

## Internal Revenue Service

*Department of the Treasury*

Washington, D.C.

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**Person to Contact:**

**Telephone Number:**

**Refer Reply to:**  
CC:TE/GE:EO2 PLR-151833-02  
**Date:**

**January 24, 2003**

### LEGEND

Corporation =

State =

Statute a =

County =

Council =

City =

date b =

Business Park =

Air Park =

Dear :

This is in reply to a letter dated August 30, 2002, requesting a ruling that the income of Corporation is excludible from gross income under § 115 of the Internal Revenue Code and whether Corporation must file an annual federal income tax return.

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## FACTS

Corporation was incorporated as a nonprofit public benefit corporation by Council, the legislative body for County, pursuant to State Statute a on date b. Corporation was created by Council for the purpose of promoting economic growth and job creation in County. In order to accomplish this purpose Corporation will increase the inventory of prepared sites for industry, with an emphasis on sites suitable for companies with increased levels of engineering and scientific content. Corporation is currently carrying out this mission through the purchase, development and sales of industrial sites in Business Park to private industry.

Corporation is governed by a board of 5 directors. The chairman and vice chairman of Council serve as directors. The Chairman of Air Park also serves ex officio as a director of Corporation. Air Park is a nonprofit public benefit corporation whose board is selected by County and City. The Chairman of Air Park is elected by the board of Air Park. In addition, two directors of Corporation are chosen by Council from the citizens of County. Council has the power to remove any of the directors with or without cause. Corporation's Article of Incorporation provide that Corporation does not have any members.

The sources of Corporation's funds are contributions from County and proceeds from the sale of land within Business Park to private industry. Corporation has adopted a resolution that no part of the income of Corporation will inure to the benefit of any director or private individual. The by-laws provide that all of the property of Corporation is irrevocably committed to public purposes. Corporation is required to provide County with a copy of an independent audit of its books and records, which must be conducted annually. Upon dissolution of Corporation its assets shall be distributed either by the directors of Corporation or pursuant to the mandates of the County Administrator for Council. Corporation has amended its Articles of Incorporation and by-laws to provide that upon dissolution the assets of Corporation will be transferred to a state, a political subdivision of a state, or an organization the income of which is excluded from gross income under § 115 of the Code.

## LAW AND ANALYSIS

### Section 115

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.

In Rev. Rul. 77-261, 1977-2 C.B. 45, income from an investment fund, established under a written declaration of trust by a state, for the temporary investment

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of cash balances of the state and its participating political subdivisions, was excludable from gross income for federal income tax purposes under § 115(1). The ruling indicated that the statutory exclusion was 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 a corporation or other entity engaged in the operation of a public utilities or the performance of some governmental function that accrued to either a state or municipality. 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 which are within the ambit of a sovereign to properly conduct. In addition, pursuant to section 6012(a)(2) and the underlying regulations, the investment fund, being classified as a corporation that is subject to taxation under subtitle A of the Code, was required to file a federal income tax return each year.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the Service determined 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 § 115 of the Code. In Rev. Rul. 90-74, private interests neither materially participate in the organization nor benefit more than incidentally from the organization.

By developing prepared sites for sale to private companies Corporation increases the inventory of available sites and helps to attract new companies involved in technological enterprises to County. Stimulating County's economic growth and job creation are essential governmental functions.

The income of Corporation is derived from and used solely for purposes related to promoting the economic development of County. No part of Corporation's income will be distributed to a private party other than as payment for goods or reasonable compensation for services rendered. Corporation has amended its Articles of Incorporation and by-laws to provide that upon dissolution, Corporation's assets shall be distributed to State, a political subdivision of State, or another organization the income of which is excluded from gross income under § 115 of the Code.

Based on the information and representations submitted by Corporation and the amendments Corporation has made to its Articles of Incorporation and its by-laws, we hold that the income of Corporation is derived from an essential governmental function and accrues to a political subdivision of a state or to an entity the income of which is excludible from gross income under § 115.

### CONCLUSIONS

The income of Corporation is excludible from gross income under § 115 of the

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Code.

Section 6012(a)(2) and §1.6012-2(a)(1) provide, in general, that every corporation, as defined in § 7701(a)(3), subject to taxation under subtitle A is required to file an income tax return regardless of whether it has taxable income or regardless of its gross income. See Rev. Rul. 77-261. Accordingly, Corporation will be required to file an income tax return pursuant to § 6012(a)(2).

This ruling letter is effective as of the date the above described amendments to the Articles of Incorporation and to the by-laws were adopted.

Except as specifically provided otherwise, no opinion is expressed on the federal tax consequences of any particular transaction.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

Sincerely,

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Elizabeth Purcell, Chief  
Exempt Organizations  
Branch 2  
Division Counsel/Associate  
Chief Counsel  
(Tax Exempt and Government  
Entities)

Enclosures;

CC: