

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:02, PLR-125772-02

Date:

November 5, 2002

LEGEND:

Entity =
State A =
Historical Event =
Year A =
Year B =
Year C =
Number A =
Office A =
Office B =

Dear _____ :

This is in response to your letter dated April 18, 2002, requesting a ruling on behalf of Entity concerning the deductibility of contributions to Entity under § 170 of the Internal Revenue Code (Code). You have supplemented the ruling request with correspondence dated August 22, 2002.

ISSUE

You have requested a ruling that Entity is an integral part of State A and contributions to Entity will be deductible under § 170(a) because Entity is described in § 170(c)(1) and § 170(b)(1)(A)(v).

CONCLUSION

Based on the facts stated below, we conclude that Entity is an integral part of State A and contributions to Entity will be deductible under section 170(a) of the Code, because Entity is described in section 170(c) and § 170(b)(1)(A)(v).

FACTS

The Entity was originally established in Year A through an Executive Order of the Governor of State A, and was reestablished in Year B by a subsequent Governor. In Year C, legislation enacted by State A made the Entity a part of the executive branch of State A's government.

Under the law of State A, the Entity's purpose is to educate the citizens of State A about the Historical Event. State A legislation created the Entity as a permanent state organization to survey, design, encourage and promote implementation of Historical Event education and awareness programs in State A and to be responsible for organizing and promoting the memorialization of the Historical Event on a regular basis throughout the State A.

The Entity's activities, as set forth in the law of State A, include (1) providing assistance to public and private schools, colleges and universities on implementing Historical Event education and awareness programs; (2) assisting education officials and organizations with the development of courses of study on the Historical Event; (3) surveying and cataloguing the extent of Historical Event education in State A's current educational curricula; and (4) inventorying Historical Event memorials, exhibits, and other educational resources. The Entity also has statutory authority to compile rosters of volunteers to present educational programs, coordinate Historical Event commemoration events, appoint advisory committees, and provide reports to the State A elected officials regarding the Entity's findings and recommendations for facilitating inclusion of Historical Event studies and programs in the educational systems of the State A.

The Entity has Number A voting members comprised of individuals from the public appointed by various elected officials of State A. These Entity members are appointed for five year terms and are required to be State residents. The Entity also has several ex-officio members, including other State A officials who work in State A public offices or their designees. Ex-officio members do not vote on matters before the Entity. Further, other State A legislative officials also appoint an advisor to the Entity.

The legislature of State A provides the Entity with an annual appropriation of State A funds. These funds cover the operating costs of the Entity, including but not limited to, salaries and benefits for its employees, supplies, printing and publication, repairs and maintenance of equipment, travel expenses, insurance and general overhead expenses. In addition, the laws of State A authorizes the Entity to solicit and accept donations, contributions, grants, bequests, gifts of money and property, facilities, or services. All property contributed to the Entity is owned by State A.

The Entity's budget and appropriations are a sub-part of the Office of State A's Office A, to which the Entity is assigned for administrative purposes. State A exercises financial control over the Entity through the State A's Office B, which audits the Entity to

ensure compliance with its budget as required under the laws of State A.

LAW AND ANALYSIS

Integral Part

Rev. Rul. 87-2, 1987-1 C.B. 18, holds that a trust fund created by a State supreme court to hold amounts advanced to lawyers in the State by their clients is an integral part of the State and not subject to tax. In arriving at this holding, the ruling reasons that the State court's creation of the fund and its ability to select and remove the fund's governing body, to control the fund's investments and expenditures, to monitor the fund's daily operation, and to abolish the fund indicate that the fund is not an independent entity, but rather is an integral part of the State. See also § 511(a)(2)(B); Rev. Rul. 87-2, 1987-1 C.B. 18; Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29.

In Maryland Savings-Share Insurance Corp. v. United States, 308 F. Supp. 761, rev'd on other grounds, 400 U.S. 4 (1970) (MSSIC), the State of Maryland formed a corporation to insure the customer accounts of state chartered savings and loan associations. Under MSSIC's charter, the full faith and credit of the state was not pledged for MSSIC's obligations. Only three of eleven directors were selected by state officials. The district court rejected MSSIC's claim of intergovernmental tax immunity because the state made no financial contribution to MSSIC and had no present interest in the income of MSSIC. Thus, the imposition of an income tax on MSSIC would not burden the State of Maryland. Although the Supreme Court reversed the lower court on other grounds, it agreed with the lower court's analysis of the instrumentality and section 115 issues.

In State of Michigan and Michigan Education Trust v. United States, 40 F.3d 817 (6th Cir. 1994), rev'g 802 F. Supp. 120 (W.D. Mich. 1992), the court held that the investment income of the Michigan Education Trust (MET) was not subject to current taxation under section 11(a). The court's opinion is internally inconsistent because it concludes that MET qualifies as a political subdivision of the State of Michigan (*Id.* at 825), that MET is "in a broad sense" a municipal corporation (*Id.* at 826), and that MET is in any event an integral part of the State of Michigan (*Id.* at 829). Moreover, the court's reliance on the factors listed in Rev. Rul. 57-128, 1957-1 C.B. 311, to reach its conclusion is misplaced. The revenue ruling applies to entities that are separate from a state. The factors in the revenue ruling do not determine whether an enterprise is considered to be a separate entity or an integral part of a state.

Nevertheless, in determining whether an enterprise is an integral part of a state, it is necessary to consider all of the facts and circumstances, including State A's degree of control over the enterprise and State A's financial commitment to the enterprise. If an enterprise is deemed to be an integral part of a state or political subdivision of a state, that enterprise will not be treated as a separate entity for federal tax purposes. See

§ 301.7701-1(a)(3) of the Income Tax Regulations.

The facts indicate that the Entity is not independent from the State A. The Entity was established by Executive Order of the Governor of State A and made a part of the executive branch of the State A government through legislation enacted by the State A legislature. Voting and ex-officio members and advisors of the Entity are appointed by the Governor and other State A officials. The Entity is required to report to State A on its plans to implement Historical Event educational programs. Further, State A controls the Entity's budget through the appropriations process and through regular audits by Office B of State A. These facts demonstrate that the State A exerts significant control over the Entity.

The facts also show that the State A has made and continues to make a substantial financial commitment to the Entity. A substantial portion of the annual funding for the Entity derives from appropriations from the State A legislature.

Because it has been demonstrated that the State A exercises control over and has made a financial commitment to the Entity, we conclude that the Entity is an integral part of the State. Because we have determined that the Entity is an integral part of the State A, we need not address whether the Entity is an instrumentality of the State A.

Section 170 Deduction

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) of the Code states that the term "charitable contribution" includes a contribution or gift to or for the use of a State, a possession of the United States, any political subdivision of a State or any possession of the United States, the United States, or the District of Columbia, but only if the contribution is made for exclusively public purposes. See, e.g., Rev. Rul 79-323. 1979-2, C.B. 106 (holding that amounts contributed to an industrial commission established by a state legislature for exclusively public purposes are deductible under § 170(c)(1)).

Entity was formed to survey, design, encourage and promote implementation of Historical Event education and awareness programs in State A and to be responsible for organizing and promoting the memorialization of the Historical Event on a regular basis throughout the State A. This purpose is "an exclusively public purpose" required by § 170(c)(1) for contributions to a State or a political subdivision of a State.

Since we have concluded that Entity is an integral part of State A, contributions or gifts to or for the use of Entity are contributions or gifts 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 Entity are to or for the use of State A and are for exclusively public purposes and are

therefore generally deductible under section 170(c)(1) to the extent otherwise provided under § 170.

Further, § 170(b)(1) of the Code provides limitations on the amount that an individual can deduct for charitable contributions in a taxable year. Section 170(b)(1)(A)(v) provides that any charitable contribution to a "governmental unit" referred to in § 170(c)(1) is allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

Since Entity is an integral part of State A, Entity is a "governmental unit" described in § 170(b)(1)(A)(v) of the Code. Therefore, charitable contributions to Entity are deductible under § 170 as contributions to an entity described in § 170(b)(1)(A)(v).

CAVEATS:

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Thomas D. Moffitt
Chief, Branch 2
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures:

Copy of letter
Copy for § 6110 purposes