

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:ITA:2 – PLR-120048-01
Date:
Sept. 17, 2001

LEGEND:

District =
State =
City =
X =
A =

Dear

This is in response to a ruling request dated February 15, 2001 and supplemented by a letter dated May 23, 2001. Both the original ruling request and the supplemental information were submitted on your behalf by your authorized representatives. You are seeking rulings that the District is a political subdivision for purposes of § 170(b)(1)(A)(v) and § 170(c)(1) of the Internal Revenue Code.

ISSUES

We are responding to the following rulings that you have requested:

1. The District is a political subdivision of State and as such is an organization described in §§ 170(b)(1)(A)(v) and 170(c)(1).
2. Contributions to the District that are exclusively for public purposes qualify as contributions to an organization or entity described in §§ 170(b)(1)(A)(v) and 170(c)(1) subject to the limitations therein.

CONCLUSIONS

1. The District is a political subdivision of State and as such is an organization described in §§ 170(b)(1)(A)(v) and 170(c)(1).
2. Contributions to the District that are exclusively for public purposes qualify as contributions to an organization or entity described in §§ 170(b)(1)(A)(v) and 170(c)(1) subject to the limitations therein.

FACTS

The District is a local cultural arts district created by City pursuant to State law. The District's jurisdictional boundaries are coextensive with City's limits. The District's X-member board consists of the Governor of State, the County Executive of A County, and the Mayor of City (or their designees) and the appointees of each of them. The purpose and function of the District is to construct and operate a local public performing and visual arts complex (the Center). The proposed Center will occupy approximately one city block. The District has been granted the power of eminent domain over a downtown area composed of five contiguous blocks. Under State law, the District's power of eminent domain may not be revoked for the specific area (five contiguous blocks) included in its initial grant of power.

The State Legislature has determined that local cultural arts districts such as the District serve a statewide public purpose by assisting the development of cultural arts facilities in the state, which provide educational and recreational opportunities for State residents, by enhancing the appreciation of the arts among the state's residents, by encouraging economic development and tourism, by reducing unemployment, and by bringing needed capital into the state for the benefit and welfare of people throughout the state. Furthermore, the State Legislature has determined that local cultural arts districts in populous cities serve a public purpose in those cities by providing educational and recreational opportunities for residents of those cities, by enhancing the appreciation of the arts among the residents of those cities, by encouraging economic development and tourism, by reducing unemployment, and by bringing needed capital into those cities for the benefit and welfare of people in those cities.

LAW AND ANALYSIS

Section 170(a), subject to certain limitations, allows as a deduction any charitable contribution (as defined in § 170(c)) payment of which is made within the taxable year.

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

For example, Rev. Rul. 79-323, 1979-2 C.B. 106, holds that gifts to an industrial commission established by a state legislature for exclusively public purposes are deductible under § 170(c)(1). Rev. Rul. 69-90, 1969-1 C.B. 63, holds that voluntary payments by merchants and property owners to a city to be used to provide unrestricted public parking facilities in the general area of the business and properties of the contributors are charitable contributions as defined in § 170(c)(1).

Section 103(a) provides, in part, that except as provided in subsection (b), gross income does not include interest on any state or local bond. Section 103(c)(1) provides

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that the term “state or local bond” means an obligation of a state or political subdivision thereof.

Section 1.103-1(b) of the Income Tax Regulations provides that the term “political subdivision” denotes any division of any state or local governmental unit that is a municipal corporation or that has been delegated the right to exercise part of the sovereign power of the unit. As thus defined, a political subdivision of any state or local governmental unit may or may not, for purposes of this section, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of these units.

Rev. Rul. 78-276, 1978-2 C.B. 256, states that the term “political subdivision” has been defined consistently for all federal tax purposes as denoting either (1) a division of a state or local government that is a municipal corporation, or (2) a division of such state or local government that has been delegated the right to exercise sovereign power. The three generally acknowledged sovereign powers are the power to tax, the power of eminent domain, and the police power. See Commissioner v. Estate of Shamberg, 3 T.C. 131 (1944), acq., 1945 C.B. 6, aff’d 144 F.2d 998 (2d Cir. 1944), cert denied, 323 U.S. 792 (1945). It is not necessary that all three sovereign powers enumerated in Shamberg be delegated. See Rev. Rul. 77-164, 1977-1 C.B. 20. However, possession of only an insubstantial amount of any or all sovereign powers is not sufficient. In determining whether an entity is a division of a state or local governmental unit, important considerations are the extent that the entity is (1) controlled by the state or local government unit, and (2) motivated by a wholly public purpose. Rev. Rul. 83-131, 1983-2 C.B. 184.

The District is controlled by the Governor, the Country Executive and the Mayor (or their designees) who have the power to appoint the X members on its board of directors. The District serves a public purpose. The proposed Center will occupy approximately one city block within the five block area where the District has the power of eminent domain. Although limited to a five block area, the District’s power of eminent domain is a substantial power that may not be revoked. Based on the facts and circumstances presented, we conclude that the District is a political subdivision of the State.

The District was created to serve a wholly public purpose by assisting in the development of cultural arts facilities in the City. The State Legislature has determined that such facilities serve a statewide public purpose by providing educational and recreational opportunities for state residents, enhancing the appreciation of the arts among the state's residents, encouraging economic development and tourism, reducing unemployment, and bringing needed capital into the state for the benefit and welfare of people throughout the state. In addition, such facilities in populous cities serve a public purpose in those cities by providing educational and recreational opportunities for residents of those cities, by enhancing the appreciation of the arts among the residents of those cities, by encouraging economic development and tourism, by reducing unemployment and by bringing needed capital into those cities for the benefit and

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welfare of people in those cities. Promoting the local economy serves a public purpose. See Rev. Rul. 79-323 and Rev. Rul. 69-90.

Since we have concluded that the District is a political subdivision of State, contributions or gifts to or for the use of the District are contributions or gifts to or for the use of an entity described in § 170(c)(1). Accordingly, contributions or gifts to or for the use of the District are to or for the use of a political subdivision of State and are for exclusively public purposes and are therefore generally deductible under § 170(c)(1) to the extent otherwise provided under § 170.

Section 170(b)(1) of the Code provides limitations on the amount that an individual can deduct for charitable contributions in a taxable year. Section 170(b)(1)(A)(v) provides that any charitable contribution to a "governmental unit" referred to in § 170(c)(1) is allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

Since the District is a political subdivision of State, the District is a "governmental unit" described in § 170(b)(1)(A)(v) of the Code. Therefore, charitable contributions to the District are deductible under § 170(c)(1) of the Internal Revenue Code as contributions to an entity described in § 170(b)(1)(A)(v).

No opinion is expressed about the federal income tax treatment of the transaction under other provisions of the Code.

The above rulings are directed only to the taxpayer who requested them. Section 6110(k)(3) of the Code provides that these rulings may not be used or cited as precedent.

Sincerely yours,
CHRISTOPHER F. KANE
Assistant to the Chief, Branch 2
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosure:
Copy for § 6110 purposes

cc: