

Internal Revenue Service

Department of the Treasury

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October 2, 2002

LEGEND

- Agency =
- Area =
- District =
- State =
- Act =
- X =
- Y =

Dear . :

This is in response to your letter dated February 26, 2002, and subsequent correspondence and submissions, requesting a ruling that the Agency is an instrumentality of State, and charitable contributions to Agency are deductible under section 170(c)(1) as contributions to an entity described in section 170(b)(1)(A)(v), and are subject to the 50% charitable deduction limitation.

FACTS

The Agency was authorized pursuant to the Act in the year X. State enacted Act to provide for a delivery system for human resources to the residents of State. The District, which is comprised of cities and counties that are political subdivisions of State, established the Agency in Y. The Act authorized the creation of 13 other similar agencies in State, each agency serving a distinct geographic area. The Agency was subsequently incorporated as a State nonprofit corporation.

Agency's stated purposes in its charter are to: (1) effectively and efficiently deliver human resource programs and services to eligible recipients in the thirteen

county Area; (2) own and dispose of property both real and personal and receive and dispense funds and contributions from any federal or state assistance program under which such an agency can serve as grantee, contractor, or program sponsor or from private or local sources; and (3) operate within the meaning of the Act. Agency's bylaws provide that the Agency "shall have the responsibility to provide both a forum and a vehicle for local authority to administer and to assure implementation and operation of human resource programs."

The Agency provides employment training, child care, in-home services to the elderly, disabled, and economically disadvantaged, assistance to low-income families, transportation for the elderly, disabled and economically disadvantaged, counseling, and health care services.

Its charter states that the Agency shall be operated "exclusively for charitable purposes," . . . and that it was formed "[t]o effectively and efficiently deliver human resource programs and services to eligible recipients" in the Area. The Agency is authorized to "own and dispose of property both real and personal and receive and dispense funds and contributions from any federal or state assistance program . . . ". Its charter further states that the Agency "shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from Federal income taxation as a Corporation described in §501(c)(3) of the Code, or cause it to lose such exempt status, or carry on any activity not permitted to be carried on by a Corporation, contributions to which are deductible under §170(c)(2) of the Code."

The Act requires appointment of a certain number of directors to serve on the Agency's governing board, consisting of the county executive of each county in the District, the mayor of each municipality in the District, the chief executive officer of any metropolitan government in the District, one representative from a local human resources agency in each county, and one member from the State Senate and State House of Representatives. The governing board delegates the power to operate the Agency to an executive committee. Pursuant to the Act, the governing board also appoints a policy council to adopt bylaws, appoint persons to senior staff positions, determine major personnel, fiscal, and program policies, to approve overall program plans and priorities, and to assure compliance with conditions for financial assistance. The decisions of the policy counsel are subject to the approval of the governing board. The governing board must prepare an annual report of its activities, including financial statements, and submit them to the State.

Agency receives operating funds from State. Other sources of revenue include funding from the federal and municipal governments, and program fees. All revenues received by Agency are used for programs and activities engaged in by Agency. No private individual, association, or corporation has any ownership interest in Agency's earnings or its assets, and no part of its earnings inures to the benefit of, or is distributable to, any private entity or individual.

LAW AND ANALYSIS

Section 170(a)(1) of the Code provides, subject to certain limitations, a deduction for contributions and gifts to or for the use of organizations described in section 170(c), payment of which is made within the taxable year.

Section 170(c)(1) of the Code defines the term “charitable contribution” as including a contribution or gift to or for the use of a State, or any political subdivision thereof, but only if the contribution or gift is made for exclusively public purposes.

Section 170(b)(1)(A)(v) of the Code provides, in part that in the case of an individual the deduction provided in section 170(a) shall be allowed for any charitable contribution to a governmental unit referred to in section 170(c)(1) to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer’s contribution base for the taxable year. Section 170(b)(1)(F) generally provides that the term “contribution base” means adjusted gross income.

In determining the status of an organization to see whether it is an instrumentality of a state or of a political subdivision, reference is made to Rev. Rul. 57-128, 1957-1 C.B. 311. Rev. Rul. 57-128 considers the following factors in determining the status of an organization as an instrumentality: (1) whether it is used for a governmental purpose and performs a governmental function; (2) whether performance of its function is on behalf of one or more states or political subdivisions; (3) whether there are any private interests involved (i.e., inurement to the benefit of private individuals either currently or upon dissolution of the entity), or whether the states or political subdivisions involved have the powers and interest of an owner; (4) whether control and supervision of the organization is vested in public authority or authorities; (5) if express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality, and whether such authority exists; and (6) the degree of financial autonomy and the source of its operating expenses. An entity must also have a separate existence from the political subdivision.

In applying the factors in Rev. Rul. 57-128, 1957-1 C.B. 311, with respect to the first factor, the Act provides that the Agency is created for a public and governmental purpose and a matter of public necessity. The Act further provides that the Agency is to serve as a delivery system for human resources within its designated geographical area. Providing for the welfare of the citizens of a state is considered a governmental function and agencies established for such purpose are deemed to have a governmental purpose.

Second, the Act provides that the Agency is to be the delivery system for human resources for an area coterminous with the boundary lines of the District. The District is delineated and established by the State department of economic and community development upon consent of the participating counties, cities, and municipalities. In

addition, the Act provides that the Agency is acting on behalf of the creating and participating counties and cities.

Third, there is no indication that there are any private interests involved except indirectly in the course of advancing the public purposes of promoting the welfare of the population under the Agency's jurisdiction. No private person has a direct vested interest in the activities or the administration of funds received by the Agency. The Agency has control of its assets and program funds and can enter into transactions to accomplish its functions. The State as well as the participating political subdivisions have the powers and interests of an owner. The State, through the sunset provisions of the Act, can terminate the Agency.

Fourth, the control and supervision over the Agency is vested solely in public authorities. The Agency is directed by a governing board composed of the chief executive officers of the participating counties, cities, and municipalities, one state senator and one state representative whose districts are overlapping the Agency District, and one appointed representative from each local agency for human resources. The governing board appoints the policy council to act on its behalf. Members of the policy council are broadly based and equitably distributed between providers and consumers of Agency's services. The policy council, subject to the approval of the Board, appoints senior staff, adopts bylaws, determines personnel, program, and fiscal policies.

The Agency prepares an annual report, including financial statements, that is submitted to the governor, the general assembly, and the commissioner for finance and administration. The Agency is attached to the department of human services for purposes of general oversight and the commissioner for human services receives all reports relating to the activities of the Agency. The commissioner of human services considers the needs of the Agency in making budgetary proposals. The State enacted sunset provisions with respect to the Agency and periodically reviews the need for its continued existence. Also, the commissioner of the treasury determines the uniform accounting principles for the Agency and all other sister agencies in other districts.

Fifth, the Agency is created pursuant to the Act, which empowers the counties, cities, and municipalities within the District to establish a human resource agency for the District.

Finally, sixth, the agency is financially dependent upon the State, and to a much lesser extent, upon the counties, cities, and municipalities with the District. The funds appropriated for the Agency by the State are subject to the approval of the governor and the commissioner of finance and administration. The State matches the contributions of the local governments to finance the Agency's programs. The local governments may contribute independently of each other to fund the Agency's programs.

Based on the foregoing, Agency satisfies the criteria set forth in Rev. Rul. 57-128 for wholly-owned instrumentalities. Because instrumentalities of States constitute entities described in section 170(c)(1), contributions to instrumentalities of States are subject to the 50 percent charitable deduction limitation. See section 170(b)(1)(A)(v).

No opinion is expressed as to the federal tax consequences under any other provision of the Code. The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

By: Elizabeth Purcell
Chief, Exempt Organizations
Branch 2

Enclosure:
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