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Department of the Treasury

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PLR-120253-09

Date:

July 15, 2009

LEGEND

Trust =

District =

State =

Plan A =

Plan B =

Bank =

Dear :

This is in reply to a letter dated April 2, 2009, requesting a ruling that the income of Trust is excluded from gross income under § 115)1 of the Internal Revenue Code.

FACTS

District is an electric utility that provides power throughout State. It is governed by an eleven member board elected by the public and has been delegated the power of eminent domain. It is a political subdivision of State for federal income tax purposes.

Trust was created to fund District's obligations to provide post-employment medical and death retiree benefits to its employees pursuant to Plans A and B. District is the sole participating employer in Trust. Trust's income is derived from District contributions and investment income. It is used exclusively to provide health benefits to its retirees and their spouses and dependents and to pay for the cost of administering Trust. No private interests participate in or benefit from the operation of Trust other than as providers of goods and services.

Trust's initial trustee is Bank. The trustee manages and controls Trust assets, subject to the investment policy adopted by District. The board of District can remove and replace the trustee at any time.

District has the right to amend or terminate Trust. Upon termination, the assets of Trust will be used exclusively to pay for retiree benefits and administrative costs. Assets remaining after Plan obligations and Trust liabilities are satisfied shall revert to District.

LAW & ANALYSIS

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 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 resulting from its own participation in activities, but rather to the income of a corporation or other entity engaged in the operation of 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 § 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.

Trust provides health benefits to retired employees of District, a political subdivision of State. Providing health benefits to current and retired government employees constitutes the performance of an essential government function. Based upon Rev. Rul. 90-74 and Rev. Rul. 77-261, Trust performs an essential governmental function within the meaning of § 115(1) of the Code.

The income of Trust accrues to District, its sole participating employer. No private interests participate in or benefit from the operation of Trust. Any distribution of remaining funds in Trust to participating retirees upon the dissolution of Trust satisfies an obligation District has assumed with respect to providing health benefits to its employees. The benefit to the participating employees is incidental to the public benefit. See Rev. Rul. 90-74.

Section 6012(a)(2) provides, in general, that every corporation subject to taxation under subtitle A shall make returns with respect to income taxes under subtitle A. In addition, § 1.6012-2(a)(1) of the Income Tax Regulations provides in part that every corporation, as defined in § 7701(a)(3), subject to taxation under subtitle A of the Code shall make a return of income regardless of whether it has taxable income or regardless of the amount of its gross income.

Section 6012(a)(4) provides, in general, that every trust having for a taxable year any taxable income, or having gross income of \$600 or over, regardless of the amount of taxable income, shall make returns with respect to income taxes under subtitle A. Section 7701(a) and § 301.7701-4 of the regulations define trusts for purposes of § 6012.

Based on the information and representations submitted by Trust, we hold as follows:

- (1) The income of Trust is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof for purposes of § 115(1). Accordingly, Trust's income is excludable from gross income under § 115(1) of the Code.
- (2) If Trust is classified as a trust for federal income tax purposes, no annual income tax return must be filed by Trust pursuant to § 6012(a)(4) because any income realized by Trust is excluded from gross income under § 115(1). However, if

Trust is a corporation, as defined in § 7701(a)(3), it will be required to file an income tax return pursuant to § 6012(a)(2).

No opinion is expressed concerning the federal tax consequences of the Trust under any other provision of the Code other than those cited above.

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

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

Sincerely,

Sylvia F. Hunt,
Assistant Chief, Exempt Organizations
Branch 2
Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosures:

Copy of this letter
Copy for § 6110 purposes