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October 22, 2004

LEGEND

Council =

State =

Statute =

Department =

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Dear.

This is in reply to a letter dated June 8, 2004, and subsequent correspondence, requesting rulings that the income of Council is excludible from gross income under § 115(1) of the Internal Revenue Code and that charitable contributions to Council are deductible by the donors to the extent provided by § 170(a) of the Code.

FACTS

Council is an unincorporated organization whose establishment is mandated by State Statute. In enacting Statute the legislature of State declared that there was a compelling need to develop and implement a statewide trauma care system and that it was in the public interest to provide quality emergency medical and trauma care to the people of State. Council's function is to make recommendations to improve and

coordinate emergency medical and trauma care within the participating counties. Pursuant to Statute, all members of a council are either counties or cities and counties.

Council is governed by a board of 15 directors. Each of the five participating counties appoints three directors. Each county has the power to remove, with or without cause, any of the directors that it appoints. In addition the board of Council may appoint up to seven nonvoting ex officio board members who serve as advisors to Council.

Statute requires Council to submit a regional emergency medical and trauma system plan, approved by the governing bodies of the participating counties, to Department, a division of State. Council has submitted its plan, and is now required to plan improved emergency medical services within its region. Council certifies facilities based on the level of trauma care provided by each facility, identifies regional needs by applying the statewide program assessments, and oversees state-wide reporting and information collecting with respect to local medical facilities. In addition, Council participates in creating and updating plans for emergency triage, transportation and interfacility transfers and distributes grant funds to local emergency service providers, such as hospitals, county operated emergency medical service units, several fire departments and private medical service providers. The distributed funds are used to enhance the availability of emergency medical services and to improve the quality of available services.

Council's income consists of a State grant and mandatory contributions from each participating county. In addition, Council may receive federal grant money. The net revenue of Council for year 2003 was \$ a. Fifty percent of this total came from State and the remaining fifty percent from the participating counties. Council represents that all of its funds will be used solely for the purposes of providing public health services to citizens of the state. The bylaws provide that no part of its income shall inure to the benefit of any private individual except as payment for goods or services received. Council submits annual reports to the board of each participating county. It also submits a financial report to Department, a division of State. Council represents that it will amend its bylaws to provide that upon the dissolution of Council, any remaining assets will be distributed to the state, or a political subdivision thereof for a public purpose, or for one or more exempt purposes to an organization described in § 501(c)(3) of the Internal Revenue Code and whose income is also excludible from gross income under § 115(1) of the Code.

LAW & 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 section 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 utilities 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 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 section 115(1) of the Code. In Rev. Rul. 90-74, private interests neither materially participate in the organization nor benefit more than incidentally from the organization.

By coordinating and improving emergency medical and trauma care throughout the state, Council helps to promote public health. Promoting public health is an essential governmental function.

The income of Council is derived from and used solely for purposes related to providing public health services to the citizens of State. No part of Council's income will be distributed to a private party other than as payment for goods or reasonable compensation for services rendered. The taxpayer represents that it will amend its bylaws to provide that upon dissolution Council's assets shall be distributed to state or local governments or to an organization the income of which is excluded from gross income under § 115 and that is exempt from federal income tax under § 501(c)(3) of the Code.

Based on the information and representations submitted by Council and provided that Council adopts in final form the proposed amendment to the bylaws described above we hold that the income of Council is derived from an essential governmental function and accrues to a political subdivision of a state or to an entity the income of which is excludible from gross income under § 115. Accordingly, the income of Council is excluded from gross income under § 115(1) of the Code.

Section 170

Section 170(a)(1) provides, subject to certain limitations, a deduction for contributions and gifts to or for the use of organizations described in § 170(c).

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

An entity that is not a governmental unit specifically described in § 170(c)(1) of the Code may nevertheless qualify to receive deductible charitable contributions if it is an instrumentality of a state or an instrumentality of a political subdivision of a state, See Rev. Rul. 75-359, 1975-2 C.B. 79. Although § 170(c)(1) of the Code does not refer to instrumentalities of a state or instrumentalities of a political subdivision of a state, it is a long-standing position of the Service that contributions or gifts to a state or a political subdivision, or an organization acting on behalf of such entity, that are made for exclusively public purposes are deductible under § 170(c)(1). See Rev. Rul. 79-323, 1979-2 C.B. 106.

Rev. Rul. 57-128, 1957-1 C.B. 311, provides that the following factors are taken into consideration in determining whether an organization is an instrumentality of one or more states or political subdivisions: (1) whether it 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) if 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 degree of financial autonomy and the source of its operating expenses.

These six factors have been used to determine whether an organization is an instrumentality for purposes of § 170(c)(1) such that contributions, if made for an exclusively public purpose, are deductible. In this case Council performs the governmental function of planning and coordinating emergency medical and trauma services in State. It functions on behalf of its five participating counties. The participating counties have the powers and interests of an owner. Each director represents and can be removed, with or without cause, by the county by which the director was appointed. Council was created pursuant to State statute. Council receives funds from State for its operating expenses, and must submit yearly financial reports to the participating counties and Department, a division of State. Accordingly, Council is an instrumentality for purposes of § 170(c)(1) and charitable contributions to Council are deductible by the donors to the extent provided by § 170(a) of the Code.

CONCLUSIONS

1. The income of Council is excludible from gross income under § 115(1) of the Code.

2. Charitable contributions to Council are deductible by the donors to the extent provided by § 170(a) of the Code.

This ruling letter is effective as of the date the proposed amendment to the bylaws, relating to the distribution of assets upon the dissolution of Council, is adopted by Council.

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,

David L. Marshall, Chief
Exempt Organizations
Branch 2
Division Counsel/Associate Chief Counsel
(Tax Exempt & Government Entities)

Enclosures:

Copy of this letter
Copy for § 6110 purposes

CC: