

WC-1 Resolution on Contributions in Aid of Construction for Water and Wastewater Systems

Whereas Contributions in Aid of Construction (“CIAC”) represent the amount of money or property advanced or contributed to a utility by a developer to provide for the expansion, improvement or replacement of the utility’s water or wastewater facilities;

Whereas CIAC finances a substantial amount of the capital costs of water and wastewater utilities and has the effect of ensuring that the expansion of water or wastewater service to new customers or new locations does not unfairly burden a utility’s existing customers;

Whereas the Tax Cuts and Jobs Act (“TCJA”) of 2017 made changes to federal tax law so that CIAC is now federal taxable income to the water and wastewater utilities that receive them;

Whereas prior to the TCJA, the tax code treated CIAC as nontaxable contributions to capital;

Whereas as a tradeoff for these amounts being nontaxable, prior law prohibited water and wastewater utilities from including system expansion property funded by CIAC in the rate base upon which the utility is allowed the opportunity to earn a return;

Whereas prior law also prohibited utilities from taking any depreciation deductions with respect to CIAC property;

Whereas water and wastewater utilities are severely impacted by the increased taxation because of the capital-intensive nature of water infrastructure and the resulting large amounts of CIAC funds they receive;

Whereas for water and wastewater utilities, the loss of tax-free CIAC will increase the cost of providing water and wastewater utility service to the public and result in higher rates for customers for waterline extensions or other expenditures funded by CIAC;

Whereas the TCJA also allows most businesses to deduct 100 percent of the cost of water infrastructure in the first year, but does not make that deduction available to regulated utilities;

Whereas the first-year deduction will enable non-utilities that receive CIAC to offset the tax on the CIAC and thus avoid adding a tax charge to the CIAC;

Whereas the discrepancy in the availability of the first-year deduction thus creates a tax incentive for developers to shift investment in water infrastructure away from regulated water utilities to non-utility companies that may lack the expertise and experience to ensure safe and reliable water and wastewater services for consumers;

Whereas no action has been taken by Congress to amend the TCJA and exempt CIAC from taxable income for water and wastewater utilities;

Whereas it has been a longstanding position of the National Association of Regulatory Utility Commissioners (“NARUC”) to support the exemption of CIAC from taxable income, as the membership has passed two resolutions on the subject with respect to prior tax laws;

Whereas the first of these resolutions, which the NARUC Executive Committee adopted on March 1, 1995, encouraged and supported an amendment to the Tax Reform Act of 1986, which, similar to the TCJA, eliminated capital-contribution treatment for CIAC;

Whereas in 1996, Congress amended the Tax Reform Act of 1986 and restored capital-contribution treatment for CIAC received by water utilities, thereby making CIAC for investments in water and wastewater systems again tax exempt;

Whereas the TCJA has reversed that change and has once again made CIAC taxable income to the detriment of water and wastewater utilities and water consumers across the nation; *now, therefore be it*

Resolved that the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2019 Summer Policy Summit in Indianapolis, Indiana supports the exemption of CIAC funds received by regulated water and wastewater utilities from income tax liability and encourages and supports an amendment to the TCJA which would exempt CIAC from income taxes for regulated water and wastewater utilities.

Sponsored by the Committee on Water

Adopted by the NARUC Board of Directors on July 24, 2019