

Exhibit A

APPENDIX C

CHECKLIST

IS YOUR LETTER RULING REQUEST COMPLETE?

INSTRUCTIONS

The Service will be able to respond more quickly to your letter ruling request if it is carefully prepared and complete. Use this checklist to ensure that your request is in order. Complete the four items of information requested before the checklist. Answer each question by circling "Yes," "No," or "N/A." When a question contains a place for a page number, insert the page number (or numbers) of the request that gives the information called for by a "Yes" answer to a question. Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.

If you are an authorized representative submitting a request for a taxpayer, you must include a completed checklist with the request or the request will either be returned to you or substantive consideration of it will be deferred until a completed checklist is submitted. If you are a taxpayer preparing your own request without professional assistance, an incomplete checklist will not cause the return of your request or defer substantive consideration of your request. You should still complete as much of the checklist as possible and submit it with your request.

TAXPAYER'S NAME ALASKA GASLINE DEVELOPMENT CORPORATION
TAXPAYER'S I.D. NO. 45-3304338
ATTORNEY/P.O.A. TRAVIS GIBBS, PRAVEEN AYYAGARI
PRIMARY CODE SECTION 103

CIRCLE ONE

ITEM

☒ Yes ☐ No

1. Does your request involve an issue under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Associate Chief Counsel (Tax Exempt and Government Entities)? See section 3 of Rev. Proc. 2016-1, this revenue procedure. For issues under the jurisdiction of other offices, see section 4 of Rev. Proc. 2016-1. (Hereafter, all references are to Rev. Proc. 2016-1 unless otherwise noted.)

☒ Yes ☐ No

2. Have you read Rev. Proc. 2016-1, Rev. Proc. 2016-3, and Rev. Proc. 2016-7, this bulletin, to see if part or all of the request involves a matter on which letter rulings are not issued or are ordinarily not issued?

☐ Yes ☒ No ☐ N/A

3. If your request involves a matter on which letter rulings are not ordinarily issued, have you given compelling reasons to justify the issuance of a letter ruling? Before preparing your request, you may want to call the branch in the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs and Special Industries), the Office of Associate Chief Counsel (Procedure and Administration), or the Office of Associate Chief Counsel (Tax Exempt and Government Entities) responsible for substantive interpretations of the principal Internal Revenue Code section on which you are seeking a letter ruling to discuss the likelihood of an exception. For matters under the jurisdiction of—

(a) the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (Passthroughs and Special Industries), or the Office of Associate Chief Counsel (Tax Exempt and Government Entities), the Office of the Associate Chief Counsel (Procedure and Administration), the appropriate branch to call may be obtained by calling (202) 317-5221 (not a toll-free call);

(b) the Office of the Associate Chief Counsel (International), the appropriate branch to call may be obtained by calling (202) 317-3800 (not a toll-free call).

Yes ☐ No ☒ N/A
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4. If the request involves a retirement plan qualification matter under § 401(a), § 409, or § 4975(e)(7), have you demonstrated that the request satisfies the three criteria in section 4.02 of Rev. Proc. 2016-3, this Bulletin, for a ruling?

- Yes No N/A
Page__
5. If the request deals with a completed transaction, have you filed the return for the year in which the transaction was completed? *See* section 5.01.
- Yes No No
6. Are you requesting the letter ruling on a hypothetical situation or question? *See* section 6.12.
- Yes No No
7. Are you requesting the letter ruling on alternative plans of a proposed transaction? *See* section 6.12.
- Yes No No
8. Are you requesting the letter ruling for only part of an integrated transaction?
- Yes No No
Page__
9. Are you requesting a letter ruling under the jurisdiction of Associate Chief Counsel (Corporate) on a significant issue (within the meaning of section 3.01(50) of Rev. Proc. 2016-3, this Bulletin) with respect to a transaction described in § 332, § 351, § 355, or § 1036 or a reorganization within the meaning of § 368? *See* section 6.03.
- Yes No No
10. Are you requesting the letter ruling for a business, trade, industrial association, or similar group concerning the application of tax law to its members? *See* section 6.05.
- Yes No No
11. Are you requesting the letter ruling for a foreign government or its political subdivision? *See* section 6.07.
- Yes No No
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12. Have you included a complete statement of all the facts relevant to the transaction? *See* section 7.01(1).
- Yes No N/A
13. Have you submitted with the request true copies of all wills, deeds, and other documents relevant to the transaction, and labeled and attached them in alphabetical sequence? *See* section 7.01(2).
- Yes No N/A
14. Have you submitted with the request a copy of all applicable foreign laws, and certified English translations of documents that are in a language other than English or of foreign laws in cases where English is not the official language of the foreign country involved? *See* section 7.01(2).
- Yes No No
15. Have you included an analysis of facts and their bearing on the issues? Have you included, rather than merely incorporated by reference, all material facts from the documents in the request? *See* section 7.01(3).
- Yes No No
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16. Have you included the required statement regarding whether any return of the taxpayer (or any return of a related taxpayer within the meaning of § 267 or of a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) who would be affected by the requested letter ruling or determination letter is currently or was previously under examination, before Appeals, or before a Federal court? *See* section 7.01(4).
- Yes No No
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17. Have you included the required statement regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor? *See* section 7.01(5)(a).
- Yes No No
Page 27
18. Have you included the required statement regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request (including an application for change in method of accounting) involving the same or similar issue but withdrew the request before the letter ruling or determination letter was issued? *See* section 7.01(5)(b).
- Yes No No
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19. Have you included the required statement regarding whether the taxpayer, a related taxpayer, or a predecessor previously submitted a request (including an application for change in method of accounting) involving the same or similar issue that is currently pending with the Service? *See* section 7.01(5)(c).
- Yes No No
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20. Have you included the required statement regarding whether, at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request (including an application for change in method of accounting) involving the same or similar issue to the Service? *See* section 7.01(5)(d).
- Yes No No
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21. Have you included the required statement regarding whether the taxpayer or a related taxpayer had, or has scheduled, a pre-submission conference involving the same or a similar issue? *See* section 7.01(5)(e).
- Yes No N/A
Page__
22. If your request involves the interpretation of a substantive provision of an income or estate tax treaty, have you included the required statement regarding whether the tax authority of the treaty jurisdiction has issued a ruling on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor; whether the same or similar issue is being examined, or has been settled, by the tax authority of the treaty jurisdiction or is otherwise the subject of a closing agreement in that jurisdiction; and whether the same or similar issue is being considered by the competent authority of the treaty jurisdiction? *See* section 7.01(6).

Yes No N/A
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23. If your request is for recognition of Indian tribal government status or status as a political subdivision of an Indian tribal government, does your request contain a letter from the Bureau of Indian Affairs regarding the tribe's status? *See* section 7.01(7), which states that taxpayers are encouraged to submit this letter with the request and provides the address for the Bureau of Indian Affairs.

Yes No 14
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24. Have you included the required statement of relevant authorities in support of your views? *See* section 7.01(8).

Yes No 28
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25. Have you included the required statement regarding whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities? *See* section 7.01(8).

Yes No N/A
Page 28

26. Does your request discuss the implications of any legislation, tax treaties, court decisions, regulations, notices, revenue rulings, or revenue procedures that you determined to be contrary to the position advanced? *See* section 7.01(9), which states that taxpayers are encouraged to inform the Service of such authorities.

Yes No 28
Page 28

27. If you determined that there are no contrary authorities, have you included a statement to this effect in your request? *See* section 7.01(9).

Yes No 28
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28. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? *See* section 7.01(10).

Yes No

29. Have you included the deletion statement required by § 6110 and placed it on the top of the letter ruling request as required by section 7.01(11)(b)?

Yes No 29
Page 29

30. Have you (or your authorized representative) signed and dated the request? *See* section 7.01(12).

Yes No N/A

31. If the request is signed by your representative or if your representative will appear before the Service in connection with the request, is the request accompanied by a properly prepared and signed power of attorney with the signatory's name typed or printed? *See* section 7.01(14).

Yes No last pg.
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32. Have you signed, dated, and included the penalties of perjury statement in the format required by section 7.01(15)?

Yes No N/A

33. Are you submitting your request in duplicate if necessary? *See* section 7.01(16).

Yes No N/A
Page 29

34. If you are requesting separate letter rulings on different issues involving one factual situation, have you included a statement to that effect in each request? *See* section 7.02(1).

Yes No N/A

35. If you want copies of the letter ruling sent to a representative, does the power of attorney contain a statement to that effect? *See* section 7.02(2).

Yes No N/A

36. If you do not want a copy of the letter ruling to be sent to any representative, does the power of attorney contain a statement to that effect? *See* section 7.02(2).

Yes No N/A

37. If you are making a two-part letter ruling request, have you included a summary statement of the facts you believe to be controlling? *See* section 7.02(3).

Yes No N/A
Page 29

38. If you want your letter ruling request to be processed ahead of the regular order or by a specific date, have you requested expedited handling in the manner required by section 7.02(4) and stated a compelling need for such action in the request? *See* section 7.02(4) of this revenue procedure.

Yes No 28
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39. If you are requesting a copy of any document related to the letter ruling request to be sent by facsimile (fax) transmission, have you included a statement to that effect? *See* section 7.02(5).

Yes No 28
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40. If you want to have a conference on the issues involved in the request, have you included a request for conference in the letter ruling request? *See* section 7.02(6).

Yes No

41. Have you included the correct user fee with the request and is your check or money order in U.S. dollars and payable to the Internal Revenue Service? *See* section 15 and Appendix A to determine the correct amount.

Yes No 28
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42. If your request involves a personal, exempt organization, governmental entity, or business-related tax issue and you qualify for the reduced user fee because your gross income is less than \$250,000, have you included the required certification? *See* paragraphs (A)(4)(a) and (B)(1) of Appendix A.

Yes No
Page

N/A

43. If your request involves a personal, exempt organization, governmental entity, or business-related tax issue and you qualify for the reduced user fee because your gross income is less than \$1 million, have you included the required certification? See paragraphs (A)(4)(b) and (B)(1) of Appendix A.

Yes No
Page

N/A

44. If you qualify for the user fee for substantially identical letter rulings, have you included the required information? See section 15.07(2) and paragraph (A)(5)(a) of Appendix A.

Yes No
Page

N/A

45. If you qualify for the user fee for a § 301.9100 request to extend the time for filing an identical change in method of accounting on a single Form 3115, *Application for Change in Accounting Method*, have you included the required information? See section 15.07(4) and paragraph (A)(5)(d) of Appendix A.

Yes No

N/A

46. If your request is covered by any of the checklists, guideline revenue procedures, notices, safe harbor revenue procedures, or other special requirements listed in Appendix G, have you complied with all of the requirements of the applicable revenue procedure or notice?

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96-16

List other applicable revenue procedures or notices, including checklists, used or relied upon in the preparation of this letter ruling request (Cumulative Bulletin or Internal Revenue Bulletin citation not required).

Yes No
Page

N/A

47. If you are requesting relief under § 7805(b) (regarding retroactive effect), have you complied with all of the requirements in section 11.11?

Yes No
Page

N/A

48. If you are requesting relief under § 301.9100 for a late entity classification election, have you included a statement that complies with section 4.04 of Rev. Proc. 2009-41, 2009-39 I.R.B. 439? See section 5.03(5) of this revenue procedure.

Yes No
Page

N/A

49. If you are requesting relief under § 301.9100, and your request involves a year that is currently under examination or with appeals, have you included the required notification, which also provides the name and telephone number of the examining agent or appeals officer? See section 7.01(4) of this revenue procedure.

Yes No

N/A

50. If you are requesting relief under § 301.9100, have you included the affidavit(s) and declaration(s) required by § 301.9100-3(e)? See § 5.03(1) of this revenue procedure.

Yes No

N/A

51. If you are requesting relief under § 301.9100-3, and the period of limitations on assessment under § 6501(a) will expire for any year affected by the requested relief before the anticipated receipt of a letter ruling, have you secured consent under § 6501(c)(4) to extend the period of limitations on assessment for the year(s) at issue? See § 5.03(2) of this revenue procedure.

Yes No

N/A

52. Have you addressed your request to the attention of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate? The mailing address is:

Internal Revenue Service
Attn: CC:PA:LPD:DRU
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

If a private delivery service is used, the address is:

Internal Revenue Service
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224

The package should be marked: RULING REQUEST SUBMISSION. Improperly addressed requests may be delayed (sometimes for over a week) in reaching CC:PA:LPD:DRU for initial processing.

AUTHORIZED REPRESENTATIVE

Title or Authority

Date

March 8, 2017

Signature

Typed or printed name of
person signing checklist

RULING REQUEST



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ATTORNEYS AT LAW

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March 9, 2017

Internal Revenue Service
Associate Chief Counsel (Financial Institutions and Products)
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224

RE: Alaska Gasline Development Corporation

Dear Sir or Madam:

This letter ruling request is respectfully submitted on behalf of the Alaska Gasline Development Corporation (the “AGDC”).

In brief, the AGDC requests a ruling on whether it is a “political subdivision” of the State of Alaska (the “**State**”), as defined under proposed regulations (the “**Proposed Regulations**”) published on February 23, 2016 in the Federal Register with respect to Section 103 of the Internal Revenue Code (the “**Code**”), the income of which is exempt from federal income taxation. The AGDC intends to rely on the Proposed Regulations with the understanding that they provide more detail and nuance regarding the definition of political subdivision than does the current law.

Section A of this request outlines certain taxpayer information and facts relating to the organization, operation and purpose of the AGDC. **Section B** sets forth the specific ruling requested. **Section C** summarizes the authorities supporting such a ruling. **Section D** analyzes the authorities’ application to the relevant facts and **Section E** sets forth the conclusion of that analysis. **Section F** discusses certain procedural matters.

A. STATEMENT OF FACTS

1. Taxpayer Information

a. Names, Addresses, Telephone Numbers of All Interested Parties

Alaska Gasline Development Corporation
c/o Keith Meyer
3201 C. St.

Suite 200
Anchorage, Alaska 99503
(907) 330-6300

AGDC Asset Holding Co. (a subsidiary of the AGDC of which it is the sole member)
c/o AGDC
3201 C. St.
Suite 200
Anchorage, Alaska 99503
(907) 330-6300

AGDC Gas Aggregator Co. (a subsidiary of the AGDC of which it is the sole member)
c/o AGDC
3201 C. St.
Suite 200
Anchorage, Alaska 99503
(907) 330-6300

b. Taxpayer Identification Number

The AGDC's Taxpayer Identification Number is 45-3304338.

c. Annual Accounting Period and Overall Method of Accounting

Not applicable.

2. Description of Taxpayer's Business Operations and Facts Relating to Transaction

a. Background

In 2010, the State legislature determined that, by 2018, declining oil flow through the TransAlaska Pipeline System¹ would seriously diminish State revenue. In addition, the State legislature determined that natural gas reserves in the Cook Inlet, located in the south-central region of the State with the majority of Alaska's population, were depleting at a rate that would eventually lead to significant long-term shortages for residential and commercial gas users in that region who depend solely Cook Inlet natural gas for the majority of their heating and

¹ The TransAlaska Pipeline System, built between 1974 and 1977, generally consists of a pipeline system and other infrastructure that conveys crude oil from northern Alaska to the city of Valdez, Alaska. Since its completion, the State has collected significant taxes paid by oil producers and shippers and has enjoyed significant other revenues in connection with the Pipeline System. Declining oil production and other market impacts have resulted in significant reduced amounts of associated taxes and revenues.

electric requirements. Moreover, the central-Alaskan Fairbanks region was facing severe air quality issues because of the region's reliance on coal and wood-burning. In response, the State legislature enacted House Bill 369² ("H.B. 369") requiring the development of an in-state natural gas pipeline plan to facilitate the delivery of a clean supply of natural gas and/or liquefied natural gas ("LNG") from the State's North Slope to residents of the State, including the south-central region of the State, on a priority basis. To oversee this process, the State created the predecessor of the AGDC as a subsidiary of the Alaska Housing Finance Corporation.

Under H.B. 369, the State acknowledged that the in-state natural gas consumption alone could not financially support the creation of a pipeline due to the State's relatively small population. Therefore, the State determined that natural gas in excess of that expected to be consumed in-state could be available for other uses and that the State could provide facilities to condition the natural gas for export out of the State, all for the benefit of the State and its residents.

b. Creation of the AGDC

On May, 22, 2013, the State legislature enacted House Bill 4³ ("H.B. 4") that established the AGDC as an independent public corporation and government instrumentality of the State located for administrative purposes in the State's Department of Commerce, Community, and Economic Development.⁴ H.B. 4 also established the AGDC as "having a legal existence independent of and separate from the State."⁵

H.B. 4 created an Act⁶ (the "Act") that set out the AGDC's organization, administration, and powers, established the AGDC's authority to issue bonds and bond anticipation notes, and contained the AGDC's general provisions. In 2014, the State legislature enacted Senate Bill 138⁷ ("S.B. 138") that expanded the AGDC's authority to include participation in a LNG export project.

Pursuant to H.B. 4, S.B. 138, and the Act the AGDC was created to: (1) develop a pipeline to process and transport natural gas to various communities in-state (the "**Pipeline Project**"); and (2) develop a larger capacity pipeline with related infrastructure to process,

² H.B. 369, 26th Leg., 2nd Reg. Sess. (Ak. 2010). See Exhibit C.

³ H.B. 4, 28th Leg., 1st Reg. Sess. (Ak. 2013). See Exhibit D. In creating the Act, H.B. 4 amended and repealed portions of H.B. 369.

⁴ *Id.*

⁵ Alaska Stat. § 31.25.010. See Exhibit E.

⁶ Alaska Stat. § 31.25.005 to 31.25.390. See Exhibit E.

⁷ S.B. 138, 28th Leg., 2nd Reg. Sess. (Ak. 2014). See Exhibit F.

transport, and liquefy natural gas and to ship excess LNG out-of-State (the “LNG Project,” and together with the Pipeline Project, the “Projects”).⁸ The AGDC’s intention is to pursue either one of these Projects, whichever is more economically feasible, but not both. In addition, the AGDC is authorized to develop other transportation mechanisms to deliver natural gas in-state for the maximum benefit of the people of the State.⁹

Further, S.B. 138 created the Alaska Affordable Energy Fund to dedicate 20% of the LNG Project’s net revenue to develop infrastructure and deliver affordable energy to areas of the State that will not have direct access to the Pipeline Project.¹⁰ The State legislature determined that the fund was necessary and consistent with the AGDC’s public purpose to benefit all Alaskans.

c. Purpose of the AGDC

The AGDC is a public corporation and government instrumentality acting in the best interest of the State.¹¹ The AGDC’s mission is to provide the State with long-term energy solutions and to maximize the value of natural gas located in the State. The AGDC currently intends to deliver the benefits of the North Slope’s natural gas by one of two methods—the Pipeline Project or the LNG Project.

The Pipeline Project will provide infrastructure that will facilitate the processing, distribution and use of natural gas located in the State.¹² This infrastructure consists of an 800-mile-long pipeline that starts at Prudhoe Bay (along the North Slope) and terminates at Cook Inlet along the south-central coast of Alaska.¹³ If it pursues the Pipeline Project, the AGDC will make such natural gas and other products available to the State’s residents and businesses through domestic sales at the lowest rates possible.¹⁴

⁸ Alaska Stat. § 31.25.005. See Exhibit E.

⁹ Id.

¹⁰ The Alaska Affordable Energy Fund is to receive 20 percent of the net revenue from the sales of the State’s royalty gas, after the Alaska Permanent Fund first receives its share (typically 25 percent of the royalty but it can be 50 percent depending on the lease form). The Alaska Affordable Energy Fund does not receive any percentage of AGDC’s tariff revenues.

¹¹ See Alaska Stat. § 31.25.010. See Exhibit E.

¹² See id. The Pipeline Project will also allow for the processing and distribution of propane and other hydrocarbons associated with natural gas (other than oil).

¹³ See Exhibit H. Exhibit H contains a presentation by the AGDC to the House Resources Committee that describes the transportation route of the pipeline.

¹⁴ See id.

The LNG Project will also consist of providing infrastructure that will facilitate the processing, distribution and use of natural gas located in the State. The contemplated infrastructure for the LNG Project will consist of (1) a pipeline that shares much of the same route as the pipeline contemplated as part of the Pipeline Project and (2) an LNG production facility (the “**LNG Production Facility**”) in Nikiski, Alaska (around 170 miles away from Anchorage, Alaska). Instead of terminating near Cook Inlet to connect to the existing natural gas distribution system, the contemplated pipeline for the LNG Project will continue across Cook Inlet to the LNG Production Facility. The LNG Production Facility will provide liquefaction and related services (including storage)¹⁵ for natural gas in excess of that needed for in-State consumption. The AGDC expects the LNG to be exported for sale to the world LNG market.

To date, the AGDC has only focused on the development of the Projects but the AGDC may undertake other activities or projects in the future that are in line with its purpose. The AGDC may pursue development of some or all of its projects in partnership with other interests, including private interests, or other arrangements.¹⁶

The AGDC’s projects will offset declining Cook Inlet reserves and provide State residents and third-party projects along the entire pipeline corridor with an alternative source of heat and power generation. The availability of cleaner fuel will benefit the State through creation of engineering and construction jobs, additional tax revenues, and healthcare cost savings from improvements in air quality.

¹⁵ See *id.*

¹⁶ S.B. 138 gives the commissioner of revenue the authority to “identify and report to the legislature on a range of financing options for state acquisition of an ownership interest and participation in a North Slope natural gas project.” “North Slope natural gas project” means a project to produce or transport natural gas from state oil and gas and gas only leases that include land north of 68 degrees North latitude for transport in a gaseous state from the North Slope. S.B. 138 goes on to state that the commissioner of revenue “shall present a plan and suggested legislation to allow a municipality, regional corporation, or resident or the state to participate as a co-owner in a North Slope natural gas pipeline.” See Exhibit F. To date, no plan has been presented to the legislature. In 2017, new legislation was proposed to allow individuals the opportunity to participate as a co-owner in the LNG Project. S.B. 35, 30th Leg., 1st Reg. Sess. (Ak. 2017). See Exhibit G. Under S.B. 35 co-ownership interests will be offered at the subsidiary level, if at all. If the AGDC’s ownership interests in such jointly developed Projects are less than 100%, AGDC has been advised that only the income associated with the AGDC’s ownership interests will potentially be exempt from federal income tax as a result of AGDC’s political subdivision status.

d. Eminent Domain and Other Powers of the AGDC

The AGDC is authorized to exercise the powers of eminent domain and declaration of taking to acquire land or an interest in land that is necessary for the Projects. This power is equal to and indistinguishable from the power of eminent domain held by the State.¹⁷

The AGDC has the power to plan, finance, construct, develop, acquire, maintain and operate a pipeline system and other transportation mechanisms¹⁸ in-state to facilitate production, transportation, and delivery of natural gas or other related natural resources to the point of consumption or to the point of distribution for consumption.¹⁹

The AGDC is expressly authorized to do all the things necessary, convenient, or desirable to carry out the powers expressly granted by the Act, including, but not limited to:

(i) acquire an interest in property as necessary or convenient to the development financing, construction, or operation of all or part of the Pipeline Project or the LNG Project, financing for the project, whether by purchase, gift or lease;

(ii) lease or rent facilities, structures, and properties;

(iii) transfer or otherwise dispose of all or part of an interest in an asset of the corporation;

(iv) receive, administer, and comply with the conditions and requirements of an appropriation, gift, grant, or donation of property or money;

(v) invest or reinvest its funds, subject to agreements with noteholders and bondholders;

(vi) borrow money as provided by the Act to carry out its corporate purposes and issue its obligations as evidence of borrowing;

(vii) make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the corporation under the Act, including a contract with a person, firm, corporation, government agency, or other entity;

(viii) acquire an ownership or participation interest in the LNG Project, natural gas treatment facilities, natural gas pipeline facilities, liquefaction facilities, marine terminal

¹⁷ See Alaska Stat. § 31.25.080(a)(4). See Exhibit E.

¹⁸ These transportation mechanisms may include pipelines, compressors, storage facilities, and other related facilities, equipment, and works of public improvement.

¹⁹ Alaska Stat. § 31.25.080(a)(2). See Exhibit E.

facilities related to the infrastructure of the LNG Project, or an entity or joint venture that has an ownership interest in or is engaged in the planning, financing, acquisition, maintenance, construction, and operation of the LNG Project;

(ix) establish a schedule of reasonable fees, rental rates, and other charges, and collect fees, rentals, and other charges for use of the facilities of the corporation;

(x) employ fiscal consultants, engineers, attorneys, appraisers, and other consultants and employees that may, in the judgment of the corporation, be required and fix and pay their compensation from funds available to the corporation.²⁰

c. Structure of the AGDC and its Subsidiaries

The AGDC is currently the sole member of two subsidiary corporations: the AGDC Asset Holding Co. and the AGDC Gas Aggregator Co.²¹ The AGDC Asset Holding Co. was generally formed for the purpose of holding assets on behalf of AGDC. The AGDC Asset Holding Co. shall also serve any other purpose of the Act, as amended from time to time, and as directed by the AGDC. The AGDC Gas Aggregator Co. was formed for the purpose of collecting natural gas on behalf of the State from the North Slope and from other regions of the State, including the State's outer continental shelf. If utilized, the AGDC Gas Aggregator Co. will make natural gas available to markets in the State by delivering the natural gas (including propane and other hydrocarbons associated with natural gas other than oil) anywhere in the State. The AGDC Gas Aggregator Co. shall also serve any other purpose identified in the Act, as amended from time to time, and as directed by the AGDC.

The AGDC may create additional subsidiaries to further its purpose. Currently, the AGDC anticipates creating additional subsidiaries to: (1) sell gas to customers within the State; (2) own AGDC project infrastructure; and (3) purchase natural gas prior to entry into the LNG Project, utilize the LNG Project pipeline as a customer, and sell the gas after it has been liquefied at the LNG Production Facility (the "**Merchant Marketing Entity**").

The AGDC's subsidiaries are created under general State corporate law and not by legislative enactment, as is the case with the AGDC. The subsidiaries have separate legal existences from the AGDC (with their own borrowing powers) and their debts and obligations are not the debts and obligations of the AGDC.

²⁰ See Alaska Stat. § 31.25.080(a)(1)-(24). See Exhibit E.

²¹ See Exhibit H. Exhibit H also includes the AGDC's Articles of Incorporation, the AGDC's Bylaws, and a presentation by the AGDC to the Alaska House Resources Committee.

f. Governance of the AGDC and its Subsidiaries

The AGDC is governed by a board of directors (the “**Board**”) consisting of five (5) public members and two (2) individuals designated by the Governor of the State that are each the head of a principal department of the State (not including the Commissioner of Natural Resources and the Commissioner of Revenue).²²

The public members of the Board are appointed by the Governor and are subject to confirmation by the State legislature.²³ Public members serve staggered five-year terms and can be removed at any time by the Governor.²⁴ Board vacancies are subject to confirmation by the State legislature.²⁵ Public members are not required to be registered voters or residents of the State.²⁶

The Board appoints an Executive Director who may not be a member of the Board and who will serve at the pleasure of the Board.²⁷ The Board may appoint a Program Director for the LNG Project who shall report to the Executive Director and serve at the pleasure of the Board.²⁸

The board of directors for the AGDC Asset Holding Co. and the AGDC Gas Aggregator Co. will currently consist of the same directors as those that serve on the Board. The boards of directors for the AGDC’s subsidiaries may be appointed or removed in the discretion of the Board and they are not subject to the governor’s appointment or removal.

g. Financial Disclosure and Other Requirements

The AGDC and its subsidiaries are required to annually submit a proposed operating budget to the Office of Management and Budget of the State for inclusion in the Governor’s annual operating budget.²⁹ The AGDC must also comply with the uniform accounting rules of the State for the expenditure of funds appropriated for its operating budget.³⁰ Under these rules,

²² Alaska Stat. § 31.25.020(a). See Exhibit E.

²³ See Alaska Stat. § 31.25.020(b). See Exhibit E.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Alaska Stat. § 31.25.045. See Exhibit E.

²⁸ Alaska Stat. § 31.25.040. See Exhibit E.

²⁹ Alaska Stat. § 31.25.140(b). See Exhibit E.

³⁰ Id.

funds approved for operating budgets may be used only in accordance with such appropriation.³¹

In accounting for the AGDC's assets, the AGDC is required to submit to the State legislature an annual report identifying its assets and whether the assets exceed an amount required to fulfill the purpose of the AGDC.³² The annual report must be audited by an independent auditor.³³

The AGDC is required to file an annual report (along with a financial statement, income statement, and balance sheet) that is available to the public on the AGDC's website.³⁴

h. Facts Relating to the Projects and Revenues of the AGDC

The assets of the Projects will be owned by the AGDC or one or more subsidiaries of the AGDC. The majority of the natural gas that the Projects will transport and liquefy will be owned by or acquired from private entities. These private entities are oil and gas producers that have purchased lease rights from the State to develop natural gas located in the State (the "Producers" or "Producer" individually).

i. Royalty Payments and Production Tax

The State is entitled to a minimum royalty amount of 12.5% for the leasing rights granted to the Producers to develop natural gas located in the State.³⁵ However, there are royalty reduction provisions that may result in a lower royalty rate.³⁶ The State has the option of taking its royalty in kind or in value.³⁷ If the State opts to receive its royalty in kind, it will receive rights and title to a portion of the natural gas owned by the Producers (i.e. it will receive "royalty gas"). If the State opts to receive its royalty in value, it will receive a standard royalty payment. The State's selection to take its royalty payments in kind or in value will happen prior to the final investment decision on the Projects. If the State takes royalty gas in kind, the State has the choice of taking rights to the natural gas at the lease boundary or at the entry point into

³¹ Alaska Stat. § 37.05.170. See Exhibit E.

³² Alaska Stat. § 31.25.140(c)(3). See Exhibit E.

³³ Id.

³⁴ Alaska Stat. 31.25.270(b). See Exhibit E.

³⁵ See Alaska Stat. § 38.05.180(f)(3). See Exhibit E. The royalty is generally "not less than 12.5 percent in amount or value of the production removed or sold from the lease."

³⁶ See Alaska Stat. § 38.05.180(j) (which provides for royalty reductions in certain circumstances). See Exhibit E.

³⁷ Royalties on oil and gas are taken in kind unless the commissioner of the Department of Natural Resources determines that the taking in value would be in the best interest of the State. See Alaska Stat. § 38.05.182(a). See Exhibit E.

the pipeline, once the natural gas is produced. If the State takes its royalty in value, the natural gas will be transported and sold by each lease holder (i.e. each oil and gas producer who uses the pipeline as a customer), and then a value calculation would be applied to deduct the costs of transportation from the lease boundary to the point of sale.

The State also levies a 13% production tax on the Producers who develop gas located in the State. If the State elects to take its royalty in kind, the Producers have a choice of electing to pay their production tax in the form of gas. In that case, the production tax is 13% of each of the Producer's equity gas (after subtracting each Producer's royalty gas provided to the State from the Producer's total gas produced). Thus, an additional 13% of the gas would be owned by the State, with title transfer also occurring at the entry point into the pipeline.

Whether royalty in kind or royalty in value is selected, taking the production tax into account, it is anticipated that the value of approximately 25% of the natural gas going through the Project will be owned by (or will directly benefit) the State. For that portion of the gas effectively owned by the State, the AGDC will be the likely toller on the Projects, taking title of the gas at the inlet and transferring the natural gas or LNG to in-state customers or LNG buyers at the outlets of the pipeline or the LNG Production Facility.

ii. The Pipeline Project

The consideration of and planning for the Pipeline Project was undertaken immediately after the original creation and funding of the AGDC as a public corporation by the State. The effort regarding the development of the Pipeline Project has been wholly funded by the State and no commercial commitments have been made to the Pipeline Project to date. The AGDC contemplates the Pipeline Project as a viable back-up alternative to the larger LNG Project if commercial commitments cannot be secured for the LNG Project.

The Pipeline Project is designed as a gas pipeline system that treats and transports utility grade natural gas from the North Slope to an interconnect point with the local pipeline distribution system in the south-central region of the State (the most populated region of the State). The existing local pipeline distribution system in south-central region of the State supplies existing industrial customers, some of which have had to reduce or shut down their activities due to the shortage of natural gas from the Cook Inlet. The Pipeline Project also expects to supply North Slope gas to the central portion of the State (near Fairbanks, Alaska) by way of a lateral pipeline located along the pipeline route of the Pipeline Project.

The current design capacity of the Pipeline Project is 500 million standard cubic feet per day (MMscf/d), which represents approximately twice the natural gas demand in the State.³⁸ The Pipeline Project is designed above the State's total natural gas demand in order to capture

³⁸ The State's natural gas demand includes residential, commercial, and small industrial customer (e.g. refinery) demand.

cost efficiencies from existing industrial customers and lower the unit cost of natural gas to the State's residents.

The Pipeline Project has received right-of-way over State lands and the AGDC is completing the National Environmental Policy Act ("NEPA") process in order to obtain right-of-way over federal lands and other federal permits. Acquisition of the federal right-of-way for the Pipeline Project is anticipated in early 2018. The combination of State and federal right-of-ways represent approximately 82% of the pipeline route for the Pipeline Project.

iii. The LNG Project

The LNG Project began with a pre-Front End Engineering Design (pre-FEED) joint venture between the State and the following affiliates of producers who own natural gas interests located in the State: ExxonMobil Alaska LNG LLC ("**ExxonMobil**"), ConocoPhillips Alaska LNG Company ("**ConocoPhillips**"), and BP Alaska LNG LLC ("**BP**," and collectively, the "**Original Producers**").³⁹ The parties intended that these producers would initially supply the natural gas that would be liquefied and exported out-of-State as part of the LNG Project. The joint venture funded a substantial pre-FEED and NEPA pre-filing effort for the LNG Project. At the end of 2016, the joint venture was terminated due to unfavorable investment conditions under the project commercial structure contemplated by the venture. The AGDC remains the leading party to the NEPA pre-filing effort and the LNG Project.

The LNG Project is much larger than the Pipeline Project. The current design capacity of the LNG Project is around 3 billion standard cubic feet per day (Bcf/d) and includes a LNG component. The LNG project faces economic challenges due to market conditions and the relatively large infrastructure investment that includes the construction of an 800-mile pipeline across the State and developing processing facilities for the removal of carbon dioxide and other impurities from the North Slope gas. Presently, the AGDC intends to develop a utility tolling model for the project where users/customers of the pipeline would be charged a toll for their use of the pipeline. Using a utility tolling structure is expected to lower the overall cost of supply from the LNG Project and therefore enable its construction. The customers may be the Producers, the State (for the portion of natural gas it owns via royalties and production taxes), or a subsidiary of the AGDC that will purchase the natural gas from the Producers or the State (i.e.

³⁹ The Producers, or their affiliates, have acquired interests in the gas and oil fields in northern Alaska pursuant generally to leases dating as far back as 1969. Generally, due to the absence of a pipeline dedicated to the movement of natural gas, very little natural gas has been produced for sale. Rather, such natural gas has generally been reinjected into the ground to enhance the production of oil.

TransCanada Alaska Midstream LP ("**TAML**P") was an original party to the pre-FEED joint venture. In November 2015, TransCanada executed a Purchase and Sales Agreement with the State for TAML's partnership interest in the pre-FEED joint venture. The State designated the AGDC to receive TAML's partnership interests. AGDC dissolved TAML which eliminated TAML as a party to the pre-FEED joint venture.

the Merchant Marketing Entity). To fund the LNG Project, the AGDC will seek long-term commitments from tollers to export the LNG. Sales of the LNG for export are expected to be at prices that will allow for sufficient toller commitments to finance the LNG Project.

The AGDC will work with the Federal Bureau of Land Management and State Department of Natural Resources to acquire rights-of-way across State and federal land for the LNG Project. Approximately 673 miles of the LNG Project's 800 mile right-of-way share the same alignment as the Pipeline Project. The State and federal rights-of-way for the Pipeline Project may be amended for use by the LNG Project. This will result in a significantly reduced permitting effort and positive schedule impact.

iv. Development of the Projects

The entities that will utilize the Projects can be separated into two categories: (1) the Producers or "gas resource owners" and (2) the pipeline customers or "tollers."

The AGDC will develop the Projects as the sole owner or as primary-owner and project sponsor with other third-party participants.⁴⁰ The Producers will own at least 75% of the natural gas which is monetized through the Project. If the State opts to take its royalty payments in kind and production tax in kind, it will own the remaining gas which is monetized through the Project (approximately 25%) as a gas resource owner.

The AGDC through its subsidiaries will seek tollers to utilize the pipeline. These tollers may be: (1) the Producers; (2) private buyers of natural gas or LNG; (3) AGDC's Merchant Marketing Entity that will purchase gas from the producers and sell to third parties at the outlet(s) of the pipeline; and (4) an AGDC subsidiary created for in-State natural gas sales.

The subsidiary that will own the Projects' infrastructure will derive revenue for the Projects from the services that it provides to the Producers or private buyers of natural gas or LNG—mainly, transportation through the pipeline, processing, liquefaction, and related services (including storage). The sales for services are currently contemplated to be pursuant to a tolling arrangement and will be at arm's length. If the AGDC pursues the Pipeline Project instead of the LNG Project, the sales of services will be approved by a regulator.

As explained earlier, a Merchant Marketing Entity may be formed in order to purchase natural gas from the Producers or the State and sell the gas to third parties at the outlet of the pipeline. If such a subsidiary is formed, it will derive revenue from long-term tolling commitments for the Projects' processing, transportation, liquefaction, and related services, and sales of LNG out of State.

⁴⁰ See Footnote 15.

Another subsidiary may be formed in order to purchase natural gas from the Producers and utilize the Projects under long-term contractual commitments. This subsidiary will derive revenue from the sales of natural gas or LNG to in-State customers.

The final mix of entities that will comprise the Projects' tollers has not been determined. The AGDC will solicit long-term contractual commitments from the potential tollers in order to ensure adequate financing for the Projects.

The AGDC is prohibited in its statutes from making any profits on the transportation and processing services that it provides for the gas owned by the State (i.e. the royalty gas or gas accepted in lieu of the production tax), so any profit that it recovers from acting as a transporter for natural gas owned by the State will go directly to the State.⁴¹

All of the AGDC's Projects' tolling revenue, sales of LNG, and sales of natural gas will be at prices that will allow for sufficient toller commitments to finance the project. The Projects and the associated revenue, to the extent owned by the AGDC and its subsidiaries, will be used to provide economic benefits and revenues to the State and its residents. In addition, the State and its residents will also significantly benefit from the monetization of the natural gas located in the State, production tax on private parties' monetization of natural gas as a result of the LNG Project, State corporate income tax generated by private parties monetizing natural gas, and the supply of natural gas and LNG to in-State customers.

The AGDC has the authority to use money appropriated to it by the State legislature and from the issuance of bonds to finance its share of the cost of the Projects.⁴² Currently, the State legislature intends that no State debt will be used for the Projects. The AGDC will not have revenues to support a bond issue until the Projects are completed and operational. The AGDC intends to finance the Projects using limited recourse project finance.

i. Third Parties that may benefit from Transactions with the AGDC

The parties that may benefit from the activities of the AGDC include the current and future North Slope gas resource owners (i.e., the Producers), potential project investors, LNG buyers, Alaska utility customers, and Alaska industrial users. The degree to which each party may benefit is not certain at this time, as no commercial commitments have been made to any of the Projects.

⁴¹ See Alaska Stat. § 31.25.005(5). See Exhibit E.

⁴² See Alaska Stat. §§ 31.25.100, 31.25.110, 31.25.160. See Exhibit E. See also Footnote 15.

j. Termination of the AGDC

The AGDC may not be terminated as long as it has bonds, notes, or other obligations outstanding.⁴³ The AGDC may dissolve when no bonds, notes, or other obligations of the AGDC or its subsidiaries are outstanding and the AGDC or its subsidiaries are no longer engaged in the development, financing, construction or operation of the Projects.⁴⁴ Upon termination of the AGDC, its rights and property pass to the State.⁴⁵

B. RULING REQUESTED

The AGDC requests a ruling that:

The AGDC is a political subdivision of the State as defined by the Proposed Regulations, the income of which is exempt from federal income tax.

C. STATEMENT OF LAW

Under the doctrine of intergovernmental tax immunity, “income earned by a * * * political subdivision of a state is generally not taxable in the absence of specific statutory authorization for taxing such income.”⁴⁶ This doctrine ensures that the federal government does not impose taxes that would unduly burden the state in the performance of its functions.⁴⁷

For purposes of determining whether an entity qualifies for tax exemption under the doctrine of intergovernmental immunity, as further discussed below, a “political subdivision” is defined under current law as “any division of any State or local governmental unit which * * * has been delegated the right to exercise part of the sovereign power of the unit.”⁴⁸ In an effort to “clarify and further develop” this definition, the Service recently released the Proposed Regulations, as further discussed below, which address whether an entity qualifies as a political subdivision and which are intended to clarify current law by providing more detail and nuance.

⁴³ Alaska Stat. § 31.25.010. See Exhibit E.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ See Rev. Rul. 87-2, 1987-1 C.B. 18 (citing Rev. Rul. 71-131, 1971-1 C.B. 28) (emphasis added); see also Rev. Rul. 71-132, 1971-1 C.B. 29; Priv. Ltr. Rul. 8820030 (Feb. 16, 1988).

⁴⁷ See Priv. Ltr. Rul. 8820030 (Feb. 16, 1988) (citing Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29).

⁴⁸ Sec. 1.103-1(b), Income Tax Regs.

1. Discussion of Current Law

Current law states that the term “political subdivision” means “any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.”⁴⁹ The three recognized sovereign powers are the power to tax, the power of eminent domain, and the police power.⁵⁰ An entity need not possess all three sovereign powers and possession of only one of the powers is sufficient as long as such powers are not insubstantial.⁵¹ In determining whether an entity possesses sufficient sovereign powers, the critical inquiry is whether the entity possesses such sovereign power in its own right.⁵²

Though current law and the authorities thereunder are primarily focused on whether an entity possesses a substantial amount of the sovereign power, an entity cannot qualify as a political subdivision, whether or not it is a municipal corporation or has the right to exercise sovereign powers, unless it also can first demonstrate that it is a division of a state or local government unit.⁵³ A division of a state or local government unit can include an entity that is organized (by way of its establishing statute or statutes) as separate and apart from the state.⁵⁴ The relevant inquiry for whether an entity qualifies as a division of a state or local government unit is whether the entity is a public, rather than a private entity.⁵⁵ Several factors indicate that an entity is public including, but not limited to: (1) its public purpose and attributes; (2) whether its assets or income will inure to private interests; (3) the degree of control by a state or local government or government official; and (4) the degree of its control by an electorate.⁵⁶

⁴⁹ See sec. 1.103-1(b), Income Tax Regs. Note that there are different criteria relevant to the determination of whether an entity is a political subdivision for certain other purposes, none of which are relevant here. For example, the definition of political subdivision under current law or the Proposed Regulations does not apply for purposes of Section 414(d) of the Code, relating to whether a retirement plan constitutes a “governmental plan” for purposes of such Code section.

⁵⁰ See Commissioner v. Shamberg’s Estate, 144 F.2d 998 (2d Cir. 1994), cert. denied, 323 U.S. 792 (1945).

⁵¹ See Texas Learning Tech. Group v. Commissioner, 958 F.2d 122, 124 (5th Cir. 1992); see also Rev. Rul. 77-164, 1977-1 C.B. 20; Rev. Rul. 61-181, 1961-2 C.B. 21.

⁵² See Rev. Rul. 78-138, 1978-1 C.B. 314.

⁵³ See sec. 1.103-1(b), Income Tax Regs.

⁵⁴ See e.g., Priv. Ltr. Rul. 201142016 (Oct. 21, 2011) (entity qualified as political subdivision for federal tax purposes even though it was organized by statute as a “body corporate and politic, constituting a public corporation and government instrumentality”); see also sec. 301.7701-1(a)(3), Income Tax Regs. (an entity that is separate from a state “is not always recognized as a separate entity for federal tax purposes”).

⁵⁵ See Priv. Ltr. Rul. 9725038 (Jun. 20, 1997).

⁵⁶ See id.

In a technical advice memorandum issued on August 23, 2013, the Internal Revenue Service (the “Service”) further elaborated on what it believes constitutes a division of a state or local government unit under current law.⁵⁷ In the memorandum, the Service stated that the clause “division of a state or local government” must be read in the context of the purpose of section 103, which is to provide subsidized financing for State and local government purposes.⁵⁸ The Service went on to say that a governmental unit is an entity that is inherently accountable, directly or indirectly, to a general electorate.⁵⁹ It concluded by saying that a process that allows a private entity to determine how a bond subsidy should be used without appropriate government safeguards cannot alone satisfy section 103.⁶⁰

All the facts and circumstances must be taken into consideration in determining whether an entity is a political subdivision, including (1) the public purposes of the entity and (2) its control by government.⁶¹ The courts and the Service have given the term “public purpose” a broad interpretation. For example, the term includes traditional public purposes such as education and transportation, and less traditional purposes such as operating a utility, the conservation and preservation of natural resources, and community development.⁶² The term even includes the operation of liquor stores.⁶³ In one private letter ruling the Service held that a development authority was serving a public purpose by “conserving, developing, and utilizing [a] Territory’s water and energy resources so as to make those resources available to Territory residents.”⁶⁴

Control by the government is another factor in determining whether an entity is a political subdivision.⁶⁵ An entity that is organized and operated in a manner intended to perpetuate private control, and to avoid indefinitely, responsibility to a public electorate, cannot

⁵⁷ See Tech. Adv. Mem. 201334038 (Aug. 23, 2013).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* Though the Technical Advice Memorandum is focused on the definition of political subdivision for purposes of the Tax-Exempt Bond rules, it has long been clear that the Internal Revenue Service looks to the definition of political subdivision in the regulations pertaining to Tax-Exempt Bonds for other federal tax purposes, with some exceptions not relevant here.

⁶¹ See Rev. Rul. 77-164, 1977-1 C.B. 20.

⁶² See *Michigan v. United States*, 40 F.3d 817, 819-20 (6th Cir. 1994) (for education); *Shamberg*, 144 F.2d at 999-1002 (for transportation); Priv. Ltr. Rul. 9122068 (Mar. 6, 1991) (for operating a utility); Rev. Rul. 59-373, 1959-2 C.B. 37 (for the conservation of natural resources); Rev. Rul. 77-164, 1977-1 C.B. 20 (for community development).

⁶³ See Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29.

⁶⁴ See Priv. Ltr. Rul. 201142016 (Oct. 21, 2011).

⁶⁵ See Rev. Rul. 77-164, 1977-1 C.B. 20.

be a political subdivision of a state.⁶⁶ Rulings by the Service have pointed to two indicia of governmental control: (1) whether the governing board of the entity is controlled by government and (2) whether the entity's revenue and assets inure to a public entity.⁶⁷ Furthermore, public control via a governmental-appointed board indicates that an entity is a political subdivision.⁶⁸

2. Discussion of Proposed Regulations

The Service released the Proposed Regulations to “clarify and further develop” whether an entity qualifies as a “political subdivision.”⁶⁹ As discussed below, however, the Proposed Regulations appear to add new requirements not present or inherent in current law.

The Proposed Regulations contain a three-pronged test to determine whether an entity is a political subdivision.⁷⁰ First, as under current law, the entity must have the ability to exercise a substantial amount of at least one sovereign power.⁷¹

Second, the entity must have been formed for and actually serve a “governmental purpose” instead of a “public purpose.”⁷² A “governmental purpose” requires, among other things, that the purpose for which the entity was created, as set out in its enabling legislation, be a public purpose and that the entity actually serve that purpose.⁷³ It also requires that the entity operates in a manner that provides a significant public benefit with no more than an incidental benefit to private persons.⁷⁴ The addition of the requirement that there be no more than an incidental benefit to private persons is entirely new (as compared to current law) and there is no straightforward guidance on its application.

⁶⁶ See Rev. Rul. 83-131, 1983-2 C.B. 184 (corporations did not qualify as political subdivisions, partly because they were not controlled directly or indirectly by a state or local government, but rather by a board of directors independent of such authority).

⁶⁷ See Rev. Rul. 83-131, 1983-2 C.B. 184 (for whether the governing board is controlled by the government); Priv. Ltr. Rul. 8820030 (Feb. 16, 1988) (for whether the entity's revenue and assets inure to a public entity).

⁶⁸ See Shamberg, 144 F.2d at 998, 1000; Commissioner v. White, 144 F.2d 1019, 1020 (2d Cir. 1944); Priv. Ltr. Rul. 8405007 (Oct. 26, 1983); Priv. Ltr. Rul. 8809038 (Dec. 3, 1987); Priv. Ltr. Rul. 9327072 (Apr. 12, 1993).

⁶⁹ See Preamble, Proposed Income Tax Regs., 81 Fed. Reg. 8870 (Feb. 23, 2016).

⁷⁰ See sec. 1.103-1(c)(1), Proposed Income Tax Regs., 81 Fed. Reg. 8872 (Feb. 23, 2016).

⁷¹ See sec. 1.103-1(c)(2), Proposed Income Tax Regs., 81 Fed. Reg. 8872 (Feb. 23, 2016).

⁷² See sec. 1.103-1(c)(3), Proposed Income Tax Regs., 81 Fed. Reg. 8872 (Feb. 23, 2016).

⁷³ See sec. 1.103-1(c)(3), Proposed Income Tax Regs., 81 Fed. Reg. 8873 (Feb. 23, 2016).

⁷⁴ Id.

Third, the entity must be “governmentally controlled” by a general purpose governmental unit or an established electorate (made up of a reasonable amount of persons).⁷⁵ In order to be “governmentally controlled,” a general purpose governmental unit or established electorate should have ongoing rights or powers to: (1) approve and remove a majority of the governing board of the entity, (2) elect a majority of the governing body of the entity, or (3) approve or direct significant uses of funds of assets of the entity.⁷⁶

D. ANALYSIS

The Proposed Regulations generally follow the requirements of current law for an entity to qualify as a political subdivision. That is, both current law and the Proposed Regulations require the entity to: (1) be a division of a state or local government; (2) possess a substantial amount of the sovereign power; (3) serve a proper public purpose; and (4) be adequately controlled by the State. The Proposed Regulations, however, add an additional element to the public purpose requirement to the effect that the entity serve a governmental purpose by operating “in a manner that provides a significant public benefit with no more than an incidental benefit to private persons.”⁷⁷ This element is entirely new and its scope and application is unclear. Because the current law and the Proposed Regulations generally follow the same framework with the exception that the Proposed Regulations require an additional element, we seek a ruling on whether the AGDC qualifies as a political subdivision under the Proposed Regulations. Furthermore, we seek clarification and focus our analysis on the new requirement that the entity operate with “no more than an incidental benefit to private persons.”

1. The AGDC qualifies as a division of a state or local government unit.

The AGDC qualifies as a division of a state or local government because it is closely related to the State. Even though the AGDC is organized by statute as a “government instrumentality of the State” and “having a legal existence independent of and separate from the State,” the AGDC may still qualify as a political subdivision if it is a public entity. Several factors indicate that the AGDC is a public entity. First, the AGDC’s Board, and by extension its subsidiaries’ boards, are either appointed or designated by the Governor of the State. Second,

⁷⁵ See sec. 1.103-1(c)(4), Proposed Income Tax Regs., 81 Fed. Reg. 8872 (Feb. 23, 2016). Governmental control requires the control to be by either a general purpose governmental unit or an established electorate, but not an electorate controlled by a small number of individuals, corporations, or other private entities. For example, regarding the concept of an “established electorate,” the Proposed Regulations indicate that control by three voters is too small to meet this requirement but that control by more than 10 voters is sufficient to satisfy the rules. Control by a small faction of private individuals, business corporations, trusts, partnerships, or other persons is fundamentally not governmental control. Here, governmental control is held and manifested by the State, a general purpose governmental unit and the concepts related to an established electorate are not relevant.

⁷⁶ See sec. 1.103-1(c)(4), Proposed Income Tax Regs., 81 Fed. Reg. 8873 (Feb. 23, 2016).

⁷⁷ See sec. 1.103-1(c)(3), Proposed Income Tax Regs., 81 Fed. Reg. 8873 (Feb. 23, 2016).

all of the AGDC's net revenues inure to the benefit of the State and its residents and its operating budget is annually reviewed by the State legislature. Third, the AGDC's assets will be distributed to the State if and upon its termination. Finally, the AGDC serves a proper purpose (as described below in Part D.3.). For these reasons, there are proper governmental safeguards in place, as the Service's August 23, 2013 technical advice memorandum requires and as is inherent in the requirements of the Proposed Regulations, for the AGDC to qualify as a division of a state or local governmental unit.

2. The AGDC has the ability to exercise a substantial amount of the sovereign power of eminent domain.

The AGDC is authorized to exercise the power of eminent domain and declaration of taking to acquire land or an interest in land that is necessary for the Projects that is equal to and indistinguishable from the power of eminent domain held by the State. The AGDC does not need to seek the approval of the State or any other State government agency or instrumentality in exercising this power; such power is vested in the AGDC to the same extent that such powers exist in the State. Therefore, the AGDC possesses full and substantial eminent domain power.⁷⁸

3. The AGDC was formed for and serves a proper public purpose and governmental purpose.

a. The purpose for which the AGDC was created, as set out in its enabling legislation, is a public purpose and the AGDC actually serves that purpose.

The AGDC was formed for and actually serves the public purpose of developing and transporting natural gas for the benefit of the people of the State, making the natural gas available to State residents at the lowest rates possible, and otherwise providing financial resources to the State for the benefit of all of its citizens.

The courts and the Service have interpreted the term "public purpose" very broadly. For example, the term includes "conserving, developing, and utilizing [a] Territory's water and energy resources so as to make those resources available to Territory residents."⁷⁹ The term also includes operating a utility, providing for the conservation and preservation of natural resources, and operating a liquor store.⁸⁰

The AGDC's enabling legislation establishes the AGDC as an independent public corporation of the State whose purpose, for the benefit of the State, is to advance the Projects to

⁷⁸ See Rev. Rul. 78-138, 1978-1 C.B. 314.

⁷⁹ See Priv. Ltr. Rul. 201142016 (Oct. 21, 2011).

⁸⁰ See Priv. Ltr. Rul. 201142016 (Oct. 21, 2011); Rev. Rul. 59-373, 1959-2 C.B. 37 (for providing for the conservation of natural resources); Rev. Rul. 71-131, 1971-1 C.B. 28 (for operating a liquor store).

make natural gas, propane, and other hydrocarbons associated with natural gas (other than oil) available to communities in Alaska at the lowest rates possible. In doing so, the AGDC will develop transportation systems to deliver natural gas to much needed areas within the State and it will export LNG to raise revenue for the State and promote economic development in the State.

This purpose fits within the Service's and the courts' broad standard for public purpose because it is very similar to the Service-approved public purpose of "conserving, developing, and utilizing * * * water and energy resources so as to make those resources available to * * * residents."⁸¹ In addition to the purpose of addressing the critical need to make natural gas and other fuels available to communities within the State, the AGDC contemplates selling tolling services, natural gas, and liquefied natural gas to third parties, the revenue from which will flow directly to the State for the benefit of the people of the State. The AGDC's Projects will promote economic development in the State by creating jobs, additional tax and royalty revenues, and healthcare cost savings by allowing residents to use cleaner primary fuel.⁸² Therefore, the AGDC's authorizing legislation comports with the Service's prior rulings addressing the concept of public purpose and the AGDC actually serves a public purpose.⁸³

b. The AGDC operates in a manner that provides a significant public benefit with no more than an incidental benefit to private persons.

The Proposed Regulations add the element that the entity must operate "in a manner that provides a significant public benefit with no more than an incidental benefit to private persons." The Proposed Regulations do not elaborate on what constitutes a "significant public benefit" or "incidental benefit," but the Proposed Regulations cite to a revenue ruling, Rev. Rul. 90-74, 1990-2 C.B. 34, that applies these terms to section 115 of the Code.⁸⁴ Rev. Rul. 90-74 appears to be the first guidance by the Service to apply the "incidental benefit" concept when analyzing entities as section 115 entities. Although the "incidental benefit" standard does not appear in

⁸¹ Id.

⁸² See Priv. Ltr. Rul. 201308010 (Feb. 22, 2013) (an economic development corporation that conducted construction, rehabilitation, and redevelopment activities and which furthered the City's stated goal of increasing employment opportunities, was used for a governmental purpose and performed a governmental function).

⁸³ See e.g., Michigan v. United States, 40 F.3d 817, 819-20 (6th Cir. 1994) (for education); Shamberg, 144 F.2d at 999-1002 (for transportation); Priv. Ltr. Rul. 9122068 (Mar. 6, 1991) (for operating a utility); Rev. Rul. 59-373, 1959-2 C.B. 37 (for the conservation of natural resources); Rev. Rul. 77-164, 1977-1 C.B. 20 (for community development); Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29; Priv. Ltr. Rul. 201142016 (Oct. 21, 2011).

⁸⁴ The "no more than an incidental private benefit" standard that is applied in Rev. Rul. 90-74, 1990-2 C.B. 34 is not contained in section 115 or the regulations promulgated thereunder.

section 115 itself, or in the regulations promulgated thereunder, it generally has been incorporated in section 115 jurisprudence since the release of Rev. Rul. 90-74.

Rev. Rul. 90-74 concerns a separate non-profit organization formed, operated, and funded by the governing bodies of certain counties of a State. The organization was created in order to pool the casualty risks of each county in lieu of purchasing casualty insurance. The Service held that the income of the organization was excludible under section 115 of the Code. The ruling further held, without elaboration, that “similarly, the income of an organization formed, operated and funded” to cover public liability, workers’ compensation, or employees’ health obligations was also excludible under section 115 of the Code because the employees of the participating counties *only received incidental benefits* from the operations of the organization and no private interests participated in or benefitted from the organization. The ruling provided no additional analysis for this conclusion. The basis of determining whether there are more than incidental benefits to private persons in other circumstances for purposes of section 115 remain unclear.

Additional guidance on whether an organization serves a private interest “more than incidentally” exists in the context of 501(c)(3) organizations. For example, a General Counsel’s Memorandum issued in 1987 discusses whether an entity qualifies for section 501(c)(3) status.⁸⁵ The memorandum states, “[a] private benefit is considered incidental only if it is incidental in both a qualitative and a quantitative sense. In order to be incidental in a qualitative sense, the benefit must be a necessary concomitant of the activity which benefits the public at large, i.e., the activity can be accomplished only by benefiting certain private individuals. * * * To be incidental in a quantitative sense, the private benefit must not be substantial after considering the overall public benefit conferred by the activity.”⁸⁶

Rulings and case law with respect to 501(c)(3) entities generally analyze the private benefit concept in several ways: (1) whether the charitable entity serves a broad charitable class;⁸⁷ (2) whether economic benefits flow to persons outside the charitable class (e.g. medical practice plan cases);⁸⁸ (3) whether there is private inurement;⁸⁹ (4) whether there were direct

⁸⁵ See G.C.M. 39,598 (Jan. 23, 1987).

⁸⁶ *Id.*

⁸⁷ See sec. 1.501(c)(3)-1(d)(2)(iii), Ex. 1, Income Tax Regs.; see also Rev. Rul. 75-286, 1975-2 C.B. 210 (an organization whose purpose was to improve one city block that limited its members to residents of that block violated the private benefit prohibition); but see Rev. Rul. 68-14, 1968-1 C.B. 243 (an organization devoted to beautifying an entire city qualified for 501(c)(3) status); see also Priv. Ltr. Rul. 201014068 (Apr. 9, 2010) (mobile home park was not a large enough “community to constitute charitable class).

⁸⁸ See *B.H.W. Anesthesia Foundation, Inc. v. Commissioner*, 72 T.C. 681 (1979), *University of Massachusetts Medical School Group Practice v. Commissioner*, 74 T.C. 1299 (1980), and *University of Maryland Physicians, P.A. v. Commissioner*, T.C. Memo. 1981-23. All of these cases involved “practice plans” where the medical school collected fees from the doctors’ private practice of medicine and then paid a certain portion of those fees back to the doctors as compensation. This was done to provide higher compensation

(Footnote continued on next page)

financial benefits to private entities and individuals (e.g. hospital partnerships with doctors, back-office deals with credit counseling agencies, circular cash in down-payment assistance);⁹⁰ and (5) whether there were indirect non-financial benefits to private entities and individuals.⁹¹

From these rulings and cases, it can be inferred that the private benefit concept balances the benefits to private entities against the benefits to the charitable class, but there is no guidance on how that balancing should be evaluated.

In the context of deciding whether an organization formed under Section 501(c)(3) of the Code was operated exclusively for an exempt purpose, the Service has ruled that an entity may serve a public purpose but nevertheless provide a more than incidental private benefit to a private individual because of the manner in which the entity operated.⁹² The entity was formed to manage and solicit funds for a research project that would demonstrate that marine transportation could be operated reliably and economically while free of fossil fuel. The companies that participated in the project were allowed to retain the patents and licenses that were developed from the research. One of the potential service providers for the entity was a for-profit company that shared the same board member as the entity. The Service ruled that the

levels to the teaching doctors at these medical schools. The Service argued that the “practice plans” constituted nothing more than an organization collecting fees for the doctors. See also Rev. Rul. 76-206, 1976-1 C.B. 154 (foundation supporting classical programming on an individual radio station was not charitable because it gave excessive monetary support to the station); Rev. Rul. 76-152, 1976-1 C.B. 151 (art gallery displaying and selling the work of a limited number of local artists was not charitable because the artists received 90% of the sales proceeds).

⁸⁹ See B.H.W. Anesthesia Foundation v. Commissioner, 72 T.C. 681, 684 n.3 (1979) (the prohibition against “the net earnings of an organization inuring to the benefit of private individuals” and the prohibition against “charitable organizations being operated for the profit or private benefit of its owners or operators” appear to be “substantially identical.”); see also Priv. Ltr. Rul. 201039034 (Oct. 1, 2010) (organization that operated an airport with money loaned from the founder’s business at a higher-than-market interest rate violated the private benefit prohibition).

⁹⁰ See G.C.M. 39,862 (Nov. 22, 1991) (used private benefit analysis to disallow arrangements where hospitals would “spin off” certain outpatient services to a joint venture between the hospital and doctors which gave the doctors a direct economic stake in the “spun off” facility); see also Office of Chief Counsel Memorandum 200431023 at 9 (July 30, 2004) (stating that most modern credit-counseling agencies violated the private benefit doctrine because the agencies’ operations directly benefited the “back-office service providers” with whom the agencies had contractual arrangements to promote debt consolidation loans, credit repair services, buying clubs, downpayment assistance and even dietary supplements); see also Rev. Rul. 2006-27, 2006-21 I.R.B. 915 (cash down-payment assistance grant organization formed to help poor individuals purchase homes in which the seller would make a “donation” to the organization, which in turn would transfer this amount, less fees, to the low-income buyer as downpayment assistance, constituted an impermissible private benefit to the sellers and real estate brokers involved in the transactions).

⁹¹ See American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989) (school that trained individuals to be political campaign professionals where most of the school’s graduates worked for the Republican Party or its related entities violated the private benefit prohibition).

⁹² See Priv. Ltr. Rul. 201128030 (Jul. 15, 2011).

purpose of preserving the natural environment was a proper purpose. But the Service held that ~~even though the entity had sufficient conflicts of interest policies in place, it nevertheless~~ conducted an activity so distinct that it served to benefit the commercial operations of the other companies it contracted with, including the for-profit company that shared a board member with the entity. That is, the research activity that the entity conducted was too indeterminate to provide distinct benefits to the entity's charitable class more so than the benefits it conferred to the companies the entity contracted with. Therefore, the entity provided a more than incidental private benefit to the businesses that participated. Although this ruling does not address the standards for determining whether an entity is a political subdivision, perhaps the ruling is nonetheless instructive because it reflects a context in which a private benefit may be found to be "more than incidental."

The AGDC is not conducting open-ended, indeterminate research where only a few interested parties participate and the activity undertaken may have limited application. Indeed, the AGDC will engage in activities that are to benefit the State and its residents and there is no private participation, except perhaps that which is incidental. No private parties have any meaningful input in the development or manner of development of the Projects. As described above in connection with the pre-FEED effort, the AGDC started a process that involved private interests but that process and those private interests are no longer participating. Since the Original Producers have a significant interest in the gas resource through long-held lease arrangements, a necessary incident to the success of the Projects will include mutual arm's length tolling or other arrangements (including potentially the purchase of the gas by an AGDC affiliate of the gas at the gas field) between the AGDC and the Original Producers. Any benefit realized to the Original Producers, however, is only incidental to the State's purposes of making the gas resources available to its citizens and to enhance State revenues. In addition, the AGDC is participating in a highly capital-intensive industry. A few large companies will participate in the development of the AGDC's Projects, but this is by necessity given the large start-up costs and transaction costs that exist in the development of oil and gas. In contrast to the entity described above where the Service found a more than incidental private benefit to companies it contracted with, the AGDC's Projects have clear economic consequences for the State that will confer real (and not ostensible) benefits for the State's residents, including access to cleaner energy and more jobs.

Moreover, and importantly, the Service has indicated a deference to the sovereignty of political subdivisions in terms of a political subdivision's direct participation in business activity or matter. For example, the Service has concluded that the requirements of section 115 of the Code are not applicable to a political subdivision's direct participation in a business.⁹³ That is, the conduct or participation in a business directly by a political subdivision is treated as analyzed differently than such conduct or participation by a separate entity owned or controlled

⁹³ G.C.M. 14407, C.B. XIV-1, 103 (1935) which has been superceded by Rev. Rul. 71-131, 1971-1 C.B. 28 and Rev. Rul. 71-132, 1971-1 C.B. 29 (both of which make the same point).

by the political subdivision (such as a separate corporation) for which a higher burden is appropriate to determine consequences such as whether the income from such activity is exempt from federal tax. In other words, the approach of General Counsel's Memorandum 14407 is based on the notion that Congress did not intend to restrict or impact a State or political subdivision's direct participation in activities that the State or political subdivision concludes are in it and its citizens' best interest.

"It is suggested that Congress, in not taxing the income of States, may well have been motivated by a desire not to limit the activities in which States might otherwise engage. The line between those revenue-producing activities of a State which are 'governmental' and those which are 'proprietary' is one which is in its nature difficult to draw * * *."⁹⁴

Rev. Rul. 77-261 stated it this way:

"It was pointed out that it may be assumed that Congress did not desire in any way to restrict a State's participation in enterprises that might be useful in carrying out those projects desirable from the standpoint of the State government which, on a broad consideration of the question, may be the function of the sovereign to conduct."⁹⁵

Accordingly, in the context of a political subdivision and the requirements thereof, the concept of "no more than an incidental benefit" must either (i) have no application or (ii) be applied in a manner that is substantially less stringent than its application in the context of section 115 entities. Otherwise, the sovereign determinations of a State or political subdivision are at great risk of being compromised or undermined. Rather, Congress intended that states and political subdivisions be allowed to participate in enterprises that might be useful in carrying out projects that are desirable to them and which are "within the ambit of a sovereign to properly conduct."⁹⁶

Here, the AGDC's powers include the provision of affordable natural gas for use by the citizens of the State. In order to effectuate this power, the AGDC will facilitate the development of natural gas located in the State, create jobs and commerce within the State, and raise revenue to serve the general needs of the State, its municipalities, and its citizens. Upon termination of the AGDC, its rights and property shall pass to the State. Although private entities will or may derive a business benefit from the Projects, including by buying for resale natural gas that is in excess of the needs of communities in the State and that is liquefied for

⁹⁴ See G.C.M. 14407 at 106.

⁹⁵ Rev. Rul. 77-261, 1977-2 C.B. 45.

⁹⁶ See Rev. Rul. 77-261, 1977-2 C.B. 45; see also Priv. Ltr. Rul. 201528010 (Jul. 10, 2015); Priv. Ltr. Rul. 201442037 (Oct. 17, 2014); Priv. Ltr. Rul. 201441003 (Oct. 10, 2014); Priv. Ltr. Rul. 201346006 (Nov. 22, 2013); Priv. Ltr. Rul. 200637031 (Sep. 15, 2006).

transport, all such sales will be at arm's length.⁹⁷ The benefit that these private entities will ~~derive will be no different to that which private entities derive when they participate in public~~ works projects such as ports, hydroelectric dams, airports, etc.⁹⁸ Thus, for example, a city is no less of a political subdivision because it operates an airport in which private air carriers operate and derive a benefit. Indeed, it should be the case that, for example, a city-owned airport with a number of air carriers is no different as it respects political subdivision status as a city-owned airport with one air carrier. In either case, the city's purpose is to provide air transportation to its residents.

Any benefit to private entities is only incidental to the State's objectives of providing affordable natural gas to communities within the State and enhancing revenues of the State for the benefit of its citizens. Moreover, private entities that the AGDC contracts with are necessary, but incidental, to the success of the Projects in that the AGDC needs to develop arrangements such that the now stranded gas in the North Slope is available to be transported through the pipeline for the benefit of the State.

Finally, since all of the revenues of the Projects will be used to benefit the State and its citizens, any benefits derived by private parties will be in furtherance of the State's goals of creating jobs and commerce within the State and raising revenue to serve the general needs of the State, its municipalities, and its citizens. That is, any benefits that private parties receive from the Projects will be secondary or "incidental" to the State's objectives. Therefore, the AGDC will meet the "public purpose" and "governmental purpose" requirement under the Proposed Regulations.

4. The AGDC is governmentally controlled by the State.

The Proposed Regulations provide that a political subdivision must be "governmentally controlled," defined as: (1) the ongoing rights or powers to direct significant actions of the entity; and (2) generally vested in either a general purpose state or local governmental unit or in an electorate established under an applicable state or local law or general application.

In order to be "governmentally controlled" by a general purpose state or local governmental unit, the general purpose governmental unit should have ongoing rights or powers

⁹⁷ See Priv. Ltr. Rul. 201509001 (Feb. 27, 2015) (concluding that reasonable payment to private entities as providers of goods and services was not a private benefit that was more than incidental).

⁹⁸ See Rev. Rul. 80-339, 1980-2 C.B. 42 (political subdivision issued bonds to construct terminals and related facilities for several commercial airlines); Rev. Rul. 74-207, 1974-1 (political subdivision issued bonds to construct and operate water pollution control facilities for use by an industrial corporation); Rev. Rul. 77-233, 1977-2 C.B. 30 (political subdivision issued bonds to finance the construction of a drydock to be leased to a non-exempt corporation).

to: (1) approve and remove a majority of the governing board of the entity or (2) approve or direct significant uses of funds or assets of the entity.⁹⁹

Here, all persons serving on the AGDC's Board are appointed by the Governor and confirmed by the State legislature,¹⁰⁰ a "general purpose governmental unit" in the utmost sense. Furthermore, the Governor can remove the majority of the Board at his discretion. Therefore, the AGDC should meet the Proposed Regulations' requirement for governmental control that a general governmental unit be empowered to approve and remove a majority of the board of the entity.

The AGDC also meets the requirement of the Proposed Regulations for governmental control that a general purpose government be empowered to approve or direct significant uses of the funds or assets of the entity because the AGDC and its subsidiaries are required to annually submit a proposed operating budget subject to approval by the State legislature and may expend funds only as approved and appropriated in such annual operating budget. As a result, the State legislature must approve all of the uses of the AGDC's funds or assets.

Therefore, the AGDC is "governmentally controlled" as defined by the Proposed Regulations.

E. CONCLUSION

For the reasons set forth above, we respectfully request that the Service issue a letter ruling that the AGDC is a political subdivision of the State under the Proposed Regulations, the income of which is exempt from federal income tax.

F. PROCEDURAL MATTERS

1. Applicable District Office

The district having audit jurisdiction over the AGDC is the Pacific Northwest District.

2. Revenue Procedure 96-16 Statement

a. Acknowledgement of a Request for a Nonreviewable Ruling. See Exhibit I.

⁹⁹ See sec. 1.103-1(c)(4), Proposed Income Tax Regs., 81 Fed. Reg. 8873 (Feb. 23, 2016).

¹⁰⁰ Except that the two State department heads that are appointed by the Governor of the State need not be confirmed by the State legislature.

3. Revenue Procedure 2017-1 Statements

a. Current and Previous Examinations, Litigation, and Administrative Matters. To the best of the knowledge of both the AGDC and the AGDC's representative, the same issue is not addressed in any return of the AGDC, a related taxpayer within the meaning of § 267, or of a member of an affiliated group of which the AGDC is also a member within the meaning of § 1504, or any predecessor that:

(i) is currently under examination, before Appeals, or before a Federal court;

(ii) was previously under examination, before Appeals, or before a Federal court;

(iii) in qualified retirement plan matters, is being considered by the Pension Benefit Guaranty Corporation or the Department of Labor; or

(iv) in health care matters, is being considered by the Department of Labor or the Department of Health and Human Services.

b. Identical or Similar Issues. To the best of the knowledge of the AGDC and the AGDC's representatives:

(i) the Service has not previously ruled on the same or a similar issue for the AGDC, a related taxpayer within the meaning of § 267, or a member of an affiliated group of which the AGDC is also a member within the meaning of § 1504, or a predecessor.

(ii) the AGDC, a related taxpayer, a predecessor, or any of their representatives has not previously submitted a request (including an application for change in method of accounting) involving the same or a similar issue but no letter ruling or determination letter was issued;

(iii) the AGDC, a related taxpayer, or a predecessor has not previously submitted a request (including an application for change in method of accounting) involving the same or a similar issue that is currently pending with the Service;

(iv) at the same time as this request, the AGDC or a related taxpayer is not presently submitting another request (including an application for change in method of accounting) involving the same or a similar issue; or

(v) the AGDC or a related taxpayer did not have or schedule, a pre-submission conference involving the same or a similar issue.

c. Certainty of the Law. The law in connection with the request is relatively certain and has been adequately addressed by relevant authorities.

d. **Contrary Authorities.** Beyond the authorities discussed in this request, the AGDC and the AGDC's representatives are not aware of authorities contrary to the positions advocated herein.

e. **Pending Legislation.** The State is considering legislation that may affect the facts of this ruling request.¹⁰¹ Specifically, the State legislature is considering offering individuals the opportunity to participate as a co-owner in the LNG Project. The pending legislation is attached to this letter ruling request as Exhibit G.

f. **Request for a Conference.** The AGDC respectfully requests a conference at the National Office to discuss the issues involved in this letter ruling request.

g. **Facsimile Transmission.** When a letter ruling is prepared, the AGDC requests that an advance copy of the letter ruling be sent by facsimile transmission to Travis C. Gibbs; the fax number is (866) 599-4729. We agree to waive any disclosure violations resulting from the facsimile transmission.

4. **Administrative**

a. **User Fee.** The required user fee of \$28,300.00 is enclosed. However, the AGDC believes that a reduced user fee of \$2,200 applies because the ruling request involves a tax issue from a domestic corporation with gross income of less than \$250,000. See Rev. Proc. 2017-1, Appendix A, paragraphs (A)(4)(a) and (B)(5)(b)(1). The AGDC's gross income, as defined under paragraph (B)(5) of Appendix A is less than \$250,000 as reported on its last federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed. Therefore, the AGDC intends to request a refund of the excess user fee.

b. **Power of Attorney.** An Internal Revenue Service Form 2848, Power of Attorney and Declaration of Representative, has been completed with respect to the AGDC and said form is enclosed as Exhibit B.

¹⁰¹ See Footnote 15. S.B. 35, 30th Leg., 1st Reg. Sess. (Ak. 2017). See Exhibit G.

Internal Revenue Service
Associate Chief Counsel (Financial Institutions and Products)
March 9, 2017
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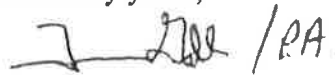
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5. Additional Information

If you have any questions or need further information in order for you to rule as requested, please contact Travis C. Gibbs at (415) 984-8336 or Praveen Ayyagari at (202) 585-8025.

Sincerely yours,

Handwritten signature of Travis C. Gibbs, followed by the initials "PA".

Travis C. Gibbs, of Nixon Peabody LLP