

Internal Revenue Service

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Legend

Division =

State =

Act =

Authority =

Corporation =

City =

Year 1 =

a =

b =

c =

d =

e =

f =

Dear _____ :

This letter is in response to the request for a ruling submitted on behalf of the Division that the Division is a political subdivision of State for purposes of § 1.103-1(b) of the Income Tax Regulations.

FACTS AND REPRESENTATIONS

Under State's constitution, public transportation is an essential public purpose for which public funds may be expended. Under the Act, a State law, the a-county City metropolitan area (Metro Area) public transportation needs are served by Authority and its b divisions, each of which have separate responsibilities with respect to the Metro Area public transportation. Division is one of the b divisions of Authority.

Authority was established as a unit of local government by a referendum held in the a counties of the Metro Area. Authority is governed by a c-member board of directors (the Authority Board). The members of the Authority Board are appointed by the heads of the governing bodies of the a counties in the Metro Area and by the chief executive official of City. No member of the Authority Board may be a member of the governing body of any division.

Under the Act, Authority adopts plans that implement the public policy of State to provide public transportation in the Metro Area, set goals, objectives and standards for the provision of public transportation, and coordinates investment in the public transportation facilities to enhance the integration of the public transportation in the Metro Area. Authority also provides financial oversight of the b divisions and allocates State and local tax revenue to the b divisions in accordance with a statutory formula.

Division was established by State as part of the Metro Area public transportation system to provide public transportation by commuter rail within the Metro Area. Division is governed by a d-member board of directors (the Division Board). The members of the Division Board are appointed by the governing bodies of the counties in the Metro Area, and by the chief executive official of City. Division Board members serve for a period of e years. The members of the Division Board may be removed for cause either by a qualified majority of the members of the Division Board or by the governor of State.

Division has the power to issue revenue bonds to acquire, construct, or improve public transportation facilities it operates, subject to the approval of the Authority Board. Division has the power to acquire property by, among other types of contracts, installment or conditional purchase contracts and leases, which can be paid for in annual installments with a term of up to f years.

Division also has the power to pass ordinances and make all rules and regulations proper and necessary to regulate the use, operation, and maintenance of its property

and facilities and, by ordinance, to prescribe fines or penalties for violations thereof. In addition, Division may establish, enforce, and facilitate the achievement and maintenance of standards of safety against accidents with respect to public transportation provided by Division or by other transportation agencies or contractors within its jurisdiction.

Division determines the level and nature of public transportation by commuter rail in the Metro Area to meet the plans, goals, and objectives adopted by Authority. Division determines the level of fares and charges for the public transportation it provides so that it can meet certain revenue standards established by Authority.

Division controls its own finances. Division proposes its budget, subject to a public hearing and the approval by Authority. Authority approves the budget if the budget meets the specific criteria set by the Act and is consistent with Authority's established requirements, plans, and objectives. The Division budget includes funding for the police force maintained by Corporation.

Corporation is a separate corporate entity that, since Year 1, when the relevant part of the Act was amended, has operated Division's commuter rail facilities. The governing board of Corporation consists of the members of the Division Board. Division supervises, directs, and may dissolve Corporation. The Act confers certain powers upon Corporation as are delegated to it by Division. One of such powers is the power to establish and maintain a police force that aids, coordinates, and supplements other police forces in protecting persons and property and reducing the threats of crime with regard to public transportation within Division's jurisdiction. This police force has the same powers with regard to protection of persons and property as those exercised by municipal police.

LAW AND ANALYSIS

The Internal Revenue Code does not define the term "political subdivision." Section 1.103-1(b) provides that the term "political subdivision" denotes any division of any state or local governmental unit that is a municipal corporation or that has been delegated the right to exercise part of the sovereign power of the unit. As thus defined, a political subdivision of any state or local governmental unit may or may not, for purposes of this section, include special assessment districts such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of these units.

The three generally acknowledged sovereign powers of states are the power to tax, the power of eminent domain, and the police power. *Commissioner v. Estate of Alexander V. Shamburg*, 3 T.C. 131 (1944), acq. 1945 C.B. 6, *aff'd*, 144 F.2d 998 (2d Cir. 1944), cert. denied, 323 U.S. 792, 65 S. Ct. 433, 89 L. Ed. 631 (1945). It is not necessary that all three of these powers be delegated in order to treat an entity as a political

subdivision for purposes of the Code. However, possession of only an insubstantial amount of any or all of the sovereign powers is not sufficient. All of the facts and circumstances must be taken into consideration, including the public purposes of the entity and its control by a government. Rev. Rul. 77-164, 1977-1 C.B. 20.

Division is charged by State law with providing public transportation by commuter rail within the Authority's jurisdiction, traditionally a public purpose and declared as such by the State constitution. Division is controlled by State, Authority, and all of the Metro Area county and City governments. Division Board members are appointed by the governing bodies of the counties and City comprising the Metro Area. Division Board members may be removed by the governor of State for cause. As part of Authority's responsibility of coordinating, planning, and facilitating the provision of public transportation in the Metro Area, it oversees the operation of Division and approves its budget. Based on these facts, we conclude that Division is a division of a state or local government for purposes of § 1.103-1(b).

Division sets the routes of, and charges for, the public transportation by commuter rail in the Metro Area. Division possesses the power to pass rules and regulations proper and necessary to regulate the use, operation, and maintenance of its property and facilities that have effect on the public within its jurisdiction; Division may also impose fines and penalties for violations of those rules and regulations. In addition, Division is authorized to provide, through Corporation, a police force to protect persons and property and enforce rules and regulations related to commuter rail. Accordingly, under all of the facts and circumstances, we conclude that Division possesses substantial police power.

CONCLUSION

Based on the above, we conclude that Division is a political subdivision for purposes of § 103 of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions & Products)

/S/

By: _____
Timothy L. Jones
Senior Counsel
Branch 5