

LAW OFFICE OF PERRY ISRAEL



3436 American River Drive, Suite 9
Sacramento, CA 95864
916-485-6645
perry@103law.com

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The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Technical Advice Memorandum
Index (UIL) No.: 103.02-01
CASE-MIS No.: TAM-127670-12

Dear Mr. Wilkins:

I am writing on behalf of my client, the Village Center Community Development District (the "Center District"), to express concern about a recent Technical Advice Memorandum (referenced above) relating to the Center District. That TAM, dated May 9, 2013, and mailed to the Center District on May 30, 2013, was issued in response to a request by the Center District for technical advice submitted in writing to the IRS Agent examining the Center District's bond issues on January 15, 2010. Despite the time taken for the TAM to be finally issued and the volume of material submitted relating to the issue, the content of the TAM is very disappointing.

First, the TAM, which presents an issue vital not only to the Center District but to other governmental entities in Florida and throughout the country, is very troublesome for its lack of legal analysis. The only authority cited to support its conclusion comprises two Revenue Rulings, neither of which stands for the propositions for which it is cited. Although Revenue Ruling 78-276 states that the term "political subdivision" has been defined consistently for all federal tax purposes to include a division of such state or local government that has been delegated the right to exercise sovereign power, the ruling does not include any specific analysis that would indicate being a "division" of a state or local government is a separate substantive requirement that must be satisfied in order to be a political subdivision; rather, it solely analyzes whether an entity has been delegated enough sovereign powers in order to be treated as a political subdivision for purposes of the federal excise taxes. In dicta, it does mention public purpose, but does not set forth any specific requirements relating to public purpose or being a "division." Similarly, Revenue Ruling 83-131 does not contain any discussion concerning whether an entity must be responsible to a public electorate to be a political subdivision; rather, with

respect to the determination of whether an entity is a political subdivision, the ruling discusses the well-established principle that the entity must possess a substantial right to exercise sovereign powers and further it arguably stands for the proposition that, for a corporation to be treated as a “division” of a state or local government that is a municipal corporation for purposes of a federal excise tax, the entity must be subject to some control by the state or local government (although it alternatively may be read to say that an entity without sovereign powers may nonetheless be exempted from that tax if it is controlled by a state or local government). Although not discussed in the TAM, a key distinguishing fact between the negative holding in Revenue Ruling 83-131 and the prior favorable precedent of Revenue Ruling 57-193 is that the local law had been amended so that the assets of the entity would no longer be distributed to the state upon dissolution. Distribution of an entity’s assets to the state upon dissolution is a key element found in numerous IRS “political subdivision” rulings and would occur in the case of the dissolution of the Center District, but is omitted from the factual description or legal analysis of the TAM.

As well as failing to cite any authority supporting its conclusion, the TAM also completely fails to address any of the precedents submitted to the Chief Counsel’s Office that support the legal position of the Center District.¹ These legal precedents, including a ruling by the Supreme Court of the United States, clearly support the Center District’s position. These precedents establish not only that an entity may be treated as a political subdivision for purposes of federal tax law even though it only permits landowner vote, but that even an entity where the majority of the voting power is in the hands of a single business landowner may be properly treated as a political subdivision. This precedent is directly contrary to the assertion in the TAM that only an entity that is governed by a “general electorate” is part of the “democratic process” in the United States. There is certainly no basis established in the TAM for the wholly original concept that only a “general electorate” can support the valid issuance of tax exempt bonds. That stands as a strikingly novel and unsupported concept that borders on the creation of new law.

The TAM also dismisses out of hand a lengthy list, selectively and inexplicably pared down from an even longer and more detailed list submitted by the Center District, of the controls possessed over the Center District by the State of Florida and three political subdivisions as failing to address the writer’s conclusion “that the Issuer was organized and operated to perpetuate private control,” notwithstanding that even this pared down list contains a key measure of control that is repeatedly found necessary in several prior IRS rulings, as pointed out by the Center District’s submissions, i.e., upon dissolution all of the Center District’s assets will transfer to governmental entities. Further, among the

¹ I am attaching a copy of the letter I sent following our “conference of right” which summarizes some of the most important of those precedents. To keep this letter as brief as possible, I am not including the attachments to that letter. If you would like me to send them, please let me know.

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elements of governmental control that is left out of the factual description in the TAM is the power granted by the State of Florida/controlling governmental entities to cause the dissolution of the Center District and, thereby, take over all of its assets and operations. This is an element of governmental control exercisable over the Center District that, if properly addressed in the TAM, would not be easily dismissed.

Further, in its recitation of the facts, the TAM contains several incorrect and/or biased statements designed to color the perception of the Central District. Perhaps the most egregious of these is a discussion of the amounts paid by the Central District for the assets it acquired using the proceeds of the bonds under examination. Despite the IRS's own valuation indicating the Center District paid fair market value for those assets, the Chief Counsel's Office persists in statements that imply an inflated purchase price. These grossly misleading statements are apparently included to paint an unflattering, incomplete and inaccurate portrait of the Center District.

Notwithstanding that the Chief Counsel's Office had full knowledge of the valuations prepared by the IRS (over a period of more than two years) of the property acquired and knew that those valuations (even though flawed in certain respects) support that the Center District paid fair market value for the property, the TAM repeats a theme which was originally raised by the first examining agent—that it is somehow relevant that the total value and purchase price of the assets acquired by the Center District was in excess of the original cost incurred by the developer many years earlier with respect to a small percentage of the total assets it sold. Moreover, the misleading statement of the value of the property acquired has no role in the “analysis” or conclusion of the TAM and has apparently been included only to paint an unflattering, incomplete and incorrect portrait of the Center District.

The recitation of the facts in the TAM also misstates the powers of the Center District in a manner that improperly limits them (such as ignoring that the Center District has two independent sources of the power of eminent domain). It also concedes that a political subdivision may start with one landowner or a group of related landowners controlling a majority of the voting power of the district, then posits a new theory that such an arrangement is only permissible if it later evolves to broader control, but ignores the facts showing that, over the years, the developer (including all related parties, even as overly broadly defined in the TAM) has sold more than half of the land in the Center District and continues to move away from controlling a majority of the landowner votes.

Finally, in a puzzling and troublesome manner, the TAM contains a redacted footnote that was not made available to the Center District, even though it was the Center District that requested the technical advice. Although we know that such redactions are common in Field Advices, we are very surprised at such a redaction in a TAM addressed to an entity under examination that has requested the technical advice. In response to inquiry,

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the Center District has been told that the text of the redacted footnote was a “private communication” to the Field and will not be provided to the Center District.

The result of the failings of the TAM—lack of legal analysis, ignoring precedent cited by the Center District, and coloring of the facts through omissions or misstatements—is to target the Center District through innuendo and through the attempted creation of new legal standards not set forth in any previous law or guidance. The Center District has now had its bonds under examination for five and one-half years. Moreover, that examination started only a few years after a previous examination of its bonds had closed without change. The Center District requests a review of the TAM and its conclusions that fairly examines the facts and applies the applicable legal precedents.

Very truly yours,



Perry Israel