

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:TE/GE:EOEG:TEB-PLR-111444-00

Date:

September 14, 2000

LEGEND:

Issuer =

Borrower =

City =

Bonds =

County =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

A =

B =

C =

D =

E =

F =

G =

H =

Dear Sir or Madam:

This in response to your letter on behalf of the Issuer and Borrower requesting a private letter ruling that the use of Bond proceeds as described below will be an insubstantial deviation for purposes of the public notice and approval requirements set forth in § 147(f) of the Internal Revenue Code and § 5f.103-2 of the temporary Income Tax Regulations.

FACTS:

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The Issuer is a public non-profit corporation organized under the laws of State to provide financing for health related facilities within County. The Borrower is a non-profit corporation organized under the laws of State for the purpose of providing overall leadership, coordination, and general support in the development of a comprehensive medical center. The Borrower represents that it is an organization described in § 501(c)(3). The Borrower is comprised of A member institutions (individually a "Member Institution" and collectively, the "Member Institutions").

The campuses of the Borrower total more than B acres of non-contiguous property (collectively, the Borrower's Campus"), located in a mixed use medical, education, distribution, entertainment, and health-related area, and used primarily by non-profit institutions of various endeavors, including but not limited to, institutions providing educational services, facilities for hospitals, and facilities for medical research. C of the Member Institutions are located on, and have their primary function on, the Borrower's Campus. An additional D of the Member Institutions have a broader geographic range of activity outside the Borrower's Campus, but part of each such Member Institution's activity is on the Borrower's Campus.

The proceeds of the Bonds were loaned to the Borrower pursuant to loan agreements between the Issuer and the Borrower. The Borrower expected to use such Bond proceeds to expand, renovate, and enhance parking garages and surface parking lots, to acquire and install related equipment and software, and to improve public access, signage, conference, administrative, and housing facilities (the "Projects").

On Date 1, in compliance with the public notice requirement of § 147(f), the Issuer published a public notice (the "Notice") in a newspaper of general circulation within the City and the County. The Notice identified and described the Projects and provided the place, date, and time of the public hearing relating to the proposed issuance of the Bonds. The Notice set forth the maximum aggregate principal amount of the Bonds and indicated that the proceeds of the Bonds would be used to finance portions of the costs incurred to "expand, renovate, and enhance parking garages and surface parking lots, to acquire and install related equipment and software, and to improve public access, signage, conference, administrative, and housing facilities," on behalf of the Borrower. The Notice stated that the financed Projects would be "situated within or immediately adjacent to" E campuses and properties of the Borrower, which it proceeded to describe by street and natural boundaries. On Date 2, the public hearing was duly held. The Bonds were approved by the Commissioner's Court of County on Date 3. On Date 4, the Issuer issued the Bonds.

Subsequent to the issuance of the Bonds a property consisting of four contiguous tracts of land comprising approximately F acres located in the midst of Borrower's Campus (the "Property") became available for sale. The Borrower expects that, upon acquisition, the Property will be used only for a combination of office space, class rooms, record storage, research labs, pharmaceutical storage and distribution, telecommunication facilities, maintenance administration, and surface parking.

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Borrower proposes to use approximately \$ G (H percent) of the proceeds of the Bonds to acquire the property and convert the improvements on the Property from a manufacturing type building to an office type building. Such amount of Bond proceeds is available for such use due to unforeseen reductions in cost and delays of several of the Projects contemplated to be financed with Bond proceeds at the time the Bonds were issued. Although the Property's location is not one of the tracts described in the Notice, the Property is located in the midst of the noncontiguous tracts comprising Borrower's Campus. The Property is approximately one-half mile from two of the tracts listed in the Notice and directly across the street from one of the Borrower's Member Institutions. There is no zoning designation for the Property, as there is no zoning ordinance in City. However, the prior use and the proposed use of the Property is similar to the use of land surrounding the Property.

LAW AND ANALYSIS:

Under § 147(f), a private activity bond is not a qualified bond unless it is part of an issue that has been approved by the governmental unit that issued the bond or by the governmental unit on whose behalf the bond was issued. Section 147(f)(2) treats an issue as having been approved by a governmental unit after a public hearing following reasonable public notice.

Section 5f.103-2 provides further guidance on meeting the public notice approval requirements. Under § 5f.103-2(f)(2)(i) through (iv), a facility is within the scope of approval if the notice of hearing and the approval contain all of the following; (i) a general functional description of the type and use of the facility to be financed; (ii) the maximum aggregate face amount of obligations to be issued with respect to the facility; (iii) the initial owner, operator, or manager of the facility; and (iv) the prospective location of the facility by its street address or, if none, by a general description designed to inform readers of its specific location. The term "facility" as defined in § 5f.103-2(f)(4) includes a tract or adjoining tracts of land, improvements thereon and any personal property used in connection with such real property. Separate tracts of land may be treated as one facility only if they are used in an integrated operation.

An approval is valid under § 5f.103-2(f) for any issue used to provide publicly approved facilities, notwithstanding insubstantial deviations with respect to the maximum aggregate face amount of the bonds issued under the approval for the facility, the name of its initial owner, manager, or operator, or the type or location of the facility from that described in the approval. An approval or notice of public hearing is not adequate if any of the items in § 5f.103-2(f)(2)(i) through (iv), with respect to the facility to be financed, are unknown on the date of public notice or the date of the approval.

Section 5f.103-2(g)(2) states that the public hearing means a "forum providing a reasonable opportunity for interested individuals to express their views, both orally and

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in writing, on the proposed issue of bonds and the location and nature of a proposed facility to be financed.” Section § 5f.103-2(g)(3) states that the public notice must be “reasonably designed to inform residents of the affected governmental units, including residents of the issuing unit and the governmental unit where a facility is to be located, of the proposed issue.” The notice must state the date and time for the hearing and contain the information contained in paragraph (f)(2) and be published no fewer than 14 days before the scheduled hearing.

When § 215 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) added former § 103(k) to the 1954 Code, the public approval requirement applied only to industrial development bonds and not to bonds issued for the benefit of § 501(c)(3) organizations. At that time, tax-exempt industrial development bonds were required to finance specific capital projects. Consequently, § 5f.103-2 states that a “facility” is within the scope of approval if the notice of hearing and the approval contain all of the items listed in § 5f.103-2(f)(2)((i) through (iv). Later, § 1301(b) of the Tax Reform Act of 1986 expanded the application of the public approval requirement to all private activity bonds. This expansion included qualified § 501(c)(3) bonds, even though § 145 does not require that qualified § 501(c)(3) bonds finance a facility as defined in § 5f.103-2(f)(4).

According to the Senate Committee on Finance, S.Rep. No. 494, 97th Cong., 2d Sess. 168 (1982), 1982-2 C.B. 622-623, the public notice and approval requirements in TEFRA were enacted to help eliminate inappropriate uses of tax-exempt financing and to help restore the benefit of tax-exempt financing for traditional governmental purposes. While admitting that state and local governments were best suited to determine the appropriate uses of industrial development bonds, the committee believed that industrial development bonds would serve legitimate purposes only if (a) the affected public has an opportunity to comment on the use of tax-exempt financing for particular facilities and (b) after that input, the elected representatives of the governmental unit determine that there will be substantial public benefit from issuing the bonds. The Conference Committee adopted the Senate amendment with some clarifications. H.R.Conf.Rep. No. 760 97th Cong., 2d Sess. 518 (1982), 1982-2 C.B. 623-624.

The purpose of the public notice and approval requirement of § 147(f) is to ensure that the affected members of the general public will be notified of a pending bond issue and made aware of the intended use of proceeds in order to elicit comments that will ensure a substantial public benefit from issuing the bonds. In this case, the Property is located in the midst of the non-contiguous parcels comprising the Borrower’s Campus in a mixed-use area used primarily by non-profit institutions for medical, educational, and research purposes. The Property is approximately one-half mile from two of the tracts listed in the Notice and directly across the street from one of Borrower’s Member Institutions. While the use of Bond proceeds to acquire the Property may not have been expected or foreseen at the time the Bonds were issued, the Notice did not fail to put the public in the affected area on notice as to the

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Borrower's intention to use Bond proceeds to finance Projects in the general vicinity of the Property having the same or similar uses as those to which it expects to put the Property. Thus, the originally published notice provided the general public in the affected locality with all the pertinent information regarding the Projects as required by § 147(f) and § 5f.103-2(f)

CONCLUSION:

Based on the factual representations set forth above, we conclude that the proposed use of unexpended Bond proceeds to acquire the Property and to convert the improvements thereon constitutes an insubstantial deviation from the location and description of the Projects set forth in the Notice, and will not cause the Bonds to fail to meet the public notice and approval requirements of § 147(f) and § 5f.103-2(f).

Except as specifically ruled above, no opinion is expressed concerning this transaction under any other provision of the Code or regulations thereunder, including §§ 103 and 141 through 150.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Sincerely yours,
Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)
By: Timothy L. Jones
Assistant to the Chief
Tax Exempt Bonds Branch

Enclosure: Copy for § 6110 purposes