

emphasis on sites suitable for companies with increased levels of engineering and scientific content.

Corporation is governed by a board of 7 directors. Three directors are elected by City Council and three are elected by City Commission. Corporation represents it will amend its bylaws to provide that the seventh director will be jointly elected by City Council and City Commission. Directors can be removed with or without cause by the body or bodies that elected them. City Commission is a political subdivision of State. Under state statute, Corporation is required to submit an annual financial report to City and City Commission.

Corporation's initial funds will come from City and City Commission. It is anticipated that in the future Corporation will qualify for state and federal grants. In addition Corporation will receive proceeds from the sale of land within the business and technology parks to private industry. The properties to be sold to private industry are properties originally purchased by Corporation with funds contributed by City and City Commission. Profits from the sale of land at the business parks will accrue to Corporation to be used for further development. No part of Corporation's income will be distributed to a private party other than as payment for goods or reasonable compensation for services rendered. Corporation's bylaws provide that all of its property is irrevocably committed to public purposes. Corporation represents that it will amend its articles of incorporation and bylaws to provide that upon dissolution its assets will be distributed to State, a political subdivision of State or an entity the income of which is excluded from gross income under § 115 of the Code.

LAW AND ANALYSIS

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.

In Rev. Rul. 77-261, 1977-2 C.B. 45, income from an investment fund, established under a written declaration of trust by a state, for the temporary investment of cash balances of the state and its participating political subdivisions, was excludable from gross income for federal income tax purposes under § 115(1). The ruling indicated 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 a corporation or other entity engaged in the operation of a public utility or the performance of some governmental function that accrued to either a state or municipality. 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 which are within the ambit of a sovereign to properly conduct. In addition, pursuant to section 6012(a)(2) and the underlying regulations, the investment fund, being classified as a corporation that is

subject to taxation under subtitle A of the Code, was required to file a federal income tax return each year.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the Service determined 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 § 115 of the Code. In Rev. Rul. 90-74, private interests neither materially participate in the organization nor benefit more than incidentally from the organization.

By developing prepared sites for sale to private companies Corporation will help to attract new companies involved in technological enterprises to City, thereby promoting economic growth and reducing unemployment. Stimulating economic growth and reducing unemployment are essential governmental functions for purposes of section 115.

The income of Corporation is to be used solely to promote the economic development of City. No part of Corporation's income will be distributed to a private party other than as payment for goods or reasonable compensation for services rendered. Corporation represents it will amend its articles of incorporation and bylaws to provide that upon dissolution, Corporation's assets shall be distributed to State, a political subdivision of State, or another organization the income of which is excluded from gross income under § 115(1) of the Code.

Based on the information and representations submitted by Corporation and provided that the proposed amendments described above are made to its articles of incorporation and bylaws, 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.

CONCLUSIONS

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

Section 6012(a)(2) and § 1.6012-2(1)(1) provide, in general, that every corporation, as defined in § 7701(a)(3), subject to taxation under subtitle A is required to file an income tax return regardless of whether it has taxable income or regardless of its gross income. See Rev. Rul. 77-261. Accordingly, Corporation will be required to file an income tax return pursuant to § 6012(a)(2).

This ruling letter is effective as of the date the proposed amendments to Corporation's articles of incorporation and by-laws are adopted.

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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