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April 24, 2013

Legend:

Taxpayer =

State =

State Legislature =

State Law =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Date 3 =

A =

B =

Dear _____ :

This letter responds to a letter dated August 17, 2012, and supplemental correspondence dated September 24, 2012, January 8, 2013, and January 16, 2013, requesting a ruling on behalf of Taxpayer that Taxpayer's proposed sale of certain mortgage loans that it purchased with the proceeds of tax-exempt bonds will not cause any portion of Taxpayer to be classified as a "taxable mortgage pool" (a "TMP") as defined in section 7701(i) of the Internal Revenue Code (the "Code").

Facts:

Taxpayer is a public and official governmental agency of State and a body corporate and politic that was created by State Legislature in Year 1 pursuant to and in accordance with State Law. One of the purposes of Taxpayer is to provide for the housing needs of individuals and families of low and moderate income in State. Taxpayer is governed by a governing board consisting of A public members, appointed by the governor of State. Pursuant to State Law, Taxpayer may issue revenue bonds the debt service of which is payable from, and secured by, the repayments of mortgage loans. Such bonds must be authorized by Taxpayer's governing board and approved by the attorney general of State prior to issuance.

Taxpayer has established its Single Family Mortgage Revenue Bond Program (the "Program") pursuant to State Law for the purpose of assisting in financing the costs of acquisition of residences within the State by first-time homebuyers. Through the Program, Taxpayer finances mortgage loans that meet the requirements imposed by section 143 of the Code, including but not limited to requirements that borrowers be first-time homebuyers and meet specified income limits and that the property financed meet certain purchase price limits.

Funds used by Taxpayer to acquire mortgage loans are derived principally from its sale of bonds that meet all the requirements necessary to be "qualified mortgage bonds" as defined in section 143 and all other requirements for interest on the bonds to be excludable from gross income under section 103. The repayment of the tax-exempt bonds issued by Taxpayer is secured by mortgage loans, cash, and other investments held pursuant to a master indenture structure.

Taxpayer entered into a Single Family Mortgage Revenue Bond Trust Indenture, dated Date 1 (the "Master Indenture"), pursuant to which it issues tax-exempt bonds through a trust (the "Trust"). In connection with each separate "issue" (as defined in section 1.150-1(b) of the Income Tax Regulations) of tax-exempt bonds (each referred to herein as an "Issue"), Taxpayer enters into one or more supplemental indentures (each, a "Supplemental Indenture") that supplements the Master Indenture.

Each Issue is secured by the Trust estate and held by the trustee pursuant to the Master Indenture, as supplemented by any Supplemental Indentures (collectively, the "Indenture"). Taxpayer is the only entity that holds an interest in the Trust estate. The Trust estate generally includes revenues, mortgage loans, investments, and money held in any funds established under the Indenture. However, compliance with the requirements of section 143 and the Code is determined and monitored separately for each Issue. This results in mortgage loans being allocated in whole or in part to the Issue or Issues whose proceeds were used to acquire the mortgage loan. The amount of each separate Issue issued by Taxpayer, as well as the maturities and projected debt-service schedules with respect to debt obligations that comprise each Issue, is determined by reference to the timing and amount of projected payments on the mortgage loans to be acquired with proceeds of that Issue.

Taxpayer's ownership of mortgage loans held in the Trust estate is most often evidenced by a pass-through certificate representing multiple, identical mortgage loans. Mortgage loans are originated by lenders that have been approved by Taxpayer and have agreed to originate mortgage loans in accordance with the requirements of the Program. The originating lenders are required to sell the mortgage loans made under the Program to the Program's servicer. The servicer purchases qualified mortgage loans on scheduled dates to form loan pools eligible to constitute mortgage backed, pass-through certificates that are guaranteed as to timely payment of principal and interest by the Government National Mortgage Association, Freddie Mac, or Fannie Mae. The trustee for the tax-exempt bonds purchases the mortgage certificates with proceeds of the tax-exempt bonds on behalf of Taxpayer. The mortgage certificates are transferable.

Under the Program, Taxpayer, through its approved lenders, is able to originate mortgage loans to first-time homebuyers with low and moderate incomes that might not otherwise be able to obtain affordable financing. The purposes of the Program, the issuance of the tax-exempt bonds, and the purchase of the mortgage loans, is to address the housing needs of the State's low and moderate income residents. Assuming a continuation of the market conditions on the date of issuance of an Issue of tax-exempt bonds, Taxpayer generally expects that it will retain ownership of the mortgage loans until those loans are fully repaid or prepaid. However, the Indenture does permit Taxpayer to sell mortgage loans without any modification or alteration of the tax-exempt bonds or the Indenture.

Current market conditions have resulted in the fair market value of certain of Taxpayer's mortgage loans exceeding their amortized principal balances by a significant amount. Taxpayer represents that it would benefit Taxpayer to sell certain of its mortgage loans while these market conditions exist and that such sale would permit Taxpayer to use the amounts realized for use in furtherance of the Program and its stated purpose. As such, Taxpayer proposes to sell (the "Proposed Sale") certain

mortgage loans with an amortized principal balance, as of Date 2, of approximately B (the "Selected Mortgage Loans"). The majority of each Selected Mortgage Loan is allocated to an Issue of tax-exempt bonds issued by Taxpayer in Year 2 ("Issue 1"), but a portion of each Selected Mortgage Loan is also allocated to an issue of tax-exempt bonds issued by Taxpayer in Year 3 ("Issue 2") and an issue of tax-exempt bonds issued by Taxpayer in year 4 ("Issue 3") (all such bond issues, collectively, "debt obligations").

The tax-exempt bonds comprising Issue 1 have more than one maturity and all of the Issue 1 bonds that remain outstanding are currently callable at the option of Taxpayer. The tax-exempt bonds comprising Issue 2 have more than one maturity and none of those bonds outstanding are subject to optional redemption until Date 3. However, the Supplemental Indenture for Issue 2 does provide that the bonds of such Issue are subject to special redemption from mortgage loan prepayments. The tax-exempt bonds comprising Issue 3 were issued as variable-rate bonds, all of which have a single maturity date and are subject to optional redemption on any business day.

The buyer of the Selected Mortgage Loans in the Proposed Sale will be selected pursuant to a competitive bid process conducted by Taxpayer's financial advisor. Documentation of the transfer of the Selected Mortgage Loans will be accomplished by a transfer of the mortgage certificates evidencing ownership of the Selected Mortgage Loans. Homeowners whose mortgage loans are included among the Selected Mortgage Loans will be unaffected by the Proposed Sale. Additionally, the Proposed Sale will not affect the legal rights of the holders of any tax-exempt bonds issued by Taxpayer related to the Selected Mortgage Loans or such holders' expectation of repayment in full of their tax-exempt bonds; Taxpayer will remain obligated on its debt obligations.

Upon receipt of the proceeds of the Proposed Sale, Taxpayer intends to allocate the proceeds to accounts established under the Supplemental Indenture for each of the three Issues in an amount proportionate to each of the three Issues' participation percentage in the Selected Mortgage Loans. Taxpayer expects to use the proceeds from the Proposed Sale allocated to each of the three Issues as follows:

(1) The mortgage sale proceeds allocated to Issue 1 will be used to retire immediately (subject to any notice requirements) all bonds of Issue 1 that remain outstanding. Any amounts remaining after redemption of Issue 1 will be used to support Taxpayer's programs, including the origination of additional mortgage loans to low and moderate income first-time homebuyers in furtherance of its governmental purpose.

(2) The mortgage sale proceeds allocated to Issue 2 will be invested in nonpurpose investments the yield on which is not materially higher than the yield

on Issue 2 and used to (a) effect prepayment redemptions, and (b) to the extent amounts are remaining on Date 3, call a portion of Issue 2 on such date.

(3) The mortgage sale proceeds allocated to Issue 3 will be used to retire immediately (subject to any notice requirements) a portion of Issue 3 and to pay any fees associated with a change in the notional amount of an interest rate swap entered into in connection with Issue 3.

Any amounts not used to redeem bondholders will be held by the Trust. Taxpayer represents that it will use all proceeds from the Proposed Sale in compliance with the rules of sections 143 and 148 and any other relevant section of the Code in order to maintain the tax-exempt status of Issues 1, 2, and 3 under section 103.

Law and Analysis:

Section 7701(i)(1) provides that a TMP shall be treated as a separate corporation which may not be treated as an includible corporation with any other corporation for purposes of section 1501.

Section 7701(i)(2)(A) provides that in general, a TMP is any entity (other than a REMIC) if (i) substantially all of the assets of such entity consists of debt obligations (or interests therein) and more than 50 percent of such debt obligations (or interests) consists of real estate mortgages (or interests therein), (ii) such entity is the obligor under debt obligations with 2 or more maturities, and (iii) under the terms of the debt obligations referred to in clause (ii) (or underlying arrangement), payments on such debt obligations bear a relationship to payments on the debt obligations (or interests) referred to in clause (i).

Section 7701(i)(2)(B) provides that any portion of an entity which meets the definition of subparagraph (A) shall be treated as a TMP.

Section 301.7701(i)-4(a)(1) of the Procedure and Administration Regulations (the "Regulations") excludes certain governmental bond programs from TMP treatment. It provides that regardless of whether an entity satisfies any of the requirements of section 7701(i)(2)(A), an entity is not classified as a TMP if (i) the entity is a State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof (within the meaning of section 1.103-1(b) of this chapter), or is empowered to issue obligations on behalf of one of the foregoing; (ii) the entity issues the debt obligations in the performance of a governmental purpose; and (iii) the entity holds the remaining interests in all assets that support those debt obligations until the debt obligations issued by the entity are retired.

Section 301.7701(i)-4(a)(2) provides that the term "governmental purpose" means an essential governmental function within the meaning of section 115 and does

not include the mere packaging of debt obligations for resale on the secondary market even if any profits from the sale are used in the performance of an essential governmental function.

Taxpayer is an entity described in section 301.7701(i)-4(a)(1)(i). Thus, in order for the Proposed Sale not to cause any portion of Taxpayer to become treated as a TMP, it must be found that the Proposed Sale is in furtherance of Taxpayer's performance of a governmental purpose and that the Proposed Sale meets the requirements of section 301.7701(i)-4(a)(1)(iii). In order to meet the requirement of "performance of a governmental purpose," the Proposed Sale must satisfy the requirements under section 301.7701(i)-4(a)(2) that the Proposed Sale (1) is in performance of an essential governmental function within the meaning of section 115, and (2) is not the mere packaging of debt obligations for resale in the secondary market. In order to satisfy section 301.7701(i)-4(a)(1)(iii), it must be found that the Proposed Sale does not violate the requirement that Taxpayer hold the remaining interests in all assets that support the debt obligations until the debt obligations issued by Taxpayer are retired.

In providing an exclusion from gross income, section 115 requires, among other things, that the income be derived in "the exercise of any essential governmental function."

Rev. Rul. 77-261, 1977-2 C.B. 45, holds, "Income from a fund, established under a written declaration of trust by a State, for the temporary investment of cash balances of the State and its political subdivisions ... is excludable from gross income" The ruling reasons that the "investment of positive cash balances ... in order to receive some yield on the funds until needed to meet expenses is a necessary incident of the power of the State or political subdivision to collect taxes and other revenues for use in meeting governmental expenses." In addressing the meaning of an "essential governmental function" for purposes of section 115, the ruling states, "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."

In this case, the proceeds of the Proposed Sale will be used by Taxpayer primarily to redeem holders of tax-exempt bonds issued by Taxpayer and to further support Taxpayer's programs, including the origination of additional mortgage loans to low and moderate income first-time homebuyers in furtherance of its governmental purpose. Thus, the Proposed Sale will be in furtherance of Taxpayer's performance of a governmental purpose and satisfies section 301.7701(i)-4(a)(ii).

The Proposed Sale will result in a sale of mortgage loans that currently support Taxpayer's debt obligations; however, the Proposed Sale is a sale of unencumbered

mortgage loans and, after the Proposed Sale Taxpayer will remain obligated on its debt obligations. After the Proposed Sale, while the Selected Mortgage Loans will no longer support any of Taxpayer's debt obligations, amounts not used to redeem bonds will be held in the Trust, and Taxpayer will continue to own the entire interest in the pool of mortgages not sold pursuant to the Proposed Sale and other assets that continue to support the debt obligations issued by Taxpayer. Thus, Taxpayer will continue to own the remaining interest in all assets that support Taxpayer's debt obligations, and the Proposed Sale satisfies section 301.7701(i)-4(a)(1)(iii).

Conclusion:

Based on the information submitted and representations made, we conclude that the Proposed Sale will not cause Taxpayer to fail to satisfy the requirements of section 301.7701(i)-4(a)(1) of the Regulations to be exempt from the TMP rules and, thus, will not cause Taxpayer or any portion of Taxpayer to be treated as a TMP.

This ruling is limited to the Proposed Sale. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Taxpayer's Program could meet the requirements of a REMIC under section 860D(a), whether Taxpayer or any portion of Taxpayer would otherwise be a TMP under section 7701(i), whether Taxpayer's Program satisfies either the accrual requirement or the private benefit requirement of section 115, or whether the proposed Sale will cause the bonds financed by the Selected Mortgage Loans to be arbitrage bonds under section 148 or cause the Issue of which such bonds are a part to fail to meet the requirements of section 143(g).

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

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the provisions of a Power of Attorney on file, we are sending a copy of this ruling letter to your authorized representatives.

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

Sincerely,

Diana Imholtz
Diana Imholtz
Branch Chief, Branch 1
(Financial Institutions & Products)