

Legal Opinion: GCH-0048

Index: 2.700  
Subject: Bond Refunding

April 1, 1992

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Dear Mr. Lencione:

This is in response to your letter dated January 8, 1992, to Bessie Henderson of my staff, in which you requested that the Department of Housing and Urban Development (HUD) designate the refunding bonds to be issued by the City of West Branch, Michigan as housing program obligations under section 11(b) of the United States Housing Act of 1937. The bonds were originally issued under section 103(a) of the Internal Revenue Code (Code).

In the past, HUD had the authority to designate bonds tax-exempt under section 11(b) of the United States Housing Act of 1937. It is our opinion that HUD no longer has that authority, pursuant to the Tax Reform Act of 1986.

Section 149(c)(1) of the Code provides that tax exemption must be derived from the Code. It states that:

Except as provided in paragraph (2), no interest on any bond shall be exempt from taxation under this title unless such interest is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

Subparagraph (2)(A) provides an exception for prior exemptions. It states that:

. . . notwithstanding any provision of this part, any bond the interest on which is exempt from taxation under this title by reason of any provision of law (other than a provision of this title) which is in effect on January 6, 1983, shall be treated as a bond described in section 103(a).

Subparagraph (2)(C)(iii) provides that a bond is treated as described in subparagraph (A) if:

such bond is issued before June 19, 1984 under section 11(b) of the United States Housing Act of 1937.

Because the bonds originally issued by the City of West Branch were not issued under section 11(b), they do not fall within the exemption of the Code. Correspondingly, because the

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refunding bonds will be issued after June 18, 1984, they cannot possibly be designated or otherwise treated as section 11(b) obligations.

If you have further questions, please contact John Daly, Associate General Counsel, Office of Insured Housing and Finance at (202) 708-1274 or Ms. Henderson at (202) 708-1904 .

Sincerely,

Robert S. Kenison  
Associate General Counsel  
Office of Assisted Housing  
and Community Development