

Dear _____ :

This is in response to Issuer's request for a ruling that, for purposes of § 142(b)(1)(B) of the Internal Revenue Code (Code), the safe harbor for the government ownership requirement (the safe harbor), Issuer may determine the reasonably expected economic life (economic life) of property financed with proceeds of the Bonds using the method described below.

FACTS AND REPRESENTATIONS

Issuer controls, manages, and operates the Port, which is a public port. Over the years, Issuer has issued bonds to finance or refinance various assets and improvements to Port facilities. The Bonds are the outstanding issues that financed or refinanced expenditures related to property subject to the Amended Agreements (described below). Generally, the expenditures financed or refinanced by the Bonds for the property subject to the Amended Agreements (the Bond-financed Property¹) relate to improvements to portions of existing assets, such as upgrades or replacements of such portions, rather than to construction or acquisition of an entire asset.

In managing and operating the Port, Issuer enters into agreements with maritime terminal operators and other maritime-related businesses for the assignment of non-exclusive preferential use of the Port facilities. On Dates 1, 2, and 3, Issuer entered into such agreements with respect to Terminals 2, 1, and 3, respectively (the Agreements). The Agreements for Terminals 2 and 3 were entered into with Company more than a decade apart. The Agreement for Terminal 1 was entered into with a different party and, some years later, was ultimately assigned to Company. Effective Date 4, Issuer and Company amended the Agreements to provide, among other things, an extension of the term of each of the Agreements for years (as amended, the Amended Agreements), subject to the Issuer receiving a ruling from the Internal Revenue Service approving Issuer's proposed method for determining the economic life of the Bond-financed property.

The property that is subject to the Amended Agreements includes wharves/pilings, buildings, and yards. Wharves/pilings are the dock areas at which container ships are moored. Yards comprise all of the land improvements and utilities in the area in which containers are temporarily stored and through which containers move during the loading and unloading of ships. In addition, certain of the Amended Agreements provide for the non-exclusive preferential use of Bond-financed cranes for the loading and unloading of containers onto and from ships.

¹ For purposes of this ruling, Bond-financed Property does not include property for which Issuer has taken a remedial action with respect to the allocable bonds.

Issuer proposes, for purposes of the safe harbor, to determine the economic life of the Bond-financed Property as of Date 4, the effective date of each of the Amended Agreements, based on an engineering assessment. Further, in the case of improvements, Issuer will determine the economic life of the Bond-financed Property based upon the economic life of each improved asset, *i.e.*, each wharf/piling, building, yard, or crane (rather than based upon the economic life of each separate improvement to such asset). Issuer will then compute the weighted average economic life of the Bond-financed Property subject to each respective Amended Agreement by multiplying the economic life of each asset (or improved asset) to which Bond proceeds are allocated by the amount of proceeds originally allocated to the cost of each such asset (including the cost of the improvements). Issuer will not take the costs allocable to land (including all costs capitalized to land) into account because such costs do not exceed 25 percent of the aggregate amount of proceeds allocated to the Bond-financed Property subject to each respective Amended Agreement.

LAW

Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) shall not apply in the case of any private activity bond which is not a qualified bond (within the meaning of § 141).

Section 141(e)(1) provides, in part, that the term "qualified bond" includes an exempt facility bond. Section 142(a)(2) provides that the term "exempt facility bond" includes any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide facilities for docks and wharves.

Section 142(b)(1)(A) provides that an issue that provides a dock and wharf facility will be treated as described in § 142(a)(2) only if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit.

Section 142(b)(1)(B) provides that for purposes of § 142(b)(1)(A), property leased by a governmental unit shall be treated as owned by such governmental unit if: (i) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property, (ii) the lease term (as defined in § 168(i)(3)) is not more than 80 percent of the reasonably expected economic life of the property (as determined under § 147(b)), and (iii) the lessee has no option to purchase the property other than at fair market value (as of the time such option is exercised). Section 142(b)(1)(B) further provides that similar rules shall apply to management contracts and similar types of operating agreements.

Section 147(b)(1) provides that a private activity bond is not a qualified bond if it is issued as part of an issue and the average maturity of the bonds issued as part of the issue exceeds 120 percent of the reasonably expected economic life of the facilities

being financed with the net proceeds of such issue. Section 147(b)(2)(B) provides that for purposes of § 147(b)(1), the average reasonably expected economic life of the facilities being financed with any issue is determined by taking into account the respective cost of such facilities. Section 147(b)(3)(A) provides that for purposes of § 147(b), the reasonably expected economic life of any facility shall be determined as of the later of the date on which the bonds are issued or the date on which the facility is placed in service (or expected to be placed in service). Section 147(b)(3)(B) provides that for purposes of § 147(b), land is not taken into account unless at least 25 percent of the net proceeds of the issue are to be used for land costs (in which case land costs will be given a 30-year life).

ANALYSIS

The governmental ownership requirement must be met with respect to all of the Bond-financed Property. Under the safe harbor, the term of the arrangement must not exceed 80 percent of the economic life of the property (as determined under § 147(b)). However, rather than using the date the Bonds are issued as the date as of which to assess the economic life of the Bond-financed Property as under § 147(b)(3)(A), Issuer will use the effective date of the Amended Agreements. Because the safe harbor requires a comparison of the length of an arrangement to the economic life of the property subject to that arrangement, we conclude that Issuer's use of the effective date of the Amended Agreements, as the starting date of the term of those agreements, is an appropriate date as of which to assess the economic life of the Bond-financed Property for purposes of the safe harbor.

Under § 147(b), the economic life of assets may be determined based on the economic life with respect to the principal users of the assets taking into account all the facts and circumstances. See H. R. Conf. Rep. 97-760, at p. 519-20 (1982). In the case of the Bond-financed improvements (rather than construction or acquisition of whole assets), Issuer proposes to determine the economic life of the Bond-financed Property based on the economic life of each asset as a whole as improved by the expenditure of Bond proceeds (in contrast to the economic life of the improvement to the asset separately). We conclude that this approach is reasonable under the facts and circumstances of Issuer's expenditures of Bond proceeds.

Under § 147(b)(3)(B), for purposes of determining the economic life of the financed property under § 147(b)(1)(B), land is not taken into account unless more than 25 percent of the net proceeds of the issue is used to finance land. However, Issuer will not take costs allocable to land (including all costs capitalized to land) because such costs do not exceed 25 percent of the aggregate amount of proceeds allocated to the Bond-financed Property subject to each respective Amended Agreement. We conclude that, for purposes of the safe harbor, determining whether to take such costs into account based on the amount of proceeds allocated to the Bond-financed Property subject to each Amended Agreement is appropriate.

Under § 147(b)(2)(B), the average economic life of property financed by an issue is determined by taking into account the respective amounts of bond proceeds allocable to the costs of the property. See H. R. Conf. Rep. 97-760, at p. 519, n.6 (1982) (regarding assets partially financed with bond proceeds). Issuer proposes to determine the average economic life of the Bond-financed Property using the amounts of proceeds originally allocated to the costs of the Bond-financed Property. However, rather than calculating the average economic life of Bond-financed Property with respect to each issue of the Bonds as under § 147(b)(1)(B), Issuer will calculate the average economic life of the Bond-financed Property with respect to each Amended Agreement. Because the safe harbor requires a comparison of the length of an arrangement to the economic life of the property subject to that arrangement, we conclude that Issuer's method of calculating the average economic life of the Bond-financed Property for each Amended Agreement is reasonable.

CONCLUSION

Accordingly, we conclude that Issuer's method of determining the economic life of the Bond-financed Property consistently applied for purposes of determining whether the Bond-financed Property meets the safe harbor is reasonable under all the facts and circumstances described above.

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, including whether the Bonds meet the requirements for the exclusion of interest from gross income under § 103 of the Code. In addition, this ruling does not constitute a ruling on (1) the useful life of each Bond-financed property under § 167, (2) the determination of the useful life of any asset under § 167 or any other depreciation or amortization provision of the Code, (3) the application of § 168(i)(6) to any addition or improvement, or (4) the placed-in-service date of each Bond-financed property under § 167.

This ruling is directed only to the taxpayer 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.

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,

/S/

Johanna Som de Cerff
Senior Technician Reviewer
(Financial Institutions & Products)