elected chief executive officer for purposes of this section, but for no longer than his tenure as an official elected at-large.”

In this case, the Authority asks whether the approval of the Bonds by the Acting Governor satisfies the requirement of § 147(f)(2)(B) that bonds be approved by the applicable elected representative. Under State law, the governor is the State's chief elected executive officer. The Constitution provides that in the event of a vacancy in the office of the governor, the president of the Senate is the acting governor. The president of the Senate is elected by the Senate. The Senate may remove, with or without cause, the president of the Senate and thereby remove the Acting Governor. While this mechanism does not precisely fit the parameters set forth in § 147(f)(2)(E)(i), we do not believe that distinctions between the manner in which the people of a state replace a chief elected executive officer that has vacated his or her office should control. Therefore, the Acting Governor should be treated as the applicable elected representative for the purposes of § 147(f).

CONCLUSION

Based on the representations made by the Authority, we conclude that the Acting Governor should be treated as the applicable elected representative of the State for the purposes of § 147(f).

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling.

Except as expressly provided herein, this ruling expresses no opinion as to whether the Bonds will meet the requirements to qualify for tax exempt status under § 103.

This ruling is directed only to the taxpayer(s) requesting it. Section 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 the taxpayer.

Sincerely,
 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