

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:TEGE:EOEG:EO1
PLR-119554-10
Date:
August 30, 2010

Entity:

Area:

Board:

Trust:

Trustee:

System:

Committee:

Administrator:

Year 1:

Year 2:

Year 3:

Date 1:

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Date 2:

State:

Law:

Dear _____ :

This letter responds to a letter from your authorized representative dated March 7, 2010, as well as subsequent correspondence, submitted on behalf of the Entity, requesting a ruling that the Trust's income is excludable from gross income under § 115 of the Internal Revenue Code. The Entity represents the following facts.

FACTS

Entity was formed in Year 1 by voters of the Area. The Board resolved in Year 2 (as clarified by a Board resolution in Year 3) to provide hospital and medical coverage to the Entity's current and former employees and their spouses and eligible dependents. Pursuant to a resolution of the Board on Date 1, the Trust was established on Date 2 by and between the Entity and the Trustee to fund the Entity's obligation to provide certain post-employment health and welfare benefits to its retirees and their spouses and eligible dependents (eligible recipients). These medical, dental, vision, life insurance, longterm care, and similar benefits are provided through an agreement with the System, a State agency, and subject to the Law.

The Administrator, on behalf of the Entity, makes all contributions to the Trust and selects qualified investments consistent with the broad policies and objectives established by the Committee. The assets of the Trust are held for the exclusive purpose of providing post-employment health and welfare benefits to eligible recipients and paying the reasonable administrative and actuarial expenses of the Trust.

The Entity may amend the Trust agreement at any time, provided, *inter alia*, that Trust assets are used for the exclusive benefit of eligible recipients and for reasonable administrative expenses. The Entity may remove the Trustee with proper notice.

Upon termination of the Entity's obligation to provide health and welfare benefits to eligible recipients, the Trustee, when directed by the Administrator, shall distribute any Trust assets remaining after all liabilities are satisfied to the Entity or to a public-sector successor of the Entity. If the Entity or a successor no longer exists, the Trustee shall distribute any remaining assets to the State, any political subdivision of the State, or any

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entity in accordance with State law the income of which is excludable from gross income under § 115(1).

LAW AND ANALYSIS

Section 115(1) 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 properly to conduct.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the income of an organization formed, funded, and operated by political subdivisions to pool various risks (casualty, public liability, workers' compensation, and employees' health) was excludable from gross income under § 115. In Rev. Rul. 90-74, private interests neither materially participated in the organization nor benefited more than incidentally from the organization.

The Trust was established and is maintained by the Entity to fund various health and welfare benefits provided through the System to its retired employees and their spouses and dependents. Providing such benefits to former public employees constitutes the performance of an essential governmental function within the meaning of § 115(1). See Rev. Rul. 90-74 and Rev. Rul. 77-261.

The provision of health and welfare benefits to retirees and their dependents satisfies the obligation of the Entity to provide those benefits; thus, the income of the Trust accrues to the benefit of the Entity, which is a unit of local government in the State. No private interests participate in, or benefit from, the operation of the Trust, other than as providers of goods and services. Any amounts remaining in the Trust after all health and benefits, plus reasonable fees and expenses, have been paid shall be returned to the Entity or its successor. In no instance will any remaining assets by distributed to an

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entity other than the State, a political subdivision, or a § 115 entity. The benefit to retired employees is incidental to the public benefit. See Rev. Rul. 90-74.

CONCLUSION

Based solely on the facts and representations submitted by the Entity, including the amendments to the Trust agreement dated 22 July 2010, we conclude that the income of the Trust is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof for purposes of § 115(1). Consequently, we rule that the Trust's income is excludable from gross income under § 115(1).

Except for the specific ruling above, no opinion is expressed or implied regarding the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no representation is made that contributions or premiums paid on behalf of, or benefits received by, employees, former employees, retirees, spouses, dependents, or others will be tax-free. This ruling concerns only the federal tax treatment of the Trust's income and may not be cited or relied upon as to any matter relating to the taxation of accident or health contributions or benefits.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

SYLVIA HUNT
Assistant Chief
Exempt Organizations Branch 2
Office of Division Counsel /
Associate Chief Counsel
(Tax Exempt & Government Entities)

Enclosure: copy for § 6110 purposes