

Internal Revenue Service

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Date:
June 14, 2019

Legend

Trust:

Trustee:

Board:

Entity:

State:

Date 1:

Date 2:

Dear :

This letter responds to a letter from your authorized representative dated December 18, 2018, 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 (the 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 under State law on Date 1 by agreement between the Board and the Trustee. It operates pursuant to a trust agreement effective as of Date 2. The purpose of the Trust is to invest and disburse funds irrevocably designated by each Entity to meet the Entity's obligations to provide its eligible retired employees and their eligible dependents and beneficiaries (the plan participants) with certain retiree and other post-employment health and welfare benefits, including medical, dental, life, and long-term care (OPEB). The Trust is not used to pre-fund pension obligations. All of the Trust's income is from investments.

The Trustee represents that each participating Entity is a political subdivision of the State, with the power to levy taxes.

Each Entity maintains a Plan, representing its commitment to provide OPEB. Each Entity from time to time may contribute funds irrevocably to the Trust in an amount it deems appropriate, to be held in the Entity's separate account. Only contributions, earnings, expenses, liabilities, or withdrawals attributable to that Entity are credited or charged against its separate account. Each Entity is solely responsible for the timing and deposit of its contributions to the Trust and for the calculation and payment of any benefits under its Plan.

Each Entity enters into an agreement with the Board under which it participates in the Trust.

Each Entity may appoint a member of the Board, but it is not required to do so. An Entity may remove its Board member at any time, with or without cause, provided that the Board consists of at least one member. The Board is responsible for trust administration, including investment of trust assets. It has the authority to amend the trust agreement at any time and to remove the Trustee and appoint a successor at its discretion.

The Board designates a plan administrator or authorized representative (Plan Administrator) for each Entity. Each Plan Administrator has the sole authority to direct the Trustee to withdraw or otherwise disburse funds from the Entity's separate account for the benefit of the Entity's plan participants. The Board itself does not have authority to make or direct withdrawals and is not involved with the withdrawal process.

A Plan Administrator may withdraw funds only to pay for an Entity's plan liabilities and reasonable administration expenses, except as provided by the trust agreement or applicable law. No funds may revert to an Entity, except for loan repayment, return of mistaken contributions, or disposition of excess assets after trust termination.

The Board can terminate the Trust at any time. Upon termination, the Trustee will dispose of trust assets under the written directions of the Plan Administrators and

consistent with the trust agreement. Any trust assets remaining after all benefit obligations, administrative fees, and related liabilities have been satisfied shall revert to the Entities. In no event will trust assets be transferred to an entity that is not a state, a political subdivision of a state, or any other entity the income of which is excluded from gross income under § 115(1) of the Code.

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.

LAW AND ANALYSIS

Issue 1 – § 115(1)

Section 115(1) of the Code 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 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 § 115(1) of the Code because such investment constituted an essential governmental function. The ruling states 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) of the Code and the underlying regulations, because the investment fund was classified as a corporation subject to taxation under subtitle A of the Code, it was required to file a federal income tax return each year.

Rev. Rul. 90-74, 1990-2 C.B. 34, holds 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) of the Code because the organization was performing an essential governmental function. The revenue ruling states 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.

Through the Trust, each Entity provides health and welfare benefits to its plan participants (including eligible dependents and beneficiaries). Providing such benefits constitutes the performance of an essential governmental function. See Rev. Rul. 90-74 and Rev. Rul. 77-261.

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

In no event, including dissolution, will the Trust's 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 of the Code.

Issue 2 – § 6012(a)(4)

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

Section 301.7701-4(a) of the Regulations 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 each Entity to set aside funds to provide post-employment life and health benefits for its plan participants. 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 Trustee's responsibility to protect and conserve the Trust's property 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 § 301.7704(a) of the Regulations.

Section 6012(a)(4) of the Code 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 Trustee:

1. We conclude that the Trust's income 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) of the Code. Consequently, we rule that the Trust's income is excludable from gross income under § 115(1) of the Code.

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

This ruling letter is based on information and representations submitted on behalf of the Trust and accompanied by a penalty-of-perjury statement executed by an individual with the authority to bind the Trust, and on the understanding that there will be no material changes in the facts. This office has not verified any of the supporting materials submitted with this ruling request, and such materials are subject to verification on examination. The Associate office will revoke or modify a letter ruling retroactively if there has been a misstatement or omission of controlling facts; if the facts at the time of the transaction are materially different from the controlling facts on which the ruling letter was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2019-1, § 11.05.

This letter does not address the applicability of any section of the Code or Regulations to the facts submitted, other than those sections specifically described. Further, except as expressly provided in this letter, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item of income discussed or referred to in this letter. 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 letter 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.

Because it could help resolve questions concerning federal income tax status, this letter should be kept in the Trust's permanent records.

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

This ruling letter is directed only to the taxpayer who requested it. According to § 6110(k)(3) of the Code, this ruling letter 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.

Sincerely,

David L. Marshall
Senior Counsel, Branch 1
Exempt Organizations
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)

cc: