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Legend

Act =

Authority =

The Facilities =

Commissioner =

State =

State Law =

Year 1 =

Year 2 =

Dear :

This responds to your request for rulings submitted by your authorized representative on behalf of Authority. The ruling requests are that: (1) Authority qualifies as a political subdivision of State for purposes of § 103 of the Internal Revenue Code (the "Code"), and (2) contributions made to Authority to be used in connection with the educational

programs of the Facilities qualify as charitable contributions under § 170(c)(1) of the Code.

FACTS AND REPRESENTATIONS

You make the following factual representations. Authority was created in Year 1 by the Act as a body corporate and politic constituting a political subdivision of the State. Authority was created for the purpose of implementing solid waste disposal and resource recovery systems and the Facilities throughout the State.

Under the Act, the governing body of Authority has 11 directors and 8 ad hoc members. The Governor appoints 3 of the directors and all 8 ad hoc members. The remaining 8 directors are appointed by designated legislative leaders and are subject to confirmation by both houses of the General Assembly. The appointed directors serve terms ranging from 2 years and 1 month to 4 years and 1 month. The Governor designates the chairperson with the advice and consent of both houses of the General Assembly. The chairperson serves at the pleasure of the Governor. All board members serve without compensation. The Authority prepares an annual plan of operations which is reviewed by the Commissioner for consistency with the State solid waste management plan. Upon approval of the Commissioner and a two-thirds vote of the Authority's full board of directors, the annual plan of operations is promulgated. Authority is required to submit a copy of its independent audits to the appropriate committee of the General Assembly. Authority is also included as a component unit in State's Comprehensive Annual Financial Report.

Authority is authorized under State law to acquire property by exercise of the power of eminent domain in its own name without oversight of the State.

Authority also educates the public about responsible waste management emphasizing source reduction and recycling. Authority fulfills this mission, in part, through the Facilities. The Facilities provide educational services through exhibits and outreach programs to schools, day camps, scout troops and other youth-oriented organizations. In Year 2, a large number of people participated in programs sponsored by the Facilities.

Since their openings, the Facilities and their various programs have been funded by the Authority out of its operating revenues. However, because of increasing financial pressures from the towns that are the clients of Authority and its own increasing costs, Authority must end, or at least seriously curtail this funding source. In order for the Facilities to continue to function and provide educational services, many individuals, corporations and organizations have expressed an interest in providing financial assistance but have been reluctant to do so without an assurance that their contributions would be deductible for Federal income tax purposes.

The enabling statutes do not allow Authority to create a subsidiary qualifying under § 501(c)(3) to receive contributions. Instead, Authority proposes to segregate the amounts contributed from its general operating revenues into a separate account and to dedicate the contributed amounts solely to the operation of the Facilities and their respective education programs. If Authority ceases to operate the Facilities, any remaining segregated funds would be distributed to the State to be used for public purposes, or with the permission of the appropriate State officials, contributed to § 501(c)(3) organizations whose exempt function is to provide environmental education.

LAW AND ANALYSIS

Political Subdivision

The Internal Revenue Code does not define the term “political subdivision.” Section 1.103-1(b) of the Income Tax Regulations provides that the term “political subdivision” denotes any division of any state or local governmental unit that is a municipal corporation or that has been delegated the right to exercise part of the sovereign power of the unit. As thus defined, a political subdivision of any state or local governmental unit may or may not, for purposes of this section, include special assessment districts such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of these units.

Three generally acknowledged sovereign powers of states are the power to tax, the power of eminent domain, and the police power. *Commissioner v. Estate of Alexander V. Shamberg*, 3 T.C. 131 (1944), acq. 1945 C.B. 6, aff'd, 144 F.2d 998 (2d Cir. 1944), cert. denied, 323 U.S. 792 (1945). It is not necessary that all three of these powers be delegated in order to treat an entity as a political subdivision for purposes of the Code. However, possession of only an insubstantial amount of any or all of the sovereign powers is not sufficient. All of the facts and circumstances must be taken into consideration, including the public purposes of the entity and its control by a government. Rev. Rul. 77-164, 1977-1 C.B. 20.

Authority was created pursuant to State legislation and is controlled by State. Under State law, Authority is granted substantial powers of eminent domain to carry out its authorized purposes.

Charitable Contributions

As a general rule under § 170(a)(1), subject to certain limitations, a deduction is allowed for a charitable contribution (as defined § 170(c)) paid during the taxable year.

Under § 170(c)(1), the term “charitable contribution” includes a contribution or gift to or for the use of any political subdivision, but only if the contribution or gift is made exclusively for public purposes.

Provided that Authority is a political subdivision, it will therefore qualify to receive charitable contribution deductions under § 170(c)(1), so long as the contributions or gifts are used exclusively for public purposes. The submission does not describe all the activities of Authority but the activities it ascribes to the Facilities are exclusively for public purposes.

Under Rev. Rul. 54-243, 1954-1 C.B. 92, a tax-exempt organization which is not itself a charitable organization, may establish a separate fund exclusively for charitable purposes and such fund will qualify for contributions deductible under § 170(a). Donations to such a fund will be deductible if the fund is operated exclusively for charitable purposes; separate books and records are maintained for the fund; and it otherwise meets the requirements for exemption as a fund organized and operated exclusively for charitable purposes.

Authority has set up such a fund like the one described in Rev. Rul. 54-243 and therefore contributions or gifts to the fund would qualify as deductions under § 170(a)(1). See Rev. Rul. 67-298, 1967-2 C.B. 111. See also Rev. Rul. 62-66, 1962-1 C.B. 83.

CONCLUSIONS

Based on the information submitted and representations made, we conclude that: (1) Authority is a political subdivision of State for purposes of § 1.103-1(b) and (2) contributions made to Authority to be used exclusively in connection with the Facilities and their respective education programs are for public purposes and will qualify as charitable contributions under § 170(c)(1).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to Authority's authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Authority and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,
Assistant Chief Counsel (Financial Institutions
and Products)

By:

Timothy L. Jones
Sr. Counsel, Tax Exempt Bond Branch

cc: