Internal Revenue Service

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Person To Contact:
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Date:
July 18, 2017

LEGEND:

Corporation =

State =

Date 1 =

Producers =

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Dear :

This responds to Corporation's request for a ruling that it is a political subdivision of State under section 1.103-1(c) of the Proposed Income Tax Regulations (as defined below) and does not have to file a federal tax return.

Facts and Representations

Corporation makes the following representations. Corporation was established by State on Date 1 as an independent public corporation and government instrumentality of State. The mission of Corporation is to provide State with long-term energy solutions and to maximize the value of natural gas located in State to make the benefit of those resources (including associated revenues) available to all State residents.

To carry out its mission, Corporation is authorized to develop (1) a pipeline and related infrastructure to process and transport natural gas to various communities in-state (the "Pipeline Project"), and (2) a larger capacity pipeline with related infrastructure to process, transport, and liquefy natural gas and to ship excess liquefied natural gas

("LNG") out-of-state (the "LNG Project"). The Pipeline Project and the LNG Project are referred to collectively as the "Projects." Corporation intends to pursue whichever of the Projects is most economically feasible, but not both. In addition, Corporation is authorized to develop other transportation mechanisms to deliver natural gas in-state for the maximum benefit of all of the people of State.

The assets of the selected Project will be owned by Corporation or one of its subsidiaries. Most of the natural gas transported and liquefied by the selected Project will be owned by, or acquired from, private entities that are for-profit oil and gas producers that have purchased lease rights from State to develop natural gas located in State (the "Producers"). The Producers are expected to own at least a percent of the natural gas that is to be monetized through the selected Project.

Corporation, through its subsidiaries, may enter into arm's-length contracts with private entities, including the Producers, for the sale of natural gas or LNG. Corporation, through its subsidiaries, may also enter into arm's-length tolling arrangements with private entities, including the Producers, for the sale of services (mainly, transportation through the constructed pipeline, processing, liquefaction, and storage). Corporation will solicit long-term contractual commitments from potential customers in order to ensure adequate financing for the selected Project. Revenue associated with the Projects, to the extent earned by Corporation and its subsidiaries, will be used to provide economic benefits and revenues to State and all of its residents.

Corporation is governed by a board of directors (the "Board") consisting of seven members: five public members; and two members that are heads of principal departments of State. The public members are appointed by the governor of State (the "Governor") and are subject to confirmation by the State legislature. Public members of the Board serve staggered five-year terms and can be removed at any time by the Governor. Vacancies on the Board are subject to confirmation by the State legislature. Corporation and its subsidiaries are required to annually submit a proposed operating budget to State for inclusion in the Governor's annual operating budget.

Corporation is authorized under State law to initiate eminent domain actions, in its own name, to acquire property in State. This power is equal to, and indistinguishable, from the power of eminent domain held by State.

Upon dissolution of Corporation, all of its rights and property pass to State.

Corporation chooses to apply the proposed regulations under section 1.103-1 published on February 23, 2016 (the "Proposed Regulations"), as permitted by the notice of proposed rulemaking. 81 FR 8870

Law and Analysis

The Internal Revenue Code does not define the term "political subdivision." Section 1.103-1(b) of the Income Tax Regulations provides that the term "political subdivision" denotes any division of any state or local governmental unit that is a municipal corporation or that has been delegated the right to exercise part of the sovereign power of the unit. As thus defined, a political subdivision of any state or local governmental unit may or may not, for purposes of section 1.103-1(b), include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of these units.

Section 1.103-1(c)(1) of the Proposed Regulations provides in part that the term political subdivision means an entity that meets each of the requirements of paragraphs (c)(2) (sovereign powers), (c)(3) (governmental purpose), and (c)(4) (governmental control) of such section, taking into account all of the facts and circumstances. Entities that may qualify as political subdivisions include, among others, general purpose governmental entities, such as cities and counties (whether or not incorporated as municipal corporations), and special purpose governmental entities, such as special assessment districts that provide for roads, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvements, and other governmental purposes for a State or local governmental unit.

Section 1.103-1(c)(2) of the Proposed Regulations provides that an entity meets the "sovereign powers" requirement if pursuant to a State or local law of general application, the entity has a delegated right to exercise a substantial amount of at least one of the following recognized sovereign powers of a State or local governmental unit: the power of taxation, the power of eminent domain, and police power.

Section 1.103-1(c)(3) of the Proposed Regulations provides that the determination of whether an entity serves a governmental purpose is based on, among other things, whether the entity carries out the public purposes that are set forth in the entity's enabling legislation and whether the entity operates in a manner that provides a significant public benefit with no more than incidental private benefit.

Section 1.103-1(c)(4) of the Proposed Regulations provides that the entity meets the requirement for governmental control if a State or local governmental unit exercises control over the entity.

Section 1.103-1(c)(4)(i) of the Proposed Regulations provides that for this purpose, control means an ongoing right or power to direct significant actions of the entity. Rights or powers may establish control either individually or in the aggregate. Among rights or powers that may establish control, an ongoing ability to exercise one or more of the following significant rights or powers, on a discretionary and non-ministerial basis, constitutes control: the right or power both to approve and to remove a majority of the governing body of the entity; the right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; or the right or power to

approve or direct the significant uses of funds or assets of the entity in advance of that use. Procedures designed to ensure the integrity of the entity but not to direct significant actions of the entity are insufficient to constitute control of an entity. Examples of such procedures include requirements for submission of audited financial statements of the entity to a higher level State or local governmental unit, open meeting requirements, and conflicts of interest limitations.

Section 1.103-1(c)(4)(ii) of the Proposed Regulations provides in part that control may be vested in a State or local governmental unit possessing a substantial amount of each of the sovereign powers and acting through its governing body or through its duly authorized elected or appointed officials in their official capacities.

Section 6012(a)(2) of the Code and section 1.6012-2(a)(1) of the Income Tax Regulations provide that every corporation subject to taxation under Subtitle A is required to file an income tax return regardless of whether it has taxable income or regardless of its gross income. However, the filing requirement of section 6012(a)(2) does not apply to states or their political subdivisions, with respect to activities conducted directly by them. See Rev. Rul. 78-316, 1978-2 C.B. 304, clarifying Rev. Rul. 77-261, 1977-2 C.B. 45.

Our consideration of the Proposed Regulations, as they apply to the facts of this case, leads us to conclude that Corporation is a political subdivision for purposes of Section 1.103-1(c) of the Proposed Regulations. Corporation was created pursuant to State legislation and is controlled by State. Of Corporation's seven Board members, two are heads of departments of State and five are appointed, and can be removed, by the Governor of State. Corporation is also required to submit annually to State a financial statement and complete report of its business activities. Upon dissolution of Corporation all remaining assets of Corporation will pass to State.

Under State law, Corporation is granted powers of eminent domain to carry out authorized purposes. Corporation may initiate eminent domain actions in its own name without limitation.

Corporation's purpose of providing State with long-term energy solutions and maximizing the value of natural gas located in State to make the benefit of those resources (including associated revenues) available to all State residents is a governmental purpose. So long as Corporation's contracts and transactions with private entities are arm's-length, any private involvement in and benefit from the Projects, including any involvement of, or benefit derived by, private entities, including the Producers, is only incidental to Corporation's public purpose.

Conclusion

Under the facts and circumstances of this case and based on the representations made by Corporation, we conclude that Corporation qualifies as a political subdivision under

Section 1.103-1(c) of the Proposed Regulations. As a political subdivision, Corporation is not required to file a federal tax return.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

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

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to each of Corporation's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by Corporation and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions & Products)

By: /S/
Timothy L. Jones
Senior Counsel, Branch 5