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Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Legend

State =

Board =

City =

Authority =

Regents =

Conference =

Partnership =

Team =

University 1 =

University 2 =

League =

Bonds =

157

PLR-108991-98

Additional Bonds =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear

This responds to your request for the following two rulings:

(1) the transfer of proceeds of the Bonds and the Additional Bonds to the City under the Grant Agreement for construction of a new stadium (the Stadium) is a grant by the State under § 1.148-6(d)(4)(iii); and

(2) certain revenues received by University 1 and University 2 as a result of certain activities taking place in the Stadium are not derived, directly or indirectly, from payments in respect of property used or to be used for a private business use under § 141(b)(2).

FACTS

The State and the City concluded that bringing the Team to the State and constructing the Stadium to serve as the Team's home stadium would benefit the State and the City. Construction of the Stadium began on Date 1 and will be substantially complete on Date 2. Various separate agreements, including the Development Agreement, the Grant Agreement, the University 1 Agreement and Stadium Lease (the University 1 Lease), and the Partnership Stadium Lease, control the financing, construction, use, operation, and management of the Stadium. Each agreement is described separately below.

The Development Agreement

The City, the Authority, the Team, and the Partnership entered into the Development Agreement on Date 3.[1] The Development Agreement was modified on Date 4 and Date 5. Under the Development Agreement, the parties' obligations include, but are not limited to, the following: (1) the City must ensure that the Stadium is constructed and, upon substantial completion, must convey the Stadium to the Authority; (2) the Authority must lease the Stadium to the Partnership, an affiliate of the Team; and (3) the Team must relocate to the State and play its home games in the Stadium. In addition, the Development Agreement gives the Partnership the right to approve the design and construction plans for the Stadium.

The Grant Agreement

Construction financing for the Stadium has been provided from various sources. The State is contributing up to $a to the cost of constructing the Stadium, using proceeds of the Bonds and the Additional Bonds. The State characterizes its contribution to the Stadium's construction financing as a "grant" made by the State to the City pursuant to the terms of the Grant Agreement.

The State, the City, and the Authority entered into the Grant Agreement on Date 6. The term of the Grant Agreement is 30 years. Under the Grant Agreement, the State is obligated to transfer to the City the proceeds of the Bonds and the Additional Bonds (together, not to exceed $a) to reimburse The City for b

[1] The City formed the Authority, pursuant to the Act, to own and operate the Stadium. The Authority is a State public, nonprofit corporation.

percent of the City's actual Stadium construction costs. The Grant Agreement lists the following items as actual Stadium construction costs:

(1) foundations and superstructure;
(2) exterior skin;
(3) interior;
(4) building systems;
(5) conveying systems;
(6) furniture, fixtures, and equipment to be used in the Stadium;
(7) signage;
(8) video and scoreboards; and
(9) concessions and food service.

Actual Stadium construction costs do not include costs or expenses for Stadium design, site acquisition, site development, design or construction of Stadium parking, environmental services, infrastructure construction or renovation, or retainage (unless and until due and payable).

The State fulfilled its obligation under the Grant Agreement, in part, by issuing the Bonds on Date 2 and transferring $c of the proceeds to the City. The State will fulfill the remainder of its obligation by issuing the Additional Bonds and transferring $d of the proceeds to the City.

The Grant Agreement recites that the State entered into the Grant Agreement with the understanding that the Partnership would manage and operate the Stadium. The Grant Agreement further recites that the State entered into that agreement in exchange for, among other consideration, the State's use of e parking spaces at the Stadium.

The Grant Agreement provides that the State is entitled to exclusive use and possession of up to e designated parking spaces at the Stadium on Monday through Friday, between 6:00 a.m. and 6:00 p.m. during the term of that agreement. It is expected that State employees will use the parking spaces during the work week. The State is required to reimburse the Authority for certain costs associated with its use of the parking spaces, including the costs of operating the parking spaces, maintaining the parking spaces (determined by formula based upon the maximum number of spaces reserved by the State in a particular year), and maintaining general liability insurance (also determined by formula based upon the maximum number of spaces reserved by the State in a particular year). These costs have been estimated to be approximately $f per year. The State is not required to otherwise compensate the City, the Authority, or the Partnership for the value of its use of the parking spaces.

The Partnership Stadium Lease

On Date 4, the City, the Authority, and the Partnership entered into the Partnership Stadium Lease. The term of the Partnership Stadium Lease is 30 years. The Partnership Stadium Lease was amended on Date 5 and Date 6. The Partnership Stadium Lease grants the Partnership the exclusive right to possess and use the Stadium for 30 days during each calendar year for Team home games and other events determined and selected by the Partnership.

The Partnership Stadium Lease provides that the Partnership has the exclusive right and obligation to direct all aspects of the operation, management, and control of the Stadium 365 days per year during the 30-year term of the lease. The Partnership Stadium Lease generally provides that the Partnership has such discretion to operate and manage the Stadium as may be needed to perform its responsibilities thereunder. The Partnership Stadium Lease sets forth 15 specific and exclusive rights granted to the Partnership, including but not limited to, the following:

(1) to operate and maintain the Stadium in good condition;
(2) to schedule events to be held at the Stadium;
(3) to employ and supervise all employees and to contract with independent contractors as it deems necessary to fulfill its obligations;
(4) to contract with all vendors and concessionaires both inside and outside of the Stadium and to operate all Stadium restaurants and dining facilities;
(5) to establish rules and policies with respect to employee matters and all aspects of advertising, publicity, and promotion;
(6) to sell certain general admission, club, and luxury suite seating for all of the Partnership's events;
(7) to manage and operate the Stadium parking facilities;
(8) to contract for security personnel and systems and to control all access to the Stadium;
(9) to arrange and contract for all Stadium utilities, janitorial services, parking and shuttle services, equipment maintenance service, laundry service, and any and all services that the Partnership deems advisable;
(10) to obtain and maintain licenses and permits as required by law; and
(11) to establish, impose, and enforce rules governing Stadium use by all persons, with no veto power reserved to the Authority.

The Partnership Stadium Lease states that the highest priority of the Stadium, with preference over all other uses, is to serve as the site for Team games. All other uses of the

Stadium are to be scheduled by the Partnership and are to be conducted in a manner that complies with this priority use by the Team.

Under the Partnership Stadium Lease, the Partnership is obligated to pay the Authority annual rent in the amount of $g. In addition, the Partnership Stadium Lease entitles the Partnership to retain all gross income, revenues, and consideration that the Partnership receives by, from, or in connection with the Partnership's events (including Team home games) held at the Stadium.

The Partnership Stadium Lease acknowledges that University 1 is entitled to use the Stadium to play its home games. The Partnership Stadium Lease provides that University 1's use of the Stadium is subject to the Partnership's rights under the Partnership Stadium Lease, including the Partnership's right to operate and manage the Stadium during any University 1 home game. The Partnership Stadium Lease further provides that, due to the Partnership's substantial interest in the Stadium, the Authority is required to submit the form of any agreement with University 1 relating to the playing by University 1 of its home games at the Stadium to the Partnership for review before the Authority enters into any such agreement. The Partnership Stadium Lease prohibits the Authority from entering into any agreement with University 1 until the terms and conditions thereof have been mutually agreed upon by the Authority, University 1, and the Partnership, although agreement by the Partnership may not be unreasonably withheld. The Partnership is permitted, on request, to attend, monitor, and assist the Authority in the Authority's negotiations with University 1 regarding any agreement for University 1's use of the Stadium.

The University 1 Lease

The City, the Authority, the Regents, and the Partnership entered into the University 1 Lease on Date 6.[2] The University 1 Lease provides that University 1 is entitled to play its home games at the Stadium for the 30-year term of that lease. University 1 is obligated to pay to the Authority annual rent in the amount of $h throughout the term of the lease. No amount of the rent is payable directly or indirectly to the State.

The University 1 Lease entitles University 1 to all revenues that are directly or indirectly attributable to the University 1 home games played in the Stadium (University 1 Gross Revenues), including revenues from the exercise of the University 1

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[2] University 1 is a public higher educational institution, governed by the Regents. The Regents are an instrumentality of the State.

advertising and broadcast rights, gift shops, ticket offices, and concession areas; provided, that the University 1 Gross Revenues do not include the following: (1) revenues attributable to the sale of novelties, gifts, and similar items that are licensed by the League or any of its affiliates; (2) revenues from restaurants and other facilities that operate on a regular basis and would, therefore, operate regardless of whether the University 1 home games are played in the Stadium; (3) revenues payable to the Partnership in a lump sum for the Partnership's advertising rights, broadcasting rights, or other rights that are not based upon the number of people attending the University 1 home games; and (4) any revenues relating to League games. The University 1 Gross Revenues, net of the annual rent payment to the Authority and the payment to the Partnership, as described below, for management services (the University 1 Adjusted Revenues) will be credited to University 1 for the use and benefit of its athletic department. The University 1 Adjusted Revenues will not replace or reduce any State funding to University 1 for its athletic activities.[3]

The University 1 Lease grants the Partnership the exclusive right to operate and manage the Stadium during University 1 home games. The Partnership's rights and obligations include, but are not limited to, the following:

(1) to operate and maintain the Stadium during University 1 home games and other periods set forth in the Partnership Stadium Lease or the Development Agreement;
(2) to regulate the Stadium's use consistent with the Partnership Stadium Lease and the Development Agreement;
(3) to employ and supervise all employees and to contract with independent contractors as the Partnership deems necessary to fulfill its obligations;
(4) to contract with all vendors and concessionaires both inside and outside of the Stadium and to operate all Stadium restaurants and dining facilities;
(5) to establish rules and policies with respect to employee matters and all aspects of advertising, publicity, and promotion;
(6) to manage and operate the Stadium parking facilities;

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[3] At least for the several years prior to the issuance of the Bonds, the State did not and does not, reasonably expect to fund University 1's non-capital athletic activities, and during the same period, the State did not and does not reasonably expect to divert its University 1 funding which is reserved for non-athletic activities to University 1's capital athletic activities.

(7) to contract for security personnel and systems and to control all access to the Stadium;
(8) to arrange and contract for all Stadium utilities, janitorial services, parking and shuttle services, equipment maintenance service, laundry service, and any and all services that the Partnership deems advisable;
(9) to obtain and maintain licenses and permits as required by law; and
(10) to establish, impose, and enforce rules governing Stadium use.

The University 1 Lease emphasizes that the Partnership has full power and authority to control, operate, manage, and maintain the Stadium subject only to the terms of the Partnership Stadium Lease and the Development Agreement. There is no provision in the University 1 Lease for University 1 to select or contract with any person other than the Partnership to manage and operate the Stadium during University 1 home games. There is no provision in the University 1 Lease permitting University 1 to terminate University 1's relationship with the Partnership. There is no separate or independent contract or other arrangement between University 1 and the Partnership with respect to the Partnership's services.

In exchange for the above-listed services, University 1 is obligated to reimburse the Partnership for University 1's allocable share of the actual and direct expenses that the Partnership incurs to manage and operate the Stadium, but only if these costs and expenses are incremental costs and expenses that would not have been incurred except for the existence of the University 1 Lease. Other than this reimbursement, the Partnership does not share in the University 1 Gross Revenues.

University 2 Use

University 2 is a public higher educational institution and is a member of the Conference.[4] Although University 2 does not expect to play its regular season games in the Stadium, it has been represented that the Stadium may be used for one Conference-sanctioned game (the Game) per year. The Conference determines whether the Game may take place at the Stadium. When the Game takes place at the Stadium, the Conference will receive revenues derived principally from ticket sales and certain corporate and media payments (the Conference Gross Revenues).

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[4] University 2 is governed by the Board, an instrumentality of the State.

When the Game is played at the Stadium, the Partnership will operate and manage the Stadium under an arrangement that is substantially the same as the one under which the Partnership operates and manages the Stadium during University 1 home games. In that regard, the Partnership is reimbursed for its actual and direct expenses that it incurs to operate and manage the Stadium during the Game.

Each member of the Conference, including University 2, is expected to receive a share of the Conference Gross Revenues, net of any payments to the partnership (the Conference Adjusted Revenues). The Conference determines each Conference member's share of these revenues. When a Conference member, including University 2, participates in the Game, that member may receive an additional share of the Conference Adjusted Revenues as determined by the Conference. If the Game is played at the Stadium, the University 2 portion of the Conference Adjusted Revenues is expected to be between $i and $j, based upon a specified formula (University 2 Revenues). The University 2 Revenues are not intended to replace or reduce any State funding to University 2 for its athletic activities.[5]

LAW AND ANALYSIS

Grant Issue

The first ruling requested is that the transfer of proceeds of the Bonds and the Additional Bonds to the City under the Grant Agreement for construction of the Stadium is a grant by the State under § 1.148-6(d)(4)(iii).

Section 1.148-6(d)(4)(iii) defines the term grant as a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor. This provision does not require that the repayment be in any particular form (e.g., in cash) and does not require that the amount of any repayment relate to the amount of the transfer. However, obligations or conditions intended solely to

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[5] At least for the several years prior to the issuance of the Bonds, the State did not and does not, reasonably expect to fund University 2's non-capital athletic activities, and during the same period, the State did not and does not reasonably expect to divert its University 2 funding which is reserved for non-athletic activities to University 2's capital athletic activities.

assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

Section 1.150-1(b) defines the term related party, as here material, as any member of the same controlled group. Section 1.150-1(e)(3) provides that an entity is not a controlled entity if the entity possesses substantial taxing, eminent domain, and police powers. For example, a city possessing substantial amounts of each of these sovereign powers is not a controlled entity of the state. We assume, for purposes of this ruling request, that the State and the City are not related parties.

The Grant Agreement establishes various conditions on the State's transfer of the proceeds of the Bonds and the Additional Bonds to the City, including the condition that the City and the Authority provide e parking spaces at the Stadium to the State during the work week.

The e parking spaces have value to the State because it receives the right to use the spaces while only paying the costs of operating the spaces. The State has chosen to permit State employees to use the spaces during the work week. Although it has been represented that the State is not obligated to provide parking for any of its employees, that does not alter the conclusion that the State is receiving something of value. Moreover, the e parking spaces represent a foregone value to the City and the Authority because they could have earned additional revenues from renting the spaces to users, including State employees, during the period that the spaces are used by the State.

The provision of the e parking spaces to the State does not constitute a condition intended solely to assure that the City and the Authority spend the proceeds of the Bonds and the Additional Bonds for the governmental purpose of the transfer. The Grant Agreement provides that the governmental purpose of the transfer is to construct the Stadium and to relocate the Team to the State. The State's use of the e parking spaces has no correlation to ensuring that the proceeds of the Bonds or the Additional Bonds are spent to construct the Stadium or to relocate the Team to the State.

On the basis of these facts, we conclude that provision of the e parking spaces constitutes an obligation or condition to repay any amount to the State and, therefore, the transfer of proceeds of the Bonds and the Additional Bonds to the City under the Grant Agreement for construction of the Stadium is not a grant under § 1.148-6(d)(4)(iii).

Private Payments Issue

The second ruling requested is that the University 1 Adjusted Revenues and the University 2 Revenues are not derived, directly or indirectly, from payments in respect of property used or to be used for a private business use under § 141(b)(2).

Section 103(a) generally provides that gross income does not include interest on any State or local bond. Section 103(b)(1) provides that this exclusion does not apply to any private activity bond unless it is a qualified bond (as such terms are defined under § 141). Section 141 provides that a bond is a private activity bond if the bond satisfies the private business use test and the private security or payment test of § 141(b) or the private loan financing test of § 141(c).

Under § 141(b)(1) and (6), the private business use test is satisfied if more than 10 percent of the proceeds of the bonds are used, directly or indirectly, in the trade or business of nongovernmental persons. Under § 1.141-3(a), the use of financed property is treated as the direct use of proceeds. Under § 1.141-3(b)(1), both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property according to an arrangement with the issuer.

Section 1.141-3(b)(2) provides that, with exceptions that are not material to this ruling, ownership by a nongovernmental person of financed property is private business use of that property. For this purpose, ownership refers to ownership for federal income tax purposes. Section 1.141-3(b)(3) provides that, with exceptions that are not material to this ruling, the lease of financed property to a nongovernmental person is private business use of that property. For this purpose, any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease. In determining whether a management contract is properly characterized as a lease, it is necessary to consider all of the facts and circumstances, including the degree of control over the property that is exercised by a nongovernmental person; and whether a nongovernmental person bears risk of loss of the financed property.

Section 1.141-3(b)(4)(i) provides that, subject to exceptions that are not material to this ruling, a management contract with respect to financed property may result in private business use of that property, based on all of the facts and circumstances. A management contract with respect to financed property generally results in private business use of that

property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility. Under § 1.141-3(b)(4)(iv), a management contract with respect to financed property results in private business use of that property if the service provider is treated as the lessee or owner of financed property for federal income tax purposes. Under § 1.141-3(b)(4)(iii)(D), a contract to provide for services is not treated as a management contract that gives rise to private business use if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

Under § 1.141-3(g)(4)(iii), for a facility in which government use and private business use occur simultaneously, the entire facility is treated as having private business use.

Under § 141(b)(2), the private security or payment test is satisfied if payment of the principal of, or the interest on, more than 10 percent of the proceeds of the issue is directly or indirectly (1) secured by any interest in property used or to be used for a private business use, or payments in respect of such property; or (2) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

Section 1.141-4(a)(1) provides that private payments are payments of the debt service on an issue that are directly or indirectly to be derived from payments (whether or not to the issuer or any related party) in respect of property, or borrowed money, used or to be used for a private business use. Under § 1.141-4(c)(2)(i)(A), both direct and indirect payments made by any nongovernmental person that is treated as using proceeds of the issue are taken into account as private payments, but only to the extent allocable to the proceeds used by that person. Payments are taken into account as private payments only to the extent that they are made for the period of time that proceeds are used for a private business use. Payments for a use of proceeds include payments (whether or not to the issuer) in respect of property financed (directly or indirectly) with those proceeds, even if the payments are not made by a private business user. Payments are not made in respect of financed property if those payments are directly allocable to other property being directly used by the person making the payment and those payments represent fair market value compensation for that other use.

In § 1.141-4(g), Example 5, a city owns a hospital and issues general obligation bonds to finance renovations to the hospital. A nongovernmental person (D) operates the hospital for the city under a management contract that results in private business use under § 1.141-3. The city will use hospital

revenues (after payments to D and payment of operation and maintenance expenses) to pay debt service on the bonds. The example concludes that the bonds meet the private security or payment test because the revenues from the hospital are payments in respect of property used for a private business use.

In order to determine whether the University 1 Adjusted Revenues and the University 2 Revenues are payments in respect of property used or to be used for a private business use, it is necessary to first determine whether the Partnership's use of the Stadium constitutes private business use.

The Development Agreement establishes the relationship among the City, the Authority, the Partnership, and the Team. Under the Development Agreement, the Partnership is granted the right to approve the Stadium design and construction plans.

The Partnership Stadium Lease grants the Partnership virtually absolute control over the management and operation of the Stadium 365 days per year. The extent of the Partnership's control over the management and operation of the Stadium is evidenced by the 15 enumerated rights and obligations set forth in the Partnership Stadium Lease, including the following:

(1) to operate and maintain the Stadium in good condition;
(2) to schedule events to be held at the Stadium;
(3) to employ and supervise all employees and to contract with independent contractors as the Partnership deems necessary to fulfill its obligations;
(4) to contract with all vendors and concessionaires both inside and outside of the Stadium and to operate all Stadium restaurants and dining facilities;
(5) to establish rules and policies with respect to employee matters and all aspects of advertising, publicity, and promotion;
(6) to sell certain general admission, club, and luxury suite seating for all of the Partnership's events;
(7) to manage and operate Stadium parking facilities;
(8) to contract for security personnel and systems and to control all access to the Stadium;
(9) to arrange and contract for all Stadium utilities, janitorial services, parking and shuttle services, equipment maintenance service, laundry service, and any and all services that the Partnership deems advisable;
(10) to obtain and maintain licenses and permits as required by law; and
(11) to establish, impose, and enforce rules governing Stadium use by all persons, with no veto power reserved to the Authority.

The Partnership's control is further evidenced by additional rights it has relating to University 1's use of the Stadium. In particular, the Partnership Stadium Lease entitles the Partnership to approve any agreement between the Authority and University 1. The Authority is required to keep the Partnership regularly advised, in reasonable detail, of all negotiations pertaining to the University 1 Lease. The Partnership is further permitted, on request, to attend, monitor, and assist the Authority in the Authority's negotiations with University 1. Finally, the Authority is prohibited from entering into any agreement with University 1 unless and until the Partnership approves the terms thereof.

In addition to its control over management and operation of the Stadium, the Partnership is entitled to retain all gross income, revenues, and consideration that the Partnership receives in connection with Partnership events at the Stadium. Moreover, as discussed earlier, the Partnership is entitled to certain revenues generated during non-Partnership events at the Stadium. For example, the Partnership is entitled to receive any revenues attributable to the sale of novelties, gifts, and similar items that are licensed by the League or any of its affiliates (subject to any payments that must be made to the League).

Based on all facts and circumstances, we conclude that the Partnership has special legal entitlements to use the Stadium 365 days per year as a result of its status as lessee under the Partnership Stadium Lease. Thus, the Partnership's use of the Stadium constitutes private business use of the proceeds of the Bonds and the Additional Bonds.

The fact that the Partnership does not receive all of the revenues generated when it manages and operates the Stadium during University 1 and University 2 events does not make the Partnership any less of a private business user during such events than it is at other times. This is because the activities performed by the Partnership during University 1 and University 2 events are part of a single indivisible arrangement created by the Partnership Stadium Lease. Under the Partnership Stadium Lease, the Partnership's control over the management and operation of the Stadium during University 1 and University 2 games is the same as the Partnership's control during other Stadium events. While the Partnership's compensation for management services during the University 1 and University 2 games is equal to the Partnership's actual and direct expenses incurred as a result of the Partnership's managing the Stadium for games, it is unlikely that the Partnership would agree to this level of compensation in the absence of the Partnership's status as lessee of the Stadium under the Partnership Stadium Lease. There are no facts to indicate that University 1 or University 2 negotiated any of the terms with respect to the

Partnership's management services. The Partnership's management rights and obligations terminate when the Partnership Stadium Lease is terminated. University 1 and University 2 are not permitted to either select any person or entity other than the Partnership to operate or manage the Stadium during University 1 or University 2 games or to terminate its arrangement with the Partnership.

As a result, we conclude that the Partnership's management and operation of the Stadium during University 1 and University 2 events may not be analyzed independently of the other arrangements under the Partnership Stadium Lease.

We turn, then, to the issue of whether the University 1 Adjusted Revenues and the University 2 Revenues received by the respective university and generated from games played in the Stadium during the Partnership's use of the Stadium are derived, directly or indirectly, from payments in respect of property used or to be used for a private business use.

Because we have concluded that the Stadium is used by the Partnership 365 days per year, the University 1 Adjusted Revenues and the University 2 Revenues being analyzed will be generated during the period of time that proceeds of the Bonds and the Additional Bonds are used for a private business use. Although the revenues do not originate from the Partnership, this is not relevant because the University 1 Adjusted Revenues and the University 2 Revenues are revenues in respect of the Stadium, which is used for a private business use, and are not directly allocable to other property being directly used by the persons making the payments that generate such revenues.

The University 1 Adjusted Revenues and the University 2 Revenues are retained by University 1 and University 2 respectively. There is, however, no arrangement obligating University 1 or University 2 to directly pay over any amount of those revenues to the State. Moreover, it has been represented that no amount of the University 1 Adjusted Revenues or the University 2 Revenues will be used to directly pay debt service on the Bonds or the Additional Bonds, and it has further been represented that the University 1 Adjusted Revenues and the University 2 Revenues will not replace or reduce State funding to each university for non-capital athletic activities. Nonetheless, because the State is related to University 1 and University 2, any payments received by University 1 and University 2 shall be treated as received by the State. Section 1.141-4(c)(2)(i)(A) does not require that payments be made to the State or originate from the Partnership in order for those payments to be private payments. Moreover, neither § 1.141-

4(a)(1) nor § 1.141-4(c)(2)(i)(A) require that payments be directly traced to payment of debt service in order for those payments to be private payments.

For the reasons noted above, we conclude that the University 1 Adjusted Revenues and University 2 Revenues received by each respective university as a result of the games taking place in the Stadium are derived, directly or indirectly, from payments in respect of property used or to be used for a private business use under §141(b)(2).

Except as expressly provided herein, no opinion is expressed as to the tax treatment of the transaction involved herein under the provisions of any other section of the Code and regulations that may be applicable thereto, or the tax treatment of any condition existing at the time of, or effect resulting from, the transaction that is not specifically covered by the above.

This letter is directed only to the taxpayer(s) requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Financial Institutions & Products)

By: _____
Bruce M. Serchuk
Senior Technician Reviewer
Branch 5

Enclosure:
Copy for § 6110 purposes