

## Internal Revenue Service

*Department of the Treasury*

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Person to Contact:

Telephone Number:

Refer Reply to:  
CC:TE/GE:EO2 - PLR-120641-01  
Date:  
July 30, 2001

### LEGEND

District	=
City	=
State	=
Statute <u>A</u>	=
Statute <u>B</u>	=
Statute <u>C</u>	=
Statute <u>D</u>	=
Statute <u>E</u>	=
Statute <u>F</u>	=
Statute <u>G</u>	=
Statute <u>H</u>	=

Dear :

This is in reply to a letter dated February 28, 2001, requesting a ruling that District is a political subdivision as defined in Treas. Reg. § 1.103-1(b) and § 170 of the Internal Revenue Code.

### FACTS

District is a school district for a large metropolitan area. The board of education of District is appointed by the mayor of City. As mandated by State Statute A, the

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mayor selects the board members from a list submitted by a nominating committee. State Statute B provides that the board of education of a school district is a body politic and corporate. Under State Statute C, a city school district is considered a political subdivision for purposes of state business.

State law provides in Statute D and Statute E that when necessary in the opinion of any board of education a school district may proceed to appropriate property in accordance with Statute E (setting forth the procedures for appropriation). Statute G gives the school district the power to declare by resolution the necessity of raising annually a specified amount of money for school district purposes. A copy of the resolution is certified to the tax commissioner no more than eighty-five days prior to the date of the election at which the board intends to propose a levy under this section. Statute H vests an attendance officer and assistants with police powers to issue warrants and enforce laws relating to compulsory education and employment of minors. This law also provides that an attendance officer or assistant may take into custody youth of compulsory school age who are not attending school.

## LAW AND ANALYSIS

### ISSUE #1: Political Subdivision

In general, if income is earned by an enterprise that is an integral part of a state or a political subdivision of a state, that income is not taxable in the absence of specific statutory authorization to tax that income. See Rev. Rul. 87-2, 1987-1 C.B. 18, GCM 14407, C.B. XIV-1,103 (1935), superseded by Rev. Rul. 71-131, 1971-1 C.B. 28.

The term “political subdivision” is not defined in the Code. Section 1.103-1(b) of the Income Tax Regulations, however, generally provides that the term “political subdivision” denotes any division of any state or local governmental unit that is a municipal corporation, or which has been delegated the right to exercise a portion of the sovereign power of the governmental unit.

The three generally acknowledged sovereign powers are the police power, the power to tax, and the power of eminent domain. Estate of Shamberg, 3 T.C. 131, 143, aff’d, 144 F.2d 998 (2<sup>nd</sup> Cir. 1944), cert. denied 323 U.S. 79 (1945). It is not necessary that all three of these powers be delegated to treat an entity as a political subdivision for purposes of the Code. However, possession of only an insubstantial amount of any or all sovereign powers is not sufficient. All of the facts and circumstances must be taken into consideration, including the public purposes of the entity and the extent to which it is subject to control by a governmental body.

Under state law the District’s power to appropriate property and land for its purposes is a substantial sovereign power. Accordingly, we conclude that the District is a political subdivision of State. We express no opinion about whether the District’s power to raise money for school district purposes or the District’s power to enforce certain laws are substantial sovereign powers.

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ISSUE #2: Section 170

Section 170(a)(1) of the Code provides, subject to certain limitations, a deduction for contributions or gifts to or for the use of organizations described in § 170(c), payment of which is made within the taxable year.

Section 170(c)(1) states that the term “charitable contribution” includes a contribution or gift made to or for the use of a State, a possession of the United States, a political subdivision of a State or any possession of the United States, or the District of Columbia, but only if the contribution is made for exclusively public purposes.

Because District is a political subdivision of State, contributions or gifts to or for the use of District are to or for the use of an entity described in § 170(c)(1) of the Code. Accordingly, contributions or gifts to or for the use of District are to or for the use of State and, provided they are made for exclusively public purposes, are generally deductible under § 170(c)(1) to the extent otherwise allowed by § 170.

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

Enclosures:

Copy of this letter  
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CC: