

executive director who serves at the pleasure of the board. Authority's charter provides that it will solicit, receive and administer federal, state, local and private funds, goods, or services for any purposes consistent with the purposes and powers of its charter.

Under state law, County is required to supervise Authority's operations and funds. Authority is required to submit an annual report to County containing, in part, (1) a summary of its accomplishments and the programs and activities planned for the current year; (2) a statement of assets and liabilities, income and expenditures and changes in its financial position; and (3) a projected operating budget for the current fiscal year.

The County ordinance that created Authority required County to transfer to Authority on Date 2 all of the assets that it held on Date 1 in various funds and accounts for cultural purposes, including all of certain tax revenues in County's arts and cultural development fund and cultural resources endowment fund, all current expense fund revenues designated or appropriated for cultural purposes, all public art fund revenues designated for public art purposes, all state and federal funds designated for cultural purposes, and all other funds and fees designated or appropriated for cultural purposes. County transferred all such funds to Authority.

In addition to the initial transfer of funds, County will continue to transfer to Authority periodically during each year funds from a specific tax designated for cultural purposes as well as the other funds designated for cultural purposes. In Year 1, over C percent of Authority's revenue came from County. Over D percent of Authority's revenue in Year 1 was from government sources.

The County ordinance also provides that donated funds shall be accounted for individually and administered by Authority until fully expended in a manner consistent with the donor's restrictions and the County motion that approved the donation. Authority represents that it maintains control over the ultimate determination of how all funds donated to it are allocated. It accepts donations subject to donor restrictions following a determination that such restrictions are consistent with and further the Authority's purposes.

No part of the net earnings of Authority may inure to benefit of the directors, officers, or other private persons. Upon dissolution of Authority, all Authority income and assets will be distributed for the benefit of County.

Authority requests a ruling that:

Authority is an instrumentality of a political subdivision and that contributions made to it exclusively for public purposes are charitable contributions as defined in section 170(c)(1) and are deductible pursuant to section 170(a).

Law and Analysis

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 a 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.

Authority is used for a governmental purpose and performs a governmental function, and performs its function on behalf of a state or political subdivision. Authority is a public corporation created by County pursuant to State statute. Authority's functions were conducted by County prior to Authority's formation. Authority's programs and activities enhance opportunities for County citizens to participate in arts, heritage, historic preservation, and public art, and constitute government functions.

County has the power and interests of an owner of Authority. All of Authority's income and assets will be distributed for County's benefit upon the dissolution of Authority. There are no private interests involved in Authority. Authority is a public corporation controlled solely by County. All members of Authority's board of directors are appointed by County, and County may remove any director from office for any reason. The executive director serves at the pleasure of the board. Authority is required to report on its past and planned activities to County.

Statutory authority for the creation and use of Authority is found in the law of State.

County controls the financial affairs of Authority. Authority is required to submit an annual report to County containing (1) a statement of assets and liabilities, income and expenditures and changes in its financial position; and (2) a projected operating budget for the current fiscal year. Nearly all of Authority's operating revenues are from County and other government sources. In addition to the initial transfer of funds to Authority on Date 2, County will continue to transfer funds to Authority on an annual basis. In Year 1, over C percent of Authority's revenue came from County and over D percent was from government sources.

Based on the factors contained in Rev. Rul. 57-128, Authority is an instrumentality of County.

Section 170(c)(1) of the Code, in part, provides that a charitable contribution is a contribution or gift to or for the use of a state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes. County, of course, is a political subdivision of State. An entity that is not a governmental unit or political subdivision specifically described in section 170(c)(1) may nevertheless qualify to receive deductible charitable contributions if it is an instrumentality of a political subdivision and the contributions are made exclusively for public purposes. See Rev. Rul. 75-359, 1975-2 C.B. 79. Rev. Rul. 75-359 provides that the criteria for identifying instrumentalities of political subdivisions are set forth in Rev. Rul. 57-128. These criteria are discussed above and are met by Authority. Therefore, Authority is an instrumentality of County for purposes of section 170(c)(1).

Section 170(a)(1) provides that there shall be allowed as a deduction any charitable contribution as defined in section 170(c) payment of which is made during the taxable year. Section 170(c) provides that a charitable contribution is a contribution to or for the use of an organization operated exclusively for charitable purposes.

Inherent in the concept of a charitable gift is the notion that the gift must produce a public rather than a private benefit. Also, the recipient donee rather than the donor must control the specific disposition of the gift. Rev. Rul. 60-367, 1960-2 C.B. 73 involved gifts to a university for the purpose of constructing housing for a designated fraternity. The college accepted gifts designated for improving or building a house for a designated fraternity and honored such designation so long as it was consistent with the policy, needs, and activities of the college. The college retained and exercised discretion and control with respect to the amount spent on the fraternity house consistent with the standards and pattern of the college for other student housing and consistent with the expressed housing policy of the college. The ruling thus held that the contributions made to the college under such circumstances constituted allowable section 170 deductions.

Where funds are earmarked, it is important that the donee organization has full control of the donated funds and discretion as to their use, so as to ensure that the funds will be used to carry out the organization's functions and purposes. If the donee has such control and discretion and the gift is applied in accordance with the organization's exempt purposes, the charitable gift ordinarily will be deductible, despite the donor's expressed hope that the gift will be applied for a designated purpose. Thus, in Peace v. Commissioner, 43 T.C. 1 (1964), acq., 1965-2 C.B. 3, the court permitted a deduction for funds donated to a church mission society with the stipulation that specific amounts should go to each of four designated missionaries because an examination of the totality of the facts and evidence demonstrated that the contribution went into a common pool and the church retained control of the actual distribution of the funds.

Authority has represented that it will maintain control over the ultimate determination of how all funds donated to it are allocated. Authority may endeavor to honor donors'

wishes that designate the use of donated funds but must maintain control over the ultimate determination of how all donated funds are allocated.

Therefore, based on the above we rule that: Authority is an instrumentality of County under Rev. Rul. 57-128, 1957-1 C.B. 311. Therefore, contributions made to Authority exclusively for public purposes are charitable contributions as defined in section 170(c)(1) of the Internal Revenue Code and deductible pursuant to section 170(a) to the extent otherwise allowed by section 170.

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 yours,

CHRISTOPHER F. KANE
Branch Chief, Branch 3
Office of Associate Chief Counsel
(Income Tax and Accounting)