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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:E02
PLR-101791-17

Date:
July 13, 2017

City =
State =
Trust =
Trustee =
Mayor =
Effective Date =

Dear :

This letter responds to a letter from Trust’s authorized representative dated November 15, 2016, and subsequent correspondence submitted on behalf of Trust, requesting a ruling that Trust’s income is excludable from gross income under Internal Revenue Code (IRC) section 115; and that Trust is not required to file annual tax returns.

Facts

Trust was established by City on Effective Date to provide health and welfare benefits to retired general members, police officers, and firefighters and their eligible spouses and dependents.

The Trustee is the City Council of the City. The City Council is comprised of the Mayor and eight members elected by the voters of the City.

The Trust is a funding vehicle whereby the Trustee of the Trust will accept contributions to the Trust for holding and administration. The Trustee holds, invests and reinvests the assets of the Trust and pays benefits from the Trust solely to provide health and welfare benefits to retirees and eligible spouses and dependents of retirees entitled to health coverage under the City Code.

The Trust provides that in no event will Trust assets be distributed to or revert to any entity that is not a state, a political subdivision of a state or an entity whose income is excluded from gross income under IRC section 115(1).

Law and Analysis

Issue 1- IRC section 115(1)

IRC section 115 (1) provides that gross income does not include income derived from any public utility or the exercise of any essential governmental 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 section 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 section 115(1), because the organization is performing an essential governmental function. The revenue ruling states that the income of such an organization is excludable from gross income so long as private interests do not participate in the organization or benefit more than incidentally from the organization. The benefit to the employees of the insurance coverage obtained by the member political subdivisions was deemed incidental to the public benefit.

Providing health and welfare benefits to current and former employees constitutes the performance of an essential government function within the meaning of IRC section 115(1). Rev. Rul. 90-74 and Rev. Rul. 77-261.

The Trust's income accrues to the City. No private interests will participate in, or benefit from, the operation of Trust, other than as providers of goods or services. The benefit to employees is incidental to the public benefit. See Rev. Rul. 90-74.

In no event, including dissolution, will the Trust's assets be distributed or revert to any entity that is not a state, a political subdivision of a state, or entity the income of which is

excludable from its gross income by application of IRC section 115(1).

Issue 2 - IRC section 6012(a)(4)

Section 301.7701 -1(b) of the Procedure and Administration Regulations (Regulations) provides that the classification of organizations that are recognized as separate entities is determined under sections 301.7701-2, 301.7701-3, and 301.7701-4 of the Regulations, unless a provision of the IRC provides for special treatment of that organization.

Section 301.7701-4(a) of the Regulations provides that, in general, an arrangement will be treated as a trust if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

The beneficiaries of the Trust cannot share in the discharge of the Trustee's responsibility for the protection and conservation of property and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

IRC section 6012(a)(4) provides that every trust having for the taxable year any taxable income or having gross income of \$600 or more, regardless of the amount of taxable income, shall make returns with respect to income taxes under Subtitle A.

Based solely on the facts and representations submitted by the Trust, we conclude that:

1. Because the income of the Trust derives 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 section 115(1).
2. The Trust is classified as a trust within the meaning of section 301.7701-4 (a) of the Regulations. Because Trust's income is excludable from gross income under IRC section 115(1) the Trust is not required by IRC section 6012(a)(4) to file an annual income tax return.

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 concerns only the federal tax treatment of the Trust's income and may not be cited or relied upon by any taxpayer, including the City participating in the Trust, and any recipients of benefits paid under the terms of the Trust, as to any matter relating to the taxation of accident or health contributions or benefits.

This ruling is directed only to the taxpayer who requested it. IRC 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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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,

James Zelasko
Assistant Branch Chief
Exempt Organizations Branch 2 (Tax Exempt and Government Entities)

Enclosures: 2