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CC:PA:LDP:PR
Internal Revenue Service
Crystal Mall 4
1941 Jefferson Davis Highway
1901 S. Bell Street, Room 108
Arlington, VA 22202

REG-140379-02; REG-142599-02: Allocation of and Accounting for Tax-Exempt Bond Proceeds for Purposes of the Private Activity Bond Restrictions

Dear Sir or Madam:

On behalf of the 16,500 members of the Government Finance Officers Association (GFOA), we appreciate the opportunity to comment on the proposed regulations in the allocation of, and accounting for, tax-exempt bond proceeds for purposes of private activity restrictions that apply to IRC Section 141 and Section 145.

The GFOA is a professional association of state and local government finance officers dedicated to the sound management of government financial resources and many of our members will be impacted by these regulations.

The proposed regulations are well intentioned and our members would certainly benefit from the greater flexibility allowed when governments finance mixed-use facilities. This is an area of increasing complexity and one in which the tax-exempt bond community has sought clarified regulations for some time. Since many of our members are charged with creating and financing many mixed-use projects (e.g., research facilities, economic development projects, parking structures, and public power facilities), the GFOA and other issuer groups are interested in final regulations that meet the needs of the IRS and Treasury as well as the state and local governments and authorities who are responsible for building the infrastructure that serves the needs of our citizens.

We are concerned, however, with the complicated nature of the proposed regulations, especially the many elections and tests that are brought forward. Our concern is that due to the complicated nature of understanding and applying/electing various methods and tests, that the intent of the regulation is undermined. While we appreciate the ability to use either a discrete physical portion or an undivided portion allocation method, the rules related to these provisions should be greatly simplified. Similarly, the definitional aspects of “mixed use projects” should be simplified and issuers should not have to expect private use in order to take advantage of these rules. Other types of mixed use projects should be covered as well. Another example of unnecessary complexity relates to the fair market value limitation that is seemingly imposed on every mixed use project allocation—this added layer of analysis should be eliminated.

Another area of concern is the portion of the proposed regulations addressing anticipatory remedial actions. As proposed, these rules are much too limited to be of assistance to many governments. We would thus suggest that instead of creating new rules for anticipatory remedial action, that the final regulations for such situations mirror current remedial action regulations. This would provide a less complicated approach to the issue that would benefit both the federal treasury and state and local governments and authorities.

For purposes of IRC Section 141 it is very helpful to allow an exception to the rule that calls for partnerships to be treated as separate entities when both parties are governmental entities. However, we respectfully suggest that the rules in this area be broadened so that a greater variety of partnerships may qualify for the exception.

Without further simplification of the proposed regulations, state and local governments may need to seek additional advice from tax counsel which would increase a state or local government's bond issuance costs. Therefore, we suggest that Treasury and the IRS simplify the allocation and accounting methods regulations before they become final, and seriously consider the technical comments brought forward from other industry groups, chiefly, the National Association of Bond Lawyers.

Thank you for the opportunity to comment on the forthcoming guidance.

Sincerely,

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Susan Gaffney
Director, Federal Liaison Center