

Internal Revenue Service

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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.

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Refer Reply To:

CC:TEGE:EOEG:EO3

PLR-102794-18

Date:

July 27, 2018

Legend

Trust =

State =

Plans =

Dear :

This letter responds to a letter from your authorized representative, dated January 26, 2018, requesting a ruling that the Trust's income is excludable from gross income under section 115(1) of the Internal Revenue Code (Code). The Trust represents the facts as follows.

FACTS

The State retirement system, which is governed by State law, maintains various Plans that provide health and welfare benefits to current and retired employees (including their beneficiaries) of State and political subdivisions of State. Each plan is authorized and governed by State law. Each plan maintains a trust that has elected to participate in the Trust. The Trustee of the Trust is the board of the State retirement system. The board is comprised of members appointed either by the governor of State or a committee of the State legislature. The Trust is intended as a funding vehicle for the Plans, and it accepts contributions for holding, investment, and administration.

The Trustee distributes money from the Trust only to provide benefits to employees and retirees entitled to benefits under the Plans. No part of the Trust may be used for any purpose other than providing benefits to covered employees and retirees, or to pay reasonable expenses associated with administering the Trust and the Plans.

The board of the State retirement system may amend the Trust agreement at any time and in any manner, provided the amendment is consistent with State law and section 115 of the Code. In no event, including upon dissolution, will the Trust assets be transferred to or revert to an entity that is not a state, a political subdivision of a state, or an entity whose income is excludable from gross income under section 115(1).

LAW AND 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 governmental 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 section 115(1) because such investment constitutes an essential governmental function. The ruling states 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 explains 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 (casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under section 115(1) because the organization is performing an essential governmental function. The revenue ruling states that the income of such an organization is excludable from gross income so long as private interests do not participate in the organization or benefit more than incidentally from the organization. The benefit to the employees of the insurance coverage obtained by the member political subdivisions was deemed incidental to the public benefit.

The Trust's provision of benefits under the Plans constitutes the performance of an essential governmental function within the meaning of section 115 of the Code. See Rev. Rul. 90-74 and Rev. Rul. 77-261.

No private interests will participate in, or benefit from, the operation of the Trust other than as providers of goods or services. The benefit to employees and retirees is incidental to the public benefit. See Rev. Rul. 90-74.

In no event, including dissolution, will the Trust's assets be distributed or revert to any entity that is not a state, a political subdivision of a state, or another entity the income of which is excludable from its gross income by application of section 115(1).

RULING

Based on the information and representations submitted on behalf of the Trustee, we conclude that:

Because the income of the Trust derives from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof, the Trust's income is excludable from gross income under section 115(1) of the Code.

The ruling contained in this letter is based upon information and representations submitted by or on behalf of the Trust and accompanied by a penalty of perjury statement executed by an individual with authority to bind the Trust, 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. 2018-1, 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, and, 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 Trust's permanent records.

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

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

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

Sincerely,

Kenneth M. Griffin
Branch Chief
Office of the Chief Counsel
(Tax Exempt & Government Entities)