

INTERNAL REVENUE SERVICE

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February 11, 2000

X =

Town =

State =

Law =

Dear

This is in response to a letter dated September 21, 1999, and subsequent correspondence requesting a private letter ruling that (1) the income of X is excludable under section 115 of the Internal Revenue Code, and (2) X is not required to file a federal income tax return.

FACTS

Town is a political subdivision of State.

X is a corporation incorporated under the nonprofit corporation law of State. X has been determined to be an organization described in section 501(c)(3) of the Code.

X was incorporated by the Board of Directors of Town in order to issue bonds for the purpose of constructing a new town hall for Town. X leases all of its property to Town for use as its town hall complex. The rent X receives satisfies the debt service on the bonds.

X is managed by its board of directors whose members are those persons who hold the offices of mayor, mayor pro tem, chairman of the administrative committee, and council members of Town. Directors serve as such only so long as they occupy those offices in the government of Town.

The officers of X are a president, vice-president, and secretary-treasurer. These offices are occupied, respectively, by the mayor, mayor pro tem, and chairman of the administrative committee of Town and occupy their offices in X only so long as they occupy their offices in the government of Town.

The bylaws of X provide that X shall not pay any dividends, and no part of its net earnings shall inure to the benefit of any

private individual.

X's bylaws currently provide that on dissolution its remaining assets and property shall be distributed to Town or to such other organization selected by X's directors that are exempt from income tax under section 501(c)(3) of the Code, qualify for the exclusion from gross income in section 115 of the Code, are donees described in section 170(c) of the Code, and are described in Law.

X proposes to amend its bylaws to provide that upon dissolution its remaining assets shall be distributed only to Town.

LAW

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 governmental function and accruing to a state or any political subdivision of a state.

Rev. Rul. 71-589, 1971-2 C.B. 94, provides that the income from property held in trust by a city that was to be used by the city for certain charitable purposes is not subject to federal income tax. Although Rev. Rul. 71-589 does not explicitly so state, the holding in the revenue ruling means that a determination was made that the income in question was derived from the exercise of an essential governmental function and accrued to a political subdivision within the meaning of section 115(1) of the Code. Rev. Rul. 71-589 specifically mentions several types of functions that the trust might perform, such as support of a hospital, schools, maintenance of a park, or other purposes ordinarily recognized as municipal functions.

Under Rev. Rul. 77-261, 1977-2 C.B. 45, the income from a fund, established under a written declaration of trust by a state for the temporary investment of cash balances of the state and its political subdivisions, which purchase units of participation and have an unrestricted right of withdrawal, is excludable from gross income. The fund, however, is classified as a corporation and must file a federal income tax return.

Rev. Rul. 90-74, 1990-2 C.B. 34, concerns an organization that is formed, operated and funded by political subdivisions to pool their casualty risks, or other risks arising from their obligations concerning public liability, workers' compensation, or employees' health. Rev. Rul. 90-74 states that the income of the organization is excluded from gross income under section 115(1) of the Code if private interests do not participate in the organization or benefit more than incidentally from the organization. In Rev. Rul. 90-74 the benefit to the employees of the political subdivisions was excepted as incidental.

Rev. Proc. 95-48, 1995-2 C.B. 418, specifies two classes of organizations that are not required to file annual information returns on Form 990, Return of Organization Exempt From Income Tax. These classes of organizations are governmental units and affiliates of governmental units that are exempt from federal income tax under section 501(a) of the Code. Rev. Proc. 95-48 supplements Rev. Proc. 83-23, 1983-1 C.B. 687.

ANALYSIS

The rental income received by X is paid by Town in satisfaction of its own lease obligation and is used by X to pay the debt service on bonds issued to make the leased property available to Town for Town's own use. X does not benefit from either the use of the leased property or the rental income. On the contrary, only Town benefits from the use of the leased property and the payment of debt service on the bonds.

Based on the information submitted, X is an "affiliate of a governmental unit" within the meaning of section 4 of Rev. Proc. 95-48.

CONCLUSION

Provided that Town is a political subdivision of State for purposes of section 115(1) of the Code, X's income is excludable from gross income under section 115(1).

X is not required to file federal income tax returns under section 1.6033-2(g)(1)(v) of the Income Tax Regulations. However, no opinion is expressed regarding whether x has or will have unrelated business taxable income under section 511 of the Code, and, therefore, must file a Form 990-T return.

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

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
Assistant Chief Counsel
(Financial Institutions & Products)
By: William E. Coppersmith
Chief, Branch 2