

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Legend

Board =
District =
Trust =
Company =
State =
Date =

Dear :

This letter responds to a letter from your authorized representatives dated March 30, 2012, submitted on behalf of the Board, requesting a ruling that the Trust's income is excludable from gross income under Internal Revenue Code (IRC) § 115. The Board represents the facts as follows.

FACTS

The Board, a political subdivision of State, operates the District.

The Board established the Trust on Date by an agreement with Company acting as the initial trustee. The purpose of the Trust is to provide health care and life insurance benefits to eligible former employees of the District and their dependents as defined by IRC § 152. These benefits may be provided through commercial insurance or by self-funding, as determined by the Board.

The Trust's income will be solely from contributions by the Board and from investment income and will be used solely to provide for post-employment health and welfare benefits and to pay the reasonable expenses of the Trust.

The Board is responsible for the administration of the Trust. It may designate an agent for administrative matters and a manager for investment purposes. The Board may dismiss the trustee at any time with written notice, unless the Board deems that immediate dismissal is necessary to protect the Trust. The Board may appoint a successor trustee.

The Board may amend or terminate the Trust at any time and for any reason. Upon termination, any assets remaining after satisfaction of all outstanding liabilities will be returned to the Board.

LAW & ANALYSIS

IRC § 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.

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income generated by an investment fund that is established by a state to hold revenues in excess of the amounts needed to meet current expenses is excludable from gross income under IRC § 115(1), because such investment constitutes an essential governmental function. The ruling explains that the statutory exclusion is 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 an entity engaged in the operation of a public utility or the performance of some governmental function that accrues to either a state or political subdivision of a state. 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 that are within the ambit of a sovereign to conduct.

Rev. Rul. 90-74, 1990-2 C.B. 34, holds that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (e.g., casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under IRC § 115(1), because the organization is performing an essential governmental function. In Rev. Rul. 90-74, private interests neither materially participate in the organization nor benefit more than incidentally from the organization.

The Trust provides health care and life insurance benefits to retired employees of the District and their covered dependents. Providing such health and welfare benefits to former public employees constitutes the performance of an essential governmental function within the meaning of IRC § 115(1). See Rev. Rul. 77-261 and Rev. Rul. 90-74.

The income of the Trust accrues to the Board, a political subdivision of the State. No private interests participate in, or benefit from, the operation of the Trust, other than as

providers of goods or services. The dedication of the assets of the Trust for the exclusive benefit of retiree participants and their covered dependents satisfies an obligation of the Board to provide health and welfare benefits to its retired employees. The benefit to retired employees of the District is incidental to the public benefit. The Board represents that no assets of the Trust will be distributed to an entity other than a state, a political subdivision of a state, or an entity the income of which is excluded from gross income under IRC § 115. See Rev. Rul. 90-74.

Based solely on the facts and representations submitted on behalf of the Board, we conclude that:

Because 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, the Trust's income is excludable from gross income under IRC § 115(1).

No opinion is expressed concerning the federal tax consequences under any IRC provision other than the one specifically cited in the immediately preceding paragraph. 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. More explicitly, no opinion is expressed regarding whether contributions or premiums paid on behalf of, or benefits received by, employees, former employees, retirees, spouses, dependents, or others will or will not be taxable.

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 who requested it. IRC § 6110(k)(3) provides that this ruling may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, your authorized representative will receive a copy of this letter.

Sincerely,

Kenneth M. Griffin
Chief, Exempt Organizations Branch
(Tax Exempt & Government Entities)

Enclosure (1)

cc: