

# **AHC COOPERATIVE TAXATION BRIEF**

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**December 2012**

## **Senate Bill Proposes Amendment to Section 501(c)(12) for Mutual Water Companies**

On November 29, 2012, Senator Udall of Colorado submitted a bill to amend Section 501(c)(12) as it relates to mutual ditch and irrigation companies. The bill would (i) modify the Member Income Test by exempting certain income and (ii) codify an exception for mutual companies to allow pro-rata voting based on share ownership.

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Senator Udall contends the bill would make mutual ditch and irrigation companies more profitable at a time when agriculture operations in arid regions must transport irrigation water over long distances. He further argues that the current Member Income Test renders mutual companies unprofitable because it limits their sources of income to members, who are typically farmers of irrigated farmland. Additional benefits include increased investment in water infrastructure, and creation and preservation of rural jobs and our agricultural heritage.

### **Amendments to the Member Income Test**

The bill would exempt certain income that would otherwise be non-member income from the Member Income Test. Senator Udall argues that the exemption would make mutual ditch and irrigation companies more profitable and, therefore, promote the use of irrigated farmland.

The exempted income would include income received or accrued from:

- (i) the sale, lease, or exchange of interests in real property, including interests in water;



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(ii) the sale or exchange of stock in mutual companies or contract rights for the delivery or use of water; or

(iii) investments of proceeds from the above income.

To qualify for the exemption, the income must be used for operations and maintenance of the mutual company. If the income is not used for such purposes, it will be recognized as non-member income in the year it is distributed or expended.

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## **Amendments Related to Member Voting**

The second amendment would expressly allow members of mutual ditch and irrigation companies to vote on a pro-rata basis in proportion to shares owned. To vary the traditional one-member-one-vote requirement for mutual ditch and irrigation companies, the amendment would allow voting on a pro rata basis.

The amendment is expressly limited to mutual ditch and irrigation companies, and will have no effect on other organizations exempted by Section 501(c)(12).

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