

NewsRoom

Bond Buyer (USA)
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November 8, 2013

Volume 122; Issue F344

Section: Taxation

Professor: Tax Law Rulings Don't Support IRS Stance on Florida CDD's Bonds
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WASHINGTON — Municipal bond tax law and rulings don't support the Internal Revenue Service's position that the Village Center Community Development District in Florida is not a political subdivision and cannot issue tax-exempt bonds because its board is privately controlled and not accountable to voters, a tax law professor contends.

In a seven-page paper published in Tax Analysts' Tax Notes on Thursday, Ellen P. Aprill, the John E. Anderson Professor of Tax Law at Loyola Law School, said if the IRS wants to change the definition of political subdivision, it should only do so through a rulemaking process that gives state and local governments the chance to comment.

"At the very least, a major change to the criteria of what constitutes a political subdivision, such as the unprecedented requirement of direct or indirect accountability to the general electorate that appears in the [IRS' technical advice memorandum sent to the Village Center], should be offered in a format that gives notice to the tens of thousands of local governments and political subdivisions that provide services to U.S. taxpayers," Aprill said.

She noted that the IRS recently revised its 2013-2014 priority guidance plan to include a project to provide guidance on the definition of political subdivision and called this "a good first step."

"An unprecedented and radical change should not be formulated in non-precedential guidance with retroactive effect, such as a technical advice memorandum. That approach undermines the respect according the IRS and its procedures," she said.

Aprill, who years ago served as a clerk to Supreme Court Justice Byron White and as an attorney-fellow in the Treasury Department's office of tax policy, said Tax Notes

asked her for the piece. She said lawyers representing the Village Center CDD were interested in her opinion as well. Perry Israel, the lawyer representing the Village Center CDD, sent the paper to IRS officials on Tuesday.

The paper is the latest salvo in a multi-year dispute over \$427.2 billion of bonds issued by the Village Center CDD, a commercial development of about 167 acres of land in Lady Lake, Lake County, Fla. that provides security, fire, recreational golf and other services and facilities to residents of nearby CDDs. The dispute heated up in May when the IRS sent the Village Center CDD a TAM that concluded its bonds were not tax-exempt.

The TAM concluded the CDD could not have issued tax-exempt bonds because it was not a political subdivision. It stated: "A governmental unit is inherently accountable, directly or indirectly, to a general electorate We believe that an entity that is organized and operated in a manner intended to perpetuate private control, and to avoid indefinitely responsibility to a public electorate, cannot be a political subdivision of a state."

Aprill noted in her paper that Section 1.103-1(b) of the federal tax code states, in part, "the term 'political subdivision ... denotes 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."

In addition, IRS Revenue Ruling 77-154 states: "Three generally acknowledged sovereign powers of states are the power to tax, the power of eminent domain and the police power." The ruling continues, saying "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."

Aprill said that while the IRS TAM cited Revenue Ruling 83-131 for requiring an issuing entity of bonds to be "motivated by a wholly public purpose," that ruling involved excise taxes, not tax-exempt bonds, and made no reference to the need for an accountability to a public electorate.