



May 20, 2016

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CC:PA:LPD:PR (REG-129067-15)

Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Dear Sir or Madam:

The Municipal Bonds for America Coalition respectfully submits our comments below in response to the proposed regulations (Proposed Regulations) detailed in the Notice of Proposed Rulemaking by the Internal Revenue Service (IRS) on February 23, 2016, regarding the definition of a political subdivision for purposes of tax-exempt municipal bonds.

We understand that the Proposed Regulations were issued in response to certain bond transactions undertaken by development districts in which the IRS has alleged (in enforcement actions) that such districts were privately controlled and/or conveyed a private benefit and were not truly political subdivisions eligible to issue tax-exempt bonds.

Under existing law, a political subdivision is defined as 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. The Proposed Regulations create a new definition of “political subdivision,” calling into question the status of special districts, authorities, and commissions that have been set up by state and local governments. The U.S. Census says that there are 38,572 special districts, authorities, etc. organized for a wide variety of purposes such as economic development, airports, corrections, electric power, highways, housing, irrigation, drainage, parking and ports.

Current regulations enumerate three sovereign powers of a governmental entity: eminent domain, police power and taxing power. Under existing IRS rules, to qualify as a political subdivision an entity need not have all three powers, but it must be able to exercise a substantial amount of at least one of these powers. The Proposed Regulations add two additional tests to the definition of political subdivision: the entity must serve a governmental function and it must be governmentally controlled.

There are myriad technical concerns raised by these new tests. In sum, as a technical matter we believe the Proposed Regulations are overly broad and create needless uncertainty as to the ability of a governmental entity to issue tax-exempt debt. Of greater concern is the addition of the new governmental purpose test, which inappropriately casts the federal government in the role of deciding as a predicate matter what state and local governments—and their political subdivisions—can and cannot do in fulfilling their governmental functions.

Again, we understand that the federal government has the right to preclude the benefit of tax-exemption to financing which provides private, not public, benefit. In fact, this is what the private activity bond limitations do. The Proposed Regulations will result in enormous confusion and uncertainty and should be rewritten and repropose.

Sincerely,

The MBFA Coalition