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Taxpayer =
Year =
State =
County =
Legislation =

Dear :

We are responding to a letter dated December 21, 2023, requesting rulings that Taxpayer’s income is excludable from gross income under section 115 of the Internal Revenue Code (Code)¹, and that contributions to Taxpayer are deductible because Taxpayer is a government instrumentality under section 170. We construe the facts provided as follows.

FACTS

In Year, State enacted Legislation that created a land reutilization program. The new law permits certain State counties to establish corporations that reutilize nonproductive land located within their borders. County subsequently decided to participate in the land reutilization program and established Taxpayer pursuant to a resolution by County’s board of county commissioners, which is the general administrative body overseeing County’s government. Taxpayer acquires abandoned real estate in County. After clearing title of the property, Taxpayer either transfers the property for reutilization and redevelopment or redevelops the property itself before selling it.

¹ All “section” references in this letter ruling refer to the Internal Revenue Code of 1986, as amended.

Taxpayer's organizational documents provide that Taxpayer is intended to have the status of an organization whose income is excludable from gross income pursuant to section 115(1), and that its authority and activities are limited accordingly. Taxpayer's organizational documents forbid Taxpayer from taking any action that would cause its income to be includable in gross income. Similarly, Taxpayer cannot amend its organizational documents if the amendment would be inconsistent with section 115(1).

Taxpayer's organizational documents provide that Taxpayer is overseen by County's board of county commissioners and treasurer, as well as representatives appointed by each municipality or township that participates in County's land reutilization program. In accordance with State law, Taxpayer's board of directors consists of either seven or nine directors. County's treasurer and at least two members of County's board of county commissioners must be members of Taxpayer's board of directors. County's board of county commissioners and treasurer appoint the remaining members of Taxpayer's board of directors, but those directors must include three public officials from three municipalities and townships that participate in the County's land reutilization program. County's board of county commissioners and treasurer can replace the members of Taxpayer's board of directors they appoint with or without cause.

The members of Taxpayer's board of directors do not receive compensation for their services to Taxpayer and they are subject to Taxpayer's conflicts of interest policy. Taxpayer's conflicts of interest policy requires the members of its board of directors to acknowledge annually that they understand and agree to comply with Taxpayer's conflicts of interest policy.

Taxpayer is subject to financial oversight by both County and State. State treats Taxpayer as a public agency, which requires Taxpayer to file an annual financial report with State. State law requires Taxpayer to post the annual financial report on its website if County does not post the report on its website. State law also requires Taxpayer to adhere to State's open meetings and public records requirements. Taxpayer's books and records are subject to audit by State.

Taxpayer has several sources of funding. State law requires Taxpayer to use the proceeds from its sale of property only for the purposes for which Taxpayer was organized. Taxpayer, nevertheless, is generally dependent on County and State for financial support. To this end, County funds Taxpayer through sources such as delinquent property tax collections and contributions from municipalities and townships within County. Taxpayer also receives funding from State in the form of land development grants.

Taxpayer's organizational documents provide for periodic reviews to ensure Taxpayer is performing essential governmental functions and its compensation arrangements are reasonable and the result of arm's length bargaining.

County can dissolve Taxpayer at any time, in accordance with State law. Taxpayer's organizational documents provide that if Taxpayer is dissolved, all remaining assets must be distributed in accordance with State law. Any distribution that more than incidentally benefits private interests will violate State law. If Taxpayer is dissolved, State law requires County's board of county commissioners, with written approval by County's treasurer, to distribute all remaining assets as it sees fit.

LAW

Section 115(1) states that gross income does not include income derived from the exercise of any essential governmental function and accruing to a state or any political subdivision thereof.

Section 170(a)(1) provides that there shall be allowed as a deduction any charitable contribution (as defined in section 170(c)) payment of which is made within the taxable year.

Section 170(c)(1) states that, for purposes of section 170, the term charitable contribution means a contribution or gift to or for the use of a state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

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 section 115(1), because such investment constitutes an essential governmental function. The ruling states 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 explains 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 (casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under 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.

Revenue Ruling 57-128, 1957-1 C.B. 311, provides six factors to consider when determining whether an organization is a wholly owned instrumentality of one or more states or political subdivisions. The revenue ruling's factors are: (1) whether the organization is used for a governmental purpose and performs a governmental function; (2) whether performance of the organization's 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 involved have the powers and interests of an owner; (4) whether control and supervision of the organization is vested in public authority or authorities; (5) if express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality and whether such authority exists; and (6) the degree of financial autonomy and the source of the organization's operating expenses.

Revenue Ruling 75-359, 1975-2 C.B. 79, provides that a voluntary association of counties is separate from its member counties and qualifies as a wholly owned instrumentality of those counties, which are political subdivisions, and is formed and operated exclusively for the public purposes of the member counties. Therefore, the revenue ruling holds that contributions to the association are deductible as contributions for the use of political subdivisions, subject to the limitation of 170(b)(1)(B).

Revenue Ruling 69-453, 1969-2 C.B. 182, applies the six factors of Revenue Ruling 57-128 to rule that a soil and water conservation district formed as a private non-stock corporation by private individuals is not an instrumentality of the state. The revenue ruling finds the state has no authority or control over the district's expenditures, has no authority to remove any member of the district's board, and the district funds its operations through fees that it charges landowners for work done for the purpose of soil conservation. Moreover, the revenue ruling notes the state has no claim to the district's assets after the district's dissolution.

Revenue Ruling 65-196, 1965-2 C.B. 388, holds that a sports area commission formed pursuant to an agreement (which was authorized by the enactment of a state law legalizing such agreements) between a city and two villages to erect and operate an athletic stadium is an instrumentality of political subdivisions of the state. The commission is comprised of members appointed by councils of the city and villages as their representatives. Each member is required to be a citizen and resident of the state and may not be a member of the governing body of the city or the villages. The sole source of financing for the commission comes from bonds issued by the city; the city is authorized to issue bonds upon the request of the commission to fund the athletic stadium. The revenue ruling finds the commission is an instrumentality of the city and two villages by whose agreement it was formed because it meets substantially all of the Revenue Ruling 57-128 factors: the commission was created by the city and villages as their instrumentality, and validated by state law; the commission members are delegated certain authority under the terms of the agreement between the city and villages; control and supervision of the assets of the commission are in the hands of the

city and villages; there are no private interests involved; and the city, upon the commission's direction, is responsible for the project's finances.

RULINGS REQUESTED

1. Taxpayer's income is excludable from gross income pursuant to section 115(1), because Taxpayer's income is derived from its performance of an essential governmental function and accrues to a state or a political subdivisions of a state.
2. Contributions to Taxpayer are deductible to the extent otherwise allowed by section 170, because Taxpayer is an instrumentality for purposes of section 170(c)(1).

ANALYSIS

Ruling Request 1

State maintains a land reutilization program under which counties in State establish corporations to reutilize nonproductive land located within their borders. County created Taxpayer in accordance with State law so that County could participate in State's land reutilization program. Taxpayer operates on County's behalf to convert nonproductive land into economically productive land. Redeveloping nonproductive property into economically productive property is an essential governmental function. See Rev. Rul. 90-74 and Rev. Rul. 77-261.

Taxpayer's income accrues to County, a political subdivision of State. Private interests benefit only incidentally. See Rev. Rul. 90-74. In no event, including upon dissolution, will Taxpayer's assets be distributed or revert to any entity that is not a state, a political subdivision of a state, or another entity the income of which is excludable from its gross income by application of section 115(1).

Ruling Request 2

Section 170(c)(1) generally defines the term "charitable contribution," for purposes of section 170(a)(1), to include a contribution or gift to or for the use of a state or any political subdivision of a state, provided the contribution or gift is made for exclusively public purposes. Contributions to Taxpayer cannot constitute charitable contributions to a state or political subdivision of a state for purposes of section 170(c)(1), because Taxpayer is neither a state nor a political subdivision of a state. However, pursuant to Revenue Ruling 75-359, contributions to Taxpayer may constitute charitable contributions for the use of political subdivisions of a state, if Taxpayer qualifies as a separate, wholly owned instrumentality of one or more political subdivisions of State. In that event, contributions to Taxpayer are deductible under section 170(a), subject to the limitation of section 170(b)(1)(B). A determination of whether Taxpayer is a wholly owned instrumentality of one or more political subdivisions of State is made by applying the factors set forth in Revenue Ruling 57-128.

Governmental Purpose and Function

The first factor under Revenue Ruling 57-128 is whether Taxpayer is used for a governmental purpose and performs a governmental function. Taxpayer was established by County as its agent to facilitate the governmental purposes of redeveloping nonproductive property into economically productive property. Accordingly, Taxpayer is used for a governmental purpose and performs a governmental function.

Performance on Behalf of Political Subdivisions

The second factor under Revenue Ruling 57-128 is whether performance of Taxpayer's function is on behalf of one or more states or political subdivisions. Taxpayer was established pursuant to a resolution by County's board of county commissioners as County's agent to exercise the governmental purposes referenced above. Most of Taxpayer's board of directors represent County and some of its political subdivisions. Taxpayer's organizational documents require it to carry out the purposes of the State statute authorizing the establishment of entities like Taxpayer. Additionally, State law requires periodic reporting and audits to ensure, among other things, that Taxpayer represents County or its interests, and its income accrues to County. Accordingly, Taxpayer performs its function on behalf of County, which is a political subdivision of State.

Private Interests Involved

The third factor under Revenue Ruling 57-128 is whether there are any private interests involved, or whether the state or political subdivisions involved have the powers and interests of an owner. Taxpayer's revenue accrues to County. State law requires Taxpayer to adhere to State's open meetings and public records requirements. Taxpayer must, pursuant to State law, provide an annual financial report to State and post the report on its website. Additionally, Taxpayer maintains a conflicts of interest policy that supplements the State's conflict of interest rules for public officials by requiring its directors to file an annual statement stating that they understand and agree to comply with Taxpayer's conflicts of interest policy. Taxpayer's organizational documents provide for periodic review to ensure Taxpayer is performing essential governmental functions and its compensation arrangements are reasonable and the result of arm's length bargaining. State law requires Taxpayer to use the proceeds from its sale of property for the purposes for which Taxpayer was organized. Significantly, State law authorizes County's board of county commissioners, with written approval by County's treasurer, to decide what to do with any remaining assets upon Taxpayer's dissolution. Taxpayer's organizational documents provide State law dictates what happens to any remaining assets upon Taxpayer's dissolution. Any distribution that more than incidentally benefits private interests will violate State law. Accordingly, only incidental private interests are involved, and political subdivisions of State have the powers and interests of an owner with respect to Taxpayer.

Control and Supervision

The fourth factor under Revenue Ruling 57-128 is whether control and supervision of Taxpayer is vested in public authority or authorities. Taxpayer's organizational documents provide that Taxpayer is overseen by County's board of county commissioners and its treasurer, as well as representatives from municipalities or townships that participate in Taxpayer's land reutilization program.

Pursuant to State law, Taxpayer's board of directors consists of seven or nine directors, including County's treasurer, at least two members of County's board of county commissioners, and three representatives from three municipalities or townships that participate in County's land reutilization program. Consequently, directors who represent County and its political subdivisions will always be a majority of Taxpayer's board of directors. Additionally, County can dissolve Taxpayer at any time, in accordance with State law. Accordingly, control and supervision of Taxpayer is vested in public authorities.

Statutory Authority

The fifth factor under Revenue Ruling 57-128 is whether express or implied statutory or other authority is necessary for the creation and use of Taxpayer and whether such authority exists. Pursuant to State law, County's board of county commissioners enacted a resolution to establish Taxpayer to operate on County's behalf to convert nonproductive land into economically productive land. Taxpayer functions pursuant to specific State law. Accordingly, express statutory authority is necessary for the creation and use of Taxpayer and such authority exists.

Financial Autonomy and Source of Operating Funds

The sixth factor under Revenue Ruling 57-128 is the degree of Taxpayer's financial autonomy and the source of its operating expenses. Taxpayer is generally dependent on County and State for financial support. In large part, County funds Taxpayer through sources such as delinquent property tax collections and contributions from municipalities and townships within County. Additionally, Taxpayer receives funds from State in the form of land development grants. Taxpayer also derives a small portion of its funding from property sales. State law requires Taxpayer to use revenue from its activities solely in furtherance of its statutory purposes. Accordingly, Taxpayer is not financially autonomous from State and its political subdivisions. Rather, Taxpayer relies heavily upon State and its political subdivisions for the funding of its operating expenses.

For the reasons stated above, Taxpayer is a wholly owned instrumentality of one or more political subdivisions of State. Similar to Revenue Ruling 65-196 and unlike Revenue Ruling 69-453, Taxpayer is used for a governmental purpose and performs a

governmental function; Taxpayer's function is on behalf of County, which is a political subdivision of State; there are not more than incidental private interests involved, and political subdivisions of State have the powers and interests of an owner with respect to Taxpayer; control and supervision of Taxpayer is vested in public authorities; express statutory authority is necessary for the creation and use of Taxpayer and such authority exists; and Taxpayer is not financially autonomous from State and its political subdivisions. Therefore, in accordance with Revenue Ruling 75-359, we conclude that contributions to Taxpayer constitute charitable contributions (within the meaning of section 170(c)(1)) for the use of political subdivisions of State that are deductible under section 170(a), subject to the limitation of section 170(b)(1)(B).

RULINGS

Consistent with the foregoing, we rule that:

1. Taxpayer's income is derived from the performance of an essential governmental function and accrues to a state or political subdivision of a state. Thus, Taxpayer's income is excludable from gross income pursuant to section 115(1).
2. Taxpayer is an instrumentality for purposes of section 170(c)(1). Thus, contributions to Taxpayer are deductible to the extent otherwise allowed by section 170.

The rulings contained in this letter are based on information and representations submitted by or on behalf of Taxpayer and accompanied by a penalty of perjury statement executed by an individual with authority to bind Taxpayer, and upon the understanding that there will be no material changes in the facts. 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. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling 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. 2024-1, section 11.05.

This letter does not address the applicability of any section of the Code or Treasury Regulations to the facts submitted other than with respect to the sections specifically described, and, 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 referenced in this letter.

Because it could help resolve questions concerning federal tax status, this letter should be kept in Taxpayer's permanent records. A copy of this letter must be attached to any tax return to which it is relevant. If Taxpayer files a return electronically, this

requirement may be satisfied by attaching a statement to the return that provides the date and control number of this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

This ruling letter is directed only to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.

If you have any questions about this letter ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Kenneth M. Griffin
Chief
Exempt Organizations Branch 3
Employee Benefits, Exempt Organizations, and Employment Taxes

cc: