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# Water/Wastewater: National Association of Clean Water Agencies (and Other Organizations) Comments on Proposed Internal Revenue Service Tax-Exempt Bond Regulation Revisions

## Arkansas Environmental, Energy, and Water Law Blog

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The National Association of Clean Water Agencies ("NACWA") and a number of other organizations submitted comments to the United States Internal Revenue Service ("IRS") regulations revising the definition of "political subdivision" for tax-exempt bond purposes. See 81 Fed. Reg. 8870 (Feb 23, 2016).

The other organizations joining in the NACWA comments include:

- Association of Metropolitan Water Agencies
- National Association of Flood and Stormwater Management Agencies
- California Association of Sanitation Agencies
- Water Environment Federation
- American Water Works Association

NACWA and the other organizations argued that the proposed regulations would:

- Create a new, or restrictive and less clear definition of a "political subdivision" for tax-exempt bond purposes.

The organizations interest is driven by a need for access to funding from state-exempt bonds and asked that the proposed regulations be redrafted:

... so that they preserve the existing regulations and add on nothing more than a targeted rule that abandons the broad focus on public purpose and governmental control and focuses narrowly on special districts that are intended to perpetuate private control and remain politically unaccountable.

The modifications requested include allowing public stormwater utilities, flood control districts, drinking water agencies, and publicly owned treatment works to continue to qualify as political subdivisions to maintain access to tax-exempt financing. This request notes that some of these facilities may be controlled by multiple governmental entities that may not possess all three of the traditional sovereign powers or have board members who are removable only for cause.

The arguments set forth by the organizations include:

- Drinking water, clean water, and stormwater management utilities and regional flood control districts currently enjoy access to the tax-exempt financing markets, notwithstanding their varying governance structures.
- Drinking water, clean water, stormwater management and regional flood control agencies throughout the nation depend on the lower-cost financing that they obtain through the tax-exempt debt market to finance water resources infrastructure for their consumers, ratepayers and taxpayers.
- Many water systems could lose their status as political subdivisions under the Proposed Regulations and could therefore lose access to tax-exempt financing.
- Many of our members would fail to meet the public purpose requirement under the Proposed Regulations.
- Many of our members would fail to meet the governmental control requirement under the Proposed Regulations.

The recommendations submitted to the IRS in regards to the proposed rule include:

- The Proposed Regulations must not be finalized in their current form.
- If Treasury must make new rules in this area, it should abandon the current approach to the public purpose and control requirements, and narrowly focus the rules on the real problem that it perceives.
- Treasury should delete the “no more than incidental private benefit” provision in the public purpose requirements.
- Treasury should clarify the control test to make clear that a political subdivision can have board members appointed by any number of public entities, without any one entity exercising majority control.
- Treasury should clarify the control test to make it clear that the inability to remove board members without cause does not violate the control requirement.

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