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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:EEE:EOET:EO2
PLR-101264-23

In Re:

Date:
May 25, 2023

Legend

- Area =
- Authority =
- City =
- Law 1 =
- Law 2 =
- Plan =
- Resolution 1 =
- Resolution 2 =
- Resolution 3 =
- State =
- TAD =
- Taxpayer =

Dear :

This letter responds to a letter from your authorized representative, dated December 27, 2022, requesting a ruling that Taxpayer’s income is excludable from gross income from federal income tax under § 115(1) of the Internal Revenue Code (Code). The Taxpayer represents the facts as follows.

FACTS

Taxpayer is a nonprofit corporation established by the Authority pursuant to the State’s nonprofit corporation code. Taxpayer was established to carry out economic redevelopment responsibilities delegated by the Authority with respect to the City and the Plan.

As per Law 1, State’s political subdivisions (municipalities and counties) have certain redevelopment powers for assisting economically and socially depressed areas within

the State. The redevelopment powers include the power to adopt redevelopment plans, create redevelopment tax allocation districts, issue tax allocation bonds, and enter into agreements and acquire property in pursuit of redevelopment purposes. Under Law 1, a political subdivision may designate itself as a redevelopment agency to carry out the redevelopment efforts, delegate such powers to an existing development agency, or it may create a special entity and delegate the redevelopment powers to that entity.

Pursuant to the express provisions of Law 2, each authority is created for nonprofit and public purposes. Furthermore, it is stated in Law 2 that such an authority is an institution of purely public charity and performs an essential government function in the exercise of the power conferred upon it by Law 2.

Resolution 1 was adopted by the City council and mayor, and provided that Authority was activated as a public body corporate, politic, and instrumentality. Resolution 2 designates Authority as a redevelopment agency. Pursuant to Law 1 and Resolutions 1 and 2, described below, the Authority is authorized to exercise all powers of a redevelopment agency under Laws 1 and 2 within the City, and is tasked with working with communities designated by the City to create and implement redevelopment plans, and carry out tasks designed to augment, improve, support, or encourage redevelopment, or economic development.

The selection and appointment of the Authority's board of directors is controlled by the City's council and mayor. As per the Authority's bylaws, its board of directors has between seven and nine members. The majority of the Authority's board of directors are public officials and the remainder of the directors are individuals appointed by the City's council and mayor. The Authority receives most of its funding from public sources, primarily the City.

Authority released the Plan in 2005, a major development initiative contemplating development along an area of the City. Pursuant to the Resolution 2, the City adopted the Plan, established the Area to be covered under the Plan, created the TAD, and designated the Authority to serve as its redevelopment agency to implement the Plan.

By Resolution 3, Authority authorized and approved in 2006, the formation of taxpayer, a non-profit corporation in the State, as a component unit of the Authority to carry out its redevelopment agency duties and obligations with respect to the Plan. Taxpayer's purpose is to carry out the Authority's redevelopment agency activities due to the length of the expected development period, scope of development activities, and other factors related to the TAD. Taxpayer is organized to perform the function of, or to carry out the purposes of the Authority acting solely in the capacity as a redevelopment agency for the City, with respect to the TAD. Taxpayer manages the planning, design, and implementation of all aspects of the Plan with partners in the public and private sectors. Taxpayer generally takes ownership of capital projects that are in development and transfers ownership to the City once they are completed.

According to Taxpayer, its board of directors has nine members. The Authority and the City have the right to appoint a majority of Taxpayer's board of directors, specifically five of Taxpayer's nine members. The majority of Taxpayer's revenue comes from public sources, which includes funding from the TAD, and other City and State funding. This trend is expected to continue while the Plan is being implemented. Taxpayer's revenues and expenses are part of the Authority's expenses. Taxpayer's liabilities, including debt service owed on debt related to the Plan, accrue as long-term liabilities to the Authority.

Taxpayer's annual budget is submitted to and must be approved by Authority. Taxpayer's revenue is used in furtherance of its essential governmental function and private interests do not benefit from Taxpayer's activities more than incidentally. No part of the earning of Taxpayer shall inure to the benefit of, or be distributable to, any member, director, officer, or trustee of the corporation, or any other private person.

Upon dissolution, Taxpayer's board of directors, after paying or making provision for payment of all of Taxpayer's liabilities, will dispose of all its assets by distributing those assets exclusively for the purpose to or for the benefit of the Authority and/or the City, in such manner as the board of directors shall determine to the extent consistent with the applicable ruling documents.

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 government 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 § 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 (e.g., casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under § 115(1) because the organization is performing an essential governmental function. The revenue ruling states that the income of such an

organization is excluded from gross income so long as private interests do not participate in the organization or benefit more than incidentally from the organization.

Taxpayer's activity consists of enhancing economic development as described in Plan. Furthermore, Taxpayer is a component unit of the Authority, which has been delegated redevelopment powers from a political subdivision to perform an essential government function. Therefore, Taxpayer is performing of an essential governmental function within the meaning of § 115. See Rev. Rul. 90-74 and Rev. Rul. 77-261.

The income of Taxpayer from its economic redevelopment plans accrues to a political subdivision of the State, the income of which is excluded from gross income under § 115(1). In a review of Taxpayer's financial information and governing documents, no private interests will participate in, or benefit from, the operation of Taxpayer other than as providers of goods or services. The benefit to third parties is incidental to the public benefit. See Rev. Rul. 90-74.

RULING

Based solely on the facts and representations submitted by the Taxpayer, we conclude that:

The income of Taxpayer is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof, or to an entity the income of which is excluded under § 115(1). Consequently, we rule that Taxpayer's income will be excluded from gross income under § 115(1).

The ruling contained in this letter is based upon information and representations submitted by or on behalf of the Taxpayer and accompanied by a penalty of perjury statement executed by an individual with authority to bind the Taxpayer, 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 a ruling, 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. 2023-1, § 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. Further, 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.

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

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

This ruling letter is directed only to the Taxpayer. According to § 6110(k)(3), this ruling letter may not be used or cited as precedent.

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if the Taxpayer 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 ruling letter.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Theodore R. Lieber
Senior Technician Reviewer
Exempt Organizations Branch 1
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

cc: