

Moni's County Fair Housing Council v.  
Boonin Township

1986

Letter from Asst. Deputy Public Advocate to Judges. dated  
Jan. 14, 1986

Attach: relevant provisions of  
P.L. 98-369, § 611 (b) + 26 U.S.C. § 103(c)(4)

Letter. 2 Pgs.

Att. 3 Pgs

● ML0000042



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DEPARTMENT OF THE PUBLIC ADVOCATE  
DIVISION OF PUBLIC INTEREST ADVOCACY

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ALFRED A. SLOCUM  
PUBLIC ADVOCATE

January 14, 1986

To The Honorable the Chief Justice  
and Associates Justices  
New Jersey Supreme Court  
Hughes Justice Complex  
Trenton, New Jersey 08625

Re: Morris County Fair Housing Council v. Boonton Township,  
Docket Nos. A-125, A-128 and related cases

To The Honorable The Chief Justice and  
Associate Justices of the New Jersey Supreme Court:

I am writing on behalf of plaintiffs-respondents Morris County Fair Housing Council, et al. in the above-entitled matters to provide the Court with two pieces of information alluded to during the oral arguments on January 5 and 6 of this year.

First, during my oral argument I made reference to provisions of the Internal Revenue Code which govern the activity of the New Jersey Mortgage and Housing Finance Agency (NJMHFA). Under Section 103A of the Internal Revenue Code, 26 U.S.C. §103A, as amended by the Tax Reform Act of 1984, P.L. 98-369, agencies such as NJMHFA are permitted to issue tax exempt bonds to finance mortgages for owner-occupied housing until December 31, 1987. P.L. 98-369 §611(a). The total quantity of such bonds is limited by federal law. 26 U.S.C. §103A(g). For all bonds issued after December 31, 1984, the state agency must annually document its compliance with the policy enunciated in 26 U.S.C. §103A(j)(5)(B)(ii) as enacted in P.L. 98-369 §611(b)(1):

the intent of Congress that State and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the greatest extent feasible (taking into account prevailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families.

Annual submission of this report is a condition precedent to any such bonds being tax exempt. 26 U.S.C. §103A(j)(3)(A).

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To The Honorable the Chief Justice  
and Associates Justices of the New  
Jersey Supreme Court

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January 14, 1986

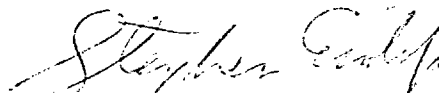
Under section 103(b)(4) of the Internal Revenue Code, NJMHFA may also issue tax exempt bonds to finance construction and mortgage loans for multifamily rental housing. The Internal Revenue Code, 26 U.S.C. §103(b)(4)(A), requires that 20 percent of the units in each project financed with these bonds be restricted to low and moderate income households. IRS regulations require this percentage to be maintained throughout the term of the bond and define low and moderate income as households with incomes no greater than 80 percent of the regional median household income. 26 C.F.R. §1.103-8(b)(5).

In sum, NJMHFA is required by federal law to use its bonding authority for the benefit of lower income housing regardless of the enactment of L. 1985 c. 222. I enclose for the reference of the Court the relevant provisions of P.L. 98-369, §611(b) and 26 U.S.C. §103(b)(4).

Second, I advised the Court, based on published reports, that \$100 million of NJMHFA mortgage bonds would provide shallow subsidies for approximately 200 to 250 units of lower income housing. I am now satisfied that the report on which I relied was erroneous and that the correct figure should be 2000 to 2500 units. This represents approximately one percent of the statewide need to 1990 for low and moderate income housing that will not be met through normal housing market mechanisms, as determined by the Rutgers Center for Urban Policy Research. R. Burchell, et al., Mount Laurel II: Meeting the Challenge and Delivery of Low Cost Housing 316 (1983).

I hope this information is of assistance to the Court.

Yours truly,



STEPHEN EISDORFER

Assistant Deputy Public Advocate

SE:id  
Enclosure  
cc: All Counsel

SEC. 559. TELECOMMUNICATION EMPLOYEES.

(a) EMPLOYEE PROTECTION.—Notwithstanding any provisions of the divestiture interchange agreement to the contrary, in the case of any change in employment on or after January 1, 1985, by a covered employee, the recognition of service credit, and enforcement of such recognition, shall be governed in the same manner and to same extent as provided under the divestiture interchange agreement for a change in employment by a covered employee during calendar year 1984.

(b) EMPLOYEES COVERED.—For purposes of this section, a covered employee is an individual—

(1) who is an employee of an entity subject to the modified final judgment,

(2) who is serving in an eligible position, and

(3) who—

(A) on December 31, 1983, was an employee of any such entity serving in an eligible position, or

(B) was a former employee with rehire or recall rights on such date and is rehired during the period of the employee's rehire or recall rights.

(c) DEFINITIONS.—For purposes of this section—

(1) The term "service credit" means service credit for benefit accrual, vesting, and eligibility for benefits under any pension plan, or any other employee benefits, including the interchange and treatment of associated benefit obligations and assets.

(2) The term "change in employment" means the commencement of employment of a covered employee by an entity subject to the modified final judgment after the termination of employment (with or without break in service) of such individual from an eligible position within another entity subject to the modified final judgment.

(3) The term "eligible position" means any position (A) which is not a supervisory position, within the meaning of section 2011 of the National Labor Relations Act (29 U.S.C. 152(11)) or (B) the annual base pay rate for which is not more than \$50,000, adjusted by the percentage increase in the consumer price index since December 31, 1983.

(4) The term "modified final judgment" means the judgment of the United States District Court for the District of Columbia in the case, United States against Western Electric, et alia, No. 82-0192, as modified.

(5) The term "entity subject to the modified final judgment" means—

(A) any carrier divested as a result of the modified final judgment,

(B) the corporation owning such carrier before divestiture,

(C) any other communications common carrier owned, in whole or in part, by such corporation on December 31, 1983, or

(D) any Interchange Company (as defined in the divestiture interchange agreement) excluding any subsidiary of such company other than any such subsidiary—

(i) which was established as of December 31, 1983, and

(ii) which participates in a defined benefit pension plan maintained by such Interchange Company.

(6) The term "divestiture interchange agreement" refers to the agreement between entities subject to the modified final judgment which was executed as of November 1, 1983, and which provides for mutual reciprocal recognition of service credit.

(7) The term "consumer price index" means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(d) COORDINATION WITH OTHER BENEFIT-RELATED PROVISIONS.—Nothing in this section shall be construed to limit benefits which would otherwise be available to any individual, whether provided under the modified final judgment, under applicable law, or otherwise.

SEC. 560. STUDY OF EMPLOYEE WELFARE BENEFIT PLANS.

(a) IN GENERAL.—The Secretary of the Treasury shall make a study of the problems relating to the use of employee welfare benefit plans for the provision of benefits to current and retired employees. Such study shall include a study of the need for participation, vesting, and funding standards.

(b) REPORT.—A report of the study conducted under subsection (a), together with such recommendations for legislation as the Secretary deems appropriate, shall be made to the Congress by not later than February 1, 1985.

SEC. 561. LIMITATION ON ACCRUAL OF VACATION PAY.

(a) GENERAL RULE.—Paragraph (1) of section 463(a) (relating to accrual of vacation pay) is amended by striking out "and payable during" and inserting in lieu thereof "and expected to be paid during".

26 USC 463.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after March 31, 1984.

26 USC 463 note.

TITLE VI—TAX-EXEMPT BOND PROVISIONS

Subtitle A—Mortgage Subsidy Bonds

SEC. 611. 4-YEAR EXTENSION OF MORTGAGE SUBSIDY BOND AUTHORITY.

(a) GENERAL RULE.—Subparagraph (B) of section 103A(c)(1) (defining qualified mortgage bond) is amended by striking out "December 31, 1983" each place it appears and inserting in lieu thereof "December 31, 1987".

26 USC 103A.

(b) REPORTING, ETC., REQUIREMENTS FOR MORTGAGE SUBSIDY BONDS.—

(1) IN GENERAL.—Subsection (j) of section 103A (relating to other requirements) is amended by adding at the end thereof the following new paragraphs:

"(3) INFORMATION REPORTING REQUIREMENT.—

"(A) IN GENERAL.—An issuer meets the requirements of this subsection only if the issuer submits to the Secretary, not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the issue is

issued (or such later time as the Secretary may prescribe with respect to any portion of the statement) a statement concerning the issue which contains—

“(i) the name and address of the issuer,

“(ii) the date of the issue, the amount of the lendable proceeds of the issue, and the stated interest rate, term, and face amount of each obligation which is part of the issue,

“(iii) such information as the Secretary may require in order to determine whether such issue meets the requirements of this section and the extent to which proceeds of such issue have been made available to low-income individuals, and

“(iv) such other information as the Secretary may require.

“(B) EXTENSION OF TIME.—The Secretary may grant an extension of time for the filing of any statement under subparagraph (A) if there is reasonable cause for the failure to file such statement in a timely fashion.

“(4) STATE CERTIFICATION REQUIREMENTS.—

“(A) IN GENERAL.—An issue meets the requirements of this subsection only if, before the issue, a State official designated by State law (or, where there is no such State official, the Governor) certifies in the manner prescribed by regulations that the issue meets the requirements of subsection (g).

“(B) CERTIFICATION FURNISHED TO SECRETARY.—Any certification under subparagraph (A) shall be submitted to the Secretary at the same time as the statement with respect to such issue is submitted under paragraph (3) or such other time as the Secretary may prescribe.

“(C) SPECIAL RULE FOR CONSTITUTIONAL HOME RULE CITIES.—In the case of any constitutional home rule city (as defined in subsection (g)(5)(C)), the certification under subparagraph (A) shall be made by the chief executive officer of such city.

“(5) POLICY STATEMENT.—

“(A) IN GENERAL.—An issue meets the requirements of this subsection only if the applicable elected representative of the governmental unit—

“(i) which is the issuer, or

“(ii) on whose behalf such issue was issued, has published (after a public hearing following reasonable public notice) a report described in subparagraph (B) by the last day of the year preceding the year in which such issue is issued and a copy of such report has been submitted to the Secretary on or before such last day.

“(B) REPORT.—The report referred to in subparagraph (A) which is published by the applicable elected representative of the governmental unit shall include—

“(i) a statement of the policies with respect to housing, development, and low-income housing assistance which such governmental unit is to follow in issuing qualified mortgage bonds and mortgage credit certificates, and

“(ii) an assessment of the compliance of such governmental unit during the preceding 1-year period preceding the date of the report with—

“(I) the statement of policy on qualified mortgage bonds and mortgage credit certificates that was set forth in the previous report, if any, of an applicable elected representative of such governmental unit, and

“(II) the intent of Congress that State and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the greatest extent feasible (taking into account prevailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families.”

(c) TREATMENT OF QUALIFIED VETERANS' MORTGAGE BONDS.—

(1) Subparagraph (C) of section 103A(c)(3) (defining qualified veterans' mortgage bond) is amended by striking out “subsection (j)(1)” and inserting in lieu thereof “subsection (d), paragraphs (1) and (3) of subsection (j), and subsection (o)”. 26 USC 103A.

(2) Section 103A is amended by adding at the end thereof the following new subsection:

“(o) ADDITIONAL REQUIREMENTS FOR QUALIFIED VETERANS' MORTGAGE BONDS.—

“(1) VETERANS TO WHOM FINANCING MAY BE PROVIDED.—An obligation meets the requirements of this subsection only if each mortgagor to whom financing is provided under the issue is a qualified veteran.

“(2) REQUIREMENT THAT STATE PROGRAM BE IN EFFECT BEFORE JUNE 22, 1984.—An issue meets the requirements of this subsection only if it is a general obligation of a State which issued qualified veterans' mortgage bonds before June 22, 1984.

“(3) VOLUME LIMITATION.—

“(A) IN GENERAL.—An issue meets the requirements of this subsection only if the aggregate amount of bonds issued pursuant thereto (when added to the aggregate amount of qualified veterans' mortgage bonds previously issued by the State during the calendar year) does not exceed the State veterans limit for such calendar year.

“(B) STATE VETERANS LIMIT.—A State veterans limit for any calendar year is the amount equal to—

“(i) the aggregate amount of qualified veterans bonds issued by such State during the period beginning on January 1, 1979, and ending on June 22, 1984 (not including the amount of any qualified veterans bond issued by such State during the calendar year (or portion thereof) in such period for which the amount of such bonds so issued was the lowest), divided by

“(ii) the number (not to exceed 5) of calendar years after 1979 and before 1985 during which the State issued qualified veterans bonds (determined by only taking into account bonds issued on or before June 22, 1984).

“(4) QUALIFIED VETERAN.—For purposes of this subsection, the term ‘qualified veteran’ means any veteran—

cy income tax assessments paid by them on such dividends. *Bishop v. Shaughnessy*, D.C. N.Y. 1951, 95 F.Supp. 759, affirmed 195 F.2d 683.

A husband may divide his income tax burdens between himself and his wife by making a valid gift of dividend-paying stock to wife who thereafter becomes liable for taxes on the income therefrom, and it is only essential that a valid gift of the stock be actually made. *Hardymon v. Glenn*, D.C.Ky. 1944, 56 F.Supp. 269.

Where taxpayer made outright gifts of stock to his wife and children prior to 1941, and during January 1941 he caused the donated stock and additional stock to be transferred to himself purportedly as trustee under parol trusts and in December 1941 he executed in writing irrevocable trusts under which he held all of the stock and retained the discretionary power to use the income for the support and maintenance of his daughter for life and of his son during minority and the principal of the trust for the son was payable to him upon reaching majority and the assets received in liquidation of the stock during 1942 were transferred during January 1943 to a single family trust, donor was not taxable on the income attributable to pre-1941 gifts. *Herberts v. C. I. R.*, 1948, 10 T.C. 1053.

Transfers of stock to members of family group were not completed gifts and dividends on stock were taxable to transferors. *Anderson v. C. I. R.*, 1945, 5 T.C. 443, affirmed 164 F.2d 870.

176. — Sums paid from income from property

Monthly sums payable to widow under settlement of statutory claim against husband's estate from income of irrevocable trust, or to be paid by life beneficiary if trust income was insufficient, constituted inheritance of income from property not excludible from her income under section 22(b)(3) [I.R.C. 1939 (now this section)] or this section and not taxable to beneficiary, since sums were required to be

paid and were paid from income from property and not from property, which income was not currently distributable to son or paid in discharge of his personal liability. *Edwards v. C. I. R.*, 1962, 37 T.C. 1107.

177. — Time of disbursement or giving

Where stock was recorded in name of decedent and special dividend check was issued to decedent but was paid to administrators and deposited by them in estate account, and dividend was not disbursed by administrators until after an order of final distribution and agreement by parties upon a division of stock had been made, the special dividend was not paid to parties as income to them and was taxable as income of the estate. *Dunlop v. C. I. R.*, C.C.A.8, 1948, 165 F.2d 284.

A gift of income, though made within the tax year in which the income was earned and received, does not relieve the person earning the income and disposing of it by gift from the payment of income tax thereon. *Hellman v. Glenn*, D.C.Ky. 1941, 36 F.Supp. 423.

178. — Miscellaneous gifts valid and complete

Evidence established that gifts by taxpayer of a portion of the sheep on his ranch to his four minor children were valid and completed gifts, so that taxpayer was not liable for income tax on gain derived from property given to the children. *Visintainer v. C. I. R.*, C.A. 10, 1951, 187 F.2d 519, certiorari denied 72 S.Ct. 85, 342 U.S. 858, 96 L.Ed. 646.

179. Miscellaneous payments includable

Monthly payments to be made to a widow from the estate of her deceased husband, regardless of the availability of income, pursuant to a prenuptial agreement and will of the husband, constitute a gift, bequest, or devise of income from property within this section to the extent that such payments were in fact made out of income from the property held by the estate. *Townsend v. C. I. R.*, 1949, 12 T.C. 692, affirmed 181 F.2d 502, petition for review dismissed 183 F.2d 191.

## § 103. Interest on certain governmental obligations

### (a) General rule.—Gross income does not include interest on—

(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia; and

(2) qualified scholarship funding bonds.

### (b) Industrial development bonds.—

(1) Subsection (a)(1) or (2) not to apply.—Except as otherwise provided in this subsection, any industrial development bond shall be treated as an obligation not described in subsection (a)(1) or (2).

(2) Industrial development bond.—For purposes of this section, the term "industrial development bond" means any obligation—

(A) which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person (within the meaning of paragraph (3)), and

(B) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part—

(i) secured by any interest in property used or to be used in a trade or business or in payments in respect of such property, or

(ii) to be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

(3) Exempt person.—For purposes of paragraph (2)(A), the term "exempt person" means—

(A) a governmental unit, or

(B) an organization described in section 501(c)(3) and exempt from tax under section 501(a) (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying section 513(a) to such organization).

(4) Certain exempt activities.—Paragraph (1) shall not apply to any obligation which is issued as part of an issue substantially all of the proceeds of which are to be used to provide—

(A) projects for residential rental property if at all times during the qualified project period—

(i) 15 percent or more in the case of targeted area projects, or

(ii) 20 percent or more in the case of any other project, of the units in each project are to be occupied by individuals of low or moderate income,

(B) sports facilities,

(C) convention or trade show facilities,

(D) airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the foregoing,

(E) sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy or gas,

(F) air or water pollution control facilities,