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October 16, 2012

**Clifford J. Gannett**  
Director, Tax Exempt Bonds  
Internal Revenue Service  
Room 6234, IRS Building  
1111 Constitution Ave, NW  
Washington, DC 20224-0001  
Via Email

**James Polfer**  
Chief Counsel  
Internal Revenue Service  
1111 Constitution Ave, NW  
Washington, DC 20224-0001  
Via Email

Dear Mr. Gannett and Mr. Polfer,

The National Association of Bond Lawyers (“NABL”) respectfully submits this letter relating to a position reportedly being taken by the IRS tax-exempt bond enforcement division (“TEB”) regarding the definition of “political subdivision” for purposes of Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”). NABL exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the law affecting public finance. We provide this submission in furtherance of that mission.

Concerns have been raised among our membership as a result of press and other reports regarding a position that TEB reportedly is taking with respect to certain special purpose development districts formed under specific state statutes pursuant to which the governing boards are elected by property owners in the district (“Special Districts”). Specifically, TEB reportedly is taking the position that a Special District is not a political subdivision for purposes of Section 103(a) of the Code if a controlling portion of the governing board of the Special District is elected by one or a small number of property owners.

NABL is concerned that the position described in the preceding paragraph is not supported by existing authority and could substantially undermine the market for Special District bonds, a long-standing form of financing utilized by a wide range of issuers in many States.

The term “political subdivision” is used in a number of different sections of the Code and “has been defined consistently for all federal tax purposes as denoting either a division of a state or local government that is a municipal corporation or a division of such state or local government that has been delegated the right to exercise sovereign power.” Rev. Rul. 78-276, 1987-2 C.B. 256. See also Rev. Rul. 79-95, 1979-1 C.B. 331; Rev. Rul. 78-138, 1978-1 C.B. 314; Rev. Rul. 77-143, 1977-1 C.B. 340; Rev. Rul. 83-131, 1983-2 C.B. 184. Under this well-settled definition, the inquiry into whether a particular entity is a political subdivision for federal income tax purposes traditionally turns on a determination of whether it is a governmental entity under state law that has been delegated the right to exercise one or more of the sovereign powers, i.e., the powers of taxation, eminent domain, and police power, as set forth in the seminal case of Commissioner v. Estate of Shamburg, 3 T.C. 131 (1944).

NABL is aware of no authority interpreting section 103(a) or any other provision of the Code where a governmental entity that has been delegated the authority to exercise a substantial amount of one or more of the sovereign powers has nonetheless been held not to be a political subdivision solely by reason of an insufficiently large number of voters participating in the election of its governing board. Special Districts are an important tool for financing public infrastructure improvements and by their nature will often involve one, or a small number of, property owners, at least initially. Certain Special Districts may have a small number of landowners on a long-term basis, such as irrigation districts and reclamation districts in rural areas. Moreover, NABL notes that, apart from Special Districts, there are a number of other units of local government throughout the United States, including a number of small towns, that have only a very few voters who are eligible to elect their governing boards. NABL is concerned that a departure from the Shamberg analysis could have an immediate and disruptive effect in some quarters of the tax-exempt bond market.

Accordingly, NABL urges the IRS, and TEB in particular, to follow existing authority on this issue and not to consider the number of landowners in a Special District as being relevant to the specific question of whether a Special District is a political subdivision. If any interpretive change is to be proposed with respect to the definition of "political subdivision" to take into account the number of electors of a governmental entity, that proposal should be the subject of the public rulemaking process and applied on a prospective basis only.

If NABL can provide further assistance, please do not hesitate to contact Bill Daly in our Washington, D.C. office at (202) 503-3300.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristin H. R. Franceschi", with a long horizontal flourish extending to the right.

Kristin H. R. Franceschi

CC: Steven Chamberlin