

Internal Revenue Service

Number: **200351006**

Release Date: 12/19/2003

Index Number: 115.00-00

Department of the Treasury

Washington, DC 20224

Person To Contact:

, ID No.

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Refer Reply To:

CC:TEGE:EOEG:E02 – PLR-117217-03

Date:

September 05, 2003

Corporation =

State =

Statute =

Town =

date a =

Dear :

This is in reply to a letter dated February 24, 2003, requesting a ruling that the income of Corporation is excludible from gross income under § 115 of the Internal Revenue Code and that charitable contributions made to Corporation for public purposes are deductible under § 170(c)(1).

FACTS

Corporation was created by Town as a non-profit local development corporation under State Statute on date a. Both Statute and Corporation's charter documents provide that Corporation will be operated exclusively for charitable or public purposes of

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attracting and retaining industry and promoting employment in Town. To accomplish this purpose Corporation will encourage the development or retention of an industry in the community including developing and promoting musical concerts, festivals, performances and other cultural events within the Town of Bethel. As part of its activities, Corporation may distribute state and federal grant money. Corporation may also provide help with event planning and new business planning to local businesses and become involved in town beautification projects.

Corporation is governed by a board of directors. The initial board is composed of seven directors, five of whom are Town officials. A majority of the directors must be officials of Town. Any director can be removed without cause by the Town Board. Corporation's only members are the members of the board of directors. The Town Board must approve the Corporation's annual operating budget, the issuance of obligations which might materially effect the financial condition of the Corporation, and the participation by the Corporation in any lease, mortgage or other obligation of the Corporation of the facilities of Corporation.

Most of Corporation's income is expected to consist of grants from Town, State and the federal government. Some of Corporation's income may come from private donors. Corporation receives in kind assistance from Town with respect to its operating expenses. Town provides office space and office supplies. Corporation has no employees. The activities of Corporation are performed by Town employees. In addition Town may pay for certain expenses such as legal expenses. All income and earnings of Corporation shall be used exclusively for its corporate purposes. Its Certificate of Incorporation provides that no part of the assets, earnings, or income of Corporation shall inure to the benefit of any member, director or officer of Corporation or any private person, corporation or individual, except that compensation may be paid for services. The Certificate of Incorporation further provides that in the event of dissolution, all of the remaining assets and property of corporation shall, after necessary expense thereof, be distributed to Town.

LAW AND ANALYSIS

Section 115

Section 115(1) of the Code provides that gross income does not include income derived from any public utility or the exercise of any essential government function and accruing to a state or any political subdivision thereof.

In Rev. Rul. 77-261, 1977-2 C.B. 45, income from an investment fund, established under a written declaration of trust by a state, for the temporary investment

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of cash balances of the state and its participating political subdivisions, was excludable from gross income for federal income tax purposes under § 115(1). The ruling indicated that the statutory exclusion was intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of a corporation or other entity engaged in the operation of a public utilities or the performance of some governmental function that accrued to either a state or municipality. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and which are within the ambit of a sovereign to properly conduct. In addition, pursuant to section 6012(a)(2) and the underlying regulations, the investment fund, being classified as a corporation that is subject to taxation under subtitle A of the Code, was required to file a federal income tax return each year.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the Service determined that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under § 115 of the Code. In Rev. Rul. 90-74, private interests neither materially participate in the organization nor benefit more than incidentally from the organization.

By encouraging the development of local businesses, including the establishment and operation of a facility for holding cultural events, Corporation is contributing to the economic development of Town. In addition, it is promoting employment, attracting tourists and helping to make cultural activities available to the citizens of Town. These activities constitute essential government functions for purposes of § 115.

The income of Corporation accrues to Town, a political subdivision of State, for purposes of § 115(1) of the Code. No part of the earnings of Corporation inure to the benefit of, or are distributed to, any private person other than incidentally as reasonable compensation for goods or services. Furthermore, all of Corporation's assets must be distributed to Town upon the dissolution of Corporation.

Accordingly, because the income of Corporation is derived from the exercise of an essential governmental function and will accrue to Town, we conclude that the income derived by Corporation is excludable from gross income of Corporation under § 115(1) of the Code.

Section 170

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Section 170(a)(1) provides, subject to certain limitations, a deduction for contributions and gifts to or for the use of organizations described in § 170(c).

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

Section 1.103-1(b) defines political subdivision to mean “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.”

An entity that is not a governmental unit specifically described in § 170(c)(1) of the Code may nevertheless qualify to receive deductible charitable contributions if it is an instrumentality of a state or an instrumentality of a political subdivision of a state. See Rev. Rul. 75-359, 1975-2 C.B. 79. Although § 170(c)(1) of the Code does not refer to instrumentalities of a state or instrumentalities of a political subdivision of a state, it is a long-standing position of the Service that contributions or gifts to a state or a political subdivision, or an organization acting on behalf of such entity, that are made for exclusively public purposes are deductible under § 170(c)(1). See Rev. Rul. 79-323, 1979-2 C.B. 106.

Rev. Rul. 57-128 sets forth six factors for determining whether an organization is an instrumentality of one or more states or political subdivisions: (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 involved have the powers and interests 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 or authorities: and (6) the degree of financial autonomy and the source of its operating expenses.

Corporation is organized for the governmental purpose of promoting economic development on behalf of the Town. There are no private interests involved in the organization or operation of the Corporation. The Town has the powers and interests of an owner and the Town controls and supervises the Corporation. The Corporation's overhead expenses are paid by the Town, and the Town has budgetary control over the Corporation. We conclude that Corporation is an instrumentality of the Town. Since the town is a political subdivision, Corporation is an instrumentality of a political subdivision. Accordingly, Corporation is an instrumentality for purposes of § 170(c)(1) and charitable contributions to the Corporation are deductible by the donors to the extent provided by § 170(a) of the Code.

CONCLUSIONS

1. The income of Corporation is excludible from gross income under § 115 of the Code.
2. Charitable contributions to Corporation are deductible by the donors to the extent provided by § 170(a) of the Code.

Section 6012(a)(2) and §1.6012-2(a)(1) provide, in general, that every corporation, as defined in § 7701(a)(3), subject to taxation under subtitle A is required to file an income tax return regardless of whether it has taxable income or regardless of its gross income. See Rev. Rul. 77-261. Accordingly, Corporation will be required to file an income tax return pursuant to § 6012(a)(2).

This ruling letter is effective as of the date the above described amendments to the Articles of Incorporation and to the by-laws were adopted.

Except as specifically provided otherwise, no opinion is expressed on the federal tax consequences of any particular transaction.

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

Sincerely,

Robin Ehrenberg, Senior Attorney
Exempt Organizations Branch 2
Office of the Division Counsel/Associate
Chief Counsel
(Tax Exempt and Government
Entities)

Enclosures;
Copy of this letter
Copy for § 6110 purposes

CC:

