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June 23, 2023

Ms. A. Shonta Dunston
Chief Clerk
N.C. Utilities Commission
430 N. Salisbury Street, Room 5063
Raleigh, NC 27603

**Re: *New River Light and Power Company
Rebuttal Testimony and Exhibits of David Stark
Docket No. E-34, Subs 54 and 55***

Dear Ms. Dunston:

Attached hereto, on behalf of New River Light and Power Company, is the Rebuttal Testimony and Exhibits of David Stark to be filed in the above-referenced dockets.

Twelve paper copies of same will be delivered to the Clerk's Office within 24 business hours of the electronic filing and the Exhibits, in native format, will be uploaded to NCUCExhibits@ncuc.net.

If you have any questions concerning this filing, or exhibits thereto, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'M. Gray Styers, Jr.'.

M. Gray Styers, Jr.

pbb

Attachments



Fox Rothschild ^{LLP}
ATTORNEYS AT LAW

Ms. A. Shonta Dunston
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cc: Parties and Counsel of Record
NC Commission Staff
NC Public Staff
Mr. David T. Drooz
Mr. Randall E. Halley
Mr. David Jamison
Mr. Edmond C. Miller
Mr. David Stark

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JUN 23 2023

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-34, SUB 54
DOCKET NO. E-34, SUB 55

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-34, SUB 54

In the Matter of:
Application for General Rate Case

DOCKET NO. E-34, SUB 55

In the Matter of:
Petition of Appalachian State
University d/b/a New River Light and
Power for an Accounting Order to
Defer Certain Capital Costs and New
Tax Expenses

REBUTTAL TESTIMONY OF

DAVID STARK

**ON BEHALF OF
NEW RIVER LIGHT AND POWER**

June 23, 2023

1 **Q. Please state your name and business address.**

2 A. My name is David Stark. I am a Certified Public Accountant and employed as
3 Managing Director of KPMG. My business address is 500 West 5th Street, Suite
4 800, Winston-Salem, North Carolina 27101.

5 **Q. What is KPMG?**

6 A. KPMG is the fourth largest accounting firm in the United States and helps manage
7 over seventy-eight percent of all US public audits. Around the world, KPMG firms
8 operate in 143 countries and territories, and collectively employed more than
9 265,000 partners and other people, serving the needs of business, governments,
10 public-sector agencies, and not-for-profits.

11 **Q. On whose behalf are you testifying in this proceeding?**

12 A. I am testifying on behalf of the Applicant, Appalachian State University (“ASU”)
13 d/b/a New River Light and Power (“NRLP”).

14 **Q. Please describe your professional background and education.**

15 A. A copy of my resume is provided as Stark Rebuttal Exhibit No. 1. My accounting
16 practice regularly involves advising clients on tax compliance issues, including
17 Unrelated Business Income Tax (UBIT) obligations of not-for-profit institutions.

18 **Q. What is the purpose of your rebuttal testimony?**

19 A. My rebuttal testimony relates to the application filed on December 22, 2022, by
20 ASU d/b/a NRLP for adjustment of general base rates and charges applicable to
21 electric service effective as of January 21, 2023, in Docket No. E-34, Sub 54, and
22 to the Petition of ASU d/b/a NRLP for an Accounting Order to Defer Certain

1 Capital Costs and New Tax Expenses, in Docket No. E-34, Sub 55. Specifically,
2 my rebuttal testimony provides the factual context for the decisions made regarding
3 the UBIT obligation of ASU d/b/a NRLP, my professional opinion that those
4 decisions were reasonable and prudent, and my conclusion that that the liability was
5 unexpected based on what was reasonably known at the time and therefore fully
6 justifies the deferral request for UBIT as set forth in the application.

7 **Q. What is UBIT?**

8 A. UBIT is defined as “income from a trade or business, regularly carried on, that is
9 not substantially related to the charitable, educational, or other purpose that is the
10 basis of the organization’s exemption.”¹

11 **Q. What information or knowledge do you have regarding the UBIT obligation**
12 **of Appalachian State University d/b/a NRLP?**

13 KPMG has been the tax compliance advisors and accountants for Appalachian State
14 University (ASU) for many years. In addition to providing tax compliance and
15 consulting services to ASU, I also provide services to six other UNC system schools
16 or their affiliated non-profit organizations along with approximately three dozen
17 other universities throughout the southeastern United States. We monitor state and
18 federal tax laws and their changes, communicate regularly with the senior
19 administration of ASU, especially its Office of the Controller, respond to tax

¹ IRS website. irs.gov/charities-non-profits/unrelated-business-income-tax

1 compliance questions, and prepare and file income tax returns for ASU. As
2 explained in more detail below, KPMG advised ASU on the changes in the law
3 created by the Tax Cuts and Jobs Act regarding UBIT. As part of that process, ASU
4 asked KPMG to take a fresh look at other sources of revenue that could potentially
5 subject ASU to an income tax liability, including the net revenues generated by
6 NRLP. We also discussed with and advised ASU management regarding the merits
7 and chances of success of seeking a private letter ruling from the IRS on this issue.
8 In summary, we have worked closely with ASU for over four years on this issue
9 and are extremely familiar with the applicable law and policy as it pertains to
10 whether NRLP revenues are subject to UBIT.

11 **Q. Historically, were net revenues generated by university-owned utility systems**
12 **subject to UBIT?**

13 A. Not to our knowledge. We reviewed pages of a report that my predecessors at
14 KPMG provided to ASU in the early 1990s. The report appears to have been
15 commissioned by the UNC System Office as part of a larger unrelated business
16 income tax review for all 16 campuses. That report concludes, “the University
17 should not report its utility income as unrelated business income.” Our review of
18 those pages, and understanding of the long-standing practices of ASU, indicate that
19 net revenues from utility operations had not been reported as UBIT, and it is my
20 professional opinion that ASU reasonably relied on the advice of its outside
21 professional tax advisor at that time in deciding not to pay that tax during that
22 period. To our knowledge, neither ASU’s outside accountants/advisors, nor the

1 State Auditor, nor the Internal Revenue Service (IRS) opined (or even expressed a
2 concern that) the net revenues of ASU d/b/a NRLP were subject to UBIT since that
3 advice was provided. My professional opinion is that the prior decision not to pay
4 UBIT based on tax advice in 1995 was reasonable based on what was known at that
5 time.

6 **Q. Was there, however, a change in the law regarding UBIT?**

7 A. Yes. The Tax Cuts and Jobs Act (TCJA), Public Law 115-97, which became
8 effective in 2018, made some significant and material changes in the criteria for the
9 applicability or exemption from UBIT. This spurred a number of universities,
10 including ASU, to take a fresh look at prior tax positions taken on revenue
11 generating activities.

12 **Q. In that context, did KPMG then proceed to analyze whether the net revenues
13 of ASU d/b/a NRLP were subject to UBIT?**

14 A. Yes. We addressed this issue in a memo dated June 26, 2019, addressed to David
15 Jamison which is attached hereto as Stark Rebuttal Exhibit No. 2.

16 **Q. What was the conclusion of that analysis?**

17 A. It concluded that the revenue generated by electricity sold to the general public is
18 more likely than not unrelated business income (UBI) subject to UBIT..

19 **Q. Are you familiar with this memo and do you believe, in your professional
20 opinion, that its analysis and conclusion are correct?**

21 A. Yes. The memo was drafted by Donald (Dee) Rich, a now-retired KPMG tax
22 partner, and Shawn Hutchinson, a Senior Tax Manager who works with me. While

1 I did not prepare the memo, I reviewed it before it went to Mr. Jamison, and was
2 aware of the underlying issues at the time the memo was being drafted.
3 Additionally, I do believe, in my professional opinion, based upon my training,
4 knowledge, and years of experience in this field, that its analysis and conclusions
5 are correct.

6 **Q. Did KPMG advise ASU regarding whether it could or should challenge or seek**
7 **further clarification regarding its UBIT obligation?**

8 A. Yes, given the unexpected and material impact on NRLP's finances, we discussed
9 ASU's options with Mr. Jamison and explained to him that it was more likely than
10 not that the IRS would find the net revenues of NRLP to be taxable. We also
11 advised him that a request for private letter ruling on the issue would be both an
12 expensive and lengthy proposition and not likely to be successful.

13 **Q. What do you mean by "more likely than not?"**

14 A. It is a technical standard found in a number of places. The Financial Accounting
15 Standards Board (FASB) Accounting Standards Codification (ASC) 740-10 which
16 addresses "Accounting for Uncertain Income Tax Positions" is one example. Tax
17 positions that meet the more-likely-than-not (MLTN) recognition threshold are
18 measured as the largest amount of tax benefit that is more than 50 percent likely of
19 being realized upon settlement with the taxing authority. A liability on the financial
20 statements must be recorded for those amounts that do not meet this threshold and
21 reported to the IRS on Form UTP in some circumstances. Form UTP is used by US
22 corporations that have assets greater than \$10 million to report their uncertain tax

1 positions recorded on their financial statements to the IRS on an annual basis.
2 Additionally, the AICPA Statements on Standards of Tax Services define MLTN
3 as a greater than 50% probability of success if challenged by the IRS. Different
4 clients may have different risk tolerances, but, in our experience, we find that most
5 public agencies/institutions tend not to take UBIT tax positions that do not meet the
6 more-likely-than-not threshold, even when a lower threshold can be used, because
7 ASC 740 would necessitate recognizing a liability on their financial statements for
8 the amount that does not meet the MLTN level of assurance, and disclose to the
9 IRS those positions on Form UTP . Therefore, the consequences of taking a
10 position below MLTN can include increasing the likelihood of IRS audits (which
11 can be both expensive and time-consuming to respond to), as well as financial
12 penalties and interest if the tax position is rejected by the IRS.

13 **Q. In your professional opinion, based upon your training, experience and**
14 **knowledge, was it reasonable for ASU to pay the UBIT on the net revenues of**
15 **NRLP beginning in 2019?**

16 A. Yes, it was.

17 **Q. You used the term “unexpected” in a previous answer; the Public Staff has**
18 **taken the position that that this liability was not unexpected; do you agree?**

19 A. Absolutely not. For the reasons discussed above, ASU had reasonably relied upon
20 the advice of outside tax professionals in not paying UBIT prior to revisiting the
21 issue in 2019, with no adverse consequences and resulting in a lower cost of service
22 and rates to the customers of NRLP. And no one – not even tax professionals – are

1 clairvoyant to know what changes Congress may enact to the Internal Revenue
2 Code, what courts may rule in the interim, or what interpretations the IRS will
3 change over time. Not every tax reporting decision has a clear-cut answer and
4 instead relies on analyzing the facts and circumstances that exist at a given point in
5 time within the context of the regulatory environment at that same point in time.
6 Sometimes new laws or court decisions make a radical change to prior conclusions
7 in an instant, and other times a series of nuanced or subtle changes in IRS
8 interpretations or guidance may tip the balance of a technical conclusion over time
9 from favorable to unfavorable. Tax professionals advise our clients on what is
10 necessary to comply with the tax code as it exists and applies to the current tax
11 year or are known and previously enacted changes to become effective in future
12 years, but not on how the tax code or IRS rulings might change or evolve in the
13 future. The Public Staff's position in this regard indicates a fundamental
14 misunderstanding of tax compliance guidance and issues.

15 **Q. Are you familiar with ASU's accounting processes for the calculation of**
16 **UBIT?**

17 A. Yes. KPMG advises ASU in that regard as part of our role as tax compliance
18 advisors and we prepare and file the UBIT tax returns for ASU based upon that
19 information.

20 **Q. So therefore, it is important that this accounting be accurate?**

21 A. Absolutely; for both tax compliance and audit purposes.

1 **Q. Have you reviewed the profiled rebuttal testimony of Mr. David Jamison in**
2 **which he describes the process by which the UBIT amounts owed by NRLP**
3 **are calculated?**

4 A. I have.

5 **Q. Based upon your own knowledge of ASU's accounting processes for the**
6 **calculation of UBIT and the description of those process described by Mr.**
7 **Jamison, what is your assessment of ASU's calculations of the UBIT owed on**
8 **net revenues of NRLP?**

9 A. I would describe them as being more likely than not in accordance with IRS
10 standards and guidance for calculating and reporting UBIT accurately and in
11 compliance with the tax code.

12 **Q. Have you reviewed the calculations of UBIT incurred and paid as a result of**
13 **the net revenues of NRLP that is attached to Mr. Jamison's testimony?**

14 A. I have, and I believe those calculations to be accurate.

15 **Q. Does this conclude your testimony?**

16 A. Yes, at this time.



DAVID L. STARK

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Function and Specialization

David is a tax managing director in KPMG's Greensboro office. He provides tax compliance and advisory services to a variety of higher education, pension, healthcare, and other tax exempt organizations.

Representative Clients

- Ducks Unlimited
- Duke University
- Georgia Tech Foundation
- Grady Memorial Hospital
- Lockheed Martin Corporation Investment Management Company
- The Nemours Foundation
- Northern Trust Corporation
- Piedmont Healthcare Corporation
- University of Florida Athletic Association
- University of Georgia Foundation
- University of Miami
- University of Mississippi Foundation
- University of North Carolina
- Wake Forest University and Wake Forest Baptist Medical Center

Professional Associations

- Member, North Carolina Association of Certified Public Accountants
- Member, American Institute of Certified Public Accountants

Education, Licenses & Certifications

- BA, History, University of North Carolina at Greensboro, *Summa Cum Laude*
- MS, Accounting, University of North Carolina at Greensboro, *Academic Achievement Medal Recipient*
- Certified Public Accountant (NC)

Background

David is a tax managing director in KPMG's Winston-Salem office. He leads KPMG Development and Exempt Organizations' Compliance and Regulatory group in the Southeast and Mid-Atlantic regions.

Professional and Industry Experience

David acts as a tax advisor to more than 40 colleges and universities and numerous healthcare and other tax exempt organizations. He and the team of managers and staff that work with him complete hundreds of Forms 990 and 990-T each year along with related state income tax filings. He also serves as a tax advisor to partnerships and global manufacturing clients including SEC registrants.

David is also familiar with the taxability of fringe benefits and related payroll tax matters frequently offered by exempt organizations.

Several areas of practice focus include; ASC 740 tax provision support and review, exempt provider healthcare, alternative investments, unrelated business income, foreign investment reporting and taxation (Forms 926, 5471, 8865, 8621, 5713 FINCEN 114), oil and gas partnerships, hedge fund partnerships, net investment income taxation, UNICAP, reportable transaction disclosure, and multi-state income tax compliance. David has also advised clients on unrelated business income tax reviews, joint venture reviews, nexus reviews, tax penalty exposure reviews, overseas operational issues, and federal and state examinations.

Publications and Speaking Engagements

David is a frequent speaker on exempt organization tax matters at industry forums, conferences, and associated meetings, including the Higher Education Tax Institute, The University of Virginia System Fiscal Officers of College and University State Supported Conference, the University of North Carolina System Finance Conference, among many others.

Other Activities

- Instructor for KPMG's audit practice with respect to tax matters impacting exempt organizations.
- Alumni Representative, The Harvey School, Katonah, NY, 1996-present
- UNCG Accounting and Finance Advisory Board, 2013-present, Chair

To David Jamison
Appalachian State University

Date June 26, 2019

From Donald E. Rich, Jr.
Shawn M. Hutchinson
KPMG LLP

Ref Public Utility UBI review

Facts:

The New River Light and Power Company ("NRLP"), which is division of Appalachian State University (ASU, or, the "University"), provides electricity to both the University's campus and the area surrounding Boone, North Carolina.

In 1971 the North Carolina General Assembly merged sixteen of the State-owned institutions of higher education, including the University, into one multi-campus university called "the University of North Carolina." The multi-campus university is governed by the Board of Governors of the University of North Carolina and is an integral part of the State of North Carolina. As an integral part of the University of North Carolina system, the University is also an integral part of the State of North Carolina.

Issue:

Is the revenue generated by electricity sold to the general public subject to unrelated business income tax (UBIT) as unrelated business income ("UBI")?

Conclusion:

The revenue generated by electricity sold to the general public more likely than not is UBI.

Discussion:

N.C. Gen Stat. §116-35 provides that institutions operating electric power plants as of October 30, 1971 are authorized to continue such operation and to sell any excess electricity at rates approved by the Utilities Commission. Additionally, any net profit derived from operating a power plant is to be paid into a permanent endowment fund held for the institution. While N.C. Gen Stat. §116-35 gives permission for the University to operate a power plant, it does not appear to mandate that the University continue operating a power plant in order to perform an essential government function.

Internal Revenue Code ("IRC") §115(1) provides that *gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof.*

Integral parts of universities are not subject to federal income tax under the doctrine of implied statutory immunity, not because they exclude income under section 115(1). *See, e.g.,* Notice 2019-09, Q/A-5. The IRS has on a number of occasions, including in the recently issued Notice 2019-09 (regarding the excise tax under section 4960), concluded that a state university cannot be both an integral part of a state and at the same time an entity eligible to exclude income under IRC §115(1).

IRC §511(a)(1) imposes a tax on the unrelated business taxable income (“UBTI”) of state colleges or universities.

The Internal Revenue Service (“IRS”) has previously issued a Technical Advice Memorandum (“TAM”), published as TAM 7904006, where the IRS analyzed the interplay between IRC §115(1) and IRC §511(a)(2)(B), specifically addressing the operation of a public utility by a state university.

In this TAM the IRS first reviewed the legislative history of IRC §511(a)(2)(B):

"The legislative history indicates that Congress enacted... section 511(a)(2)(B) to tax the unrelated business income of state colleges and universities that did not have exemption rulings under...section 501(c), but which were, nevertheless, exempt from tax on their income because they were agencies or instrumentalities of the state. Congress wanted to place these entities on a parity with colleges and universities that are exempt under section 501(c)(3)...See S. Rep. No. 781, 82d Cong., 1st Sess., pt. 2 (1951), 1951-2 C.B. 545, 534-85."

Based upon such review, the IRS conceded that:

"...there is no indication in the legislative history or the language of section 511(a)(2)(B) to indicate that Congress intended to completely negate the applicability of section 115(1) to governmental colleges and universities whose income accrues to a state or political subdivision."

Consequently, the IRS concluded that:

"...section 511(a)(2)(B) should be interpreted to merely limit the application of section 115(1) in the case of governmental colleges and universities that have unrelated business income...rather than to completely supersede the applicability of section 115(1) in any case involving a governmental college or university."

"To clarify our view of the interrelationship of these statutory provisions, consider the example of a college or university within the scope of section 511(a)(2)(B) that derives income from the exercise of an essential governmental activity, with such income accruing to a state or political subdivision of a state. We believe that this income would constitute related business income that would not be taxable under section 511(a)(2)(B) because the income would be derived from the exercise or performance of a purpose or function described in section 501(c)(3), as that section has been construed by the Service to include lessening of the burdens of government. Furthermore, we believe that income would also be excludable from gross income under section 115(1)."

The IRS then ultimately ruled in the TAM that income from providing utility services to the general public *was* taxable based upon the following analysis:

- 1) Providing utility services is not an essential governmental activity.
- 2) A determination that IRC §115(1) does not apply to income from engaging in activities that are not substantially related to the exercise of section 501(c)(3) purposes is necessary if IRC §511(a)(2)(B) is to have any validity.

By referencing the applicability of IRC §115(1) and drawing its conclusion that a state university deriving income from performing an essential governmental function does not have unrelated business income while a state university deriving income from providing public utility services does have unrelated business income, the IRS appeared to ignore the “or” in IRC §115(1). In one of the IRS’s statements above, the Service notes that the UBTI provisions of 511 do not limit the applicability of IRC §115(1) in the case of state colleges and universities. In essence, the IRS seemed to be saying that IRC §115(1) operated as a subset of section 511, and if income was excluded under IRC §115(1) it should be

excluded under section 511. If that was the case, the subsequent analysis in the TAM as to whether the provision of utility services is an essential governmental activity appeared to be irrelevant. Further, to conclude as the IRS did in its TAM that exempting utility income if the utility service is provided directly by a state or political subdivision while taxing such income as UBTI if the service was performed by a state university seemed to be an illogical conclusion.

However, in General Counsel Memorandum (“GCM”) 37657, the IRS examined the analysis and conclusions in TAM 7904006 and concluded that because “the University is [an integral part], rather than a separate corporation or trust, we necessarily must conclude that section 115 does not apply.” *See also* the recently issued Notice 2019-09, Q/A-5 (“[A] state, political subdivision of a state, or integral part of a state or political subdivision, often referred to as a ‘governmental unit,’ does not meet the requirements to exclude income from gross income under section 115(1) because section 115(1) does not apply to income from an activity that the state conducts directly, rather than through a separate entity.”). GCM 37657 considered the application of IRC §511(a)(2)(B) to integral parts and concluded that UBIT “should be applied in the case at bar with respect to all activities of [the integral part] that are not substantially related to the exercise or performance of any purpose or function described in IRC §501(c)(3) or carried on primarily for the convenience of its students, officers, or employees. Thus, the provision of . . . utility services to the general public would, in our opinion, be subject to [UBIT].” *See also* Rev. Rul. 87-2 (noting that an example of a statutory exception to the doctrine of implied statutory immunity is found in IRC §511(a)(2)(B)). Though inapplicable to an integral part, the IRS then discussed whether it would reach a different result if the university was not an integral part, but instead excluded income under IRC §115(1). The GCM made clear that the conclusion would be the same:

Section 115(1) would exclude the income derived . . . from any public utility and accruing to [the university], but section 511(a)(2)(B) would call for the application of the unrelated business income tax with respect to such income to the extent the income is derived from utility services provided the general public, just as the tax would be applied in case of a private college or university. . . . We hereby affirm this conclusion and, thus, believe that our conclusion . . . would obtain even [if the university excluded income under section 115].

While this wording continues to be a bit confusing, the IRS appears to be concluding that even if a state university was not an integral part of the state, and therefore could exclude income under IRC §115(1), it would nevertheless still be subject to UBIT under IRC section 511. And further, if such income at issue were being derived from the operation of a public utility, that income would not be considered to be from performing an essential governmental function and as such, would constitute UBTI. In contrast, the IRS noted that “we believe that [income derived from the exercise of an essential governmental function that accrues to a state or political subdivision of a state] would constitute related business income that would not be taxable under section 511(a)(2)(B) because the income would be derived from the exercise or performance of [f] a purpose or function described in section 501(c)(3), as that section has been construed by the Service – the lessening of the burdens of government.” So, income derived by a university that performs an essential governmental function and thereby lessens the burdens of government is not subject to UBIT. And, at least according to GCM 37657, the operation of a public utility is not an essential governmental function. Therefore, a state university’s operation of a public utility was subject to UBIT.

In applying the analysis above to ASU, it should be first noted that despite the somewhat confusing statements in PLR 7904006, the IRS has on a number of occasions, including during the current year in Notice 2019-09, concluded that a state university cannot be both an integral part of a state and at the same time an entity eligible to exclude income under IRC §115(1). ASU appears to be an integral part of the state of North Carolina, and therefore, cannot exclude income under IRC §115(1). Therefore, any reference to a public utility (as well as any authorities examining the intersection of IRC §115(1) and §511(a)(2)(B)) are not relevant to ASU. Second, as a state university, ASU is subject to UBIT under IRC §511. To exclude income from NRLP from the definition of UBTI, ASU would have to show that the generation of power is substantially related to its exempt purposes. One way to do that would be to show that the generation of power by ASU is considered to be an essential governmental function for the state of North Carolina, and therefore is lessening the burdens of government. As noted above, however, the

statute authorizing ASU to operate NRLP seems to simply authorize its operation, not mandate it or encourage its operation to lessen the burden of state government. While the statute does require that any net profits from its operation be placed in an endowment fund, mandating the use of the funds is not the same as mandating the generation of the funds. If the operation of NRLP cannot be considered lessening the burdens of government, and thus income therefrom is not substantially related function income, it is then income from an activity unrelated to ASU's exempt purposes. Thus, absent a conclusion that ASU is performing an essential governmental function through the operation of a public utility, it is more likely than not that the income from NRLP is UBTI.

In preparing this advice, we considered tax authorities that are subject to change, retroactively, prospectively, or both, and any such changes could affect the conclusions stated herein. This advice is based on the completeness and accuracy of any one or more of the facts, assumptions, and client representations on which we relied, relating to the matters to which this advice is addressed. Unless separately agreed in writing, we will not update our advice for subsequent changes or modifications to the law, regulations, or to the judicial and administrative interpretations thereof, nor to take into account your correcting, updating, or providing new or additional facts or information you supplied or any assumptions on which we relied in preparing our advice.

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