



July 20th, 2021

The Honorable Chuck Schumer
Senate Majority Leader
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Senate Minority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Ron Wyden
Chairman, Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Mike Crapo
Ranking Member, Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Restoring the CIAC tax exemption for regulated water and wastewater utilities

Dear Honorable Members of the United States Senate,

We are writing to you in regard to what appears to be an unintended consequence of the Tax Cuts and Jobs Act (TCJA) and its effects on the Internal Revenue Code (IRC) *contributions to the capital of a corporation*, 26 CFR § 1.118-1. Unfortunately since the passage of the TCJA, the application of the IRC has negatively affected regulated water and wastewater utilities in several states and is likely to have significant future impacts on water and sewer projects that will be undertaken with Coronavirus State and Local Fiscal Recovery Funds appropriated to states via the American Rescue Plan Act of 2021 (ARPA). Therefore, we ask for Congress to restore the exemption to the *contributions to the capital of a corporation* provision of the IRC for regulated water and wastewater utilities.

For some context, when Congress passed the federal Tax Reform Act of 1986, it required all utilities to treat receipt of *contributions to the capital of a corporation* as taxable income. In 1996, Congress passed the Small Business Job Protection Act, granting water and wastewater utilities an explicit exemption from the *contributions to the capital of a corporation* provision under Section 1613. When passing the TCJA, Congress removed the exemption, and the IRC now treats any such contribution to regulated water and wastewater utilities as taxable income.

The loss of the exemption creates a federal tax liability for regulated water and wastewater utilities and has already had negative consequences. For example, when parties responsible for contamination have needed to pay for water utilities to connect properties with affected wells to the public water systems through a settlement or administrative order, the payments have been considered taxable income. Additionally, when states issue grants as part of large-scale water projects, the grants are also considered taxable income without the exemption.

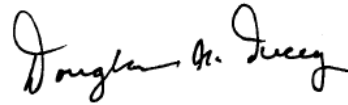
As you know, the ARPA explicitly provides funding to make necessary investments in water, sewer, or broadband infrastructure, and our states fully intend to use the funds to make similar types of investments. However, it makes little sense for Congress to give states the flexibility to provide grants for necessary infrastructure only then to levy a tax on those grantees, especially when providing a public benefit. We truly believe it was not the intent of Congress to disincentivize water utilities from expanding and improving in order to address a public need or contamination issues in the TCJA.

We put no greater trust in our government than when we turn on our faucet expecting clean water, and as elected officials, it is our duty to ensure we do everything we can to meet that expectation. Accordingly, we respectfully ask that Congress restore the exemption to the *contributions to the capital of a corporation* provision of the IRC for regulated water and wastewater utilities. Thank you for your urgent attention and cooperation toward making this right.

Sincerely,



Governor Chris Sununu
State of New Hampshire



Governor Doug Ducey
State of Arizona



Governor Mike Parson
State of Missouri



Governor Kevin Stitt
State of Oklahoma