08/25/16
NEW CONCEPT PLAN FOR STATE-LED ALASKA LNG PIPELINE

<TARGET><BILL></BILL><SUBJECT>08-25-16 NEW CONCEPT PLAN FOR STATE-LED ALASKA LNG PIPELINE</SUBJECT><COMM>SRES29</COMM></TARGET>

PETER B. BRAUTIGAM
SANDON M. FISHER
RYAN W. FITZPATRICK
COLE M. LINDEMANN
ROBERT L. MANLEY
CHARLES F. SCHUETZE

OF COUNSEL
F. STEVEN MAHONEY

MANLEY & BRAUTIGAM

ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

Via E-mail

August 24, 2016

Legislative Budget & Audit Committee
Alaska State Legislature
State Capitol, Room 514
Juneau, Alaska 99801

Re: Federal Income Tax Issues Raised by the AGDC – AKLNG Concept Document and the Heads of Agreement Regarding the Company Contemplated by the Project Documents to Be Formed by the Alaska Gasline Development Corporation

Our File No. 12463-02

Ladies and Gentlemen:

In a contract dated August 24, 2016, the Legislative Budget & Audit Committee of the Alaska State Legislature (the "Committee") has requested that Manley & Brautigam P.C. provide advice to the Committee concerning Federal income tax issues raised by the July 2016 AGDC – AK LNG Concept Document (the "Concept Document") and the January 14, 2014 Heads of Agreement (altogether, the "Project Documents"). This letter addresses certain federal income tax issues raised by the contemplated organization by the Alaska Gasline Development Corporation ("AGDC") of a company that would own, commercialize, finance, design, build and operate a gas treatment plant on the North Slope of Alaska with gas transmission lines from producing units, an approximately 800 mile long gas pipeline, and a liquefaction plant and marine terminal located near Nikiski, Alaska (the "Project").

This letter is issued in conjunction with a separate contract between the Committee and Jermain, Dunnagan & Owens, P.C. regarding tax-exempt financing issues raised by the Project Documents.

I. AGDC and its Enabling Legislation.

The purpose of the Project, as contemplated by AS 31.25.005, includes developing natural gas pipelines, to deliver natural gas in-state for the maximum benefit of the people of Alaska, to provide economic benefits and revenue to the State, and to maximize royalty and tax revenues from Alaska natural gas.

The State's interest in the Project would be held, directly or indirectly, by AGDC,

> a public corporation and government instrumentality acting in the best interest of the state for the purposes required by AS 31.25.005, located for administrative purposes in the Department of Commerce, Community, and Economic Development, but having a legal existence independent of and separate from the state.

AS 31.25.010.

AGDC is governed by a board of directors consisting of five public members, appointed by, and serving at the pleasure of, the governor and subject to confirmation by the legislature and two individuals designated by the governor that are each the head of a principal department of the State (other than the commissioner of natural resources and the commissioner of revenue). AS 31.25.020. The AGDC board may appoint a program director for the Project and shall appoint an executive director for AGDC. AS 31.25.040(d) and 31.25.045. The personnel of AGDC are exempt from AS 39.25, the State Personnel Act. AS 31.25.065.

AGDC has been granted the power of eminent domain, exercisable by filing a declaration of taking under AS 09.55.240 - 09.55.460, to acquire land or an interest in land that is necessary for the Project; the exercise of powers by AGDC may not exceed the permissible exercise of the powers by the State. AS 31.25.080(a)(4).

The board of AGDC has been granted the power to "adopt regulations to carry out the purposes of [AS 31.25]"). AS 31.25.130(c). AGDC is generally required to post proposed regulations for public comment at least 15 days prior to adoption. AS 31.25.130(d). Regulations adopted by AGDC's board shall be made available to members of the public and to the chair of the Administrative Regulation Review Committee under AS 24.20.400-24.20.460. AS 31.25.130(a).

AGDC has been given access by statute to the information of departments, agencies, and public corporations of the State that is directly related to the planning, financing, development, acquisition, maintenance, construction, or operation of the Project. All departments, agencies, and public corporations of the State are required to cooperate

with, and provide information, services, and facilities to AGDC, and are generally required to give priority to processing authorization applications and other requests of AGDC. Further, the Department of Natural Resources is generally required to grant AGDC a right-of-way lease under AS 38.35 for the Project's gas pipeline transportation corridor at no appraisal or rental cost. AS 31.25.090.

Alaska Statutes 31.25.110 authorizes a Project fund, established in AGDC and consisting of money appropriated to it. AGDC would be responsible for fund management, but may contract with the Department of Revenue for fund management. If money were appropriated to the fund to finance the cost of the Project, AGDC would create an account in the fund for that purpose and hold the money appropriated for that purpose in that account. AGDC may use money appropriated to the fund without further appropriation for the purpose of managing the fund, for purposes related to the Project, and for purposes of transferring net revenue received by AGDC related to equity interest, contracts, and other activities to an appropriate fund as determined by the commissioner of revenue in consultation with the commissioner of natural resources.

II. Analyzing the Tax Status of AGDC Itself.

A. The Case for AGDC Qualifying as a Political Subdivision of the State of Alaska.

If AGDC qualifies as a political subdivision of the State of Alaska for tax purposes, its income would not be subject to federal taxation, under the doctrine of implied statutory immunity.

> Income earned by a state, a political subdivision of a state, . . . is generally not taxable in the absence of specific statutory authorization for taxing such income.

Rev. Rul. 87-2 (emphasis added).

The income of states and their political subdivisions is exempt from federal taxation because, with one exception,[1] the Internal Revenue Code does not expressly impose a tax on them. States and their political subdivisions are protected by implied statutory immunity, implied from the failure of the Internal Revenue Code to either expressly subject them to,

[1] Namely, IRC § 511(a)(2)(B) imposes the unrelated business income tax on state colleges and universities.

or exempt them from, federal income taxation.[2] *E.g.*, Rev. Rul. 87-2; *Estate of Alexander J. Shamberg*, 3 T.C. 131, 146 (1944), *acq.*, 1945 C.B. 6, *aff'd*, 144 F.2d 998 (2d Cir. 1944), 1945 C.B. 335, *cert. denied*, 323 U.S. 792 (1944).

A political subdivision is a division of the state which has been delegated the right to exercise part of the powers of a sovereign. *Id.* Sovereign powers include the power to tax, the power of eminent domain, and the police power. Rev. Rul. 77-164; *Estate of Shamberg*.

The first case to analyze the sovereign powers that a state or local subdivision must have to establish implied statutory immunity from federal taxation was the *Estate of Shamberg*, which concerned the Port of New York Authority ("Port Authority"). *Estate of Shamberg* is particularly relevant, as the structure of the Port Authority resembles in key respects the structure of AGDC. Specifically, the Port Authority was

> endowed with the power of eminent domain, and with certain police powers, including the promulgation and enforcement of regulations for the conduct of navigation and commerce in the area defined as the Port of New York District.

Estate of Shamberg, 3 T.C. at 143.

AGDC likewise has the same two of the three sovereign powers, namely the power of eminent domain and certain police powers. First, AS 31.25.080(a)(4) provides that AGDC has the power of eminent domain. Second, AGDC has significant police powers–AS 31.25.130(c) provides that the board of AGDC "may adopt regulations to carry out the purposes of [AS 31.25]").

AGDC's power under AS 31.25.130(c) to "adopt regulations to carry out the purposes of [AS 31.25]" is an example of a police power, one of the sovereign powers that can qualify AGDC as a political subdivision (and correspondingly exempt it from taxation). The police power

> embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations

---

[2] Implied statutory immunity is different from the constitutional doctrine of intergovernmental tax immunity, which formerly provided substantial protection to states and their political subdivisions from federal taxation. However, the Supreme Court of the United States has in recent decades held that states and their political subdivisions have no broad constitutional protection from federal taxation. *E.g.*, *New York v. United States*, 326 U.S. 572 (1946), and *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985).

> designed to promote the public health, the public morals or the public safety.

Philadelphia Nat'l Bank v. U.S., 666 F.2d 834, 840 (3d Cir. 1981), *cert. denied*, 457 U.S. 1105, 73 L. Ed. 2d 1314, 102 S. Ct. 2904 (1982) (quoting *Chicago, Burlington & Quincy Ry. Co. v. Illinois ex rel Drainage Comm'rs*, 200 U.S. 561, 592 (1906)).

Estate of Shamberg found that the Port Authority's police powers included "the promulgation and enforcement of regulations for the conduct of navigation and commerce in the area defined as the Port of New York District." As discussed above, AS 31.25.130(c) authorizes AGDC to "adopt regulations to carry out the purposes of [AS 31.25]" Further, AS 31.25 authorizes AGDC to build and own an interest in feeder and transmission natural gas pipelines, and a related LNG plant and marine terminal. In sum, the regulatory power under AS 31.25.130(c) is similar to the regulatory power held by the Port Authority at issue in *Estate of Shamberg*.

All three sovereign powers need not be delegated for AGDC to qualify as a political subdivision for purposes of § 103. Rev. Rul. 77-164, citing *Estate of Shamberg*, states that:

> Three generally acknowledged sovereign powers of states are the power to tax, the power of eminent domain, and the police power . . . . It is not necessary that all three of these powers be delegated. However, possession of only an insubstantial amount of any or all sovereign powers is not sufficient."

(Emphasis added.)

IRS private letter rulings routinely grant political subdivision status to entities that have only one of the three sovereign powers, such as a library district with the power of taxation, a school district with the power of eminent domain, or a health care authority with the power of eminent domain. Ellen P. Aprill, The Integral, the Essential, and the Instrumental: Federal Income Tax Treatment of Governmental Affiliates, *23 Iowa J. Corp. L. 803, 808-9 (1998)*.

If AGDC intends to qualify for federal tax exemption under implied statutory immunity, it is essential that AGDC retain substantial police (i.e., regulatory) powers under AS 31.25.130(c), in addition to the power of eminent domain. General Counsel Memorandum 37,771 noted that:

> Whatever doubt exists as to exactly what constitutes the minimum amount of required "sovereign power" this Office is unprepared to concede that the possession of only one sovereign power is sufficient. We arrive at this conclusion after considering that the enumerated sovereign powers (taxation,

> eminent domain, police) can exist in an entity in only a minor degree and recognizing that all the facts and circumstances must be taken into consideration, including the public purposes of the entity and control of the entity by a government.

(Citing *Gen. Couns. Mem. 36,994*, at 7-8.]

Revenue Ruling 73-563 held that a rapid transit authority qualified as a political subdivision under Treas. Reg. 1.103-1 for purposes of issuing tax-exempt bonds because the authority, in part because it had the police power to set rates, determine routes, and enforce its regulations by maintaining a security force, but also because the state legislature empowered participating state governing bodies to levy retail and use taxes to fund the authority and authorized them to exercise the power of eminent domain on behalf of the authority.

Further, AS 31.25.090(a) provides AGDC with access to information of State departments, agencies, and public corporations directly related to the planning, financing, development, acquisition, maintenance, construction, or operation of the Project. All State departments, agencies, and public corporations are required by AS 31.25.090(a) to cooperate with, and provide information, services, and facilities to AGDC, and are generally required to give priority to processing authorization applications and other requests of AGDC. Finally, AS 31.25.090(d) generally requires the Department of Natural Resources to grant AGDC a right-of-way lease under AS 38.35 for the Project's gas pipeline transportation corridor at no appraisal or rental cost.

There is language in AS 31.25 that suggests that AGDC is not a political subdivision of the State. First, AS 31.25.240 states that obligations issued under AS 31.25 are not debts of "the state or of a political subdivision of the state,"[3] implying that AGDC is not a political subdivision. Second, AS 31.25.010 states that AGDC is an instrumentality of the State. As discussed below in the section on instrumentalities, an "instrumentality" for federal tax purposes is by definition something other than a state or a political subdivision of the state. In order to qualify for tax exemption under implied statutory immunity, AGDC will need to prove that it is, in fact, a political subdivision of the State regardless of the language in AS 31.25.010, and is not an instrumentality for federal tax purposes. Specifically, AS 31.25.010 provides that AGDC is

> a public corporation and government instrumentality acting in the best interest of the state for the purposes required by AS 31.25.005, located for

---

[3] Note that AS 31.25.240 does not say that obligations issued under AS 31.25 are not debts of "the state or of another political subdivision of the state," etc.

> administrative purposes in the Department of Commerce, Community and Economic Development, but having a legal and existence independent of and separate from the state.

AS 31.25.010.

Treasury Regulation § 301.7701-1(a)(3) provides that an entity that is separate from a state or political subdivision "is not always recognized as a separate entity for federal tax purposes."[4] For instance, the Second Circuit held in *Estate of Shamberg* that the Port Authority of New York qualified as a political subdivision, even though the Port Authority's authorizing statutes provided, similar to AS 31.25.010 describing AGDC as a "public corporation and instrumentality," that the Port Authority is

> a body politic and corporate[5] created by a compact made between the States of New York, [**5] Laws N.Y. 1921, c. 154, and New Jersey on April 30, 1921, N.J.S.A. 32:1-1 et seq., and approved by Congress on August 23, 1921, 42 Stat. 174.

Estate of Shamberg at 1000 (emphasis added). See also Rev. Rul. 70-562 (finding that a county board of education, described as an instrumentality of the state, qualified as a political subdivision–an acceptable charitable donee under § 170(b)(1)(A)).

More recently, the Service ruled in PLR 201142016 that: (1) a public utility (described as the Authority), analogous to AGDC, qualified as a political subdivision of the Territory and, as such, was not subject to federal income taxation; and (2) the income derived from the operations of the limited liability companies owned by the Authority (created to develop, finance, construct, and operate industrial projects and other infrastructure directly related to maximizing the Authority's electric infrastructure) was excluded from gross income pursuant to § 115(2) of the Internal Revenue Code (based upon representations that private interests neither materially participated in nor benefitted more than incidentally from the operations of the Authority.

---

[4] Adding, by way of example, that "an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State."

[5] AGDC is similarly described as a "body corporate and public" in AS 31.25.260(b), dealing with the tax exempt status of its bonds. Note that PLR 8934052, which failed to cite Treas. Regs. § 301.7701-1 & -2, found that a community arts council was "not an integral part of a political subdivision because it is a separate entity created under a State statute that makes it a separate body "corporate and politic." But see PLR 9822011, which cited the regulation, found the corporation organized by the state as a "body politic and corporate" was an integral part of the state.

> When a state or political subdivision conducts an enterprise through a separate entity . . . the income of the entity may be exempt or excluded from income under a specific provision such as section 501 and section 115.

The rules governing tax exemption under § 115 are discussed further below.

For ruling purposes, to determine whether AGDC qualifies as a political subdivision of the State, and under implied statutory immunity is not subject to federal income taxation, the IRS has in recent years begun to apply the Treasury regulations interpreting § 103 of the Internal Revenue Code. Rev. Rul 77-164; see also PLR 201142016. Under Treas. Reg. § 1.103-1(b), a "political subdivision" refers to "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."

On February 23, 2016, the IRS issued Proposed Regulations on the definition of political subdivision for purposes of whether bonds are exempt from federal taxation under §103. In doing so, the IRS advances an interpretation of what it means to be a political subdivision that goes beyond the well-settled law reflected in the holding of the *Estate of Shamberg*. Namely, the proposed regulations, if they become final, add a new subsection (c) to Treas. Reg. § 1.103–1, providing that an entity can only be considered a political subdivision for purposes of issuing tax-exempt bonds under § 103 if the entity: (a) has one or more sovereign powers, as required by the holding of the *Estate of Shamberg*, and (b) has a governmental purpose, and (c) is governmentally controlled.

Under Prop. Treas. Reg. § 1.103-1(c), if it becomes a final regulation, to qualify as a political subdivision for purposes § 103, an entity would need to serve a governmental purpose, which requires a showing that it: (1) carries out the public purposes set forth in the entity's enabling legislation, (2) operates in a manner that provides a significant public benefit and (3) provides no more than an incidental private benefit.

Alaska Statutes 31.25.260(a) states the public purposes of AGDC, namely that the entity shall exercise its powers for the benefit of the people of the State of Alaska, for their well-being and prosperity, and for the improvement of their social and economic conditions. Further, AS 31.25.260(b) states that obligations of AGDC would be issued "for an essential public and governmental purpose." As discussed further below, there is an issue as to whether AGDC's involvement in the Project might provide more than an incidental private benefit.

Under Prop. Treas. Reg. § 1.103-1(c), if it becomes a final regulation, to qualify as a political subdivision for purposes § 103, a state or local governmental unit must exercise control over the entity. Control is defined in Prop. Treas. Reg. § 1.103-1(c)(4)(I) as meaning an ongoing right or power to direct significant actions of the entity, including the

right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency.

The governing body provisions of AS 31.25.020 appear to satisfy Prop. Treas. Reg. § 1.103-1(c)'s definition of control. The statute provides that the Governor designates or appoints five public members, and two individuals who each are a head of a principal department of the state, and, in the case of the public members, subject to confirmation by the legislature.

As discussed further below, Prop. Treas. Reg. § 1.103-1(c) seems to represent the Treasury's attempt to extend its informal ruling position for private letter rulings under § 103, the Code section authorizing the issuance of tax-exempt bonds by states and their subdivisions, to areas beyond the actual scope of § 103.

If AGDC intends to rely on implied statutory immunity as a political subdivision of the State to establish its claim to exemption from federal income taxation, AGDC is strongly recommended to secure a private letter ruling confirming that AGDC qualifies for tax exemption under implied statutory immunity.[6]

B. The Case for AGDC being an Integral Part of the State.

If AGDC did not qualify, or if the IRS were not willing to issue a private letter ruling confirming that AGDC qualifies, for tax exemption under implied statutory immunity as a political subdivision of the State, the question would then be whether AGDC qualifies for tax exemption as an integral part of the State or a political subdivision of the State.

Alaska Statutes 31.25.010 provides that AGDC is a:

> public corporation and government instrumentality acting in the best interest of the state for the purposes required by AS 31.25.005, located for administrative purposes in the Department of Commerce, Community, and Economic Development, but having a legal existence independent of and separate from the state.

(Emphasis added.)

---

[6] Any private letter ruling issued by the Serviced is premised on the accuracy of the representations made in seeking the private letter ruling. For instance, to establish that an entity serves a governmental purpose, Prop. Treas. Reg. § 1.103-1(c)(3) requires that the entity in fact carries out the public purposes that are set forth in the entity's enabling legislation and that the entity in fact operates in a manner that provides a significant public benefit with no more than incidental private benefit. These requirements make clear that the effectiveness of a private letter ruling depends on the actual operations of the organization that owns, develops and operates the Project being consistent with the representations made in seeking the private letter ruling.

Alaska Statutes 31.25.260(b) further provides that all obligations issued under AS 31.25, namely by AGDC, are declared to be issued by a:

> body corporate and public of the state and for an essential public and governmental purpose, . . .

(Emphasis added.)

This corporate separation raises the issue whether AGDC would be treated as a taxable corporation under federal law, separate from the State of Alaska, which is not subject to federal taxation. A corporation is generally treated as separate from its shareholders for tax purposes. *Moline Props., Inc. v. Comm'r*, 319 U.S. 436, 438-439 (1943).

Whether AGDC qualifies as an integral part of the State turns on whether its corporate status would prevent AGDC from being treated as an integral part of the State for tax purposes.

> Over the years, the IRS has extended the income tax exemption it provides to states and political subdivisions to entities it regards as their "integral parts." See Rev. Rul. 87-2, 1987-1 C.B. 18; *see also* Treas. Reg. § 301.7701-1(a)(3).

IRS Announcement 2011-78, n. 24, 2011-51 I.R.B. 874 (12/19/2011) (emphasis added).

Revenue Ruling 87-2 provides that:

> Income earned by . . . an integral part of a state or political subdivision of a state is generally not taxable in the absence of specific statutory authorization for taxing such income.

(Emphasis added).

In other words, even if AGDC failed to have any sovereign power qualifying it as a political subdivision of the State, AGDC could still be exempt from federal income tax if it is an integral part of the State or one of its political subdivisions.

Although AS 31.25.010 states that AGDC is a corporation "having a legal existence independent of and separate from the state," Treas. Reg. § 301.7701-1(a)(3) provides that AGDC's corporate status should not prevent AGDC from being treated as an integral part of the State for tax purposes:

> an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State.

Treasury Regulation § 301.7701-1(a)(3) indicates that the corporate separation of AGDC can be ignored for tax purposes if AGDC is an integral part of the State. The accompanying regulation, Treas. Reg. §301.7701-2(b)(1) & (6), seems to say that a corporation such as AGDC will, if it is not an integral part of the State, be taxed as a separate corporation.

> For federal tax purposes, the term corporation means–(1) A business entity organized under a Federal or State statute, . . . if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic; (6) A business entity wholly owned by a State or any political subdivision thereof . . ..

Id.

Treasury Regulations § 301.7701–1 & –2 provide no guidance regarding the circumstances that will cause a corporation wholly owned by a state or a political subdivision to be considered an integral part of the state. Some private letter rulings[7] issued shortly after the promulgation of Treas. Regs. § 301.7701-1 & -2 cited that regulation in ruling that, while the corporation may be classified as an entity separate from the state, that the corporation was an integral part of the state, and thus qualified for federal exemption.

The Tax Court recently addressed whether a corporation organized under Delaware law was, analogous to Treas. Reg. § 301.7701-1(a)(3), an integral part of an Indian tribe and thus exempt from federal taxation. *Uniband Inc. v. Comm'r*, 140 TC 13 (2013). The Tax Court in *Uniband* ultimately found that Uniband was organized as a state law business corporation and not under tribal law, that Uniband's constituent documents did not guarantee tribal control of Uniband, that Uniband appeared to have financial autonomy from the tribe, and held that Uniband was not an integral part of the tribe and was thus subject to federal taxation.

Private letter rulings in recent years addressing whether a corporation formed by a state, like AGDC, qualifies for federal tax exemption as an integral part of the state or political subdivision generally do not cite Treas. Regs. § 301.7701-1 & -2, but rather look to whether (a) there is sufficient state control over the entity and (b) whether the state has

---

[7] PLRs 9822011 and 9852018. A private letter ruling is only binding on the taxpayer(s) who requested the ruling; they are nonetheless a useful indication of how the IRS would rule on a specific transaction. The only published ruling in this area, Rev. Rul. 87-2, concerned a lawyer trust account fund created by order of the state supreme court that was not an independent entity. Taxpayers are entitled to rely on revenue rulings (such as Rev. Rul. 87-2), which are an official interpretations of the tax law on specific transactions published by the national office of the Internal Revenue Service.

made a financial commitment to fund the corporation. E.g., *Non Profit Ins. Program v. United States* (E.D. Wash. 2016), PLR 200524015.

The State would control AGDC by controlling its board of directors, consisting of members appointed by, and serving at the pleasure of, the governor and subject to confirmation by the legislature and individuals designated by the governor that are each the head of a principal department of the State. AS 31.25.020.

The State would be making a substantial financial commitment to fund AGDC, and would be controlling its finances. First, as noted immediately above, the State would maintain board control of AGDC. AS 31.25.020. Second, AS 31.25.110 provides that AGDC could only transfer revenues that it has received to an appropriate fund as determined by the commissioner of revenue in consultation with the commissioner of natural resources.

Private letter rulings holding that an enterprise or organization qualifies as an integral part of the state for tax purposes use the same analysis and cite substantially the same authorities, regardless whether the enterprise or organization was formed as a corporation. Namely, they each cite[8] Rev. Rul. 87–2 as establishing that income earned by an enterprise that is controlled by the state and is an integral part of the state is not generally subject to federal taxation, and cite *Maryland Savings-Share Insurance Corp. v. United States*, 308 F.Supp. 761, *rev'd on other grounds*, 400 U.S. 4 (1970), for the proposition that, in order to qualify as an integral part of the state, the state must have made a sufficient financial commitment to the enterprise as well as maintained sufficient state control over the enterprise.[9]

For instance, PLR 200403026 held that a hospital was as an integral part of a city for federal income tax purposes. The ruling found that the city had substantial control over

---

[8] Of the private letter rulings discussed immediately below, PLR 200403026 and 200427016 also cite Treas. Reg § 301.7701-1(a) as providing that an organization wholly owned by a state is not recognized as a separate entity for federal tax purposes if it is an integral part of the state.

[9] Each of the private letter rulings listed immediately below also distinguishes *Michigan v. United States*, 802 F. Supp. 120, 127 (W.D. Mich. 1992), rev'd, 40 F. 3d 817 (6th Cir. 1994), which the Service believes is a flawed opinion that misapplied Rev. Rul. 57–128. (Professor Aprill also criticizes the *Michigan* opinion, concluding that "[i]n treating the trust as exempt, the majority confused and misapplied the tests for political subdivision, instrumentality, and integral part." *23 Iowa J. Corp. L. at 825.)* While the *Michigan* analysis was recently adopted by the Tax Court in *Uniband Inc. v. Comm'r* (holding that a corporation organized under Delaware law was not an integral part of an Indian tribe), the Service's long-standing refusal to acquiesce in the *Michigan* opinion means that the Service likely will continue to issue private letter rulings that conform to its current ruling position based on Rev. Rul. 87–2 and *Maryland Savings-Share*, namely that State control and financial commitment are necessary to establish that an enterprise is an integral part of the State.

the hospital (all of the members of the board were appointed by the mayor and subject to approval of the city commissioners; and the hospital's annual budget and audit were reviewed annually by the city commission). The ruling found that the city had made a substantial financial commitment to the hospital (the city contributed the hospital facilities and the land on which the facilities are located; and the city contributed cash and bond proceeds, including the proceeds from general obligation bonds, for the acquisition of additional land and the construction and renovation of the hospital facilities).

PLR 200136011 held that an authority, created by state statute to encourage commercial space flight from the state by promoting research and participating in the development of a commercial flight center, was as an integral part of the state for federal income tax purposes. The ruling found that the state had substantial control over the authority (of the authority's twelve directors, four were public officials and eight were appointed by the governor, subject to approval by both houses of the state legislature; the authority is required by statute to submit a detailed initial plan for the use of general funds appropriated for the authority to the governor and the state legislature, and the authority is required to submit an annual report and financial statement to the governor and the state legislature). The ruling also found that the state had made a substantial financial commitment to the authority by contributing moneys to the authority.

PLR 200427016 held that a non-profit public corporation, formed by the state legislature to operate insurance plans that function exclusively as residual market mechanisms to provide essential property insurance for residential and commercial property, was as an integral part of the state for federal income tax purposes. The ruling found that the state had substantial control over the corporation (the directors include public officials and their designees, and members appointed by the commissioner or governor, all senior management serve at the commissioner's pleasure, the corporation must file regular financial reports and its plan of operation must be approved by the department, the corporation's rates are specified by legislation, and all bonds and other indebtedness of the corporation must be approved by a state commissioner). The ruling also found that the state had made a substantial financial commitment to the corporation (by enacting legislation authorizing the corporation to collect the premium tax and to retain the proceeds of the premium tax to augment the corporation's resources).

PLR 200827004 concerned whether an amendment to state law requiring additional assessments from insurers participating in the state insurance fund would alter the previous private letter ruling finding that the insurance fund was an integral part of the state for tax purposes. The ruling found that the state maintained board control over the fund as it had before, and that the amendment had not materially altered the state's financial commitment to the fund, and held that the fund maintained its status as an integral part of the state.

Reliance on AGDC being treated as an integral part of the State is problematic, however, as the IRS has not been consistent over the years in their rulings on whether a corporation formed under a state statute will be treated as an integral part of the state or its subdivisions. Enterprises that would seem to qualify as an integral part of a state or its political subdivisions sometimes receive rulings that they qualify for tax exemption under § 115(1), under which the IRS currently will only issue a favorable ruling based upon a showing of no private benefit.[10]

In sum, AGDC's qualification for tax exemption as an integral part of the State or its political subdivisions cannot be assured without a favorable private letter ruling.

C. The Case for AGDC Qualifying as a Section 115 Entity.

If AGDC were not to qualify, or the Service were not willing to rule that AGDC qualifies, for tax exemption under either implied statutory immunity or as an integral part of the State or its political subdivisions, the next question is whether AGDC qualifies for tax exemption under § 115.

Code § 115(1) provides that the income of AGDC would be excluded from federal taxation if it is derived from the exercise of any essential government function and accrues to the State or any of its political subdivisions.

In private letter rulings, the IRS not only examines the § 115(1) criteria of whether income is derived from the exercise of an essential government function and accrues to the state or its subdivisions but also considers whether private parties would benefit from the entity. The most recent published ruling regarding tax exemption under § 115 is Rev. Rul. 90–74. Revenue Ruling 90–74 held that the income of a nonprofit organization formed by county governments of the state to pool the casualty risks of the member-counties was excluded from income under §115(1), based upon findings that pooling casualty risks instead of purchasing commercial insurance constituted the exercise of an essential government function, that distribution of the assets of the organization upon dissolution to the member-counties satisfied accrual of income for purposes of § 115(1), and that private interests did not, "except for incidental benefits to employees of the participating state and political subdivisions, participate in or benefit from the organization."

---

[10] E.g., PLR 8934052 (arts commission exempt under § 115, and not as integral part, because a state statute makes it a separate body "corporate and politic").

Essential Government Function

For ruling purposes, the IRS tends to regard anything that makes or saves money for a political subdivision as an essential government function:[11]

> 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.

Rev. Rul. 77–261. Revenue Ruling 77–261 held that a state investment fund, for the temporary investment of cash balances of the state and its political subdivisions, "constitutes the exercise of an essential governmental function for purposes of section 115(1) of the Code."

A recent private letter ruling with similarities to the Project, PLR 200524015, found that a nonprofit corporation formed by political subdivisions of the state, consisting of natural gas and electric joint action agencies and distribution systems, qualified for exemption under § 115(1). The ruling specifically found that acquiring and financing long-term natural gas supplies, acquiring, constructing, owning, managing, operating and financing natural gas pipelines, liquefied natural gas facilities, storage and related facilities and equipment, and contracting with joint action agencies and public gas or power systems to provide them with natural gas supplies all constituted an essential governmental purpose within the meaning of § 115(1).

Accrual

In order to obtain a private letter ruling under § 115(1), an organization must show that it has satisfied the accrual test by including in its articles of organization a provision limiting distribution upon dissolution of all of AGDC's assets

> to one or more States, political subdivision(s) thereof, the District of Columbia, or to other organizations whose income is excluded from gross income under section 115(1).

---

[11] Aprill at 816. Note that there is very little contemporary authority that taxpayers are entitled to rely on, beyond the revenues rulings cited herein, for what constitutes "an essential governmental function" for purposes of §115(1). Case law is less than clear– the United States Supreme Court has concluded that it is essentially impossible to define what an essential governmental function is. The Supreme Court in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985) concluded that "'[t]here is not, and there cannot be, any unchanging line of demarcation between essential and non-essential governmental functions.'"

Rev. Proc. 2003-12.

AGDC is a corporation specifically authorized by statute, AS 31.25. Alaska Statutes 31.25.010 provides that "[u]pon termination of [AGDC], its rights and property pass to the state," which appears to comply with the ruling requirements of Rev. Proc. 2003–12.

The courts have been less generous in their interpretation of what is required to satisfy the accrual requirement for tax exemption under § 115(1) than the ruling position of Rev. Proc. 2003-12,[12] which only requires disbursement of assets upon dissolution to the state or its political subdivisions to satisfy the accrual requirement. For instance, *City of Bethel v. U.S.*, 594 F.2d 1301 (9th Cir. 1979), *cert. denied*, 444 U.S. 980 (1979)[13] held that the mere accrual of income to a corporation owned by the governmental entity is not considered accrual to the governmental entity. The fact that the assets will revert to the state upon the corporation's dissolution, that the government was the sole owner of the corporation, or even that the state may request payment of profits at any time, did not qualify as direct accrual.

No Private Benefit

The IRS ruling position, that an entity cannot qualify for tax exemption under § 115 if it serves a private interest that is not incidental to the public interest, has no statutory basis. This requirement was apparently first asserted in PLR 8825027, the ruling that denied the Michigan Education Trust exemption under § 115 (a ruling that was effectively reversed by the Sixth Circuit in *Michigan v. United States*). Id. at n. 4.

> To qualify under section 115, it must be established that the income does not serve private interests such as designated individuals, shareholders of organizations, or persons controlled, directly or indirectly, by such private interest. Thus, even if the income serves a public interest, the requirements of section 115 are not satisfied if the income also serves a private interest that is not incidental to the public interest. The basic principle underlying section 115 is that property (including any income thereon) must be devoted to purposes which are considered beneficial to the community in general, rather than particular individuals.

PLR 8825027.

---

[12] Rev. Proc. 2003-12 only addresses ruling requirements for a § 501(c)(3) organization that requests a ruling that it is also exempt under § 115(1), but likely reflects the Service's ruling position for an entity affiliated with a state that requests a ruling under § 115(1).

[13] The *City of Bethel* is a Ninth Circuit case, and is binding authority for AGDC.

IRS rulings from the 1990s regarding state-sponsored disaster funds, designed to deal with private insurance companies pulling out of the market for insuring certain forms of risk, illustrate the risk that AGCD's involvement in the Project might be considered by the IRS to benefit private parties. For instance, the Florida and California private letter rulings, respectively PLR 9507037 and PLR 9622019, both found that the respective state disaster funds qualified for tax exemption as integral parts of their respective states, and concluded that, because the fund was an integral part, § 115 did not apply to the fund. Technical Advice Memorandum 9347001 reviewed another state's disaster fund and found that, besides failing to qualify as an integral part of the state or as a political subdivision of the state, the disaster fund also did not qualify for exemption under §115.

In ruling against exemption under §115, TAM 9347001 noted that "the sole purpose of [the fund] is to provide commercial–type insurance for private entrepreneurs," and specifically contrasted the fund with the risk pool at issue in Rev. Rul. 90–74, which pooled the risk exposure of political subdivisions of the state, and where private interests did not benefit more than incidentally. The disaster funds in Florida and California that received favorable rulings in PLR 9507037 and PLR 9622019 likely would not have qualified for exemption under §115 under the same analysis, as those disaster funds primarily benefitted the private individuals seeking insurance coverage that they had not been able to obtain from the private insurance market. See Aprill at 828-830.[14]

AGDC's only owner will be the State or one of the State's political subdivisions. All distributions of AGDC are required by AS 31.25.110 to be distributed to an appropriate fund of the state as determined by the commissioner of revenue in consultation with the commissioner of natural resources. The "appropriate fund of the state" restriction seems intended to bar distributions from AGDC to anything other than a political subdivision or instrumentality of the State.

It will be essential for AGDC to secure a favorable private letter ruling recognizing federal tax exemption under § 115 if AGDC intends to rely on exemption under that provision.

The Concept Document contemplates that AGDC may initially own the entire interest of the organization that would own, develop and operate the Project, and at a later point sell interests in the organization to one or more Producer Parties. Revenue Procedure 2016-03 indicates that the IRS is not willing to issue a private letter ruling on whether such an organization would be exempt from federal income taxation under §115. Section 3.01(21) of Rev. Proc. 2016 – 03 provides that the Service will not issue private

---

[14] Also discussing the considerable congressional pressure that was applied by the congressional delegation of California to ensure that California received and retained a favorable private letter ruling.

letter rulings on "[w]hether some, but not all, income of an entity is from the exercise of an essential government function in order to be excluded from gross income under § 115."

D. Instrumentalities.

Alaska Statutes 31.25.010 states that AGDC is "a public corporation and government instrumentality . . ." (emphasis added). For tax purposes, an instrumentality is, by definition, an entity that is not a state or a political subdivision of a state. §§ 3121(b)(7)(F), 3306(c)(7) and 414(d); Rev. Rul. 57–128.

With the exception of certain corporations organized under an act of Congress as instrumentalities of the United States, status as an instrumentality does not indicate whether a corporation such as AGDC is exempt from federal taxation. Code § 501(c)(1) and Rev. Rul. 77–261. Revenue Ruling 77–261 concerned an investment fund established by a state treasurer that was "specifically designated as an instrumentality" of the state. After finding that the investment of funds was the exercise of an essential governmental function and after finding that the fund's income accrued to the state and the participating political subdivisions of the state, Rev. Rul. 77–261 ruled that income of the investment fund was exempt from federal income tax under §115(1). [15]

Designation as an instrumentality has significance for social security tax, federal unemployment tax and eligibility for governmental pension plans. §§ 3121(b)(7)(F), 3306(c)(7) and 414(d). The IRS analyzes whether an organization qualifies as an instrumentality for such purposes under the criteria set forth in Rev. Rul 57-128:

> (1) whether it is used for a governmental purpose and performs a governmental function; (2) whether performance of its function is on behalf of one or more states or political subdivisions; (3) whether there are any private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner; (4) whether control and supervision of the organization is vested in public authority or authorities; (5) if express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality, and whether such authority exists; and (6) the degree of financial autonomy and the source of its operating expenses.

If the IRS concluded that AGDC was an instrumentality, and not a political subdivision or an integral part of the State, it would examine whether AGDC qualified for

---

[15] In other words, Rev. Rul. 77 – 261 ruled that the investment fund qualified for tax exemption under § 115(1); that ruling was not based on the fund's status as an instrumentality of the state.

federal tax exemption under either § 115(1) (discussed above) or § 501(c), primarily § 501(c)(3) (discussed below). Aprill at 821.

If AGDC is considered an instrumentality of the State, it will be essential for AGDC to secure a favorable private letter ruling recognizing federal tax exemption under § 115 if AGDC does not qualify for exemption as a political subdivision of the State or as an integral part of the State.

E. § 501(c)(3) Organizations.

AGDC, as a " public corporation and instrumentality" of the State could qualify for exemption under §501(c)(3) if it were a "clear counterpart" of a charitable, educational, religious or like organization. Rev. Rul. 60–384; see also Rev. Rul. 55–319. There is at least an issue whether the IRS would consider AGDC, investing in a liquefied natural gas Project, to be a "clear counterpart" of a charitable organization.

AGDC's police powers, discussed above, would seem to keep AGDC from qualifying for exemption under § 501(c)(3). Revenue Ruling 60-384 observed that

> where a wholly-owned state . . . instrumentality exercises enforcement or regulatory powers in the public interest such as health, welfare, or safety, it would not be a clear counterpart of an organization described in section 501(c)(3) of the Code even though separately organized since it has purposes or powers which are beyond those described in section 501(c)(3).

In Rev. Rul. 74–14, a public housing authority was denied exemption under § 501(c)(3), even though its purpose was to provide safe housing accommodations for low income families, because the state statute incorporating the authority gave it the power to conduct examinations and investigations for the purpose of collecting information and making it available to appropriate agencies for use in furthering and enforcing local ordinances regarding planning, building, and zoning matters. Revenue Ruling 74–14 concluded this power to conduct examinations and investigations was a regulatory power that was inconsistent with exemption under § 501(c)(3).

For reasons such as those set forth above, § 501(c)(3) seems the least likely ground for AGDC to qualify for federal tax exemption.

II. Tax Issues Raised by the Organization That the Project Documents Contemplate Would Own, Develop and Operate the Project.

A. Initial Considerations.

The recitals of the Concept Document state that AGDC would organize a company that "will own, commercialize, finance, design, build and operate the [Project]." The

Concept Document does not state what kind of company AGDC would organize to own, commercialize, finance, design, build and operate the Project.

Alaska Statutes 31.25.120 empowers AGDC to form subsidiary corporations for the purpose of developing, constructing, operating, and financing in-state natural gas pipeline projects or other transportation mechanisms; for the purpose of aiding in the development, construction, operation, and financing of in-state natural gas pipeline projects; or for the purpose of acquiring natural gas from the North Slope, and natural gas from other regions of the state, including the state's outer continental shelf, and making that natural gas available to markets in the state, including the delivery of natural gas, including propane and other hydrocarbons associated with natural gas other than oil, to coastal communities in the state, or for export.[16]

Oil and gas development ventures in the United States are typically organized as tax partnerships or co-tenancies in order to provide pass-through treatment to the owners of all tax attributes of the venture–including income, gain, loss, deductions and credits.

However, AS 31.25.120 only authorizes AGDC to organize a subsidiary entity that is a corporation for purposes of the Project. Alaska Statutes 31.25.080(a)(1) grants AGDC the authority to determine the form of ownership and the operating structure of an in-state natural gas pipeline developed by AGDC, but as to an Alaska liquefied natural gas project, AS 31.25.080(a)(1) only expressly authorizes AGDC to "enter into agreements with other persons for joint ownership, joint operation or both."

AGDC may form a subsidiary corporation to own its interest in the Project, at least for liability protection reasons afforded by the corporate form of the subsidiary, but possibly also to separate the Project activities of the subsidiary from the other activities of AGDC.

Regarding the tax status of a subsidiary corporation formed by AGDC to own its interest in the Project, Treas. Reg. § 301.7701-1(a)(3) provides that if AGDC wholly owns a corporation, the subsidiary's corporate status should not prevent the subsidiary from being treated as an integral part of the state for tax purposes:

> an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State.

If AGDC's subsidiary corporation owned the entire interest in the Project for the life of the Project, and assuming that AGDC is determined to be an integral part of the state, all tax attributes of the Project would flow through to AGDC. All income and gain from the

---

[16] Alaska Statutues 31.25.120 does not expressly authorize AGDC to organize a subsidiary corporation that would own an interest in a gas liquefaction plant and/or marine terminal, powers which may be reserved to AGDC itself.

Project may also be exempt from federal taxation, assuming that the IRS acknowledges that AGDC's wholly-owned subsidiary is indeed an integral part of the state.[17]

B. Tax Considerations of the Operating Entity as Contemplated by the Project Documents.

The Concept Document contemplates that Producer Parties would be invited to become owners of the organization owning, developing and operating the Project and specifically contemplates that one or more Producer Parties would provide development funding for the Development Phase of the Project. In order for the organization that owns, commercializes, finances, designs, builds and operates the Project to be a viable investment for one or more Producer Parties, the organization likely would need to be structured as a pass-through entity, either a tax partnership (such as a limited liability company) or a tenancy in common. Unless a pass-through entity owns, develops and operates the Project, the tax attributes of the Project would not flow through to the respective tax returns of the Continuing Parties.

If the organization that owns, develops and operates the Project were instead an AS 31.25.120 corporate subsidiary of AGDC, and one in which AGDC only owns a partial interest, the corporate subsidiary would be treated as a separate corporate entity. Although income would flow through, when dividends are declared, to the owners of the corporate subsidiary that owns, develops, and operates the Project, other tax attributes, such as losses, deductions and tax credits would only be available to the organization itself and would not flow through to owners of the organization. Treas. Reg. § 301.7701–1. This may not be a viable planning option for the Producer Parties, who typically would expect that their respective shares of all tax attributes from the organization owning, developing and operating the Project would flow through to their respective income tax returns.

Assuming that the Operating Entity Were a Pass-Through Entity

If the organization that owns, develops and operates the Project were in part owned, directly or indirectly, by AGDC, and in part owned by one or more of the Producer Parties, the question is what the tax status of that organization would be.

Whether the Operating Entity Could Be a Political Subdivision

AGDC might argue that the organization that owns, develops and operates the Project, in part owned, directly or indirectly, by AGDC and in part owned by one or more Producer Parties, would be exempt from federal income taxation as a political subdivision

[17] The state, AGDC, and wholly-owned subsidiaries of AGDC could seek substantially identical private letter rulings on this issue, as part of the same ruling request.

of the State of Alaska, based on AGDC's ability to exercise its sovereign powers of eminent domain and its police powers to issue regulations governing the organization, including regulating land used by the organization. Considering the position taken by the Service in promulgating Prop. Treas. Reg. § 1.103-1(c), defining a subdivision for purposes of § 103, it is doubtful that the Service would issue a private letter ruling finding such an organization to be a political subdivision of the State of Alaska.

Namely, Prop. Treas. Reg. § 1.103-1(c) would provide that an entity can only be considered a political subdivision, at least for purposes of issuing tax-exempt bonds under § 103, if the entity, in addition to having one or more sovereign powers: (a) has a governmental purpose and (b) is governmentally controlled.

In order to show that the entity serves a governmental purpose, Prop. Treas. Reg. § 1.103-1(c) requires evidence that the entity : (1) carries out the public purposes set forth in the entity's enabling legislation, (2) operates in a manner that provides a significant public benefit and (3) provides no more than an incidental private benefit.

The organization that owns, develops and operates the Project may be able to show that it carries out the stated public purposes of AGDC, namely that the entity shall exercise its powers for the benefit of the people of the State of Alaska, for their well-being and prosperity, and for the improvement of their social and economic conditions. The organization may also be able to show that it operates in a manner that provides a significant public benefit. However, it is hard to see how the organization that owns, develops and operates the Project would not provide more than an incidental private benefit, considering that the Concept Document contemplates that the organization will have one or more Producer Parties as owners.

Further, Prop. Treas. Reg. § 1.103-1(c) also would require that a state or local governmental unit exercise control over the organization owning, developing and operating the Project. Control is defined under Prop. Treas. Reg. § 1.103-1(c)(4)(i) as meaning an ongoing right or power to direct significant actions of the entity, including the right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency.

The Concept Document indicates that, after one or more Producer Parties have become owners of the organization owning, developing and operating the Project, that AGDC would no longer control the organization. First, the annual Work Program and Budget ("WP & B") must be unanimously approved by the Continuing Parties each year. Sect. 4.2(b). This means that if even one Producer Party were an owner of the organization, it would have a veto over WP & B.

In other respects the Concept Document provides no assurance that AGDC would continue to control the organization owning, developing and operating the Project after one or more Producer Parties becomes a member of the organization. For instance Sect. 4.2(c) indicates that a Continuing Party, including a Producer Party, which pays its shares of the year's WP & B is entitled to participate in the organization's Management Committee. Further, the Management Committee consists of a representative from each of the Continuing Parties. This means that a Producer Party with a relatively small share of the year's WP & B would be entitled to have the same representation on the Management Committee as any other Continuing Party, including AGDC or its AS 31.25.120 corporate subsidiary, or even the largest Continuing Party. If the Management Committee consisted of AGDC and just two Producer Parties, AGDC would not control the Management Committee unless at least one of the Producer Parties votes in concert with AGDC.

Finally, Sect. 5.4 provides that the organization that owns, develops and operates the Project "shall have charge of, and shall conduct, all Operations" . . .. No provision is made in the Sect. 5.4 to ensure that AGDC has control over the operations of the organization.

Whether the Operating Entity Could Be an Integral Part of the State

The Tax Court's analysis in *Uniband* indicates that the organization that owns, develops and operates the Project, in part owned, directly or indirectly, by AGDC and in part owned by one or more Producer Parties, would not qualify as an integral part of the state. As in *Uniband*, the organization that would own, develop and operate the Project likely would be organized as a state law business entity or tenancy in common, the Project Documents do not guarantee that the state will have control over the organization, and the organization will have significant financial autonomy from the state. Under the Tax Court's analysis in *Uniband*, these characteristics would result in the organization that owns, develops and operates a Project not being regarded an integral part of the state. If the *Uniband* analysis applied to the organization, the organization would not be able to claim exemption from federal income taxation based on being an integral part of the state.

Private letter rulings in recent years addressing whether a corporation formed by a state, like AGDC, qualifies for federal tax exemption as an integral part of the state generally look to whether (a) there is sufficient state control over the entity and (b) whether the state has made a financial commitment to fund the entity. E.g., *Non Profit Ins. Program v. United States* (E.D. Wash. 2016), PLR 200524015. While the Concept Document appears to commit the State to make some financial commitment to fund the entity, it may be difficult for AGDC or the organization to convince the IRS in a private letter ruling request that the state will have sufficient control over the organization, in part owned,

directly or indirectly, by AGDC and in part owned by one or more Producer Parties, that owns, develops and operates the Project.

Whether the Operating Entity Could Be Exempt under §115

Private Letter Ruling 201142016, discussed above, illustrates that, if the organization that owns, develops and operates the Project is in part owned by AGDC and in part owned by one or more Producer Parties, that the organization would not be an integral part of the State, and would likely also fail to qualify for tax exemption under Code § 115,[18] and thus may be subject to Federal income taxation, at least as to the participating Producer Parties.

In PLR 201142016, the Service required evidence, as a condition of ruling that income of the public utility is exempt from federal income taxation under § 115, that there would be no incidental private benefit. It may be difficult to prove that the Producer Parties, which the Concept Document contemplates will own an interest in the organization that owns, develops and operates the Project, would receive no benefit from their participation in the Project.

Private Letter Ruling 201142016 cited Rev. Rul. 90-74 in support of its ruling. Revenue Ruling 90–74 ruled that when political subdivisions of a state create, fund, and operate an organization to pool the casualty risks of the participating political subdivisions, the organization was exempt from income tax under § 115(1), finding that private interests neither materially participated in the organization nor benefitted more than incidentally from the organization. In the case of the organization described in the Concept Document that would own, develop and operate the Project, private interests would materially participate in the organization and likely would more than incidentally benefit from the organization.

Moreover, Rev. Proc. 2016-03, Section 3.01(21) provides that the Service will not issue private letter rulings on "[w]hether some, but not all, income of an entity is from the exercise of an essential government function in order to be excluded from gross income under § 115." This suggests that the neither the state nor AGDC[19] could obtain a private letter ruling finding that AGDC's income from a partial interest in an organization owning, developing and operating the Project would be exempt from federal income tax under § 115.

---

[18] And would certainly fail to qualify for tax exemption under Code § 501(c)(3).

[19] And also not any subsidiary of AGDC.

III. Conclusion.

For the reasons outlined above, unless AGDC and/or a wholly-owned subsidiary owns, for the lifetime of the Project, the entire interest in the organization that owns, develops and operates the Project, then the organization that owns, develops and operates the Project will likely be subject to federal income taxation.

That being said, if AGDC and/or its wholly-owned subsidiaries can qualify for federal income tax exemption as a political subdivision of the state, as an integral part of the State or under § 115,[20] its interest in a taxable organization that owns, develops and operates the Project should be exempt from Federal income taxation.

If AGDC and/or its wholly-owned subsidiaries own all of a discrete portion of the Project, for the lifetime of the Project, and if AGDC and any of its wholly-owned subsidiaries qualify for federal income tax exemption as a political subdivision of the state, as an integral part of the State or under § 115,[21] AGDC's interest in the discrete portion of the Project should be exempt from Federal income taxation. The discrete portions of the Project owned by one or more Producer Parties would likely be subject to federal income taxation.

Because of the complexity of the tax issues raised by the Project Documents, the State, AGDC, and any applicable wholly-owned subsidiary of AGDC are advised to seek a private letter ruling on their participation in the Project once they have finalized their contractual commitments to the Project.

Notice Regarding Tax Advice

In a contract of even date, the Committee has requested that Manley & Brautigam P.C. provide written advice about the following Federal income tax issues raised by the Project Documents on or before August 24, 2016. Due to the specified time constraint, this letter is a discussion of issues certain federal income tax issues raised by the Project Documents, but cannot be relied on as a definitive tax analysis of all the federal income tax consequences raised by the Project Documents.

We hope that this letter helps explain some of the federal tax exemption issues raised by the Project and the related pending legislation. We would be happy to expand

---

[20] The Service's non-ruling position set forth in Rev. Proc. 2016-03, Section 3.01(21) indicates that the Service would decline to issue a tax exemption ruling in this context under § 115.

[21] It is conceivable, depending on how broadly the Service construes its non-ruling position set forth in Rev. Proc. 2016-03, Section 3.01(21), the Service might decline to issue a tax exemption ruling under § 115 in this context as well.

upon our analysis should the Committee or the Legislature so desire or to address any particular questions that the Committee or the Legislature may have.

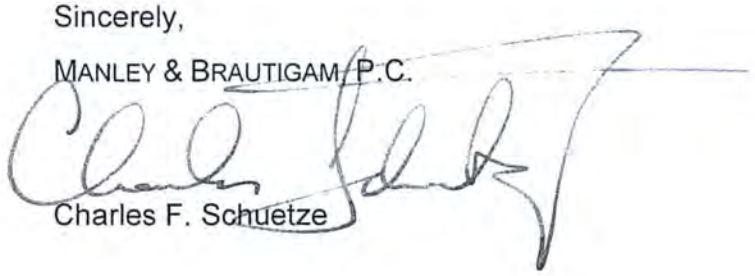
This letter has been prepared solely for use by the state, the Legislative Budget & Audit Committee, and the Alaska state legislature.

The advice in this letter is not binding on the Internal Revenue Service, any court, or any other person or entity. The Internal Revenue Code has been subject to substantial and frequent revisions in recent years. We cannot assure that forthcoming IRS interpretations, administrative pronouncements, or court decisions will not adversely affect the tax advice given in this letter.

Realization of federal tax exemption is subject to the risk that the Internal Revenue Service may challenge tax treatment and that a court may sustain that challenge. Because taxpayers carry part of the burden of proof required to support the tax treatment of a transaction, the advice expressed as to the likelihood of realization of federal tax exemption assumes that you will undertake the effort and expense to request an appropriate private letter ruling and present fully the State's case in support of any matter that the Service challenges.

Sincerely,

MANLEY & BRAUTIGAM, P.C.



Charles F. Schuetze

AK LNG

PROS AND CONS OF A STATE-LED PROJECT

Presentation to Joint Resources Committee Hearings
Anchorage, AK › August 24—25, 2016

Nikos Tsafos, President › nikos.tsafos@enalytica.com

http://enalytica.com

ASSESSING DIFFERENT STRUCTURES FOR AK LNG

Different project structures

Option 1. AK LNG becomes a state-owned, tolling project.

Option 2. Same as Option 1, but the state tries to lower cost of supply.

Option 3. AK LNG becomes a state-owned, merchant project.

What are the pros and cons of each structure?

What are the core principles that should guide the state's efforts?

What questions might the Legislature be asking?

1. AK LNG BECOMES A STATE-OWNED, TOLLING PROJECT

Project structure

State owns the hardware: the gas treatment plant, the pipeline, and the liquefaction.

State signs long-term agreements with companies to use its facilities.

The companies then pay the state a tariff for use of those facilities.

State could be a shipper too for royalty gas and/or tax as gas (if it chooses to take gas in kind).

State uses these long-term commitments to attract investors and/or finance.

Assessment

Main benefit is that this structure relieves the producers from their CAPEX burdens.

It also removes some complexity and risk (e.g. negotiating PILT, maybe even stabilization).

But this structure does not, in itself, lower the cost of supply (all depends on taxes).

Project risk also rises as execution burden shifts from producers to state.

2. SAME AS 1, BUT STATE TRIES TO LOWER COST OF SUPPLY

Project structure

State owns the hardware: the gas treatment plant, the pipeline, and the liquefaction.

State signs long-term agreements with companies to use its facilities.

The companies then pay the state a tariff for use of those facilities.

State could be a shipper too for royalty gas and/or tax as gas (if it chooses to take gas in kind).

State uses these long-term commitments to attract investors and/or finance.

State willing to accept a lower rate of return for tariff-setting purposes.

State lowers property taxes.

Assessment

Same as Option 1.

These changes can make a big impact on the cost of supply.

But, the state is effectively trying to make the project competitive on its own.

How are other parties (e.g. the producers) contributing to making project more competitive?

3. AK LNG BECOMES A STATE-OWNED, MERCHANT PROJECT

Project structure

State owns the hardware: the gas treatment plant, the pipeline, and the liquefaction.
State buys the gas at the wellhead, and sells it further downstream (e.g. FOB at Nikiski).
Gas sold either from arms-length negotiations or from leaseholders' "duty to produce."

Assessment

If the transaction makes commercial sense, state isn't really needed.
(e.g. If the state buys gas at Henry Hub and sells for HH+$7, producers can do deal directly.)
If the transaction takes on commodity exposure, risks and possible returns risk exponentially.
(e.g. If the state buys gas at Henry Hub but sells LNG at oil-linked price.)
If producers are willing to sell the gas, you probably shouldn't buy the gas.
(i.e. producers will only sell if it's a better deal than engaging market directly.)
Are the risks of a "duty to produce" approach fully understood?

CORE PRINCIPLES

State-led project needs credibility boost

Any transition to a state-led project raises serious questions about execution and governance.

State needs to upgrade its capabilities—and will have to bear the cost of this.

Don't expect to outsource risk

It's hard to see why third parties will join this project and accept a sub-par return.

State cannot expect to take on full control while outsourcing risks to others.

State cannot avoid partner veto

State cannot hope to find investors who will not ask for veto rights over FID (at least).

(i.e. No investor will surrender the right to veto a boondoggle.)

Don't overdo financial engineering

Return is a project-level, not a sponsor-level, concept—it should match project risk.

Leverage increases risk, which increases the expected return on equity.

Focus on risk-return

What returns are acceptable for AK LNG? And how much risk is the state willing to take?

CRITICAL QUESTIONS

Why state ownership?

What's the organizational plan?

What's the project structure?

What's the plan for securing/confirming tax-exemption?

What's the financing plan?

Who are the target investors?

What's the risk-sharing strategy?

http://enalytica.com

enalytica

AK LNG: PROS AND CONS OF A STATE-LED PROJECT

August 2016

Contents

Author

Nikos Tsafos is President of enalytica.

Point of departure

Over the past few months, the State of Alaska has proposed that the Alaska Gasline Development Corporation (AGDC) take the lead role in developing the Alaska LNG (AK LNG) project. Broadly speaking, a state-led project could mean:

Option 1. AK LNG becomes a state-owned, tolling project.

Option 2. Same as Option 1, but the state tries to lower cost of supply.

Option 3. AK LNG becomes a state-owned, merchant project.

What are the pros and cons of each structure? What are the core principles that should guide the state's efforts? And what questions should the Legislature be focusing on?

Option 1. AK LNG becomes a state-owned, tolling project

Project structure. In this case, AGDC owns the hardware: the gas treatment plant (GTP), the pipeline, and the liquefaction and marine facilities in Nikiski. AGDC will sign long-term contracts with the producers, and maybe others, whereby the companies will pay AGDC a tariff to use the facilities. Should the state take its royalty in kind or its production tax as gas, the state (DNR/DOR) could become a shipper as well. AGDC will use these commitments to attract investors and/or secure third-party finance.

Assessment. This structure changes the capital call for the producers: ExxonMobil, BP and ConocoPhillips would spend money to further develop Prudhoe Bay and Point Thomson but they would not spend billions to build the infrastructure. Instead, they would sign long-term contracts to use the capacity. For them, the capital call for this project has fallen considerably.

This structure also removes some complexity and reduces risk for the producers. It might no longer be necessary, for instance, to negotiate a payment-in-lieu-of-tax (PILT) for property since the state will own most of the infrastructure that would be subject to property tax. It might not even be necessary to negotiate "fiscal stabilization," since the capital that the producers would put at risk would fall sharply.

But this structure does not, in itself, lower the cost of supply—if AK LNG is uneconomic, this structure is unlikely to make a major difference, unless the state were exempt from federal income taxes, a prospect which is yet unknown, or benefited from other tax exemptions (AGDC is exempt from property tax to state and local jurisdictions, although some revenue sharing would still need to happen). This structure also raises project risk to the state by shifting the burden of execution from the producers to the state.

Option 2. Same as Option 1, but the state tries to lower cost of supply

Project structure. In this case, AK LNG moves to a structure similar to Option 1, but now the state takes on a more aggressive role in reducing the cost of supply. In effect, the state deploys non-engineering ways to lower costs—for instance, the state could reduce the rate of return used to calculate the tariffs for the GTP, the pipeline and the liquefaction facility. Lower returns would lower tariffs and thus lower the price at which the producers can sell gas to the market and still make an acceptable return. Lower returns, however, would also reduce the profits that the state can expect to make from AK LNG.

The state can also deploy its taxing power to impact project economics. Property tax, for example, is a major component of total project costs, and the state was already in discussions with the producers to come up with a mutually acceptable structure that both delivers a fair tax to the state as well as supports the project's development. In a state-owned project, AGDC would be exempt from paying property tax, which would impact the cost of supply—although the impact on communities would still need to be addressed and factored into the cost.

Assessment. It is hard to evaluate this possibility in the abstract. Sovereigns routinely offer concessions to support economic and industrial development; on their own, concessions tells us little about their advisability. It all comes down to specifics: what concessions, why, for how long, and so on.

Even so, there is one risk: that the state assumes, alone, the task of making AK LNG competitive. In other words, if there is a gap between the market price and the cost of supply, the state tries to close the gap by offering more and more concessions. This problem is particularly acute if the state sees AK LNG as a "must have," and is thus willing to take on too much risk or offer too many concessions to advance a project that is uneconomic. In this scenario, it is imperative to screen every concession and understand why it is being offered; it is similarly important to extract concessions from other parties so that the state is not, alone, trying to reduce the cost of supply.

Option 3. AK LNG becomes a state-owned, merchant project

Project structure. In this case, the state owns all the infrastructure, as in Options 1 and 2, but instead of merely providing treatment, transport and liquefaction services in exchange for a tariff, the state buys gas at the wellhead from the producers and then re-sells it further downstream (for example, as LNG at Nikiski).

Assessment. Broadly speaking, the merits of this approach depend on specifics: at what price is the state buying gas and at what price is it selling it? These details are unknown, but one could envision two scenarios: either the two transactions are linked or they are not.

In a linked transaction, the state might buy gas from a producer at a price equal to Henry Hub and then sell it as LNG for a price also linked to Henry Hub plus a margin (say $7/MMBtu). In this case, the question is whether the margin covers the costs and return on the infrastructure. But it is not clear that the state provides any value—if the transaction makes sense, the buyer and seller would deal directly with each other, and one of them would pay the state a tariff for using the infrastructure (as in Options 1 and 2). The only value would come from adjusting the margin—but the state can do this without owning the gas (i.e. Option 2).

Alternatively, the state might buy and sell gas at prices that are not linked—for example, the state might buy gas at a Henry Hub price but sell LNG at an oil-linked formula. In this case, the risks for the state rise exponentially—as do, the theoretical returns if prices move in a way that favors the state. Such a deal, however, would not only require extensive due diligence; it would also require a very high risk tolerance.

How the state buys gas matters as well. On one extreme, one could imagine an arms-length transaction between the state and a producer. But one could also imagine a sale that is part of a leaseholder's "duty to produce." In this latter case, the state would need (a) to keep prospective buyers interested while the (likely lengthy) negotiations are completed; and (b) to ensure that the state does not put itself in a position where it is obligated to buy gas that it may not be able to resell at a reasonable price. As enalytica noted in the past, the liabilities involved with buying gas can run into the tens of billions (enalytica, "Negotiating firm withdrawal terms: Key issues," November 2015). Combined with a scenario where the state borrows money to build AK LNG, the state could be assuming enormous liabilities to make this project a reality.

Some core principles to remember

State-led project needs credibility boost. A transition to a state-led project raises big questions about execution and governance. Can the state assume the leading role in driving one of the largest infrastructure projects ever? The state needs a plan for how it will do this, and it also needs a clearer delineation of responsibilities among state agencies as well as a clear blueprint for dealing with the producers.

Don't expect to outsource risk. The state cannot expect to take on a leading role, and full control, without assuming more risk—or, more precisely, while assuming that most of the risks will be borne by others (suppliers, contractors, banks, etc.). Nor should the state expect a large number of third-party investors to flock to the project in order to earn sub-par returns. Experience shows that infrastructure funds have limited appetite for liquefaction assets—and there is even less evidence that such investors would be happy with low returns.

State cannot avoid partner veto. The state places a high premium on not allowing any of its partners to hold back the project; for instance, the "AGDC-AK LNG Concept Document" (July 2016) states that its concept is "Very similar to the current structure except that a single party cannot hold up the entire development of the system." This might seem desirable but is, in reality, impractical: no investor would join a venture without having veto rights over major decisions such as whether to build the project (i.e. Final Investment Decision). It is especially unrealistic to expect that the state will not surrender any veto rights to investors who are asked to accept subpar returns and shoulder major risks.

Don't overdo financial engineering. Return is supposed to be a project-level, not a sponsor-level, concept: the return that an investor should expect should match the project's risk. In other words, AK LNG has an inherent risk that leads to an expected return. Moreover, leverage increases risk: if the state borrows to finance AK LNG, it should increase its expected return on equity. The idea that the state should, at the same time, lower its return threshold and increase debt exposure in order to make this project work would go against basic principles of corporate finance.

Focus on risk-return. Options 1 to 3 could easily be thought of as forming a risk-return continuum: Option 1 offers some benefits to the existing structure but may not suffice

to make the project economic. Option 2 allows for more concessions—these could help if they are targeted and in response to specific concerns, and as long as other parties do their part as well. Option 3 seems to offer few benefits over Option 2 but substantially more risk—as such, its merits need to be stated very explicitly. Either way, the state is proposing a big increase in risk and thus, the key questions remain: what returns are acceptable for AK LNG? And how much risk is the state willing to take?

Critical questions

As the Legislature evaluates these proposed changes, here are some possible questions to focus on.

Why state ownership? AK LNG has reached a stumbling block, but it is not obvious why state ownership is the only option available to AK LNG, especially since the primary benefits of the state taking over the project remain unproven. What levers are available to the state to reduce the cost of supply, and how much impact does each have? Is there a path that preserves the merits of the current approach while delivering some of the benefits of state ownership?

What's the organizational plan? The organizational challenges of developing AK LNG are immense and will require a major change in AGDC's capabilities and in cost. What does that look like, how long will it take, and how much does it cost?

What's the project structure? It is not clear, at this point, which path the state is following or why. Is the state looking to be an infrastructure provider? Or will it buy and sell the producers' gas? If the latter, why? What are the pros and cons of each structure from the state's perspective, and which path is being pursued?

What's the plan for securing/confirming tax-exemption? The exemption from federal taxation is a major argument for the state's increased role in AK LNG; what is the timeframe for confirming such status? How will tax exemption affect other aspects of AK LNG (e.g. issuing non-recourse debt)? What happens if that path is not successful?

What's the financing plan? LNG projects typically raise funds from the official sector, banks, and markets (bonds). But these have different costs and carry different risks. How do different financing scenarios impact project returns? What will very high leverage (say 90% or 100%) do to project risk given the amount of debt that would be needed to finance AK LNG?

Who are the target investors? Another critical assumption driving the state's efforts is the idea that third-party infrastructure funds will invest in the project, and will do so for returns that are lower than those of the producers. Liquefaction is generally not an asset that such funds have invested in, which raises the question: what case studies lead the state to believe that such investors will step forward? What returns will they require given the risks of the project?

What's the risk-sharing strategy? Many of the proposed risk mitigation strategies—that lenders will offer money at reasonable trades, that infrastructure investors will accept lower returns, that contractors will assume construction risk at a reasonable price, that future partners will waive their veto rights—are unproven at this stage and many seem implausible. A clearer definition of risk allocation would be most helpful, including the role that the producers will play in advancing this project forward.

JDOLAW
JERMAIN DUNNAGAN & OWENS, P.C.

3000 A STREET, SUITE 300, ANCHORAGE, ALASKA 99503-4097

SERVING ALASKANS SINCE 1976

MEMORANDUM

TO: Alaska Legislative Budget and Audit Committee

FROM: Eric E. Wohlforth

DATE: August 22, 2016

RE: Tax Exempt Financing of Proposed Trans Alaska Natural Gas Pipeline - Draft

---

Question: Is tax exempt financing of the proposed trans Alaska natural gas pipeline and/or the related LNG plant (the "Project") possible under general federal law?

Answer: Under existing federal law, and with my understanding of the use of the line by the three producers up to 75 percent of capacity, in my opinion, there is no possibility that interest on State of Alaska or Alaska Gasline Development Corporation ("AGDC") bonds to finance the project would be exempt from federal income taxation under federal tax law generally applicable to state and local government financing.

There is a possibility that bonds issued by the Alaska Railroad Corporation ("ARC") for this purpose under the special tax exempt financing permission in the Federal Railroad Transfer Act would be tax exempt.

General Federal Tax Law

26 U.S.C. § 103 states that tax exempt interest exclusion from taxation of state or local bonds does not extend to a "private activity bond" which is not a qualified bond under 26 U.S.C. § 141.

Obligations issued by the state or any state corporation or authority of the state for the Project would be "private activity bonds" as defined in 26 U.S.C. § 141. Section 141(b) sets up private business tests to define "private activity bond."

The private business tests are two-fold: a private business use test and a private security or payment test (IRC § 141(a)(1) and Treas. Reg. § 1.141(b)). Meeting the test means in IRC parlance failing tax exemption. An issue meets the private business use test if more than 10 percent of the proceeds of the issue is to be used for any private business use (IRC § 141(b)(1)). An issue meets the private security or payment test if the payment of principal or interest of the issue is directly or indirectly secured by or payable from property or payments used for a private business use (IRC § 141(b)(2)). A 5 percent test applies if the use is not related, or is related but disproportionate, to governmental use (IRC § 141(b)(3)).

As applicable here, it is understood that an issue of State or AGDC bonds might finance the entire pipeline which would be used by the state for its share of royalty gas and by the producers for transport of their gas. Use by the producers in excess of 10 percent of the pipeline capacity would satisfy the private use test. Payments for such use by the producers would meet the security or payment test.

IRC § 141(e)(1) defines a "qualified bond" as including an "exempt facility bond." "Exempt Facility Bonds" which are defined at 26 IRC § 142 include "(8) facilities for the local furnishing of electric energy or gas" (emphasis added). The Marine Terminal Revenue Bonds first issued by the City of Valdez in 1977 in the amount of $250 million were issued under Section 142 as an Exempt Facility Bond pursuant to then Section 103(b)(4)(D) which referred to docks, wharves or related facilities. The docks and wharves and related facilities financed was the TAPS marine terminal owned by the producers through Alyeska. This was, of course, a private use. A private letter ruling was issued affirming the tax exempt status of these bonds on January 12, 1977. Bonds for this purpose could not be issued today due to an amendment to Section 142 passed in the Tax Reform Act of 1986, requiring that all the property to be financed be owned by a governmental unit.

Alaska Railroad Financing

The federal transfer legislation endowed the Railroad with a unique tax exempt financing privilege unencumbered by the above cited restrictions of the Internal Revenue Code ("IRC") otherwise applicable to state and local government financings.

ARC received State legislative authority to provide financing for the acquisition, construction, improvement, maintenance, equipping, and operation of a natural gas pipeline for the transportation of North Slope gas in 2003 (SLA 2003 ch 71 § 2, AS 42.40.560). Tax exempt financing for this purpose would require a ruling from the Internal Revenue Service ("IRS").

However, the IRS is historically dedicated to limiting tax exempt financing. According to the US Congress Joint Committee on Taxation, the tax exempt bond subsidy is generally considered to be inefficient because, in most cases, the cost in terms of

forgone tax revenues exceeds the value of the subsidy to State and local governmental issuers.[1] Both the intent and the letter of the authorizing state law and the project must be congruent with federal tax law, regulations and rulings for a positive ruling to result. Also, rulings on financing arrangements are typically only given when there is a measure of certainty on financing arrangements. Every ruling request must contain a full description of all facts relevant to the transaction and the IRS is not bound by a ruling if there are undisclosed facts.[2] In addition, material facts that are recited in supporting documents must be included in the ruling request or in a supplemental letter and not merely incorporated by reference.[3] Any substantial change in the financing arrangement or in the project description from that set forth in the ruling request jeopardizes tax exemption. That is why the IRS declines to act on a series of hypothetical questions where, for example, the final form of the deal is not fixed.

A ruling request for a project of this magnitude and complexity would be detailed and take some time to prepare. Response from the IRS can take a year or more. There is only a possibility that the Service's response would be positive.

The question of financing the Project through use of the Alaska Railroad Corporation's permission to issue bonds on a tax exempt bases has been considered since the early 2000s. Prior work has considered the provisions of the Railroad Transfer Act, 45 U.S.C. § 1207(a)(6)(A) passed in 1982 which provides:

> After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of Title 26. Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1) of Title 26, but not obligations within the meaning of section 103(b)(2) of Title 26.

Apparently Alaska Railroad bonds and bonds issued by one other entity elsewhere in the country are still not covered by the general tax law provision cited above in 26 U.S.C. § 149(c)(2). A ruling request to the IRS would cite the provisions of 45 U.S.C. § 1207 (a)(2) as indicating a federal intention that the authority of ARC was broad. It reads:

> The transfer to the State authorized by section 1203 of this title and conferral of jurisdiction to the Interstate Commerce Commission pursuant

---

1 Joint Committee on Taxation, *The Federal Revenue Effects of Tax-Exempt and Direct-Pay Tax Credit Bond Provisions* (JCX-60-12), at 6, July 16, 2012 (available at https://www.jct.gov/publications.html?func=startdown&id=4470).

2 Section 7.01 of the 1st RevProc.

3 Id.

> to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713 of Title 49, notwithstanding any participation in such agreements by connecting water carriers.[4]

The request would, however, have to contend with 45 U.S.C. § 1207(a)(5) which states:

> Revenues generated by the State-owned railroad shall be retained and managed by the State-owned railroad for railroad and related purposes.[5]

It would also have to contend with 45 U.S.C. §1207(a)(1) which states in pertinent part that "After the date of transfer the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce . . . ."

Section 1207(a)(5) could be read as a limitation on ARC's ability to expend its revenues only for railroad related purposes, arguably, but legislative history indicates otherwise. Those involved in the transfer apparently wanted to make sure the State-owned railroad was not subject to the annual State appropriation process, to buttress its independence. The Senate Committee Conference Report, submitted by Senator Packwood, states, "[Section 1207(a)(5)] provides that the railroad shall retain and manage its own revenues. The purpose of this provision is to avoid the need for annual appropriations by the State for the railroad."[6]

What did the phrase "all business opportunities available to comparable railroads" mean? In answering this question the request would cite the fact that railroad holding companies have historically operated both railroads and pipeline companies and cite the fact that Burlington Northern Inc., a railroad holding company, acquired El Paso Co., a natural gas pipeline operator, at the same time that the railroad transfer act passed Congress, and that there are many companies both historically and currently which operate both railroads and pipelines.

ARC authorizing legislature enacted in 1984 (AS 42.40) which authorized ARC to apply for approvals ". . . to construct, maintain and operate transportation and related services, and obtain, hold, and reuse permits in the same manner as other railroad operators" (AS 42.40.250(13)). ARC gained legislative permission to finance the North Slope gas line in 2003 and in 2007 gained authority to finance the Kenai gasification project (SLA 2007, ch 65). It did not otherwise expand its bonding powers. Neither of

---

4 45 U.S.C. § 1207(a)(2) (2002) (emphasis added).

5 45 U.S.C. § 1207(a)(5) (2002).

6 S. Conf. Rep. No. 97-479, at 20 (1982).

these financing permissions is likely to persuade the IRS since they occurred well after the federal transfer legislation.

The ultimate problem with the ruling request lies in the fact that the railroad when it received tax exempt financing permission was simply a railroad. Other railroad holding companies operated pipelines, the Alaska Railroad was neither a holding company empowered to operate a pipeline nor did it operate one. The IRS very possibly would cite this fact in an effort to ascertain the legislative intent of Congress.

The IRS would note that the above cited language of the Committee stating that it was intended to confer on the railroad all business opportunities available to comparable railroads references the Interstate Commerce Commission and contract rate agreements. The IRS is unlikely to find authority for a very large pipeline financing to have been within the ambit of this language.

Alaska LNG Project

SRES / HRES Testimony

Joint Senate Resources Committee / House Resources Committee – 1:00 pm ADT on Thursday, August 25, 2016 in Anchorage, Alaska

- Chair Giessel, members of the Senate Resources Committee, Co-Chair Nageak, Co-Chair Talerico and members of the House Resources Committee for the record, my name is Bill McMahon.
  - ExxonMobil appreciates the opportunity to provide our perspectives on the Administration's proposed bridging to a State LNG project and I look forward to answering your questions.
- I am a Sr. Commercial Advisor and have 34 years of experience with ExxonMobil and have worked on commercializing Alaska natural gas for over 20 years.
- During the last Alaska LNG testimony on June 29, we discussed the misalignment that began to develop among the Administration, AGDC, BP, ConocoPhillips and ExxonMobil early this year on entering FEED in 2017. The Administration was pressing for certain agreements to be in place by the end of the regular session, but did not include a fiscal agreement, which is necessary for entering FEED. Once it became clear that this plan was not going to be met, two concepts to potentially progress the project were presented:
  1. Support transition to a State LNG project so AGDC could enter FEED in 2017, or
  2. Pace the four-party Alaska LNG Project work to match current market conditions while continuing to advance regulatory approvals, reduce project costs and work on fiscal and commercial agreements to provide the information necessary for a FEED decision.
- Now that the Walker Administration has decided to pursue a State LNG project, ExxonMobil is actively engaged in the development of a plan to bridge from the four-party Pre-FEED Joint Venture Agreement (JVA) to a State LNG Project.
- From ExxonMobil's perspective, the key components of this bridging plan include:
  - Completing the Pre-FEED deliverables and filing the remaining draft Resource Reports (11 and 13). As Steve indicated, these are on track for completion in a few weeks.
  - Selecting a target date for the completion of a smooth, efficient handover of all JVA Lead Party responsibilities to the State LNG project. AGDC appears to be targeting sometime in the 4th quarter 2016.
  - Scheduling Lead Party / AGDC handover sessions.
  - Effectively handling FERC / NEPA progression to AGDC / State Project.
  - Supporting access to Pre-FEED data and information for a State LNG project.
  - Selling the Alaska LNG Project LLC (ALPL) so AGDC will have access to the LNG Plant land, the DOE LNG Export Authorization, and the AKLNG website and logo.

    + With this acquisition, AGDC will be able to establish its standing with FERC and DOE, and to demonstrate to potential investors and customers that a State LNG project is "open for business".

- Once a State LNG project is up and running, the Pre-FEED JVA winds up and the Project Management Team disbands, ExxonMobil will still have a major role in the development of Alaska North Slope natural gas. First, through continued investment to develop Prudhoe Bay and Point Thomson and, second, by making gas available for sale for the project.
- To date, the Producers have invested billions of dollars at Prudhoe Bay and Point Thomson to successfully develop these fields. Investments are continuing at these fields to make natural gas available for a major gas sales project.
  - Point Thomson will require additional investment. Much of the equipment installed for current operations can be used for a gas sales, including the Point Thomson Export Pipeline which was sized for full field condensate production.
  - At Prudhoe Bay, gas has been extensively used to maximize oil recovery. By expanding gas cycling and using gas for enhanced oil recovery the working interest owners have produced to date over three billion barrels more oil than originally expected.
  - Investment will be necessary at PBU to allow gas to be produced into a State LNG project. Additionally, we expect AGDC to approach PBU about potentially handling the by-products from its Gas Treatment Plant.
  - Before committing to these investments at PTU and PBU, ExxonMobil will need robust gas sales & purchase agreements with assurances that the purchaser will be able to receive and pay for ExxonMobil's gas.
- ExxonMobil has always been willing to make its gas available to any project under bilateral, mutually-agreed and commercially-reasonable terms. You have been provided with copies of the various letters we have sent to the State of Alaska and AGDC:
  - July 22, 2016 letter to Keith Meyer offering to re-engage on wellhead gas sales negotiations.
  - December 3, 2015 letter to Governor Walker making ExxonMobil gas available for wellhead purchase by the State of Alaska should ExxonMobil no long be part of the Alaska LNG Project.
  - October 22, 2015 letter to Marcia Davis and Rigdon Boykin with an ExxonMobil offer to negotiate a Gas Sales and Purchase Agreement.
  - May 12, 2008 letter response to Senate Democratic on ExxonMobil willingness to sell or ship gas on commercially reasonable terms.
  - May 12, 2008 letter response to House Democratic on ExxonMobil willingness to sell or ship gas on commercially reasonable terms.
- Last year, Governor Walker sought assurances from each producer that its gas would be made available to AKLNG should that producer no longer be a part of the project. In addition to sending the December 3, 2015 letter to the Governor outlining our commitment:

  - We immediately established a negotiating team, executed a confidentiality agreement with the Administration and had several preliminary meetings.
  - With the advent of a State LNG project, ExxonMobil remains ready to re-engage on negotiations for a gas sale and purchase agreement, under commercially-reasonable terms acceptable to both parties.
- And of course, ExxonMobil has had confidential bi-lateral gas marketing conversations with the State as contemplated by SB 138. These conversations with DNR have also been on hold, so we stand ready to restart them.
- So in closing, ExxonMobil remains committed to commercializing the natural gas resources on the Alaska North Slope and we are willing to work with any interested parties, our co-ventures, AGDC and the State to explore all options to commercialize this gas.

ExxonMobil Production Company
P. O. Box 196601
Anchorage, Alaska 99519-6601

C. A. Haymes
Alaska Production Manager
Jt. Interest U.S.

ExxonMobil
Production

May 12, 2008

The Honorable Bob Buch
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

The Honorable Les Gara
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

The Honorable Harry Crawford
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

The Honorable David Guttenberg
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

The Honorable Andrea Doll
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

The Honorable Scott Kawasaki
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

The Honorable Mike Doogan
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

The Honorable Beth Kerttula
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representatives Buch, Crawford, Doll, Doogan, Gara, Guttenberg, Kawasaki and Kerttula:

ExxonMobil is in receipt of your letter dated February 19, 2008. We agree that in order to ensure a gas pipeline advances through construction, there needs to be an alignment of interests between the State of Alaska and the producers. ExxonMobil is committed to commercializing North Slope gas resources.

To illustrate the importance of this project to ExxonMobil, our corporation has spent more than $180 million studying ways to commercialize Alaska gas. ExxonMobil has investigated export pipelines, LNG and gas-to-liquids technology. Today, we sell Prudhoe Bay gas for local use on the North Slope. Most recently, ExxonMobil entered into an agreement to sell Prudhoe Bay gas to Fairbanks Natural Gas for use in the Interior.

In response to the question set out in your letter, assuming a gas pipeline is constructed to serve North American markets, ExxonMobil would be willing to sell North Slope gas at the wellhead or to ship gas through the pipeline on commercially reasonable terms and conditions.

We will continue to work with the State of Alaska and other parties to advance the development of North Slope gas resources in a manner that provides maximum benefits to the State of Alaska, consumers and North Slope producers.

Respectfully submitted,

CAH:jpc

ExxonMobil Production Company
P. O. Box 196601
Anchorage, Alaska 99519-6601

C. A. Haymes
Alaska Production Manager
Jt. Interest U.S.

ExxonMobil
Production

May 12, 2008

The Honorable Johnny Ellis
Alaska State Senate
State Capitol (MS 3101) - Room 9
Juneau, Alaska 99801-1182

The Honorable Hollis French
Alaska State Senate
State Capitol (MS 3101) - Room 417
Juneau, Alaska 99801-1182

The Honorable Kim Elton
Alaska State Senate
State Capitol (MS 3101) - Room 506
Juneau, Alaska 99801-1182

The Honorable Bill Wielechowski
Alaska State Senate
State Capitol (MS 3101) - Room 115
Juneau, Alaska 99801-1182

Dear Senators Ellis, Elton, French, and Wielechowski:

ExxonMobil is in receipt of your letter dated February 19, 2008. We agree that in order to ensure a gas pipeline advances through construction, there needs to be an alignment of interests between the State of Alaska and the producers. ExxonMobil is committed to commercializing North Slope gas resources.

To illustrate the importance of this project to ExxonMobil, our corporation has spent more than $180 million studying ways to commercialize Alaska gas. ExxonMobil has investigated export pipelines, LNG and gas-to-liquids technology. Today, we sell Prudhoe Bay gas for local use on the North Slope. Most recently, ExxonMobil entered into an agreement to sell Prudhoe Bay gas to Fairbanks Natural Gas for use in the Interior.

In response to the question set out in your letter, assuming a gas pipeline is constructed to serve North American markets, ExxonMobil would be willing to sell North Slope gas at the wellhead or to ship gas through the pipeline on commercially reasonable terms and conditions.

We will continue to work with the State of Alaska and other parties to advance the development of North Slope gas resources in a manner that provides maximum benefits to the State of Alaska, consumers and North Slope producers.

Respectfully submitted,

ExxonMobil Gas and Power Marketing
22777 Springwoods Village Parkway
EMHC/E2.5B.525
Spring, TX 77389

Vânia Carvalho
Manager – Alaska LNG Marketing

ExxonMobil

October 22, 2015

Ms. Marcia Davis and Mr. Rigdon Boykin
Office of the Alaska Governor
550 West 7th Avenue,
Suite 1700
Anchorage, AK 99501

Negotiation of Gas Sales and Purchase Agreement ("GSPA")

Dear Ms. Davis and Mr. Boykin,

ExxonMobil has been working diligently to progress the Alaska LNG Project ("AKLNG") including the development of necessary commercial agreements to support the project.

Most recently, as requested by the Governor, ExxonMobil has been working with the Walker Administration on concepts that would allow the project to move forward in the event one or more parties were to withdraw from AKLNG. In our previous meetings, the concept developed by the State was a "withdrawal agreement", along with either a gas sale agreement or a tolling arrangement through the AKLNG facilities.

As previously mentioned, ExxonMobil is willing to negotiate with the State of Alaska or its designee ("State") a GSPA. Negotiation of the GSPA would need to be conducted on a bilateral basis between ExxonMobil and the State to maintain confidentiality of commercially sensitive information and to manage competition law concerns. ExxonMobil is ready to begin these negotiations as soon as a Confidentiality Agreement ("CA") between ExxonMobil and the State is executed, which is a standard industry practice. ExxonMobil has recently sent a revised draft CA to the Department of Law, and we are ready to execute.

It is important to note that completion of the GSPA will need to be underpinned by durable and predictable fiscal terms.

Once the CA has been executed between ExxonMobil and the State, I am available to meet at your earliest convenience to discuss this matter and look forward to the timely commencement of these discussions. In the meantime, if you have any questions, feel free to contact me

Best Regards,

Vânia Carvalho

ExxonMobil Gas & Power Marketing
Manager – Alaska LNG Marketing

ExxonMobil Alaska Production Inc.
22777 Springwoods Village Parkway
EMHC/N1.6B.522
Spring, TX 77389

Thomas W. Schuessler
President

ExxonMobil

December 3, 2015

The Honorable Bill Walker
Governor of Alaska
550 West Seventh Avenue, Suite 1700
Anchorage, Alaska 99501

Dear Governor Walker:

At your request, ExxonMobil entered into a Confidentiality Agreement with the Department of Natural Resources (DNR) and has commenced negotiations with the DNR on a potential gas sales and purchase agreement for ExxonMobil natural gas as it leaves North Slope producing units (GSPA) that would allow the Alaska LNG (AKLNG) Project to move forward in the event that ExxonMobil were to end its participation in the AKLNG Project during Pre-FEED. ExxonMobil and the DNR have had several meetings on the GSPA.

Such a GSPA, on terms mutually acceptable to both parties, would only become effective if ExxonMobil elects to end its participation in the AKLNG Project during Pre-FEED and the State of Alaska and AGDC elect to continue to progress the AKLNG Project.

Obviously, no GSPA can be finalized between the DNR (or its designee) and ExxonMobil, and in particular, no price negotiations can commence under the Confidentiality Agreement until the following have occurred:

1) DNR has made an election to take its royalty share of gas in kind and acceptance by the State (including DNR and the Department of Revenue) of ExxonMobil's election to pay production tax as gas; and
2) A mutually agreed fiscal agreement confirmed to cover a sale of gas arrangement has been agreed with the Administration and is ready for approval by the Legislature (however, the GSPA will not become effective until the fiscal agreement is approved by the Legislature and found to be valid under the Alaska Constitution) ; and
3) Any necessary amendments, satisfactory to both parties, to the Point Thomson Settlement Agreement are agreed recognizing the new timeline for the AKLNG Project and the impacts that would have on the timing and options of further Point Thomson gas development.

We look forward to progressing our bilateral discussions with DNR.

Best Regards,

Tom W. Schuessler

TWS:wam

c: Mr. Mark Myers
Mr. J. K. Flood

ExxonMobil Development Company
Wellness 2, 6A.302
22777 Springwoods Village Parkway
Spring, Texas 77389

Jim K. Flood
Vice President

ExxonMobil

March 24, 2016

The Honorable Bill Walker
Governor of Alaska
550 West Seventh Avenue, Suite 1700
Anchorage, Alaska 99501

Dear Governor Walker:

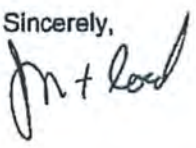
Thank you for the opportunity to discuss alternative structures to commercialize North Slope gas at our Sponsors' and bilateral meetings earlier this month. As you know, ExxonMobil has worked diligently with multiple Administrations to develop this Alaskan resource. This significant investment of funds and personnel has led to the current Alaska LNG (AKLNG) Project.

I understand from recent public comments that your Administration is now considering commercial arrangements that are different than originally anticipated. In regards to the possibility of a State project, ExxonMobil remains ready to re-engage with the State on negotiations for an economic wellhead sales and purchase agreement, under commercially reasonable terms. When you are ready, we would also progress the other agreements for a State project in a manner consistent with the existing AKLNG framework.

ExxonMobil continues to believe the best option to develop North Slope gas is a project with aligned State and producer interests throughout the entire value chain, such as the AKLNG Project. Additionally, we believe the pace should be consistent with the business environment to benefit all participants. As such, we will continue working with the other AKLNG participants to complete the Pre-FEED deliverables and define the requirements to advance the Project. This helps keep all options open, including a State project or other acceptable alternative.

I look forward to our next Sponsors' meeting in April.

Sincerely,



ExxonMobil Development Company
Wellness 2, 6A.302
22777 Springwoods Village Parkway
Spring, Texas 77389

Jim K. Flood
Vice President

July 22, 2016

ExxonMobil Development

Mr. Keith Meyer
President
Alaska Gasline Development Corporation
3201 C Street, Room 200
Anchorage, Alaska 99503

Dear Keith,

We have received a copy of your letter to Senators Meyer and Giessel dated July 13, 2016. While much of the letter relates to the Alaska Gasline Development Corporation (AGDC) and its relationship with the Legislature, there are statements within the letter ExxonMobil considers inaccurate and therefore require a response.

While it's important to correct these inaccuracies so interested parties can understand how the Alaska LNG Project parties arrived at our current status, it's also important to recognize the fact that ExxonMobil has an aligned interest to work with the State of Alaska to commercialize North Slope natural gas resources. Towards this goal, we've worked with Administrations for several years and as we stated in a joint press release issued February 17, 2016, with the State, BP, and ConocoPhillips: "ExxonMobil remains committed to commercializing Alaska's natural gas, and we are committed to working with the Project participants to explore options that would continue to progress that goal". This includes supporting a transition to the type of State run project you reviewed with the Legislature on June 29, 2016.

As part of this transition, we would like to use this letter to clarify ExxonMobil's position on elements of your July 13, 2016 letter. First, we object to your characterization that the schedule presented on June 29, 2016 "removes any focus or commitment on completion within any specified timeframe". During preparation for testimony, the subject schedule was included at AGDC's specific request to show the time frames for FEED, EPC, and start-up of the facilities. The schedule was presented generically to allow the reader to define start-up as a function of the Project management "gates" described on the next page of the presentation.

The lack of progress on the requirements to move through the gates was the core of the issue discussed with the State on February 9, 2016; which are also mischaracterized in your letter. As the Project agreements restrict each party's ability to comment on any other parties' actions or statements, we are documenting ExxonMobil's position on the subject meetings and invite other parties to independently share their position. At no time did ExxonMobil ever suggest we "shelve the Project". Our position was to focus the right level of resources on the critical path regulatory process while allowing the parties to resolve open commercial and fiscal issues.

On January 18, 2016, the State Administration sent us a letter outlining the agreements and actions required before the end of the regular session or "other options" would be considered. The letter, however, failed to include progress on a fiscal agreement. As ExxonMobil has previously stated, one of our prerequisites for entering FEED is a mutually acceptable fiscal agreement with the necessary predictability and durability to underpin a project of this scale. As such, in February, we offered two concepts to the Project participants to progress the Project:

1. Support transition to a State run project, or
2. Pace AKLNG project work to match current market conditions while continuing to advance regulatory approvals and cost reductions concurrently with work on fiscal and commercial agreements to provide the information necessary for a FEED decision.

As you testified in the Joint Resources Committee hearing, "right now we know that we've got to reduce the cost of this system". If the parties went with Concept 2, we would continue to follow the staged gate process and work cost of supply to improve project competitiveness. As lead party under the existing pre-FEED Joint Venture Agreement, we have offered a 2017 work program and budget that is consistent with this concept.

Nonetheless, ExxonMobil supports working with the State on either concept and the State Administration has chosen Concept 1 – a State run LNG project. The Governor has publicly stated a State run project would not be subject to the same taxes as an industry project and a state owned project may provide unique federal tax benefits. Furthermore, the Governor has said the State and alternative investors may accept a lower return on equity. These options could reduce cost of supply and ExxonMobil supports considering these options, as well as others that might commercialize North Slope gas.

Additionally, on page two of your letter you mischaracterize a recent public comment saying ExxonMobil has a "lack of willingness to chase this project". As previously stated, we are fully committed to developing a plan that can successfully benefit all parties, including Alaskans.

ExxonMobil has demonstrated this commitment in several ways, including:

- Spent $96 million on gas commercialization efforts prior to AKLNG, including work related to progressing the Stranded Gas Development Act and the Alaska Gas Inducement Act.
- Funded 25% of the $107 million in Concept Select work and 33% of the $460 million spent on Pre-FEED to date, for a total ExxonMobil spend of $179 million on AKLNG.
- Provided over two thirds of the people on the Alaska LNG Project Management Team which has successfully designed the AKLNG infrastructure and progressed the requisite permits.
- Funded 33% of the costs to secure the LNG Plant land and DoE export permit authorization.
- Funded 62% of the $4.2 billion Point Thomson Initial Production System for a total share of $2.6 billion. The Project included significant pre-investment for gas sales and included a larger condensate export pipeline to support a potential gas export project.

In addition, ExxonMobil has stated multiple times that our gas resources are available to sell to any project, including a State run project, on mutually agreed, commercially reasonable terms. Towards that goal, our bi-lateral negotiating team remains ready to re-start discussions on gas sales to support the State run Project.

We hope this letter will help clarify the historical facts and allow us to be more successful in working together in the future. We look forward to working with you to transition the Project to the State, explore options to reduce the cost of supply, re-engage on gas sales negotiations, and develop the necessary fiscal regime to commercialize North Slope gas.

Sincerely,

c: Senator Cathy Giessel
Senator John Coghill
Senator Kevin Meyer
Representative Benjamin Nageak
Representative Dave Talerico
Commissioner Andy Mack
Deputy Commissioner Dona Keppers
Ms. Suzanne Cunningham
Ms, Jane Conway
Mr. Chad Hutchinson
Mr. Jerry Juday
Mr. Rynnieva Moss
Mr. Darwin Peterson
Ms. Esther Tempel
Mr. Gary Zepp
Mr. Joe Marushack
Ms. Janet Weiss

BP AK LNG Testimony to House and Senate Resource Committees

David Van Tuyl, BP

August 25, 2016

Madam Chair, members of the committee, for the record my name is David Van Tuyl and I am the Regional Manager for BP here in Alaska. I've been working for BP in Alaska for over 32 years, the last several of which have been dedicated to working to get Alaska's gas to market.

Tremendous Opportunity

BP has always seen gas as a tremendous opportunity, and we still do. Since before the Prudhoe Bay Unit started production in 1977, BP saw a tremendous opportunity in commercializing Prudhoe Bay Unit gas. And we still see a tremendous opportunity today.

For BP, the opportunity represented by North Slope gas is of such a scale that it is unique to anywhere else on the planet. Alaska gas is the single, biggest undeveloped resource in our portfolio. If we can get Alaska's gas to market, BP can sell over one billion barrels of oil equivalent. That is huge to BP. Huge.

And at the right time, in the right way, this tremendous opportunity can become Alaska's reality.

In 1977, the producers and the State all thought that gas from Prudhoe Bay would be sold into the lower-48 market within five years. The peculiarities of that regulated market would allow Alaska gas to be sold at a higher price than lower-48 produced gas. But when the market was deregulated, the gas price collapsed. So the project was put on hold and then later stopped.

Was that a bad thing? No, the timing wasn't right. Are we better off having preserved Prudhoe Bay Unit gas? Absolutely. We were all blessed with a silver lining. As AOGCC Commissioner Cathy Foerster recently testified to this committee during the hearing on the Prudhoe Bay Unit plan of development, if we sold gas in the early 80s, Prudhoe Bay would have produced only eight billion barrels of oil. And as Commissioner Foerster emphatically put it, production from the PBU would be "**Dead**." Plus she said that other fields like Niakuk, Oooguruk, Alpine and other satellite fields likely wouldn't have been produced at all.

By investing billions of dollars in oil development, that gas has been used to maximize oil recovery. By expanding PBU gas cycling and using the gas for enhanced oil recovery, we have produced to date over 12 billion barrels of oil. That's four billion barrels more oil than what Commissioner Forrester said was originally expected to be produced. And we still have around two billion barrels of oil more to produce.

Plus we still have over 4 billion barrels of oil equivalent in gas resource remaining. This Prudhoe Bay gas, combined with the known gas at the Point Thomson Field, can underpin a successful Alaska LNG project. To date, we have invested billions of dollars at those fields and continue to invest there. These investments will help us make gas available for a project. So that tremendous opportunity to produce gas from the North Slope remains.

Although there have been other attempts to monetize ANS gas since PBU's early stages, this current attempt began in 2011 when gas prices in Asia were over $15/mmbtu and expected by many to rise. Then-governor Parnell asked BP, ExxonMobil, ConocoPhillips and TransCanada to work with the State to determine the feasibility of a new project we now know as the "AK LNG Project." The plan was to get Alaska gas moving as LNG to Asia in the mid-2020's.

In January 2014, the parties signed a Heads of Agreement and sought enabling legislation from the legislature which was passed as "SB-138." One of the important activities enabled by SB-138 has been confidential, bi-lateral gas marketing conversations between BP and the State. As evidenced through commitments and comments made in December of last year, BP is willing to make our gas available to a project under mutually agreed, commercially reasonable terms.

BP has been focused in many different ways on making the Alaska LNG project a success. In total, BP has spent our share of over $600 million as the project nears completion of the pre-FEED phase.

As we heard yesterday, the Alaska LNG project continues to make good technical progress. Pre-FEED work is over 90% complete and Pre-FEED deliverables are anticipated by the middle of next month. The project team has made great progress.

The Project is Challenged

But as we also heard yesterday, the Alaska LNG Project as we know it today is commercially challenged. It's no secret that the shale gas revolution in the lower-48 has fundamentally changed the LNG supply picture. We have heard from multiple industry experts, and BP agrees, that the estimated cost to supply Alaska gas to Asian markets is too high to compete with other, cheaper sources, most notably the US lower-48.

That is the reality against which Alaska LNG must compete. As Wood Mackenzie showed yesterday, in its current form, our project doesn't compete. But as we also heard yesterday from Wood Mackenzie, there are game-changing opportunities for Alaska LNG. Opportunities worth pursuing.

Our project must successfully compete in the global marketplace. LNG is a commodity. Buyers have many choices for purchasing their LNG. Understandably, they want to pay as little as possible. We want to attract buyers. So we want to be able to make a competitive offer.

We understand the State's desire to move the project ahead. We understand the State's fiscal need for a new revenue source in the mid-2020's. And the State should understand that we want to move the project forward, too.

But the next phase, FEED, will likely cost over one billion dollars, maybe more. That kind of a commitment deserves a careful evaluation and a thoughtful decision before we commit our company resources. We don't want to rush into the largest energy project in North America only to end up losing lots of money for all of us. So right now is not the time to make that commitment.

A New Approach

BP is not giving up on the project. Instead, we need to change gears and figure out how to reduce the cost of supply so that the project can be competitive. We believe that the best way to make that happen is with a State-led project and we support the State's efforts. We are determined to find a way to lower the cost of supply and make Alaska LNG competitive in the global marketplace.

One way to do that is to come up with a different, more commercially efficient structure.

It is not unusual for large projects like this one to go through a period of restructuring as they mature. And we think a State project with State ownership could be the best structure to make the project more competitive. Why?

We heard yesterday from Wood Mackenzie that if the Alaska LNG project were restructured with a utility-like toll, it would represent a major step-change in cost of supply. State ownership could provide this structure. That step alone, converting the up-front capital into a toll over time, could allow the project to compete globally. Clearly the details matter and there are many that still remain to be worked out.

Further, State ownership could significantly lower federal taxes, another part of cost of supply. As a tax exempt entity, the State may be uniquely positioned to deliver an important cost of supply reduction to further improve this project's global competitiveness.

As we just heard, details matter. This State-led approach enables the State to shape its policy choices in a way to help improve the competitiveness of the Alaska LNG project.

Because we think the State-owned structure can improve the project's competiveness, we have been working collaboratively with the other parties to achieve a number of things:

- transitioning the project to AGDC;
- finding alternative commercial structure options and concepts that have been successfully used in global LNG projects to reduce the project's cost of supply;
- timely transferring information, data and work product; and
- providing access to necessary assets for AGDC to help the filing of a successful FERC application.

BP supports the State-led project structure. Two things that will remain critically important to us in this transition are:

- that the project can attract the necessary financing; and
- that the project will be advanced and delivered efficiently, at or below its estimated cost.

Because we believe this path forward can succeed, we support AGDC in these efforts. We are discussing internally and with AGDC just what form that support might take. We want the project to seamlessly continue and maintain momentum.

We are working to define a project with a competitive cost of supply that is also financeable and technically deliverable. We want the project to be a success so that we can fulfil the tremendous opportunity to monetize our gas.

Continued Commitment

I want to conclude by emphasizing that BP is committed to making this project a success. I can't say enough that this project's success is critical to:

- BP's Alaska business;
- the State's future; and
- the welfare of so many Alaskans who will benefit from a successful project.

Amid this transition we need to remember that the core facts remain unchanged.

- Prudhoe Bay remains one of the world's most prolific basins, with a known gas resource of over 4 billion barrels of oil equivalent. That's a lot to play for.
- The Point Thomson gas condensate field is producing now and contains a gas resource of another 1 billion barrels of oil equivalent. That's even more to play for.
- A successful project would provide a major step towards commercializing both the known and as yet unknown oil and gas resources on the slope and around the State. Still more to play for.
- The companies sitting before you are motivated to monetize that gas resource.
- The government is also highly motivated to get that Alaska gas resource to market.

All of that is important as we define the way forward. It is a future worth continuing to work hard to achieve. Importantly, we are aligned on our need to continue to look for opportunities to reduce the cost of supply for Alaska LNG to provide a solid future for BP Alaska and the State.

And that remains the future for Alaska that BP is committed to working for.

Thank you.

Internal Revenue Service

Department of the Treasury

Index Number: 103.02-01

Washington, DC 20224

Travis C. Gibbs
c/o O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, California 90071-2899

Person to Contact:
David E. White I.D. #50-07793
Telephone Number:
(202)622-3980
Refer Reply To:
CC:DOM:FI&P:5/PLR-118656-99
Date: JAN 24 2000

LEGEND:

Authority = Alaska Gasline Port Authority

State = Alaska

Date 1 = October 5, 1999

A = Fairbanks North Star Burough

B = North Slope Burough

C = City of Valdez

Port = Port of Valdez, Alaska

Location = North Slope of Alaska

Dear Mr. Gibbs:

This letter is in response to your request for a ruling that based on the definition of the term "political subdivision" in § 1.103-1(b) of the Income Tax Regulations, the Authority qualifies as a political subdivision of the State.

Facts and Representations

You make the following factual representations. The Authority was created on Date 1 pursuant to State law by the local governmental units A, B, and C. The Authority was created to provide for the development of ports in the State for transportation-related commerce. In accordance with this purpose, the Authority will

undertake various improvements and additions to certain existing port facilities located, and will construct new port facilities to be located, at the Port, and will acquire and develop the facilities necessary for the transportation, in state use, and sale of natural gas that is currently stranded at the Location (the "Project").

As a result of the availability of natural gas through the Project, the cost of electricity to the State's residents will be substantially reduced. Excess gas not used in-state will be available for other uses.

The Authority is governed by a board of directors appointed by its member governmental units A, B, and C. The Authority has the power to acquire, by purchase, lease, contribution, condemnation, or otherwise, real and personal property for the Project. State law provides that the Authority has the same power of eminent domain as that possessed by A, B, and C. Specifically, the Authority may commence eminent domain actions, in its own name, in the appropriate court of the State to acquire land or materials within its physical boundaries for Authority purposes, and may take possession of the property upon commencement of the proceedings.

The Authority's revenues will be derived primarily from the sale of natural gas to municipalities within the State and to other purchasers, which are expected to include governmental and private entities. These revenues will be used first generally to pay operating expenses and debt service and to fund necessary reserves for operation of the Project. Any net income will be shared with the State and all of its municipalities for use in their respective governmental purposes. Upon dissolution of the Authority, its assets will be distributed to its member governmental units.

In addition to contributions from the participating governmental units, the Authority is authorized to issue bonds or any other form of indebtedness to raise funds to finance the Project.

Law and Analysis

Section 103(a) of the Internal Revenue Code provides, in part, that except as provided in subsection (b), gross income does not include interest on any state or local bond. Section 103(c)(1) provides that the term "state or local bond" means an obligation of a state or political subdivision thereof.

Section 1.103-1(b) 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 this section, 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. Rev. Rul. 78-276, 1978-2 C.B. 256, states that the term "political subdivision" has been defined consistently for all federal tax purposes as denoting either (1) a division of a state or local government that is a municipal corporation, or (2) a division of such state or local government that has been delegated the right to exercise sovereign power.

In determining whether an entity is a division of a state or local governmental unit, important considerations are the extent the entity is (1) controlled by the state or local government unit, and (2) motivated by a wholly public purpose. Revenue Ruling 83-131, 1983-2 C.B. 184.

The three generally acknowledged sovereign powers are the power to tax, the power of eminent domain, and the police power. See *Commissioner v. Estate of Alexander J. Shamberg,* 3 T.C. 131, (1944) *acq.*, 1945 C.B. 6, *aff'd* 144 F.2d 998 (2d Cir. 1944), *cert. denied*, 323 U.S. 792 (1945). It is not necessary that all three powers enumerated in Shamberg be delegated. Rev. Rul. 77-164, 1977-1 C.B. 20; Rev. Rul. 77-165, 1977-1 C.B. 21. However, possession of only an insubstantial amount of any or all sovereign powers is not suffficient. All of the facts and circumstances must be taken into consideration including the public purposes of the entity and its control by a government.

Indicia that the Authority is governmentally controlled are: (1) the Authority is governed by a board of directors appointed by its member governmental units A, B, and C; (2) the Authority's net revenues inure to the benefit of the State and its municipalities; and (3) the Authority's assets will be distributed to its member governmental units upon dissolution. The Authority is motivated by a wholly public purpose.

Under State law the Authority is granted broad powers of eminent domain within its physical boundaries. The Authority is authorized to commence actions in the appropriate court of the State to enforce this right and will be able to take possession of property upon commencement of the condemnation proceedings rather than after judgment. These exercises of the power of eminent domain are commensurate with a substantial exercise of that power.

Conclusion

Based solely on the representations made and the definition of the term "political subdivision" in § 1.103-1(b), we conclude that the Authority is a political subdivision. Accordingly, the Authority is not required to file federal income tax returns or pay federal income tax on its income.

Except as specifically stated above, no opinion is expressed regarding the consequences of this transaction under any provision of the Code or regulations thereunder.

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

Sincerely yours,

Assistant Chief Counsel
(Financial Institutions & Products)

By: _____
Timothy L. Jones
Assistant to the Chief, Branch 5

Enclosure:

Copy of § 6110 purposes

cc: District Director, Pacific - Northwest District (Seattle)
Attn: Chief, Examination Division

Employee Plans & Exempt Organizations
Field Compliance Division
Attn: Joseph P. Grabowski, CP:E:EO:T:4
Room 6236

O'MELVENY & MYERS LLP

CENTURY CITY
NEWPORT BEACH
NEW YORK
SAN FRANCISCO
WASHINGTON, D.C.

400 South Hope Street
Los Angeles, California 90071-2899
TELEPHONE (213) 430-6000
FACSIMILE (213) 430-6407
INTERNET www.omm.com

HONG KONG
LONDON
SHANGHAI
TOKYO

November 19, 1999

OUR FILE NUMBER
11,148-087

WRITER'S DIRECT DIAL
213-430-7482

WRITER'S E-MAIL ADDRESS
tgibbs@omm.com

Internal Revenue Service
Assistant Chief Counsel
Financial Institutions & Products
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Attn: CC:DOM:CORP:TSS, Room 6561

Re: *Alaska Gasline Port Authority*

Ladies and Gentlemen:

This letter ruling request is respectfully submitted on behalf of the Alaska Gasline Port Authority (the "Authority" or the "Alaska Gasline Port Authority").

In brief, a ruling is requested to the effect that, under the facts set forth herein, the Authority is a political subdivision of the State of Alaska (the "State"), and therefore, the Authority's income is exempt from federal income taxation.

Section I of this request outlines certain facts relating to the organization, operation and purpose of the Authority. Section II sets forth the specific ruling requested. Section III summarizes the authorities supporting such a ruling, analyzes their application to the relevant facts and sets forth the conclusion of that analysis. Section IV discusses certain taxpayer information and procedural matters.

By a separate letter attached hereto, the Authority is requesting expeditious handling of this request pursuant to Section 8.02(4) of *Revenue Procedure 99-1*.

ALASKA GASLINE PORT AUTHORITY
LETTER RULING REQUEST

I. STATEMENT OF FACTS

A. Information About the Authority

1. Creation and Legal Status of the Authority

The Authority is a port authority, which was established on October 5, 1999, in accordance with the Municipal Port Authority Act[1] of the Alaska Statutes (the "Act"). Pursuant to Section 29.35.605 of the Act,[2] the Fairbanks North Star Borough, the North Slope Borough and the City of Valdez (each an "Original Municipality") adopted parallel ordinances[3] (each an "Ordinance," and together the "Ordinances") creating the Authority. Each of the Ordinances was approved by the respective voters of each Original Municipality on October 5, 1999. The Authority has been created pursuant to each of the Original Municipality's transportation system powers.[4]

2. Purpose of the Authority

The primary purpose of an authority created pursuant to the Act is to provide for the development of ports for transportation-related commerce.[5] In accordance with this purpose and the State's constitutional mandate to utilize, develop and conserve its natural resources for the maximum benefit of its people,[6] the Authority will undertake various improvements and additions to certain existing port facilities located, and will construct new port facilities to be located, at the Port of Valdez, Alaska, and acquire and develop the facilities necessary for the transportation, in state use, and sale of natural gas that is stranded on the North Slope of the State (the "Project"). See map attached hereto as Exhibit F.

3. Powers of the Authority

a. In General. The Authority has the power to acquire, by purchase, lease, contribution, condemnation or otherwise, real and personal property for the Project, and to construct, improve, maintain and operate, or to cause to be constructed, improved, maintained and operated, all or part of the Project.[7]

---

1 ALASKA STAT. §§ 29.35.600 to 29.35.720. The Act is attached hereto as Exhibit D.
2 ALASKA STAT. § 29.35.605(a)(2).
3 Fairbanks North Star Borough, Alaska, Ordinance, 99-039 (August 12, 1999) (attached hereto as Exhibit A); North Slope Borough, Alaska, Ordinance, 99-06 (August 3, 1999) (attached hereto as Exhibit B); Valdez, Alaska, Ordinance, 99-11 (July 19, 1999) (attached hereto as Exhibit C).
4 ALASKA STAT. § 29.35.605(d).
5 ALASKA STAT. § 29.35.600.
6 ALASKA CONST. art. VIII, § 2.
7 Ordinances, § 6.

b. Eminent Domain. The Authority is authorized to exercise the powers of eminent domain and declaration of taking to the same extent as such powers exists in the Participating Municipalities (as defined herein). Specifically, the Ordinances provide that the Authority may "exercise the powers of eminent domain and declaration of taking within its physical boundaries under [Section 29.35.030 of the Alaska Statutes] to acquire land or materials for [A]uthority purposes."[8]

c. Additional Powers. Additionally, the Authority is expressly authorized, in its own name, to do all acts necessary or convenient for the exercise of its power to achieve its purpose, including, but not limited to:

1. sue and be sued;

2. have a seal and alter it at pleasure;

3. acquire an interest in a project as necessary or appropriate to provide financing for the project, whether by purchase, gift or lease;

4. lease to others a project acquired by it upon the terms and conditions the Authority considers advisable, including, without limitation, provisions for purchase or renewal;

5. sell, by installment sale or otherwise, exchange, donate, convey or encumber in any manner by mortgage or by creation of another security interest, real or personal property owned by it, or in which it has an interest, including a project, when, in the judgment of the Authority, the action is in furtherance of its purpose;

6. accept gifts, grants or loans, under the terms and conditions imposed under the gift, grant or loan, and enter into contracts, conveyances or other transactions with a federal agency or an agency or instrumentality of the State, a municipality, private organization or other person;

7. deposit or invest its funds, subject to agreements with bondholders;

8. purchase or insure loans to finance the costs of projects;

9. provide for security within the boundaries of the Authority;

---

[8] *Id.* The boundaries of the Authority are coterminous with the boundaries of the Participating Municipalities. Ordinances, § 3.

Section 29.35.030 of the Alaska Statute provides municipalities with the power of eminent domain. The extent of the Participating Municipalities' and the Authority's eminent domain powers is set forth in Section 09.55.250 of the Alaska Statutes, which is attached hereto as Exhibit E.

10. enter into loan agreements with respect to one or more projects upon the terms and conditions the Authority considers advisable;

11. acquire, manage and operate projects as the Authority considers necessary or appropriate to serve its purposes;

12. assist private lenders to make loans to finance the costs of projects through loan commitments, short-term financing or otherwise;

13. charge fees or other forms of remuneration for the use or possession of projects;

14. defend and indemnify a current or former member of the Board (as defined herein), employee or agent of the Authority against all costs, expenses, judgments and liabilities, including attorney fees, incurred by or imposed upon that person in connection with civil or criminal action in which the person is involved as a result of the person's affiliation with the Authority if the person acted in good faith on behalf of the Authority and within the scope of the person's official duties and powers;

15. purchase insurance to protect and hold harmless its employees, agents and Board members from any action, claim or proceeding arising out of the performance, purported performance or failure to perform in good faith, of duties for, or employment with, the Authority and to hold them harmless from expenses connected with the defense, settlement or monetary judgments from that action, claim or proceeding; and

16. protect its assets, services, and employees by purchasing insurance or providing for certain self-insurance retentions."[9]

4. Membership in the Authority

The Authority's members currently consist of the Fairbanks North Star Borough, the North Slope Borough and the City of Valdez, each a political subdivision of the State. Additional municipalities may join and become members of the Authority at a later date. The Fairbanks North Star Borough, the North Slope Borough and the City of Valdez, together with all municipalities that join the Authority prior to December 31, 1999, are hereinafter referred to as the "Original Municipalities." The Original Municipalities together with the municipalities that join the Authority after December 31, 1999, are hereinafter collectively referred to as the "Participating Municipalities."[10]

---

[9] Ordinances, § 6.
[10] Ordinances, § 5.

Prior to becoming a member in the Authority, the governing body of each existing Participating Municipality and the governing body of the new Participating Municipality must adopt parallel ordinances.[11] Pursuant to the Act, all municipalities that become members of the Authority must be political subdivisions of the State.[12]

5. Governance of the Authority

A governing board (the "Board") exercises the powers of the Authority.[13] The Board is comprised of three members selected by each of the Original Municipalities. Board members were appointed by their respective municipalities; each serves a four-year term. The Original Municipalities selected their representatives pursuant to their own respective local procedures.

Each Board member must be a registered voter residing within the State and serves on the Board solely in his individual capacity at the pleasure of the governing body of the Original Municipality by which the member was appointed. A majority of the Board members constitutes a quorum of the Board for the transaction of business. A majority of Board members present at a meeting at which a quorum is present may act on behalf of the Board.[14]

6. Revenues of the Authority

The Authority's revenues will be derived primarily from the sale of natural gas to municipalities within the State and to other purchasers, which are expected to include governmental and private domestic and foreign entities. The Authority's revenues will be used first generally to pay operating expenses and debt service and to fund necessary reserves for operation of the Project. Any net income will be shared with the State and all its municipalities as described below for use in their respective governmental purposes.[15] The funds will be distributed to the general funds of the State and each of the municipalities within the State in accordance with the following formula set forth in the Ordinances[16]:

1. Payment in Lieu of Tax. Each municipality that has Project facilities within its jurisdiction will receive a payment in lieu of tax to compensate the municipality for property taxes it would have received if the Authority were not tax exempt under the laws of the State. Such payment will be equal to 2 percent of the original cost of construction of the Project facility within its jurisdiction plus any subsequent capital costs added to the facilities within its jurisdiction.

2. Remaining Distribution. The remaining net income, if any, will be distributed as follows.

---

11 ALASKA STAT. § 29.35.605(b); Ordinances, § 5.
12 ALASKA STAT § 29.35.605.
13 Ordinances, § 7.
14 By-laws of the Alaska Gasline Port Authority, art. 3, § 9 (August 11, 1999) (attached hereto as Exhibit G).
15 Ordinances, § 17.
16 Ordinances, § 17

a. Sixty percent to the State.

b. Thirty percent to all municipalities within the State. A municipality's share will be calculated based on its population or, if it is a municipality within a borough, the ratio of its operating budget to the operating fund of the borough. Each municipality will receive a minimum annual payment of $50,000.

c. Ten percent equally to the Original Municipalities.

7. Dissolution of the Authority

Upon dissolution of the Authority, all of its assets remaining after its debt is retired will be distributed to all the Participating Municipalities in proportion to their respective investment in the Authority at that time.[17] Such proportion will be calculated "in proportion to the difference between their contributions to the [A]uthority and any outstanding debt or obligation of that municipality to the [A]uthority, provided that any obligation to bondholders then outstanding shall first be satisfied in full."[18]

B. Information About the Project

Approximately 35 trillion cubic feet of natural gas remains stranded on the North Slope of the State (the "Gas"). The Gas is not being commercially produced but is instead being used solely for purposes of reinjection into the ground, a process that facilitates the recovery of crude oil. While the Gas is stranded on the North Slope it is not available to the residents of the State without an 800-mile pipeline from the North Slope to Valdez.

Due to the State's small population, the in-state natural gas consumption alone could not financially support the Project. Therefore, a consequence of making the Gas available for use by Alaska residents is that excess Gas will be available for other uses. Accordingly, the Authority intends to provide facilities to condition the Gas in excess of Alaska's anticipated in-state use for export.

1. Benefits of the Project

The Project will help the State's residents to reduce their heating and electrical bills. Alaska has one of the nation's harshest climates and, therefore, a corresponding high cost of heating. This Project will enable the State's residents who are currently heating their homes with wood, coal or diesel fuel to use the State's own Gas for heating and power generation. Alaska residents also have among the highest, if not the highest, electric rates in the nation. The cost of electricity will be substantially reduced as a result of the availability of the Gas through this Project.

---

17 Ordinances, § 16. Cf. Ordinances, § 4

18 ALASKA STAT. § 29.35.610(b).

Further, oil production has been a vital resource in the development of the State and its municipalities. For many years, the State has relied heavily on the production of oil to foster its livelihood, to provide opportunities and employment for its citizens and to generate revenue to ensure future prosperity. In recent years, however, lower oil prices, reduced production and potential field depletion have greatly affected the State's ability to generate revenues and provide a secure future for its citizens. This Project will generate much-needed revenues for the State, provide employment for its citizens and generally provide the State with the financial resources to prosper in the next century.

The benefits of the Project to the State and its residents are clear. Nevertheless, the obstacles to building the pipeline have been staggering. For thirty years private interests have investigated ways to build a pipeline to transport the Gas from the North Slope to market, but the scope, cost and practical difficulties of building it have thus far been financially and practically infeasible. Thus, the Original Municipalities believe that only a public entity has the requisite power and resources to build the pipeline and credibly deliver the Gas for use by Alaska residents and other purchasers.

2. Description of the Project

The Project consists of the acquisition, creation and improvement of all facilities and infrastructure necessary or useful for the purchase, conditioning, transportation, storage and sale of the Gas. It will include the acquisition, construction, financing, installation and improvement of new and existing port facilities located at the Port of Valdez and any other necessary facility, including compression stations, pipelines, spur lines and plants for conditioning the Gas for transport by commercial carriers (such plants are technically referred to as LNG Facilities). The Authority will deliver a development plan, which requires approval by each Participating Municipality prior to the construction or acquisition of the Project.[19]

As part of the Project, the Authority will be responsible for acquiring the Gas and other related commodities, whether by purchase or other conveyance or by exercising its eminent domain power, as well as for acquiring all necessary permits, licenses and related rights necessary for the operation of the Project.

The Authority expects that the Project will be operated by a professional gasline operator pursuant to a management contract. The Authority expects and intends that any such contract will meet the requirements of *Revenue Procedure 97-13*.[20]

3. Financing of the Project

To finance the Project, the Participating Municipalities may contribute or advance public funds, personnel, equipment or property to the Authority.[21] Such advances may be subject to

---

[19] Ordinances, § 15.
[20] Rev. Proc. 97-13, 1997-1 C.B. 632.
[21] Ordinances, § 13.

repayment in accordance with terms agreed upon at the time of the advance. As of the date hereof, the Original Municipalities have contributed funds to the Authority and there is no expectation that any such funds will be repaid in the future.

Additionally, the Authority is authorized to issue bonds or any other form of indebtedness to raise funds to finance the Project.[22] Debt issued by the Authority may consist of senior as well as junior or subordinated debt. To the extent that the Authority issues debt, the debt instruments will require all parties to treat such instruments as debt for tax purposes. Further, all debt will have a noncontingent interest rate and will be due upon a fixed maturity date. The interest on and principal of any debt issued by the Authority will be due and payable in all events and failure to pay will be an event of default. Other than Participating Municipalities to the extent of their advances, any creditor of the Authority will be unrelated to the Authority and will possess customary creditor's rights; no such creditor will receive management rights as a direct result of lending money to the Authority. Finally, the Authority will have cash flow projections that reflect that there will be sufficient revenues to pay all debt, including subordinated debt.

The principal and interest on all debt issued by the Authority as well as the repayment of any advances will be payable exclusively from the income and receipts of, or other money derived from, the Project. Neither the State nor any of the Participating Municipalities will be liable for the debts, liabilities or obligations of the Authority.

II. RULINGS REQUESTED

The Authority requests a ruling that:

> The Authority is a political subdivision of the State, whose income is exempt from federal income tax.

III. STATEMENT OF LAW AND ANALYSIS

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."[23] This doctrine ensures that the federal government does not impose taxes that would unduly burden the state in the performance of its functions.[24]

For purposes of determining whether an entity qualifies for tax exemption under the doctrine of intergovernmental immunity, a "political subdivision" is defined as "any division of any State or local governmental unit which . . . has been delegated the right to exercise part of

---

[22] Ordinance, § 11.

[23] Rev. Rul 57-2, 1957-1 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. 88-20-030 (Feb. 16, 1988).

[24] Priv. Ltr. Rul. 88-20-030 (Feb. 16, 1988) (citing Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29).

the sovereign power of the government."[25] In considering whether an entity is a political subdivision, a two-part analysis must be taken.

First, in order to be a political subdivision, the entity must be a division of a state or local government (i.e., the entity have close ties with a state or local government).[26] This determination is generally based upon all of the facts and circumstances.[27] Of particular importance are (1) the extent to which there is governmental control of the entity and (2) whether the entity has a public purpose.[28] In the case at hand, the Authority is governmentally controlled as it is managed by a governing board that is appointed by the Original Municipalities, and all of the Authority's assets and net revenues inure to the benefit of the State and its municipalities. Also, the Authority was established for the public purpose of promoting the development of the State's valuable natural resources, which would otherwise lie dormant but for public involvement. Such resource development will provide an alternative, more efficient fuel source to the citizens of the State, provide additional employment within the State and raise revenue for the State and its municipalities.

Second, a political subdivision must have a grant of sovereign power by the state. The primary sovereign powers are: (1) the power to tax, (2) the power of eminent domain, and (3) the police power.[29] "It is not necessary that all three of these powers be delegated. However, possession of only an insubstantial amount of any or all sovereign powers is not sufficient."[30] In this case, the Authority has been delegated broad and substantial powers, including the power of eminent domain. Moreover, the Authority has been delegated the eminent domain power by the Participating Municipalities, as permitted by the Act, to the same extent that such power exists in such municipalities.

A. The Authority is a "Division" of the Participating Municipalities

To be considered a political subdivision, an entity must be a division of the state or local government. "All the facts and circumstances must be taken into consideration in determining whether an entity is a political subdivision, including the public purposes of the entity and its control by government."[31] The more indicia of "close ties" between government and the entity, the more likely the entity is a political subdivision.[32] The Authority is closely related to the State and local government: (1) the Authority's Board is appointed by the Original Municipalities; (2) the Authority's net revenues inure to the benefit of the State and its municipalities; (3) the

---

25 Treas. Reg. § 1.103-1(b). In General Counsel Memorandum 36,994, the Internal Revenue Service concluded that the definition of "political subdivision" under Section 103 should be used to interpret other provisions of the Code involving political subdivisions. Gen. Couns. Mem. 36,994 (Feb. 3, 1977).

26 *See Philadelphia Nat'l Bank v. United States*, 666 F.2d 834, 835 (3d Cir. 1981).

27 Rev. Rul. 77-174, 1977-1 C.B. 414; Gen. Couns. Mem. 37,829 (July 31, 1978).

28 Rev. Rul. 77-174, 1977-1 C.B. 414.

29 Estate of Shamberg, 3 T.C. 131 (1944), *acq.*, 1945 C.B. 6, *aff'd*, 144 F.2d 998 (2d Cir. 1944).

30 *See, e.g., Texas Learning Task Group v. Commissioner*, 958 F.2d 122, 124 (5th Cir. 1992) (citing 30 Op. Atty. Gen. 252; Rev. Rul. 77-164, 1977-1 C.B. 20.

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

32 *See Philadelphia Nat'l Bank*, 666 F.2d at 835.

JAN-26-2006 THU 11:18 AM No. 4159 P. 15

Authority's assets will be distributed to the Participating Municipalities upon dissolution; and (4) the Authority is fulfilling a public purpose.

1. The Authority is Government Controlled

Control by the government is an important factor in determining whether an entity is a political subdivision. Rulings by the Internal Revenue Service (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 revenues and assets inure to a public entity.

a. The Authority is Controlled by a Government-Appointed Governing Board

Public control via a government-appointed board indicates that an entity is a political subdivision.[33] There are several instances where the courts and the Service have determined that an entity is a political subdivision where the governing body of the entity is appointed by government or elected by the public.[34]

In *Revenue Ruling 85-131*,[35] for example, the Service ruled that electric and telephone membership corporations, which had eminent domain power, were not political subdivisions because they were "not controlled directly or indirectly by a state or local government."[36] Instead, "the business and affairs of the corporations [were] controlled by a board of directors that [was] independent of such authority."[37] Accordingly, the membership corporations did not have close enough ties with government to be political subdivisions.

By contrast, the Authority is managed by a Governing Board that is entirely governmentally appointed. Each Original Municipality appoints three members to the Board. Each member of the Board shall "serve at the pleasure of the governing body of the Original Municipality by whom such member was appointed."[38] Moreover, any member "may be terminated at any time by a majority vote of the governing body of such Original Municipality which appointed such member."[39]

---

33 *See id.*; Rev. Rul. 85-131, 1985-2 C.B. 184. *Cf. Rev. Rul. 77-164, 1977-1 C.B. 20.*

In *Philadelphia Nat'l Bank* the court specifically noted that the majority of the entity's board was made up of private individuals, who were elected by the entity's board. The state only appointed a minority of the board members. *See Philadelphia Nat'l Bank*, 666 F.2d at 838.

34 *See, e.g., Commissioner v. Shamberg*, 144 F.2d at 998, 1000 (2d Cir. 1944); *Commissioner v. White*, 144 F.2d 1015, 1020 (2d Cir. 1944); Priv. Ltr. Rul. 84-05-007 (Oct. 26, 1983); Priv. Ltr. Rul. 88-09-038 (Dec. 3, 1987); Priv. Ltr. Rul. 93-27-072 (April 12, 1993).

35 Rev. Rul. 85-131, 1985-2 C.B. 184.

36 *Id.*

37 *Id.*

38 Ordinances, § 7.

39 *Id.*

b. The Authority's Assets and Net Revenues Inure to the Benefit of the State and its Municipalities

Another strong indicator that an entity is a "division" of a State or local government is the fact that the entity's assets and net revenues inure to the public benefit. For instance, a hospital district possessing only the power to tax was a political subdivision since no private individual or organization would benefit from the dissolution of the entity; the revenue and assets were to inure solely to the public benefit.[40]

Here, the Authority will distribute its revenue only to the State and its municipalities.[41] Generally, net revenues will be distributed sixty percent to the State, thirty percent to all municipalities in Alaska and ten percent to the Original Municipalities.

Furthermore, if the Authority is dissolved, the Act and Ordinances mandate that the Authority's assets are to be distributed to all Participating Municipalities.[42] The assets will be distributed to the Participating Municipalities "in proportion to the difference between their contributions to the authority and any outstanding debt or obligation of that municipality to the [A]uthority."[43] Under no circumstances will private persons or entities receive asset distributions from the dissolution of the Authority.

2. The Authority is Fulfilling a Public Purpose

Whether an entity is serving a public purpose is also important in the determination of whether the entity has close ties with, or is a division of, the state or local government. The courts and the Service have given the term "public purpose" a broad interpretation. Not only has it included such traditional public purposes as education[44] and transportation[45] but also county humane societies with the purpose of preventing cruelty to children and animals,[46] utilities,[47] conservation and preservation of natural resources,[48] community development,[49] and even off-track betting[50] and the operation of liquor stores.[51] In fact, we did not find a single opinion or

---

[40] Priv. Ltr. Rul. 88-09-080 (Feb. 16, 1988). The district argued that it also had the power of eminent domain, but the Service concluded that the district's power was too insubstantial since its condemnation decisions were subject to state approval. *Id.*; *see also* Priv. Ltr. Rul. 88-09-088 (Dec. 8, 1987); Priv. Ltr. Rul. 93-27-072 (April 12, 1993).

[41] Ordinances, § 17.

[42] Ordinances, § 16; ALASKA STAT. § 29.35.610.

[43] ALASKA STAT. § 29.35.610.

[44] *Michigan v. United States*, 40 F.3d 817, 819-20 (6th Cir. 1994); *Texas Learning*, 958 F.2d at 122.

[45] *Sharpless*, 144 F.2d at 999-1002; *White*, 144 F.2d at 119-20; Gen. Couns. Mem. 37,637 (1978).

[46] Gen. Couns. Mem. 38,713 (May 5, 1981).

[47] Gen. Couns. Mem. 37,629 (July 31, 1978); Gen. Couns. Mem. 37,771 (Nov. 30, 1978).

[48] Rev. Rul. 63-44, 1963-2 C.B. 430; Rev. Rul. 59-37, 1959-1 C.B. 301; Gen. Couns. Mem. 33,808 (April 29, 1968).

[49] Rev. Rul. 77-164, 1977-1 C.B. 20; Gen. Couns. Mem. 33,556 (July 8, 1967).

[50] Rev. Rul. 78-138, 1978-1 C.B. 314.

[51] Rev. Rul. 71-131, 1971-1 C.B. 28.

ruling where a court or the Service found that an entity was not a political subdivision based on an insufficient public purpose.

The Authority serves many of the above-mentioned purposes. Its primary function involves an exercise of the transportation powers of municipalities within the State. The public functions furthered by the exercise of those powers include the provision of natural gas for the use by its citizens, the development and preservation of the natural resources of the State, the development of jobs and commerce within the State and the raising of revenue to serve the general needs of the State, its municipalities and its citizens. Accordingly, the Authority's public purpose supports a determination that it is a political subdivision.

B. The Authority is a Political Subdivision as it Possesses a Substantial Amount of the Sovereign Power of Eminent Domain

1. The Power of Eminent Domain Is Sufficient

To be classified as a political subdivision, an entity must be authorized to exercise part of the sovereign powers of the government.[21] There are three primary sovereign powers—the power to tax, the power of eminent domain and the police power; an entity need not possess all such powers to be a political subdivision.[23] In fact, possession of only one or two of these powers is sufficient as long as such powers are not insubstantial.[24]

The seminal case that established the requirements for political subdivision status, *Commissioner v. Estate of Shamberg*,[25] also involved a port authority. In *Shamberg*, the court held that the Port of New York Authority (the "Port of New York") was a political subdivision because it possessed more than an insubstantial amount of the sovereign powers.[26]

In *Shamberg* the Port of New York was established pursuant to a compact between the State of New York and the State of New Jersey and was vested with (*i*) all of the powers

---

[21] *Shamberg*, 144 F.2d at 1005.

[22] *Id.*

[23] *Texas Learning*, 958 F.2d at 124 (citing 30 Op. Atty. Gen. 252); Rev. Rul. 77-164, 1977-1 C.B. 20. These generally acknowledged sovereign powers of states are the power to tax, the power of eminent domain, and the police power.... It is not necessary that all three of these powers be delegated. However, possession of only an insubstantial amount of any or all sovereign powers is not sufficient. All of the facts and circumstances must be taken into consideration, including the public purposes of the entity and its control by a government.

Id. (citations omitted).

[24] 144 F.2d 998 (2d Cir. 1944). Although decided under the statutory predecessor to section 103, *Shamberg* is still consistently cited as authority in this area. See *Texas Learning*, 958 F.2d at 125; *Michigan v. United States*, 40 F.3d 819, 824 (6th Cir. 1994); *Philadelphia Nat'l Bank*, 666 F.2d at 837 ("There is surprisingly little decisional law on what constitutes a political subdivision within the meaning of § 103. The Supreme Court has never addressed the issue, and the leading—and almost only—cases on point were decided by the Court of Appeals for the Second Cir."); *Commissioner v. Estate of White*, 144 F.2d 1019 (2d Cir. 1944).

[25] *Shamberg*, 144 F.2d at 1004; *see also* Rev. Rul. 77-164, 1977-1 C.B. 20

necessary to acquire and construct its projects;[37] (*ii*) the power to make and enforce the rules and regulations it deemed convenient for the operation of the bridges and tunnels it operates and to maintain a uniformed police force and (*iii*) the power of eminent domain. The Port of New York could only exercise its police power with the consent of the State, and rules and regulations made by the port authority were effective only if the legislatures of both states concurred. Nevertheless, the court held that the Port of New York was a political subdivision since it was not necessary that the Port of New York exercise all the functions of the state; it was sufficient that the Port only exercise a portion of those functions.[38]

In relying on *Stamberg*, both the courts and the Service have consistently held that entities that possess but one of the three primary sovereign powers (*e.g.*, the power of eminent domain) are political subdivisions so long as that power is more than insubstantial.[39] The House Ways and Means Committee stated: "an entity is a political subdivision . . . if it has more than an insubstantial amount of *one or more* of . . . the power to tax, the power of eminent domain, and the police power."[40]

2. The Authority Possesses a Substantial Amount of Eminent Domain Power

The determination whether an entity possesses more than an insubstantial amount of sovereign power turns primarily on the extent to which the entity's power is similar to that of other governmental units within the state. As outlined below, the evaluation turns on (1) the extent to which such power rests with the entity that purports to be a political subdivision, as opposed to some other governmental unit or entity, and (2) the extent to which the entity's

---

[37] Specifically, under the compact the Port of New York was granted with the power to purchase, construct, lease and/or operate the terminal; to make charges for the use thereof; to own, hold, lease and/or operate real or personal property; to borrow money and secure the same by bond or by mortgage; and to make rules and regulations relating to navigation and commerce. *Stamberg*, 144 F.2d. at 999-1001.

[38] *Id.* at 1004.

[39] Rev. Rul. 61-181, 1961-2 C.B. 21; Rev. Rul. 77-143, 1977-1 C.B. 340; Priv. Ltr. Rul. 77-52-065 (Sept. 29, 1977); Priv. Ltr. Rul. 78-07-069 (Nov. 18, 1977); Priv. Ltr. Rul. 84-05-007 (Oct. 26, 1984); Priv. Ltr. Rul. 89-09-038 (Dec. 3, 1987); Priv. Ltr. Rul. 88-20-030 (Feb. 16, 1988); Priv. Ltr. Rul. 93-27-072 (April 12, 1993); Priv. Ltr. Rul. 97-25-058 (March 25, 1997); Priv. Ltr. Rul. 97-30-001 (Oct. 4, 1997).

The Service has maintained that this is a facts-and-circumstances decision. Accordingly, the Service has been reluctant to state categorically that only one sovereign power is necessary. Gen. Couns. Mem. 36,994 (Feb. 3, 1977). The Service has a two-fold concern. First, a political subdivision must have close ties with the state or local government; a private company serving some public functions is not a political subdivision, even if it has certain sovereign powers. *See* Gen. Couns. Mem. 37,429 (July 31, 1978); *see also* Rev. Rul. 83-131, 1983-2 C.B. 184 (holding that electric and telephone membership corporations were not political subdivisions because they were not controlled by government). Second, an entity must possess a sufficient quantity of a sovereign power; the powers must be more than insubstantial in their effect as well as in their amount. Gen. Couns. Mem. 36,994 (Feb. 3, 1977).

The Authority has close ties to the State and the Participating Municipalities. It is governed by the Participating Municipalities; its net revenues inure to the state and its municipalities; its assets will be distributed to the Participating Municipalities upon dissolution; and it serves an important public purpose. The Authority also has more than an insubstantial amount of the eminent domain power; indeed, the Authority's eminent domain power is substantial in its effect and its amount.

[40] Committee Report on P.L. 99-514 (Tax Reform Act of 1986) (emphasis added).

sovereign power is similar substantively and procedurally to that of other governmental units within the state, including that of the governmental unit or units that created the entity.

a. The Power of Eminent Domain Rests with the Authority

In *Revenue Ruling 78-138*,[41] the Service ruled that the determination of whether an entity possesses more than an insubstantial amount of one of the primary sovereign powers turns on whether the entity possesses the sovereign power in its own right. In *Revenue Ruling 78-138*, a corporation was established to operate an off-track betting system, which was designed to raise revenue and curb illegal bookmaking. The corporation possessed certain regulatory powers and it had the power of eminent domain; however, state law restricted its condemnation power by requiring the corporation to obtain the approval of the local chief elected official where the property was located. The Service held that for purposes of determining whether an entity possesses more than an insubstantial amount of sovereign power the "critical inquiry is not whether the power is restricted, but *with whom the actual power rests*."[42] Consequently, the Service ruled that the corporation was a political subdivision because it possessed substantial, albeit restricted, powers of eminent domain and regulation in its own right.[43]

Likewise, in similar situations the Service has determined that an entity possessing only the power of eminent domain will constitute a political subdivision if the entity can "exercise the condemnation power in its own right and by itself, and thereafter hold the acquired property in its own title."[44]

Where the entity does not possess the eminent domain power in its own right, the entity may not be a political subdivision, absent possession of more than an insubstantial amount of one of the other primary sovereign powers. For example, in *Philadelphia National Bank v. United States*[45] the court held that Temple University, a state university, was not a political subdivision because the university was required to obtain approval from the state to erect new facilities:

> When it wishes to erect additional facilities, the university must request the General State Authority to procure the property. The power to condemn selected property is vested in the Authority, and the fact that it has cooperated with the university by adopting and implementing its suggestions does not constitute a grant of sovereign power to Temple.[46]

---

41 Rev. Rul. 78-138, 1978-1 C.B. 314.
42 *Id.* (emphasis added).
43 *Id.* (emphasis added).
44 Priv. Ltr. Rul. 84-05-007 (Oct. 26, 1983).
45 666 F.2d 834 (3d Cir. 1981).
46 *Id.* at 840.

Although the state had cooperated with the university and had implemented the university's suggestions, the university was not a political subdivision because it did not possess a sovereign power in its own right.[67]

The Alaska Gasline Port Authority is authorized to exercise the power of eminent domain and declaration of taking. The Authority does not need to seek the approval of any of the Participating Municipalities prior to exercising its eminent domain power. Section 6 of the Ordinances provides that:

> The Authority is authorized, in its own name, to do all acts necessary or convenient for the exercise of said power for said purposes, including but not limited to . . . exercise the powers of eminent domain and declaration of taking within its physical boundaries . . . to acquire land or materials for authority purposes.[68]

Moreover, the Authority is vested with eminent domain powers to the same extent that such powers exist in the Participating Municipalities.[69] Finally, upon the exercise of its power, the Authority will hold all property in its own name.[70] Thus, the Authority possesses full eminent domain power.

b. The Authority's Eminent Domain Power Is Identical Both Procedurally and Substantively to that of the Participating Municipalities

The scope of an entity's sovereign power and the procedures by which the entity must exercise that power has also been considered by the Service. For example, the Service has decided that health-care authorities, which had only eminent domain power,[71] were political subdivisions because the entity "[had] the same power of eminent domain as [was] vested by law in any authorizing subdivision."[72] Moreover, the Service has determined that a water district, possessing only the power of eminent domain, was a political subdivision because it could (1) commence condemnation actions in state court to enforce the right and (2) take possession of the property upon commencement of the proceedings, rather than after judgment.

---

67 *Id.*

68 Ordinances, § 6.

69 ALASKA STAT. § 29.35.030.

70 Section 6 of the Ordinances provides that: "The Authority shall have the power to acquire, by purchase, lease, contribution, condemnation, or otherwise, real property and personal property for the Project . . ." Ordinances, § 6.

71 Priv. Ltr. Rul. 97-30-001 (Oct. 4, 1996). The eminent domain power of the health-care authorities was subject to a minor restriction: the authorities could not exercise their eminent domain power to provide "office facilities for the private practice of a health care professional." *Id.* Nevertheless, the Service determined that this power alone was sufficiently substantial to qualify the authorities as political subdivisions. *Id.*

72 *Id.*

In the present case, the Act and the Ordinances empower the Authority with full eminent domain power—the exact power that is vested in the Participating Municipalities and other municipalities within the state.[73] Moreover, the Authority is authorized by the Act and Ordinances to commence actions in its own name in Alaska superior court[74] and to take possession of the property upon commencement of the proceedings.[75]

In sum, the Authority's broad eminent domain power is sufficient to qualify it as a political subdivision. First, the Authority can exercise condemnation power in its own right and by itself and can hold title to condemned property in its own name. Second, the Authority's power mirrors the eminent domain power of the Participating Municipalities. Third, the Authority can commence actions in state court to enforce its condemnation right and can take possession of the property upon commencement of the proceedings. Based on the Service's past positions, the such a grant of eminent domain power mandates that the Authority be treated as a political subdivision of the State.

C. Conclusion

For the reasons set forth above, we respectfully request that the Service issue a letter ruling that the Authority is a political subdivision of the State, whose income is exempt from federal income tax.

IV. TAXPAYER INFORMATION AND PROCEDURAL MATTERS

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

Alaska Gasline Port Authority
c/o William M. Walker
550 West 7th Avenue
Suite 1850
Anchorage, Alaska 99501
(907) 278-7000

City of Valdez
c/o Dave Cobb, Mayor
P.O. Box 307
Valdez, Alaska 99686
(907) 835-4313

---

[73] The Act and Ordinances, each of which empower the Authority with eminent domain power, refer to Section 29.35.030 of the Alaska statutes, which is the source of eminent domain power for the Alaskan cities and boroughs. ALASKA STAT. § 29.35.030.

[74] ALASKA STAT. § 9.55.290.

[75] ALASKA STAT. § 9.55.380.

Fairbanks North Star Borough
c/o Hank Hove, Mayor
P.O. Box 71267
Fairbanks, Alaska 99707
(907) 459-1304

North Slope Borough
c/o George Ahmaogak, Mayor
P.O. Box 69
Barrow, Alaska 99723
(907) 852-2611

B. Taxpayer Identification Number

The Authority's Taxpayer Identification Number is 92-0169762.

C. Annual Accounting Period and Overall Method of Accounting

Not applicable.

D. Applicable District Office

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

E. Identical or Similar Issues

To the best of the knowledge of the Authority and the Fairbanks North Star Borough, the North Slope Borough and the City of Valdez (the "Current Members") and their respective authorized representatives:

a. Issues identical or similar to those discussed in this letter ruling request are not in any earlier return of the Authority, the Current Members or any taxpayer related to the Authority or the Current Members;

b. The Service has not previously ruled on identical or similar issues for the Authority, the Current Members or any taxpayer related to the Authority or the Current Members;

c. Neither of the Authority nor the Current Members or any taxpayer related to the Authority or the Current Members has submitted a request involving issues identical or similar to those raised in this letter ruling request and withdrawn it before a ruling was issued;

d. Neither of the Authority nor the Current Members or any taxpayer related to the Authority or the Current Members or any predecessor of the

Authority or the Current Members has previously submitted a request involving identical or similar issues that is currently pending with the Service; and

e. Neither of the Authority nor the Current Members or any taxpayer related to the Authority, the Current Members or any predecessor of the is submitting to the Service another request involving identical or similar issues.

F. Certainty of the Law

The law in connection with the request is relatively certain and has been adequately addressed by relevant authorities. Beyond the authorities discussed in this request, the Authority, the Current Members and their authorized representatives are not aware of authorities contrary to the positions advocated therein.

G. Deletions Required by Section 6110(c) of the Code

The Authority desires to have certain information deleted from any documents made available for public inspection. A deletions statement is attached as Exhibit H.

H. Power of Attorney

An Internal Revenue Service Form 2848, Power of Attorney and Declaration of Representative, has been completed with respect to the Authority and said form is attached as Exhibit I.

I. Penalty of Perjury Declaration

The declaration required by Section 601.201(e)(1) of the Treasury Regulations is attached as Exhibit J.

J. 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 (213) 430-7402.

K. Request for a Conference

The Authority respectfully requests a conference at the National Office to discuss the issues involved in this letter ruling request.

L. Checklist

The checklist required by *Revenue Procedure 99-1* is attached as Exhibit K.

M. User Fee

Pursuant to Appendix A of *Revenue Procedure 99-1*, enclosed in a separate envelope is a check in the amount of $5,000, payable to the Internal Revenue Service.

N. Facsimile Transmission

When a letter ruling is prepared, the Authority requests that an advance copy of the letter ruling be sent by facsimile transmission to Travis C. Gibbs, the fax number is (213) 430-6407. We agree to waive any disclosure violations resulting from the facsimile transmission.

Very truly yours,

Travis C. Gibbs
of O'MELVENY & MYERS LLP

TCG:mfh

LA2:[illegible]

INDEX TO EXHIBITS

Exhibit A	Ordinance of Fairbanks North Star Borough
Exhibit B	Ordinance of North Slope Borough
Exhibit C	Ordinance of City of Valdez
Exhibit D	Municipal Port Authority Act
Exhibit E	Alaska Eminent Domain Statutes
Exhibit F	Map of the Project
Exhibit G	By-laws of the Alaska Gasline Port Authority
Exhibit H	Deletions Statement
Exhibit I	Power of Attorney and Declaration of Representative
Exhibit J	Declaration Under Penalties of Perjury
Exhibit K	*Revenue Procedure 99-1* Checklist