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Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:EEE:EB:HW
PLR-113649-22

Date:
March 27, 2023

Legend:

Trust =

Association =

State =

Plan =

TY:

Dear _____ :

This responds to your letter dated June 13, 2022, and subsequent correspondence dated December 13, 2022, requesting rulings on behalf of Trust under sections 105, 106, 115(1), and 7701(a) of the Internal Revenue Code (Code).

FACTS

Association was founded in _____ and incorporated as a nonprofit, nonstock corporation in _____ to support boards of education in State. The purpose of Association is to provide a central organization to represent the general interests of its members and to provide benefit programs for members' employees. Membership in Association is limited to boards of education within State. Association provides a multitude of essential services to its members, including professional development opportunities, advocacy, legal services, and insurance and financial services.

In a private letter ruling dated _____, the Service determined that Association is a wholly-owned instrumentality of State for purposes of section

3121(b)(7) of the Code, that Association's functions are essential governmental functions, and that Association's income is excludible from gross income under section 115(1). The ruling noted that the boards of education, which are members of Association, are integral parts of their respective counties and state governments and that Association's functions, which benefit governmental units as well as the boards of education, are essential government functions.

Association established the Plan to provide health and welfare benefits to its retired employees. Trust represents that Association pays a portion of the premiums for individual retiree medical, dental, and vision insurance coverage for Plan participants, and that participants pay the remaining portion of the premiums for the coverage.

Association established Trust, effective _____, to fund retiree health and welfare benefits under the Plan. Article II, Section 2.1, of Trust provides that all Trust assets are fully protected from the creditors of Association and the trustees, and no part of the net earnings of Trust will inure to the benefit of any individual. Under Article II, Section 2.4, Trust assets may be used to provide benefits under the Plan either through self-insurance or through payment of premiums on insurance policies; to pay all reasonable and necessary administrative costs, and to establish and accumulate a reserve to fund Association's share of the cost of the Plan. Under Article II, Section 2.3, Trust consists of contributions made by or on behalf of Association, and earnings thereon, and participants may not contribute to Trust. Article 5, Section 5.5, of Trust provides that, upon termination, Trust assets will be transferred to one or more trust funds, provided that the trust funds are for the purpose of providing health and welfare benefits consistent with the purposes of Trust, or, if the assets may not be transferred to such other trust funds, then they will be transferred to Association. Article 5, Section 5.5, further provides that, in no event will the assets be transferred to an entity that is not a state, a political subdivision of a state, or Association.

RULINGS REQUESTED

Trust requests the following rulings:

Ruling Request 1: Amounts distributed from Trust for individual retiree medical, dental, and vision insurance coverage are excluded from the gross income of Plan participants under section 105 of the Code.

Ruling Request 2: Contributions made to Trust by Association are excluded from the gross income of Plan participants under section 106 of the Code.

Ruling Request 3: Income of Trust is excludible from gross income under section 115(1) of the Code because the income is derived from the exercise of an essential governmental function and will accrue to a state or political subdivision.

Ruling Request 4: Trust is an "ordinary trust," within the meaning of section 7701(a) and § 301.7701-4(a) of the Procedure and Administration Regulations, and, therefore, is not required to file federal income tax returns pursuant to section 6012(a)(4) of the Code.

LAW

Section 61(a)(1) of the Code and § 1.61-21(a)(3) of the Income Tax Regulations provide that, except as otherwise provided in subtitle A of the Code, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items.

Section 105(a) of the Code provides that, except as otherwise provided in section 105, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

Section 105(b) of the Code provides that, except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical expenses) for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, and his dependents (as defined in section 152, determined without regard to section 152(b)(1), (b)(2), and (d)(1)(B)), and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27.

Section 213(d)(1)(A) of the Code defines "medical care" to include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body.

Section 106(a) of the Code provides that, except as otherwise provided in section 106, gross income of an employee does not include employer-provided coverage under an accident or health plan.

Section 1.106-1(a) of the Income Tax Regulations provides that the gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by him, his spouse, or his dependents, as defined in section 152 of the Code, determined without regard to section 152(b)(1), (b)(2), or (d)(1)(B)), or any child (as defined in section 152(f)(1)) of the employee who as of the end of the taxable year has not attained age 27. The employer may contribute to an accident or health plan either by paying the premium (or a portion of the premium) on a policy of accident or health insurance covering one or more of his employees, or by

contributing to a separate trust or fund (including a fund referred to in section 105(e)) which provides accident and health benefits directly or through insurance to one or more of his employees. However, if the insurance policy, trust or fund provides other benefits in addition to accident or health, section 106 applies only to the portion of the contributions allocable to accident or health benefits.

Coverage provided under an accident and health plan to former employees and their spouses and dependents is excludable from gross income under section 106. See Rev. Rul. 82-196, 1982-2 CB 53; Rev. Rul. 85-121, 1985-2 CB 57.

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, or the District of Columbia.

Rev. Rul. 77-261, 1977-2 CB 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) of the Code because such investment constitutes an essential government function. The ruling states 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 explains 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 CB 34, holds that income from 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) of the Code because the organization is performing an essential governmental function. The revenue ruling states that the income of such an organization is excludable from gross income so long as private interests do not participate in the organization or benefit more than incidentally from the organization. The benefit to the employees of the insurance coverage obtained by the member political subdivisions was deemed incidental to the public benefit.

Section 6012(a)(4) of the Code provides that every trust having for the taxable year any taxable income, or having gross income of \$600 or over, regardless of the amount of taxable income, must file a return with respect to income taxes under subtitle A.

Section 301.7701-1(b) of the Procedure and Administration Regulations provides that the classification of organizations that are recognized as separate entities is determined under sections 301.7701-2, 301.7701-3, and 301.7701-4, unless a provision of the Code provides for special treatment of that organization.

Section 301.7701-4(a) provides that, in general, an arrangement will be treated as a trust under the Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

ANALYSIS AND CONCLUSION

Based on the foregoing, we rule as follows:

Ruling Request 1: Amounts distributed from Trust for individual retiree medical, dental, and vision insurance coverage are excluded from the gross income of Plan participants under section 105 of the Code.

Ruling Request 2: Contributions made to Trust by Association are excluded from the gross income of Plan participants under section 106 of the Code.

Ruling Request 3: Trust was established to fund health and welfare benefits for eligible retirees of Association. Trust's income accrues to the benefit of Association, an entity that previously received a private letter ruling from the IRS indicating that all of its members are integral parts of their respective counties and state governments and concluding that Association's functions are essential government functions and its income is excluded from gross income under section 115(1) of the Code. Trust's provision of benefits to retired employees of Association constitutes the performance of an essential governmental function within the meaning of section 115(1) of the Code. See Rev. Rul. 90-74 and Rev. Rul. 77-261. Trust's activities do not provide more than an incidental benefit to private interests. See Rev. Rul. 90-74. In no event, including dissolution, will Trust's assets be distributed or revert to any entity that is not a state, a political subdivision of a state, or Association, an entity the income of which is excludible from its gross income by application of section 115(1) of the Code. Thus, Trust's income is excludible from gross income under section 115(1) of the Code because Trust's income derives from the exercise of an essential governmental function and will accrue to a state or a political subdivision of a state.

Ruling Request 4: Trust enables Association to set aside funds to provide health and welfare benefits for its retirees. Trust represents that its trustees are charged with the responsibility to protect and conserve Trust's assets for the benefit of Trust's beneficiaries. Trust further represents that beneficiaries of Trust cannot share in the discharge of the trustees' responsibility for the protection and conservation of property and, therefore, are not associates in a joint enterprise for the conduct of business for profit. As such, Trust is classified as a trust within the meaning of section 7701(a) of the Code and section 301.7701-4(a) of the Procedure and Administration Regulations. Because Trust's income is excludable from gross income under section 115(1) of the Code, and section 6012(a)(4) does not require a trust without taxable income to file a

return when gross income is less than \$600, Trust is not required to file an annual income tax return.

No opinion is expressed concerning the Federal tax consequences under any other provision of the Code other than those specifically stated herein.

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

The ruling contained in this letter is based upon information and representations submitted by your authorized representatives and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2023-1, 2023-1 IRB 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. This 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. 2023-1, § 11.05.

Sincerely,

Dara Alderman, Senior Counsel
Health & Welfare Branch, Office of Associate
Chief Counsel
Employee Benefits, Exempt Organizations, and
Employment Taxes

cc: