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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:TEGE:EOEG:EO1
PLR-126679-17

Date:
February 06, 2018

State =
City =
Trust =
Date =

Dear :

This letter responds to a letter from Trust's authorized representatives dated August 15, 2017, and subsequent correspondence requesting a ruling that Trust's one-time contribution to a Voluntary Employee Beneficiary Association (VEBA) described in section 501(c)(9) of the Internal Revenue Code[1] is consistent with the requirements of section 115(1).

Trust represents the facts as follows:

FACTS

City is a political subdivision of State. City currently provides retiree health and welfare benefits through Trust to eligible employees of City. Except for investment income, Trust's income consists solely of contributions from the City and City employees. On Date, the Internal Revenue Service issued a ruling that Trust's income is excludable from gross income under section 115(1).

Pursuant to settlement of a lawsuit seeking to invalidate certain changes to City employee retirement benefits, a VEBA was created that will be used to fund health reimbursement arrangements. Trust represents that the VEBA is described in section

[1] All section references are to the Internal Revenue Code (Code), as amended.

501(c)(9) and will receive a determination letter recognizing that the organization is exempt under section 501(a) as an organization described in section 501(c)(9).

The settlement provides that certain employees will be able to make an election between (1) remaining in the current retiree health structure funded through Trust, or (2) converting to the new retiree health structure funded through the VEBA. Other employees will be required to convert to the new VEBA retiree health structure.

City proposes to make a one-time contribution from Trust to the VEBA in an amount equal to the mandatory contributions that participating employees previously made under the current health structure without added interest. Trust would continue to exist and would continue to fund post-employment health benefits for employees that remain under the current health care structure.

LAW AND ANALYSIS

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

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income generated by an investment fund that is established by a state to hold revenues in excess of the amounts needed to meet current expenses is excludable from gross income under section 115(1), because such investment constitutes an essential governmental function. The ruling explains that the statutory exclusion is 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 an entity engaged in the operation of a public utility or the performance of some governmental function that accrues to either a state or political subdivision of a state. 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 that are within the ambit of a sovereign to conduct.

Rev. Rul. 90-74, 1990-2 C.B. 34, holds 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 section 115(1). The revenue ruling states that pooling casualty risks through the organization instead of purchasing commercial insurance fulfills the obligations of the political subdivisions to protect their financial integrity. The benefit to the employees of the participating political subdivisions was deemed incidental to the public benefit. Accordingly, the organization is performing an essential governmental function and the organization's income accrues to a state or political subdivision. The revenue ruling states that the income of an organization formed, operated, and funded by one or more political subdivisions (or by a state and one or more political

subdivisions) to pool their risks in lieu of purchasing insurance to cover their public liability, workers' compensation, or employees' health obligations is excluded from gross income if private interests do not, except for incidental benefits to employees of the participating state and political subdivisions, participate in the organization or benefit from the organization.

Providing health and welfare benefits to retired City employees is an essential government function within the meaning of section 115(1). See Rev. Rul. 77-261 and Rev. Rul. 90-74. Trust is providing health and welfare benefits to retired City employees through its one-time payment to the VEBA because the VEBA will be used to fund health reimbursement arrangements for retired City employees. Furthermore, the one-time payment to the VEBA does not change that Trust's income accrues to City because it satisfies its obligation to provide health benefits to its employees and private interests do not, except for incidental benefits to the employees, participate in Trust or benefit from Trust. See Rev. Rul. 90-74.

RULING

Based solely on the facts and representations submitted, Trust's one-time contribution to a VEBA described in section 501(c)(9) is consistent with the requirements of section 115(1). See Rev. Rul. 77-261 and Rev. Rul. 90-74.

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Trust and accompanied by a penalty of perjury statement executed by an individual with authority to bind Trust and upon the understanding that there will be no material changes in the facts. 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. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2018-1, § 11.05.

This letter does not address the applicability of any section of the Code or Regulations to the facts submitted other than with respect to the sections specifically described, and, except as expressly provided in this letter, no opinion is expressed or implied concerning the tax consequences of any aspects of any transaction or item of income discussed or referenced in this letter. Specifically, this letter does not address whether the VEBA is exempt under section 501(a) as an organization described in section 501(c)(9).

Because it could help resolve questions concerning federal income tax status, this letter should be kept in Trust's permanent records.

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if Trust files a return electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and control number of this letter.

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

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

Sincerely,

Theodore R. Lieber
Senior Tax Law Specialist
Office of the Chief Counsel
(Tax Exempt & Government Entities)