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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
FACSIMILE (202) 225-4784
MINORITY (202) 225-5074

www.oversight.house.gov

May 23, 2008

Mr. Eric Solomon
Assistant Secretary for Tax Policy
U. S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Mr. Douglas Shulman
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Messrs. Solomon and Shulman:

The Domestic Policy Subcommittee of the Oversight and Government Reform Committee is writing regarding the U.S. Department of Treasury's (Treasury Department) and Internal Revenue Service's (IRS and, collectively, Treasury Department) regulation of the use of payments in lieu of taxes (PILOTs) in the financing of the construction of sports stadiums.

I believe that in testimony to this Subcommittee, the Treasury Department inaccurately characterized its decision in two Private Letter Rulings issued in 2006 (PLRs)[1] to treat PILOTs made by the Yankees and Mets as permissible sources of financing for tax-exempt private activity bonds.[2] I am particularly troubled with Treasury Department testimony that the

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[1] *See* PRIV. LTR. RUL. 200640001, 2006 WL 2848788 (July 11, 2006); PRIV. LTR. RUL. 200640002, 2006 WL 2925866 (July 19, 2006).

[2] Domestic Policy Subcommittee, House Committee on Oversight and Government Reform, Hearings on *Build It and They Will Come: Do Taxpayer-Financed Sports Stadiums, Convention Centers and Hotels Deliver as Promised for America's Cities?*, 110th Cong. (Mar. 29, 2007) (online at http://frwebgate.access.gpo.gov/cgi-

department existing regulations *compelled the Treasury Department's decision to allow* the use of PILOTs in this context. After carefully considering your testimony and the relevant regulations, I believe that your putative lack of discretion to prohibit the use of PILOTs is incorrect as a matter of law. In fact, there is strong argument that Treasury Department's existing regulations *compelled a decision to prohibit* the use of PILOTs for tax-exempt bonds used to finance stadium construction, both in the cases of the Yankees and Mets projects and more generally. At a minimum, the Treasury Department *retains discretion to prohibit* their use.

The Treasury Department's rulings open the door to other sports franchises to emulate the Yankees' and Mets' use of PILOTs to finance tax-exempt bonds. This is a significant change with, according to many Subcommittee witnesses, substantial negative public-policy ramifications. Between the Tax Reform Act of 1986 and 2006, stadium projects involving tax-exempt bonds were financed by what were indisputably generally applicable taxes, such as broadly applicable sales taxes borne generally by the public. The Treasury Department has insisted to this Subcommittee that it had no choice to allow the PILOTs and that it promptly proposed a new PILOT rule that would close an old "loophole" in the existing regulations. On the contrary, it appears that this loophole was partially of the Treasury Department's own recent creation. While the new PILOT rule would tighten the requirements for the use of PILOTs in certain respects, it would further legitimize their use for financing stadiums by placing them on firmer regulatory authority.

Because of the importance and technical nature of this issue, we request additional clarification of your position *before you proceed with further rulemaking in this area.*

Under the Internal Revenue Code, government-issued bonds are classified as non-tax-exempt private activity bonds where (1) "more than 10 percent of the proceeds of the issue are to be used for any private business use" (the "private business use test"); and (2) "more than 10 percent of the proceeds of such issue is" payable or secured from private business use sources (the "private payments test"). 26 U.S.C. § 141(a),(b). Bonds used to finance a stadium that will predominately be used by a privately owned professional sports team will always be considered to be used for private business use. Thus, the issue is whether 90 percent of payments are not from private business sources but from public sources.

Treasury Department regulations have determined that, for the purposes of the private payment test, "generally applicable taxes" are not to be considered to be payments in respect of

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bin/getdoc.cgi?dbname=110_house_hearings&docid=f:38037.pdf) and *Professional Sports Stadiums: Do they Divert Public Funds from Critical Public Infrastructure?*, 110th Cong. (Oct. 10, 2007). Cites to the March 2007 hearing transcript refer to the pagination in the GPO print. There is not yet a GPO transcript of the October hearing; unless otherwise indicated, cites are to the draft transcript available in the Subcommittee offices.

property used for a private business use. 26 C.F.R. § 1.141-(e)(1).[3] In addition, under an exception to the private payments test, the regulations treat certain PILOTs that closely resemble generally applicable taxes in the same manner as generally applicable taxes. Under existing regulations, a PILOT is treated as a generally applicable tax if (1) the payments are commensurate with and not greater than the amounts imposed by the statute for a tax of general application, and (2) the payments are designated for a public purpose and are not special charges. 26 C.F.R. § 1.141-4(e)(5).[4] The regulations also provide the following example, "a payment in lieu of taxes made in consideration for the use of property financed with tax-exempt bonds is treated as a special charge." 26 C.F.R. § 1.141-4(e)(5)(ii).

In describing the Yankees' and Mets' financing arrangements, the PLRs explain that the "PILOTs paid under the PILOT Agreement should be used to finance the Stadium, and have assigned the PILOTs to pay the debt service on the Bonds."[5] This use of PILOTs would appear to be prohibited under two separate regulations defining a "special charge" for purposes of the private payments test.: (1) the treatment as a special charge of PILOTs "made in consideration for the use of property financed with tax-exempt bonds," 26 C.F.R. § 1.141-4(e)(5); and (2)

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[3] Treasury Regulations define a "generally applicable tax" is "an enforced contribution" imposed under the "taxing power that is imposed and collected for the purpose of raising revenue to be used for a governmental purpose. A generally applicable tax must have a uniform tax rate that is applied equally to everyone in the same class subject to the tax and which has a generally applicable manner of determination and collection." 26 C.F.R. § 1.141-4(e)(2).

[4] Treasury Department regulations define a "special charge" as "[a] payment for a special privilege granted or service rendered is not a generally applicable tax. Special assessments paid by property owners benefiting from financed improvements are not generally applicable taxes. For example, a tax or a payment in lieu of tax that is limited to the property or persons benefited by an improvement is not a generally applicable tax." 26 C.F.R. § 1.141-4(e)(3).

[5] *See* PRIV. LTR. RUL. 200640001, 2006 WL 2848788, at *4 ("The City and the Agency have determined that the PILOTs paid under the PILOT Agreement should be used to finance the Stadium, and have assigned the PILOTs to pay the debt service on the Bonds. The Bonds will be payable solely out of and secured by the revenues from the PILOTs made under the PILOT Agreement. The PILOTs in excess of the debt service on the Bonds will be properly allocable to the payment of ordinary and necessary expenses directly attributable to the operation and maintenance of the Stadium and will also be used for renewal and replacement costs of the Stadium."); PRIV. LTR. RUL. 200640002, 2006 WL 2925866, at **4-5 ("The City and the Agency have determined that the PILOTs paid under the PILOT Agreement should be used to finance the Stadium, and have assigned the PILOTs to pay the debt service on the Bonds. The Bonds will be payable out of and secured by the revenues from the PILOTs made under the PILOT Agreement. The PILOTs in excess of the debt service on the Bonds will be properly allocable to the payment of ordinary and necessary expenses directly attributable to the operation and maintenance of the Stadium, used for renewal and replacement costs of the Stadium or deposited into the City's general fund to be used for governmental purposes.").

"[s]pecial assessments paid by property owners benefiting from financial improvements," including the example of a "payment in lieu of tax that is limited to the property or persons benefited by an improvement." 26 C.F.R. § 1.141-4(e)(3). While both PLRs cite these provisions when delineating the applicable regulatory framework, neither PLR adequately applies the provisions to the stadiums' financing arrangements. Application of § 1.141-4(e)(5) is completely omitted, which is curious given that the Yankees' and Mets' PILOTs appear to be designed to be "made in consideration" for the construction and "use of property"—i.e. the stadiums—"financed with tax-exempt bonds."

Similarly, the Treasury Department's interpretation of 26 C.F.R. § 1.141-4(e)(3), which generally prohibits the use of "[s]pecial assessments paid by property owners benefiting from financial improvements," is inadequate. The PLRs explain that the PILOTs are not rightly characterized as a "payment[s] for a special privilege granted or service rendered" because they "do[] not create a new charge separate and apart from the system of real property taxes that Company has to pay for use of the Stadium," the PILOTs are analogized to tax abatements.[6] Under this analysis, it would difficult to imagine any PILOT being considered a special charge because PILOTs are typically derived from "the system of real property taxes"—they are, after all, payments *in lieu of taxes*. Faced with this ambiguity, one would expect that the Treasury Department would address the example in the same provision of a prohibited PILOT that is "limited to the property or persons benefited by an improvement." However, the PLRs are completely silent on the application of this seemingly applicable limitation. In short, the PLRs treatment of the PILOT rule and other Treasury Department regulations are, at the very least, contestable and open to other reasonable interpretations. In no way do the PLRs demonstrate that the Treasury Department was compelled by the regulations to allow the use of Yankees' and Mets' PILOTs.

In its rulemaking, the Treasury Department is more forthright regarding the possibility that the existing regulations could be interpreted to prohibit the use of PILOTs in stadium financing. In fact, the Treasury Department states that the possibility of a contrary interpretation as one of the key factors driving its proposed rulemaking. The proposed rule outlines two separate concerns motivating the amendment of the regulations: (1) that the standard of commensurability "could be interpreted in an unduly broad manner to provide favorable treatment for certain PILOTs which may have an insufficient link to generally applicable taxes" and (2) "[c]onversely, . . . the last sentence of existing [26 C.F.R.] § 1.141-4(e)(5)(ii), which provides as an example of a special charge a PILOT paid in consideration for the use of property financed with tax-exempt bonds, *could be interpreted in an unduly restrictive manner to prevent any PILOTs with respect to property financed with tax-exempt bonds from being treated as*

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[6] *See* PRIV. LTR. RUL. 200640001, 2006 WL 2848788 at *9; PRIV. LTR. RUL. 200640002, 2006 WL 2925866 at **9-10.

generally applicable taxes."[7] The proposed rule would address these concerns by (1) "modify[ing] the standards to better assure a reasonably close relationship between eligible PILOT payments and generally applicable taxes" and (2) "eliminate[ing] the example in the last sentence of [26 C.F.R.] § 1.141-4(e)(5)(ii)" in the belief that "the existing definition of special charge under § 1.141-4(e)(3) adequately addresses this principle."[8]

Despite its own admission of ambiguities in the existing regulatory scheme, Treasury Department officials repeatedly testified to this Subcommittee that the Treasury Department was "compelled" to allow PILOTs in stadium financing.[9] Addressing the first concern, Treasury Department officials testified how the amendment of the definition of "commensurate" would remedy an overly permissive standard and better ensure that the PILOTs would be more closely tied to the amount of the ostensibly foregone tax burden and less to the amount payments on the bonds.[10] In contrast, despite direct questioning on the issue, Treasury Department witnesses remained completely silent on the second motivation for rulemaking it had earlier identified in the PLRs: the possibility of an "unduly restrictive" interpretation of the last sentence of 26

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[7] Treatment of Payments in Lieu of Taxes Under Section 141, 71 Fed. Reg. 61693, 61694 (to be codified at 26 C.F.R. pt. 1) (proposed Oct. 19, 2006) (emphasis added).

[8] *Id.*

[9] Hearing on *Build It and They Will Come: Do Taxpayer-Financed Sports Stadiums, Convention Centers and Hotels Deliver as Promised for America's Cities?*, at 98 ("Although we had serious concerns about whether the PILOTs in those two rulings sufficiently resembled generally applicable taxes, we nevertheless concluded that the 1997 Clinton Treasury Department regulations led to a favorable response to the taxpayer. Basically, we felt the 1997 Treasury regulations compelled the result."); at 110 ("Yes. We were following the law as it was written in the regulations that were enacted in 1997. We felt compelled to follow the rules, and that it why we moved to changed them.") at 112 ("We, our lawyers dealt with that, felt compelled by the regulations that had been enacted in 1997 to give the ruling."); at 114-15 ("We felt at the time we issued this ruling, based on the regulations that were left behind by the last administration, that we had to issue this ruling. We moved expeditiously to change that result.... We felt compelled. We felt our hands were tied.").

[10] *See id.* at 99 ("The basic purpose of these proposed regulations was to tighten the standards for PILOTs as generally applicable taxes to assure a closer relationship between the eligible PILOT payments and the generally applicable taxes. In other words, we spotted a flaw in the 1997 Treasury regulations, and we moved expeditiously to fix it."); Hearing on *Professional Sports Stadiums: Do they Divert Public Funds from Critical Public Infrastructure?*, 110th Cong. 43 ("Very briefly, the private letter rules issue by the Internal Revenue Service to private taxpayers preceded the proposed regulations. Proposed regulations we intended to tighten the rules, to tighten the rules with respect to payments in lieu of taxes, to cut back on the use of payments in lieu of taxes. So chronologically the private letter rules preceded the proposed regulations. The proposed regulations are intended to tighten the standard for treating payments in lieu of taxes as the equivalent of general taxes.").

C.F.R. § 1.141-4(e)(5)(ii). There was no acknowledgement that this provision may have been interpreted to prohibit the use of PILOTs in stadium construction, which is particularly curious given that the language itself—prohibiting PILOTs "made in consideration for the use of property financed with tax-exempt bonds"—would appear to effect precisely that prohibition. While there may be a reasonable argument that this provision alone does not compel a prohibition of PILOTs in stadium construction, logic and the Treasury Department's own discussion of the issue in its rulemaking demonstrate that the provision could be reasonably interpreted to effect such a prohibition.

Moreover, it appears that the Treasury Department retains another independent ground to prohibit the use of PILOTs in financing of sports stadiums. It could prohibit their use upon concluding that these payments were "not designated for a public purpose." *See* 26 C.F.R. § 1.141-4(e)(5). There was abundant evidence adduced at Subcommittee hearings demonstrating that the financing of sports stadiums with tax-exempt bonds does not provide a net economic benefit to communities, whether or not the financing is accomplished through PILOTs.[11] The Treasury Department has not articulated a public purpose of allowing PILOTs to finance sports stadiums, and it has not demonstrated that it lacks discretion to make a finding that the use of PILOTs in this context does not further a public purpose.

In the PLRs, the Treasury Department uncritically accepted the position of the proponents of the Yankees' and Mets' deals that the PILOTs were "designated for a public purpose" because they would "promote and encourage economic development and recreational opportunities in City"[12] There was no discussion whether public financing of these stadiums was, in fact, an effective way "to promote and encourage economic development and recreational opportunities"

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[11] *See* Testimony of Neil DeMause, Hearing on *Build It and They Will Come: Do Taxpayer-Financed Sports Stadiums, Convention Centers and Hotels Deliver as Promised for America's Cities?*; Testimony of Bettina Damiani, Hearing on *Professional Sports Stadiums: Do they Divert Public Funds from Critical Public Infrastructure?*; Testimony of Judith Grant Long, Hearing on *Professional Sports Stadiums: Do they Divert Public Funds from Critical Public Infrastructure*? ("There is absolutely no evidence that $18.5 billion dollars in public benefits have been generated since 1990 to compensate for the $18.5 billion dollars in public costs. Variations on the loophole, including recent creative use of payments-in-lieu-of-taxes should be similarly prohibited. The opportunity cost is significant, viewed in the context of infrastructure or any of a host of other important public services, and competition between local jurisdictions is becoming increasingly counter-productive when measured at the national level.").

[12] *See, e.g.,* PRIV. LTR. RUL. 200640001, 2006 WL 2848788, at *8 ("Here the payments are designated for a public purpose. The PILOTs are being used to pay the debt service on the Bonds which were issued specifically for the purpose of financing the Stadium to promote and encourage economic development and recreational opportunities in City. To the extent that the PILOTs are not used to pay the Bonds (or for operation and maintenance) they are being used to renew and renovate the Stadium, which furthers the same purpose.").

in New York City or whether the use of PILOTs, as opposed to other financing mechanisms, were a legitimate mechanism to further such a purpose. Surely, the decision whether the assertion of a "public purpose" by a project proponent is to be credited remains within the discretion of the Treasury Department and cannot be based on the mere assertion of project proponents without eviscerating the intent of the regulation.[13]

Before this Subcommittee, Mr. Korb disclaimed Treasury Department discretion to prohibit the use of PILOTs on "public purpose" grounds by testifying that the relevant regulations mandated the conclusion that PILOTs for sports stadium construction furthered a public purpose. This interpretation is based on clear legal error. Mr. Korb pointed to Example 11 of the current regulations that, in his words, "specifically contemplate a stadium financed with the generally applicable ticket tax." He asked "how can we treat a stadium different for purposes of the public purpose standard and the PILOT rules?"[14] In fact, the distinction appears on the face of a regulation. While under the PILOT rule, a stadium project must advance a public purpose,

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[13] The Treasury Department appears to have acquiesced to the position that a state or local authority's mere sponsorship of the construction of a professional sports stadium is sufficient to establish a public purpose. The PLRs' sole authority for finding the public purpose requirement satisfied is a revenue ruling interpreting an unrelated Internal Revenue Code provision, Section 170(a)(1), that allows tax deductions for charitable contributions to government entities that are "made exclusively for public purposes." *See* PRIV. LTR. RUL. 200640001, 2006 WL 2848788, at *8 (citing Rev. Rul. 72-194, 1972-1 C.B. 94, 1972 WL 29728, for the proposition that money expended by a State in promoting tourism in the State is for an exclusively public purpose).

This ruling, where the contributions at issue would be used to defray the cost of a steeplechase race, and other Treasury Department rulings concerning the scope of "public purpose" under Section 170(a)(1) have little applicability to the scope of the public purpose requirement in the PILOT rule. First, the charitable purpose Treasury Department rulings involve factual circumstances where, among other distinctions, the agency did not address a contention that a putative public purpose did not actually advance the public's economic and other interests. *See, e.g.*, PRIV. LTR. RUL. 9642036, 1996 WL 597412 (July 17, 1996) (allowing charitable contribution deduction for donations to fund statutes and gardens in public park managed by organization created by the State legislature); PRIV. LTR. RUL. 8835020, 1988 WL 572561 (June 6, 1988) (allowing deduction for donations to city board advising City Council on care and maintenance of City's trees and shrubs). More fundamentally, the public purpose requirement for the PILOT rule has a different regulatory pedigree and invokes different legal concerns than the charitable contribution requirement. To the extent that the charitable contribution rulings are at all applicable here, they certainly do not advance an overriding legal principle that would bind the Treasury Department. At the very least, the Treasury Department retains discretion to find that the requirement unmet where PILOTs are used to finance stadium construction.

[14] Hearing on *Professional Sports Stadiums: Do they Divert Public Funds from Critical Public Infrastructure?*, 110th Cong., at 123.

Example 11 addresses instances that do not require a public purpose—a stadium financed with a generally applicable tax that is not a PILOT. Specifically, the example contrasts two hypothetical non-PILOT financing mechanisms: (1) a ticket tax imposed on attendees at events of a stadium financed by authority-issued bonds; and (2) a ticket tax imposed by the same authority on events in a number of large facilities under the authority's jurisdiction. In the first example, the stadium-specific tax would be considered a special charge because it is not generally applicable; in the second, the more broadly applied tax would be considered a tax of general application. While Example 11 contemplates the use of tax-exempt bonds to finance stadiums under certain circumstances, it provides no guidance on the issue whether tax-exempt bonds to construct sports stadiums further a public purpose or any other issue relevant to the issue of the propriety of PILOTs to finance these bonds.[15] Contrary to Mr. Korb's suggestion, Example 11 in no way compels the use of PILOTs for tax-exempt stadium financing.

I am troubled that the Chief Counsel of the IRS would present such a demonstrably incorrect analysis to this Subcommittee. Indeed, the regulations are complex and difficult to parse. The Subcommittee requested Mr. Korb to testify precisely because it believed that he was the person to clarify the issues. At the hearing, it was clear that the Subcommittee wished Mr. Korb to distinguish carefully between Treasury Department's authority to prohibit tax-exempt financing for stadiums generally and tax-exempt stadium financing using PILOTs. It appears that Mr. Korb only muddled this distinction.

Moreover, when asked by this Subcommittee to clarify the confusion caused in part by Mr. Korb's earlier testimony, Mr. Solomon continued to efface the distinction between non-PILOT and PILOT financing:

> Mr. Tierney. So you are indicating that you don't think that you could just determine that a PILOT that was used specifically for stadium construction is not generally used for public purpose and make that determination? Do you feel constrained from doing that?
>
> Mr. Solomon. We do not think that we could write regulations that say stadium financing cannot be done through public funds. We do not believe that we have that authority. And so if a stadium is financed and the State or local government says it will come out of

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[15] Put another way, Example 11 interprets the private payments test, 26 U.S.C. § 141(b)(2), which only seeks to determine the whether the payments are private and is silent on the issue of public (or any other) purposes. On the contrary, the Treasury Department's PILOT test requires if a project designated for private use is financed by PILOTs, it must also serve a public purpose to satisfy the private payments test. At best, this example lends establishes that the Treasury Department believed that the Tax Reform Act of 1986 maintains some avenue for public financing of sport stadiums even as it revoked the exemption for sports stadiums.

> general taxes or their equivalent, which are the PILOTs, the payments in lieu of taxes, we don't think we can change that rule. That will require Congress to change that rule. That structure is built into the fabric of what was done in 1986.[16]

This response is misleading. Mr. Tierney did not ask whether the Treasury Department had the authority to conclude that tax-exempt "stadium financing cannot be done through public funds," but whether it had the authority to conclude that tax-exempt stadium financing cannot be done through PILOTs. The rule for the former—the private payments test—is statutory; the rule for the latter—the PILOT rule—is regulatory. As such, it would appear that the Treasury Department has wide discretion in its interpretation of the rule and promulgation of a new rule. Instead of acknowledging this authority and accepting responsibility for the Treasury Department's allowance of PILOTs for the financing of stadium construction, Mr. Solomon conflates the two tests and assumes precisely the conclusion that the PILOT test is designed to determine: that PILOTs are the equivalent of generally applicable taxes.

The Treasury Department retains discretion to interpret its own ambiguous regulations provided its interpretation is reasonable and consistent with the underlying statute. Where, as here, the Treasury Department provides an interpretation that is arguably at the outer limits of its authority, it is understandable that it wishes to defend its authority to Congress.[17] But it is not appropriate for the Treasury Department to maintain that it was *compelled* to advance such an interpretation and to defend this position by repeatedly misstating the law while testifying to Congress. Even after two Subcommittee hearings, I remain unsatisfied with the Treasury Department's explanation of the regulatory framework, and I request further clarification.

Please explain:

(1) Do you continue to maintain that existing regulations compel the Treasury Department to allow the use of PILOTs that meet the commensurability standard to be used in conjunction with sports stadiums financed by tax-exempt private activity bonds?

   (a) Whether or not you agree with this interpretation, could the existing regulations be reasonably interpreted to prohibit the use of PILOTs to support tax-exempt private activity bonds financing sports stadiums on the grounds that sports stadium construction involves the use of bonds not designated for a public purpose? *See* 26 C.F.R. § 1.141-4(e)(5)(ii). If you believe that the IRS retains the

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[16] Hearing on *Professional Sports Stadiums: Do they Divert Public Funds from Critical Public Infrastructure?*, 110th Cong. 41.

[17] The Treasury Department's PILOT regulations—both on their face and as interpreted by the agency—may also present an unreasonable interpretation of the private payments test, 26 U.S.C. § 141(b), to the extent that they allow financing of tax-exempt private activity bonds by payments more accurately characterized as linked to "private business use[s]."

authority to make such a finding, would it consider making such a determination, and, if not, why not?

(b) Whether or not you agree with this interpretation, could the existing regulations be reasonably interpreted to prohibit the use of PILOTs to support tax-exempt private activity bonds financing sports stadiums on the ground that they generally prohibits the use of "[s]pecial assessments paid by property owners benefiting from financial improvements," such as a "payment in lieu of tax that is limited to the property or persons benefited by an improvement." *See* 26 C.F.R. § 1.141-4(e)(3). Why didn't the Treasury Department include a discussion of the PILOT example in this provision in the PLRs?

(c) Whether or not you agree with this interpretation, could the existing regulations be reasonably interpreted to prohibit tax-exempt private activity bonds involving PILOTs funding sports stadium construction, such as those structured like the financing arrangements of the Yankees and Mets, because the regulations state that a PILOT "made in consideration for the use of property financed with tax-exempt bonds is treated as a special charge." 26 C.F.R. § 1.141-4(e)(5)(ii). If not, why not? If they could reasonably be interpreted that way, please explain why you depart from this interpretation.

(2) If you still maintain that the existing regulations compel the interpretation advanced in the PLRs, is it within the Treasury Department's authority under the relevant statutory provisions to propose new regulations that effectively prohibit the use of PILOTs in conjunction with financing of stadiums with tax-exempt private activity bonds? If you do not believe that the Treasury Department retains such authority, please explain why you believe this is the case.

(3) Under the proposed regulations, would the PILOTs described in the PLRs be considered generally applicable taxes?

(4) Prior to the 2006 PLRs, were PILOTs used in conjunction with the financing of tax-exempt bonds to fund stadiums, and if so, in which way(s), if any, did the use of PILOTs in these financing arrangements differ from those discussed in the PLRs.

(5) Since the issuances of the PLRs, to your knowledge, have additional sports franchises sought to use PILOTs as payments to finance tax-exempt stadium or arena construction? To your knowledge, does the Atlantic Yards proposal include use of PILOTs to fund an arena for the Nets?

The Domestic Policy Subcommittee has broad jurisdiction over many federal agencies, including the Treasury Department. The Oversight and Government Reform Committee is the principal oversight committee in the House of Representatives, with broad oversight jurisdiction as set forth in House Rule X.

If you have any questions relating to this request, please contact Charlie Honig, Counsel, at (202) 226-5299.

Sincerely,

Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee

Enclosure

cc: Darrell Issa
Ranking Minority Member