

Internal Revenue Service

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March 10, 2004

LEGEND

Authority =

City =

Year 1 =

Ordinance =

State Statute =

Budget Review Board =

Dear :

This is in reply to a letter dated June 29, 2001, requesting a ruling that the income of Authority is excluded from gross income under § 115(1) of the Internal Revenue Code (“Code”), and that contributions made to Authority will be deductible by the donors as charitable contributions under § 170(c)(1) of the Code.

FACTS

Authority is a nonprofit, non-stock, state chartered corporation created by City in year 1 pursuant to City Ordinance. Ordinance was enacted to effectuate the purposes of State Statute. The purpose of State Statute is to relieve conditions of unemployment and promote economic development by providing parking facility by public parking authorities that are responsive to local needs. Ordinance authorizes Authority to develop, own, and operate parking facilities in City.

Ordinance provides that Authority is to be governed by a five member board of directors (Board). Four of Board's members are appointed by the mayor of City and confirmed by the City Council. One Board member is a member of City Council appointed by the City Council president. Any member of Board may be removed at will by the appointing official.

Funding for Authority is to come from revenue generated from parking operations, as well as from City. Authority's board must develop an annual financial plan, which is subject to the approval of City's Budget Review Board. Additionally, Board must make available to the public an annual report of its past activities and future plans. The funds are to be deposited in accordance with state law governing the investment of local governmental funds, and Authority must provide annual audited financial statements to the mayor, the president of the City Council, and the City Budget Review Board. All of Authority's contracts are subject to the approval of the City Budget Review Board.

Authority's articles of incorporation provide that it was created pursuant to State Statute and Ordinance. Pursuant to State Statute the net earnings of Authority may not inure to the benefit of any private interest. Also pursuant to the statute, upon termination of Authority its assets must be transferred to City.

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 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 utility 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.

Authority was established to provide public parking facilities for City in order to promote economic development and help relieve unemployment. The promotion of economic development and relief of unemployment are essential government functions for purposes of § 115(1).

Authority's income will be retained by Authority to be used exclusively for its public purpose. No part of the income or earnings may inure to the benefit of any private interest. Upon dissolution, Authority's assets will be distributed to City. Accordingly, the income of Authority accrues to the state or a political subdivision thereof for purposes of § 115(1).

Section 170

Section 170(a)(1) of the Code provides, subject to certain limitations, that there shall be allowed as a deduction any charitable contribution payment of which is made within the taxable year.

Under §170(c)(1), the term "charitable contribution" means a contribution or gift to or for the use of a State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States, or the District of Columbia, but only if the contribution is made for exclusively public purposes.

Taxpayer indicates that it is not a political subdivision of a state as that term has been defined for federal tax purposes. See Estate of Shamberg v. Commissioner, 3 T.C. 131 (1944), aff'd 144 F.2d 998 (2nd Cir. 1944).

Nevertheless, an entity not expressly described in § 170(c)(1) may qualify to receive deductible charitable contributions if it is an instrumentality of a state or an instrumentality of a political subdivision of a state and if the contributions are made for exclusively public purposes. See Rev. Rul. 75-359, 1975-2 C.B. 79.

Under Rev. Rul. 75-359, the following six factors are to be taken into consideration in determining whether an organization is an instrumentality of one or more states or political subdivisions:

- (1) whether the organization is used for a governmental purpose and performs a governmental function;
- (2) whether performance of its function is on behalf of one or more states or political subdivisions;
- (3) whether there are any private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner;
- (4) whether control and supervision of the organization is vested in public authority or authorities;
- (5) whether express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality, and whether such authority exists; and
- (6) the organization's degree of financial autonomy and the source of its operating expenses.

Under the criteria set forth in Rev. Rul. 75-359, Authority constitutes an instrumentality of City for purposes of § 170(c)(1). Authority was created pursuant to an ordinance duly adopted by the city council under enabling legislation passed by the state general assembly. Authority is used for a governmental purpose and performs a governmental function. As stated in the enabling legislation, Authority's purpose is to promote the economic redevelopment of the City, as well as to promote the health, welfare, and safety of the City's residents through the provision of vehicle parking facilities responsive to local needs. Authority performs these functions solely on behalf of the City and its residents, and thereby serves an exclusively public purpose.

Although the term “exclusively for public purposes” is not defined in the Code or regulations, it has been applied in several published revenue rulings. Rev. Rul. 79-323, 1979-2 C.B. 106, concludes that contributions to a commission that promoted general economic health of a region and maintained and attracted industry benefited the residents of the region and served an exclusively public purpose. Rev. Rul. 69-90, 1969-1 C.B. 63, indicates that the provision of parking facilities for the use of the general public in the general business area is for an exclusively public purpose so that contributions to the city for this purpose are deductible under § 170.

Furthermore, the autonomy of Authority is subject to substantial governmental checks. Authority is governed by a board of directors, of which all members are appointed and subject to removal by the mayor and/or president of the City Council. Authority’s activities are subject to the oversight of the mayor, the City Council, and the City board of estimates, and Authority reports its financial dealings to City on an annual basis as required by City Code.

Authority receives all of its funding from the City and from the fees it collects as part of its operations. Authority also expects to receive contributions. Authority’s revenue is applied solely toward offsetting the expenses of its operations. No part of the net earnings of Authority inures to the benefit of, or is distributable to, any private interest, other than reasonable compensation for services rendered and to make payments and distributions as needed to further the purposes of Authority. No private interests hold any ownership or management interests in Authority. Members of Authority’s board of directors receive no compensation other than reimbursement of necessary expenses. Upon dissolution of Authority, all of its net assets will be distributed to City, which has the powers and interest of an owner.

In view of the foregoing, we conclude that Authority is an instrumentality of a political subdivision of a state and operates for exclusively public purposes. We further conclude that contributions made to Authority will be deductible by the donors as charitable contributions under § 170(c)(1) of the Code to the extent otherwise provided under § 170.

CONCLUSIONS

1. The income of Authority is excludible from gross income under § 115 of the Code.
2. Charitable contributions to Authority are deductible by the donors to the extent provided by § 170(a) of the Code.

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.

In accordance with a Power of Attorney on file, we are sending a copy of this letter to your representative.

Sincerely,

Barbara E. Beckman
Assistant Chief, Branch 2
Exempt Organizations
Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosures:

Copy of this letter

Copy for § 6110 purposes

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