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Person To Contact:
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Date:
April 27, 2007

LEGEND

Corporation	=
County	=
State	=
Statute 1	=
Statute 2	=
Date 1	=
Corp A	=
Corp B	=

Corp C =

County Department =

County Foundation =

n =

o =

p =

Dear :

This is in reply to a letter dated October 16, 2006, requesting a ruling that the income of Corporation is excludible from gross income under §115 of the Internal Revenue Code and that contributions or gifts to or for the use of Corporation may qualify as charitable contributions within the meaning of §170(c)(1) of the Code.

FACTS

Statute 1 provides that a public agency of State may exercise jointly with any other public agency of State any power that the agencies have in common and may exercise separately. The agencies may create by interlocal agreement a separate legal entity for purposes of State law to exercise that power. Under Statute 1, the entity created “shall be a public body corporate or politic." The term "public agency" includes State and local governmental units.

An economic development corporation (EDC) is also a public agency for purposes of Statute 1. Statute 2 provides for the creation of EDCs. The purpose of Statute 2 is to help alleviate and prevent conditions of unemployment, afford economic assistance to industries, assist rehabilitation to blighted areas, promote urban redevelopment and reduce the costs of production. A majority of State’s counties have created a county-wide EDC. Those counties that do not have a county-wide EDC generally have within them one or more cities or townships which have formed an EDC.

EDCs have the power to receive property condemned by a local unit of government and the power to issue bonds. EDCs conduct economic development projects involving industrial or commercial enterprises within the local unit of government. Statute 2 provides that local EDCs must report to the State at least once a year on the EDC's activities and finances. Statute 2 further provides that no part of the earnings shall inure to the benefit of a person other than the public agencies which created it. Upon termination of the interlocal agreement, title to all property owned by the entity vests in the public agencies which incorporated it.

On Date 1, Corp A, Corp B, and Corp C formed Corporation by interlocal agreement pursuant to Statute 1. Any State EDC may participate in Corporation by submitting a request form to Corporation, accompanied by an opinion of legal counsel verifying that the EDC is validly formed and has the power and authority to act as described in the interlocal agreement. Participating EDCs are called "Participants."

The purpose of Corporation is to implement economic development programs throughout County. Administration and control of the Corporation consists of (1) an Executive Committee appointed by the County Executive, and (2) a Board of Directors appointed by the governing bodies of the Participants, as well as the County Executive and the County Commission. All appointments to the Board are subject to approval by the County Commission. Members of the Executive Committee may be removed by the County Executive at any time. All Board members appointed by the County Executive may be removed by the County Executive at any time.

The Executive Committee appoints the Chief Executive Officer of the Corporation, who is responsible for the administration of all programs, funds, personnel, contracts, and all other administrative functions of the Corporation, subject to the Executive Committee's oversight. The Corporation Board authorizes and approves the annual audit and evaluates the performance of the Corporation pursuant to standards established by the Executive Committee. The board consists of one member from each participant and two members appointed by the County Executive, which may also appoint one Commissioner.

Members of the board and executive committee receive no compensation but do receive reimbursements for reasonable expenses in discharging their duties. The County Department shall detail employees to Corporation according to a written agreement between County and Corporation, as stipulated by the interlocal agreement.

Corporation is currently funded by County and County Foundation, an organization established to assist Corporation as a governmental entity. Upon termination of Corporation, its assets remaining after provision for satisfaction of debts and liabilities will be distributed to Participants. In no event will outstanding assets be distributed to benefit private individuals.

LAW and ANALYSIS

Issue 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 governmental function and accruing to a state or any political subdivision of a state.

Rev. Rul. 71-589, 1971-2 C.B. 94, provides that the income from property held in trust by a city that was to be used by the city for certain charitable purposes is not subject to federal income tax. Although Rev. Rul. 71-589 does not explicitly so state, the holding in the revenue ruling means that a determination was made that the income in question was derived from the exercise of an essential governmental function and accrued to a political subdivision within the meaning of section 115(1) of the Code. Rev. Rul. 71-589 specifically mentions several types of functions that the trust might perform, such as support of a hospital, schools, maintenance of a park, or other purposes ordinarily recognized as municipal functions.

Under Rev. Rul. 77-261, 1977-2 C.B. 45, the income from a fund, established under a written declaration of trust by a state for the temporary investment of cash balances of the state and its political subdivisions, which purchase units of participation and have an unrestricted right of withdrawal, is excludable from gross income. The fund, however, is classified as a corporation and must file a federal income tax return.

Rev. Rul. 90-74, 1990-2 C.B. 34, concerns an organization that is formed, operated and funded by political subdivisions to pool their casualty risks, or other risks arising from their obligations concerning public liability, workers' compensation, or employees' health. Rev. Rul. 90-74 states that the income of the organization is excluded from gross income under section 115(1) of the Code if private interests do not participate in the organization or benefit more than incidentally from the organization. In Rev. Rul. 90-74 the benefit to the employees of the political subdivisions was excepted as incidental.

By stimulating economic development programs throughout County, X will assist existing businesses and attract new businesses, thereby promoting economic growth and reducing unemployment. Stimulating economic growth and reducing unemployment are essential governmental functions for purposes of §115.

The income of Corporation is to be used solely to promote the economic development of County. No part of X’s income will be distributed to a private party other than as payment for goods or reasonable compensation for services rendered. Corporation represents that: (1) all Participants in Corporation are States, political subdivision(s) thereof, the District of Columbia, or other organizations whose income is excluded from gross income under §115(1); and (2) upon dissolution, Corporation’s assets shall be distributed to States, political subdivision(s) thereof, the District of Columbia, or other organizations whose income is excluded from gross income under §115(1) of the Code. Corporation will amend its organizing documents to conform with these representations.

Based on the information and representations submitted by Corporation and provided that the proposed amendments described above are made to its organizational documents, we hold that the income of Corporation is derived from an essential governmental function and accrues to a state, a political subdivision of a state, or to an entity the income of which is excludible from gross income under §115 of the Code. Accordingly, Corporation's income will be excludable from gross income under §115(1) of the Code as of the effective date of adoption of the amended organizational documents.

Issue 2:

Section 170(a)(1) of the Code provides, subject to certain limitations, that there shall be allowed as a deduction any charitable contribution payment of which is made within the taxable year.

Under §170(c)(1), 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 is made for exclusively public purposes.

An entity not expressly described in § 170(c)(1) may qualify to receive deductible charitable contributions if it is an instrumentality of a state or an instrumentality of a political subdivision of a state and if the contributions are made for exclusively public purposes. See Rev. Rul. 75-359, 1975-2 C.B. 79.

Revenue Ruling 57-128, 1957-1 C.B. 311, sets forth the following factors to be taken into account in determining whether an entity is an instrumentality of one or more governmental units: (1) whether the organization is used for a governmental purpose and performs a governmental function; (2) whether performance of its 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 have the power and interests of an owner; (4) whether control and supervision of the organization is vested in a public authority or authorities; (5) whether express or implied statutory or other authority is necessary for the creation and/or use of the organization, and whether this authority exists; and (6) the degree of financial autonomy of the entity and the source of its operating expenses.

Corporation is used for a governmental purpose and performs a governmental function on behalf of County. Corporation was created to promote the economic development of County.

There are no private interests involved. The power and interests of an owner, including net earnings, rest with the Participants and the County.

Control and supervision of the Corporation rests with the Participants and the County. The Executive Committee of the Corporation is appointed by the County Executive, and the Board of Directors of Corporation is appointed by the governing bodies of the Participants, as well as the County Executive and the County Commission. All appointments to the Board are subject to approval by the County Commission. Members of the Executive Committee may be removed by the County Executive at any time. All Board members appointed by the County Executive may be removed by the County Executive at any time.

Statutory authority for the creation of the Corporation is found in the law of State.

The Participants and the County, through the Executive Committee and the Board, control the financial affairs of the Corporation. The Executive Committee appoints the Chief Executive Officer of the Corporation, who is responsible for the administration of all Corporation funds, and the Corporation Board authorizes and approves an annual audit of the Corporation. Accordingly, the Corporation is an instrumentality of the Participants and County, and contributions made to Corporation exclusively for a public purpose may be deductible by a donor as charitable contributions under §170(c)(1) of the Code to the extent otherwise provided under §170.

CONCLUSIONS

The income of Corporation is excludible from gross income under §115(1) of the Code.

The Corporation is an instrumentality of the Participants and County, and contributions made to Corporation exclusively for a public purpose may be deductible by a donor as charitable contributions under §170(c)(1) of the Code to the extent otherwise provided under §170.

This ruling letter is effective as of the date Corporation adopts the required amendments to its organizational documents.

Except as specifically provided otherwise, no opinion is expressed on the federal tax consequences of any particular transaction.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

Sincerely

David Marshall
Chief, Exempt Organizations Branch 2
Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosures:
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Copy for § 6110 purposes