

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201821002**
Release Date: 5/25/2018

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 115.00-00, 6012.05-01

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:EO1
PLR-125373-17

Date:
February 08, 2018

Employer:

Trust:

Trustee:

Board:

Plan:

State:

a:

b:

c:

d:

e:

f:

Dear _____ :

This letter responds to a letter from your authorized representative dated August 14, 2017, as subsequently amended and supplemented, submitted on behalf of the Trustee, requesting rulings that (1) the Trust's income is excludable from gross income under § 115 of the Internal Revenue Code, and (2) the Trust is not required to file an annual federal income tax return under § 6012(a)(4) of the Code. The Trustee represents the facts as follows.

FACTS

The Trust was established to invest and disburse funds irrevocably designated by the Employer, a political subdivision of State, to fund its obligations under the Plan to provide retired employees and their eligible dependents and beneficiaries (plan participants) with post-employment life and health benefits (life, sickness, hospitalization, dental, and long-term care). Under the trust agreement, only the Employer acting as plan administrator, or an authorized representative of the Employer, may direct the Trustee to withdraw or otherwise disburse funds held in the Trust for the benefit of plan participants. Except as provided by the trust agreement, funds are to be used solely to pay for plan liabilities and related expenses.

The Employer formed the Board, composed of a maximum of a members, to serve perpetually and with staggered terms. Under the trust agreement, b are to be officers of the Employer, b are to be representatives of the retirees, and the remainder may be either officers or representatives. In conjunction with this ruling request, the Trustee amended Provision c to clarify that the Employer may remove and replace Board members at any time by written resolution.

The Board has the authority to make all decisions necessary for the operation of the Trust on behalf of the Employer, except for decisions specifically reserved under the trust agreement for the Employer acting as plan administrator. The Board may remove the trustee at any time, with or without cause, and to appoint a new trustee.

The trust agreement may be amended at any time by the Board, as long as no such amendment provides for the diversion of trust assets for any purpose other than payment of fund liabilities for the exclusive benefits of plan participants. The Trust may be terminated at any time by the Employer. In conjunction with this ruling request, the Trustee amended Provision d, and agreed to amend Provisions e and f, to provided that, upon termination, any assets in the Trust remaining after all benefit obligations, administrative fees, and related liabilities have been satisfied shall revert to the Employer. In no event will trust assets be transferred to an entity that is not a state, a

political subdivision of a state, or an entity the income of which is excluded from gross income under § 115(1).

The Trustee represents that no private interests participate in, or benefit from, the operation of the Trust, other than as providers of goods or services.

Issue 1 – § 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.

Rev. Rul. 77-261, 1977-2 C.B. 45, held that the income generated by the subject investment fund, which was established by the state to hold revenues in excess of the amounts needed to meet current expenses, was excludable from gross income under IRC section 115(1), because such investment constituted an essential governmental function. The ruling stated 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 an entity engaged in the operation of a public utility or the performance of some governmental function that accrued to either a state or political subdivision of a state. According to the ruling, 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. Pursuant to § 6012(a)(2) and the underlying regulations, the investment fund, being classified as a corporation subject to taxation under subtitle A of the Code, was required to file a federal income tax return each year.

Rev. Rul. 90-74, 1990-2 C.B. 34, held that the income of the subject organization, which was formed, funded, and operated by political subdivisions to pool various risks arising from their obligations regarding public liability, workers' compensation, or employees' health, was excludable from gross income under § 115(1), because the organization was performing an essential governmental function. The revenue ruling stated that the income of the organization was excludable from gross income as long as private interests did not participate in, 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.

The Trust provides life and health benefits to retired employees of the Employer and their survivors and eligible dependents. Providing such benefits to former public employees constitutes the performance of an essential governmental function. Rev. Rul. 90-74 and Rev. Rul. 77-261.

The income of the Trust accrues to the Employer. No private interests participate in, or benefit from, the operation of the Trust other than as providers of goods or services. The benefit to retired employees of the Employer is incidental to the public benefit. Upon termination of the Trust, any remaining assets will be used to provide life and health benefits to retirees pursuant to the Plan. In no event will trust assets be distributed to any entity that is not a state, a political subdivision of a state, or an entity the income of which is excluded from gross income under § 115. Rev. Rul. 90-74.

Issue 2 – § 6012(a)(4)

LAW & ANALYSIS

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

Section 301.7701-4(a) provides, in general, that an arrangement will be treated as a trust under the Code 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 Trust enables the Employer to set aside funds to provide post-employment life and health benefits for their employees. The Trustee is charged with the responsibility to protect and conserve trust assets for the benefit of trust beneficiaries. The beneficiaries of the Trust cannot share in the discharge of the Trustees' responsibility to protect and conserve the property of the Trust and, therefore, are not associates in a joint enterprise for the conduct of business for profit. Thus, the Trust is treated as a trust under section 301.7701-4(a).

Section 6012(a)(4) provides that every trust having taxable income for the tax year, or having gross income of \$600 or more for that year regardless of the amount of taxable income, must file a return with respect to income taxes under subtitle A.

RULINGS

Based solely on the facts and representations submitted by the Trustee:

1. 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).

2. We conclude that the Trust is classified as a trust within the meaning of § 7701(a) and § 301.7701-4(a). Because the Trust's income is excludable from gross income under § 115(1), we rule that the Trust is not required by § 6012(a)(4) to file an annual income tax return.

Except for the specific rulings above, we express or imply no opinion concerning 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.

A copy of this letter must be attached to any income tax return to which it is relevant. A taxpayer filing its return electronically may satisfy this requirement by including a statement providing the date and control number of this ruling letter. All information and representations submitted in support of a request for ruling are subject to verification upon examination.

Sincerely,

James Zelasko
Chief, Branch 2
Exempt Organizations
Office of Associate Chief Counsel
(Tax Exempt & Government Entities)

enclosure: copy for § 6110 purposes

cc: