

Internal Revenue Service

Department of the Treasury
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Date:
February 03, 2012

In Re:

TY:

Organization =
State =
Statute =
X =
Y =
Year 1 =

Dear

This is in reply to your letter dated March 31, 2011, requesting a ruling on behalf of Organization. You requested a ruling that Organization is an instrumentality of State and is eligible to receive charitable contributions under Section 170(c)(1) of the Internal Revenue Code.

FACTS AND REPRESENTATIONS

Organization was established in Year 1 by an act of the State legislature; the act was codified at Statute. With respect to Organization, the Statute provides as follows.

Organization was established as a public corporation and an “instrumentality of the state” of State. The purpose of Organization is to support educational excellence in State; specifically, to support three public schools serving the needs of vision and hearing impaired students throughout State (the “Specified Public Schools”). Each of the Specified Public Schools is operated by the State Department of Education (“the Department”). The creation of Organization and the execution of its purposes are declared in the statute to be in all respects for the benefit of the people of State and to constitute a public and charitable purpose.

Statute directs Organization to solicit and accept contributions of money and in-kind contributions of services and property. Use of such contributions is statutorily limited; contributions can be used only for the purpose of supporting educational excellence in State and for the Specified Public Schools in particular, and to make and disburse contributions to the Department and others for such purposes.

Each of the Specified Public Schools is operated by the Department to serve the needs of vision and hearing impaired students throughout State. In addition, if Organization is dissolved, then its assets shall devolve in trust to the State Board of Education or its successor for use only for the benefit of the Department and the Specified Public Schools. Organization is declared in the statute to perform an essential governmental function in the exercise of the powers conferred upon it.

Organization is governed by a board of directors composed of between X and Y members. Organization's board members are appointed by the State School Superintendent, an elected official whose office is established by the State Constitution, and the State Board of Education, a government department also established by the State Constitution.

Organization is attached for administrative purposes to the Department, which is the administrative arm of the State Board of Education. The Attorney General of State is designated as the attorney for Organization. State exercises oversight of Organization's finances through a state accounting department, which has the right to audit Organization. Further, no disbursements may be made from Organization other than for promoting educational excellence in State as provided in the Statute.

LAW

Revenue Ruling 57-128, 1957-1 C.B. 311, sets forth the factors to be taken into account in determining whether an entity is an instrumentality of one or more governmental units: (1) whether the organization 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 have the power and interests of an owner; (4) whether control and supervision of the organization is vested in a public authority or authorities; (5) whether express or implied statutory or other authority is necessary for the creation and/or use of the organization, and whether this authority exists; and (6) the degree of financial autonomy of the entity and the source of its operating expenses. Each of these factors must be evaluated in order to determine if the Association is an instrumentality of the States.

Section 170(a)(1) allows, subject to certain limitations, a deduction for charitable contributions as defined in section 170(c), payment of which is made within the taxable year. Section 170(c)(1) includes in the definition of "charitable contribution" a

contribution or gift made for exclusively public purposes to or for the use of a state, a possession of the United States, a political subdivision of either a state or possession of the United States, the United States, or the District of Columbia. Entities eligible to receive tax deductible contributions include not only governmental units described in section 170(c)(1), but also wholly owned instrumentalities of states and political subdivisions. See Rev. Rul. 75-359, 1975-2 C.B. 79; Rev. Rul. 79-323, 1979-2 C.B. 106.

Under section 170(b)(1)(B), deductions for contributions “for the use of” governmental units described in section 170(c)(1) may not exceed 30 percent of the taxpayer’s “contribution base.” A contribution to an instrumentality of a governmental unit described in section 170(c)(1) is a contribution “for the use” of such a governmental unit, rather than a contribution “to” such a governmental unit. See Rev. Rul. 75-359, 1975-2 C.B. 79.

ANALYSIS

Organization satisfies the first factor listed in Rev. Rul. 57-128, which requires it to have a governmental purpose and perform a governmental function. The purpose of Organization is to support education in State, and specifically to support the Specified Public Schools.

Organization satisfies the second factor, as it performs its function on behalf of the State Department of Education. The Department of Education is the administrative arm of the State Board of Education. The State Board of Education is a government department established pursuant to the State Constitution. Organization therefore performs its function on behalf of State.

Organization satisfies the third factor, because no private interests are involved. All contributions to Organization are for the purpose of supporting educational achievement in State and at each of the Specified Public Schools. Upon dissolution of Organization, its assets will devolve in trust to the State Board of Education.

Organization satisfies the fourth factor. Organization is governed by a board of directors. The composition of the board is determined by the State School Superintendent (an elected official; the position was created by the State Constitution) and the State Board of Education. Control and supervision of Organization is therefore vested in a public authority.

Organization satisfies the fifth factor, because Organization was created by an act of the State legislature. Statute mandates that the creation of Organization and execution of its purposes are to be for the benefit of the people of State. Thus, statutory authority is necessary for the creation and use of Organization.

Organization satisfies the sixth factor, which considers the source of operating

expenses as well as the degree of financial autonomy. Its source of income is contributions of money, services and property. While Organization is responsible for soliciting these contributions, the use of contributions received by Organization is statutorily limited to specific purposes. Organization itself has no discretion to use the contributions for purposes outside of those authorized by Statute. State indirectly controls Organization's finances because State controls Organization's Board. All Board members are appointed by the State School Superintendent or the State Board of Education. Organization is subject to audit by a state accounting department. Upon dissolution of Organization, the assets of Organization will devolve in trust to State's Board of Education. The devolved funds can be used only for the benefit of the Department of Education.

Organization satisfies all factors enumerated in Revenue Ruling 57-128 and is an instrumentality of State for purposes of Section 170(c)(1). Accordingly, contributions made to Organization are deductible by a donor to the extent provided in section 170(b)(1)(B) as charitable contributions for the use of a state or political subdivision

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) 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,

Casey A. Lothamer

Senior Technician Reviewer, Exempt Organizations (Tax Exempt & Government Entities)

cc: