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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:EEE:EOET:EO2

PLR-110121-23

Date:

November 03, 2023

LEGEND

Trust or	=
Taxpayer	
Territory	=
Date 1	=
Board 1	

Benefits =

Recipients =

Date 2 =
X =
Board 2 =
Board 3 =

Dear _____ :

This letter responds to a letter from your authorized representative, dated May 5, 2023, requesting rulings that (1) Trust's income is excludable from gross income under section 115(2) of the Internal Revenue Code (Code); and (2) Trust is not required to file an annual income tax return because any income realized by it is excluded from gross income under section 115. The Taxpayer represents the following facts:

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Trust was established on Date 1, by the Territory, by and through Board 1 as the Territory's representative. Trust is organized under the law of the Territory as a charitable or public trust.

Trust is funded exclusively by contributions made by the Territory (or on the Territory's behalf). Trust assets consist of contributions and earnings on investments.

Trust was established solely to make distributions to the Territory, its sole beneficiary, as necessary for the Territory to pay Benefits it is obligated to pay to Recipients. Trust holds assets irrevocably for the exclusive purposes of (1) paying Trust's operating and administrative expenses, and (2) beginning Date 2 (at the earliest), making disbursements to the Territory as needed for the Territory to pay Benefits to Recipients. Trust assets may not be distributed to Recipients.

Board 2 members serve as Trust's trustees and are responsible for investing and managing Trust assets. A separate body, Board 3, is responsible for monitoring the funding of and withdrawals from the Trust.

Board 2, Board 3, and the Territory have the right, separately or jointly, to request amendments to the Trust that are consistent with the Trust's purpose. The U.S. District Court with jurisdiction in the Territory has sole authority to approve any Trust amendment. Pursuant to the Trust document, Trust terminates X calendar days after the date all funds held in Trust are withdrawn or when the Benefits owed to all Recipients have been paid, whichever occurs first. Upon termination of Trust, any remaining assets in it are transferred to the Territory.

LAW AND ANALYSIS

Section 115(2) provides that gross income does not include income accruing to the government of any possession of the United States, or any political subdivision thereof.

In Rev. Rul. 77-261, 1977-2 C.B. 45, the Internal Revenue Service ruled that income generated by an investment fund established by a state for the temporary investment of cash balances of the state and its political subdivisions is excludable from gross income under section 115(1) because such investment constitutes an essential governmental function and the fund's income accrues to the state and political subdivisions thereof. The ruling explains that section 115(1) is intended to apply 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 a state or political subdivisions thereof.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the Internal Revenue Service ruled that the income of an organization formed, funded, and operated by political subdivisions to pool their casualty risks or other risks arising from obligations concerning public liability, workers' compensation, and employees' health is excludable from gross income under section 115(1) because: 1) pooling risks of political subdivisions constitutes an essential governmental function; 2) except for certain incidental benefits, private interests do not

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participate in or benefit from the organization; and 3) the organization's income accrues to political subdivisions.

Under section 115(2), gross income does not include income accruing to the government of any possession of the United States, or any political subdivision thereof. Though Trust is not an instrumentality of the Territory, which is a possession of the United States, the income it generates accrues solely to the Territory. Trust was created solely for the benefit of the Territory, its sole beneficiary, and will only provide funds to the Territory as needed to satisfy Territory's obligation to pay Benefits to Recipients, an activity within the ambit of a sovereign to conduct. See Rev. Rul. 77-261. Funds in Trust will not be paid to any Recipients. Trust's assets cannot be used for any purpose other than disbursements to the Territory and paying related administrative expenses of Trust. See Rev. Rul. 90-74. As all of Trust's income accrues to the Territory, either through distributions or upon the Trust's termination, the requirements of section 115(2) are satisfied, and therefore this income is excluded from Trust's gross income.

Regarding Trust's obligation to file tax returns, 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 through -4, unless a provision of the Code provides for special treatment of that organization. Section 301.7701-4(a) provides, in general, that 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 the 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.

Trust enables the Territory to set aside funds and make distributions to the Territory, as necessary, so that Territory may satisfy its obligation to pay Benefits to Recipients. The Trustees are charged with the responsibility to protect and conserve Trust assets for the benefit of the Territory in its capacity as Trust beneficiary. The Territory cannot share in the discharge of the Trustee's responsibility to protect and conserve Trust assets, and therefore, is not associated in a joint enterprise for the conduct of business for profit. Thus, Trust is treated as a trust under section 301.7701-4(a).

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

We conclude that Trust is classified as a trust within the meaning of section 7701(a) and section 301.7701-4(a).

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Based solely on the facts and representations submitted by the Taxpayer, we rule that (1) Trust's income is excluded under section 115(2) because it accrues to the government of Territory, a possession of the United States; and (2) because Trust's income is excluded from gross income under section 115(2), Trust is not required by section 6012(a)(4) to file an annual income tax return.

The rulings contained in this letter are 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, section 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 representatives.

This ruling letter is directed only to the Taxpayer. According to section 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,

Taina Edlund
Senior Technician Reviewer
Exempt Organizations Branch 2
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

cc: