

Internal Revenue Service

Department of the Treasury

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Legend

- Authority =
- State =
- City =
- County A =
- County B =
- Corporation =
- Bonds =
- Agreement =
- X =
- Y =
- Date 1 =

This letter is in response to your request for a ruling on behalf of the Authority that the Authority is an instrumentality of one or more political subdivisions of the State for purposes of sections 103 and 141 of the Internal Revenue Code (the "Code").

Facts and Representations:

The Authority was created in June 2001, when City, County A, and County B (the "Governmental Entities") entered into the Agreement. The Authority is a nonprofit corporation created under State law by the Governmental Entities to coordinate construction and long term management of a regional convention center (the "Center") for the Governmental Entities. The Center will be operated for the use and enjoyment

of the local residents and to encourage out of town visitors to stay in the region and use the region's lodging facilities.

Membership in the Authority is limited to the Governmental Entities. The Authority is governed by a Board of Directors (the "Board"). The Board consists of nine directors; two of whom are appointed by County A (one of whom must be a member of the lodging industry); two appointed by County B (one of whom must be a member of the lodging industry) and five appointed by the City (one of whom must be a member of the lodging industry and one of whom must be a member of the hospitality industry). The administrator or manager of each Governmental Entity may also be deemed an advisory director to the Authority. Advisory directors are entitled to attend all meetings and committees of the Board and participate as advisors to the Board.

Directors serve a three year term until 2004 when the three year terms will become staggered. Each Governmental Entity has the power to remove any or all of its appointed directors, with or without cause. The Directors serve without payment, although they may, by resolution, authorize reimbursement for out-of-pocket expenses incurred as part of their service to the Authority.

The Authority is required to maintain the Center's books and records. The City will have access to the books and records on an ongoing basis. In addition, the Authority is represented as a public body under State law and as such is obligated to comply with the State freedom of information act whereby all books and records of the Authority, all financial reports, as well as all contracts and other material arrangements entered into by the authority, will be available pursuant to requests under the act.

While there are no express rights of dissolution, taxpayer represents that under applicable state law, the three Governmental Entities could dissolve the Authority by mutual consent. Upon dissolution of the Authority, the Authority's articles of incorporation require that its assets be distributed to the Governmental Entities to be used for public purposes. Assets will be distributed to each Governmental Entity in proportion to its respective contribution of Tourism Development Fees (the "Fees") until all Fees have been returned, with any excess to be distributed on a one-third (1/3) basis to each Governmental Entity. No part of the assets of the Authority will inure to the benefit of a private person.

Each Governmental Entity has been collecting the Fees since Date 1, for use in the development, construction and operation of the Center. The Fees are collected according to local ordinances enacted by each Governmental Entity, and are equal to 3% of all lodging charges collected by each Governmental Entity.

In addition to the Fees, construction of the Center will be financed through an issuance of bonds. The bonds will be issued as certificates of participation ("COP's") in an installment sale agreement with the City in which the City agrees to make payments

to purchase the Center from Corporation. Payments will equal the interest and principal due on the COP's. Once the amounts due under the installment sale are paid in full, the City will own the Center. Any financial obligation that may be incurred relating to credit enhancements for the bonds or funding of operating costs, will be incurred separately by the City at the City's discretion.

The Authority will be granted the exclusive right and license to control and operate the Center pursuant to the Y year operating agreement between the Authority and the City. It is anticipated that the Authority will have sufficient funds from the Fees, and from City's commitment to provide additional operating capital, to operate the Center on a long term basis.

Law and Analysis:

Interest from State or local bonds is excluded from gross income under section 103(a) of the Code. Under section 103(c)(1) a state or local bond is defined as an obligation of a State or political subdivision thereof.

Section 1.103-1 defines "governmental unit" to mean a State, territory, a possession of the United States, or any political subdivision thereof. Under section 1.103-1(b), with the exception of certain industrial development bonds, obligations issued by or on behalf of any State or local governmental unit by constituted authorities empowered to issue such obligations are the obligations of such a unit. For purposes of this section, the term "political subdivision" denotes any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.

Section 1.141-1(b) of the Income Tax Regulations provides, in part, that a governmental person means a state or local governmental unit as defined in section 1.103-1 or any instrumentality thereof.

Revenue Ruling 57-128, 1957-1 C.B. 311, sets forth the following factors to be taken into account in determining whether an entity is an instrumentality of one or more governmental units: (1) whether the organization 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, or whether the states or political subdivisions have the power and interests of an owner; (4) whether control and supervision of the organization is vested in public authority or authorities; (5) whether express or implied statutory or other authority is necessary for the creation and/or use of the organization, and whether this authority exists; and (6) the degree of financial autonomy of the entity and the source of its operating expenses.

The Authority was created for the purpose of overseeing and operating the Center under a long-term management agreement for the benefit of the Governmental Entities. The Authority serves as a central unit, coordinating and performing duties which are common to each of its Governmental Entities, and which each Governmental Entity otherwise would have to perform. Thus, the Authority performs its governmental function on behalf of the Governmental Entities.

There are no private interests in the Authority. The Governmental Entities receive the assets of the Authority upon its dissolution and no part of the assets will inure to the benefit of any private person. The Governmental Entities have the power and interests of an owner, realizing the benefits of ownership in proportion to their respective contributions of the Fees with one-third (1/3) to each of any remaining surplus. In addition, the Center is deemed owned by the City, and risk of loss relating to the Center's revenues and debt service is borne by the City.

Paramount control and supervision of the Authority rests with the Governmental Entities. Each Governmental Entity can remove any or all of its appointed Directors with or without cause and can appoint replacements.

Taxpayer represents that no express or implied statutory or other authority is necessary for the creation and/or use of Authority to operate the Center for the benefit of the Governmental Entities because the State Constitution and State Code provide that any county, incorporated municipality, special purpose district or other political subdivision may provide for the joint administration of any function and the exercise of power and the sharing of cost thereof.

The Authority is financially dependent upon the Governmental Entities and has no power to obligate (directly or indirectly) any Governmental Entity to provide any funds, except for the remittance of the Fees for a X year period from date of issuance of the bonds.

Conclusion:

We conclude that the Authority meets the criteria of Revenue Ruling 57-128 and therefore will be treated as an instrumentality of its Members for the purposes of section 141.

No opinion is expressed regarding the consequences of this transaction under any section of the code or the Income Tax Regulations, except as specifically stated in this ruling. In particular, no opinion is expressed on whether the interest on the Bonds is excludable from the gross income of the bondholders, or whether the Authority is a political subdivision for the purpose of section 115.

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

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

Sincerely,

By : Timothy L. Jones
Senior Counsel, Tax Exempt Bond
Branch