

**Internal Revenue Service**

*Department of the Treasury*

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**Washington, D.C.**

**Person to Contact:**

**Telephone Number:**

**Refer Reply to:**  
CC:TE/GE:EO2 PLR-102726-02  
**Date:**  
September 27, 2002

**LEGEND**

Council =

State =

Statute a =

Department =

year b =

\$ c =

Statute d =

State Council=

Dear :

This is in reply to a letter dated January 8, 2002, requesting a ruling that the income of Council is excludible from gross income under § 115 of the Internal Revenue Code and that charitable contributions to Council are deductible by the donors to the extent provided by § 170(a) of the Code.

**FACTS**

Council is an unincorporated organization created pursuant to State Statute a. In enacting Statute a the legislature of State declared that there was a compelling need to develop and implement a statewide trauma care system and that it was in the public interest to provide quality emergency medical and trauma care to the people of State. Five counties in State entered into an interlocal agreement to form Council in order improve and coordinate emergency medical and trauma care. The interlocal agreement requires that any future members of Council also be State counties.

Council is governed by a board of 15 directors. Each of the five member counties appoints three directors. Council represents that it will amend its interlocal agreement to provide that each member has the power to remove, with or without cause, any of the directors that it appoints.

Council performs a number of functions relating to the coordination of emergency care on a statewide basis. It certifies facilities within the jurisdiction of its members based on the level of trauma care provided at each facility. It identifies regional needs through a program of statewide assessment and it oversees statewide reporting and information collecting with respect to local medical facilities. It participates in creating plans for emergency triage and transportation and interfacility transfer agreements. In addition, it participates in a public information program. Over 14 primary care hospitals and 60 medical care agencies are located within its members' jurisdiction. Some of the hospitals and care agencies are public and some are private.

Council is required by the interlocal agreement between the member counties to submit an annual report to each members board of county commissioners or city council. This report indicates the accomplishments for the prior year and states the goals of Council for the coming year. In addition, Council is required to submit a financial report to Department, an agency of State.

The net revenues of Council for year b are expected to be approximately \$ c. Forty-five percent of this total is derived from a state grant to Council which is mandated by State Statute d. The remaining fifty-five percent is from a grant from State to the member counties, also made pursuant to State Statute d. Council represents that all of the funds will be used for operating expenses.

Any modifications or changes to the interlocal agreement which governs Council must be approved by each county or city and county representative prior to taking effect. Any party to the interlocal agreement may terminate its participation in Council with or without reason upon thirty days prior written notice to the other parties to the agreement and to State Council. Council represents that it will amend its interlocal agreement and bylaws to provide that upon the dissolution of Authority, any remaining assets will be distributed to State or to the member counties.

## 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 utilities 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 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 coordinating and improving emergency medical and trauma care throughout the state, Council helps to promote public health. Promoting public health is an essential governmental function.

The income of Council is derived from and used solely for purposes related to providing public health services to the citizens of State. No part of Council's income will be distributed to a private party other than as payment for goods or reasonable compensation for services rendered. The taxpayer represents that it will amend its interlocal agreement and bylaws to provide that upon dissolution, Council's assets shall be distributed to State or to Council's member counties. The taxpayer further represents that it will amend its interlocal agreement to provide that a director of the board of council is subject to removal, with or without cause, by the member county by which the director was appointed.

Based on the information and representations submitted by Council, and provided that Council adopts in final form the proposed amendments to the interlocal agreement and bylaws as described above, we hold that the income of Council is derived from an essential governmental function and accrues to a political subdivision of a state or to an entity the income of which is excludable from gross income under § 115.

## Section 170

Section 170(a)(1) provides, subject to certain limitations, a deduction for contributions and gifts to or for the use of organizations described in § 170(c).

Section 170(c)(1) states that the term “charitable contribution” includes a contribution or gift to or for the use of any state or political subdivision of a state, but only if the contribution is made for exclusively public purposes.

An entity that is not a governmental unit specifically described in § 170(c)(1) of the Code may nevertheless qualify to receive deductible charitable contributions if it is an instrumentality of a state or an instrumentality of a political subdivision of a state. See Rev. Rul. 75-359, 1975-2 C.B. 79. Although § 170(c)(1) of the Code does not refer to instrumentalities of a state or instrumentalities of a political subdivision of a state, it is a long-standing position of the Service that contributions or gifts to a state or a political subdivision, or an organization acting on behalf of such entity, that are made for exclusively public purposes are deductible under § 170(c)(1). See Rev. Rul. 79-323, 1979-2 C.B. 106.

Revenue Ruling 57-128, 1957-1 C.B. 311, provides that the following factors are taken into consideration in determining whether an organization is an instrumentality of one or more states or political subdivisions: (1) whether it 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 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 its operating expenses.

These six factors have been used to determine whether an organization is an instrumentality for purposes of § 170(c)(1) such that contributions, if made for an exclusively public purpose, are deductible. In this case Council performs the governmental function of planning and coordinating emergency medical and trauma services in State. It functions on behalf of its five member counties. The member counties have the powers and interests of an owner. Each director represents and can be removed, with or without cause, by the member county by which the director was appointed. Council was created pursuant to State statute. Council receives funds from State for its operating expenses, and must submit yearly financial reports to the member counties and Department, a State agency. Accordingly, Council is an instrumentality for purposes of § 170(c)(1) and charitable contributions to Council are deductible by the donors to the extent provided by § 170(a) of the Code.

## CONCLUSIONS

1. The income of Council is excludible from gross income under § 115 of the Code.
2. Charitable contributions to Council are deductible by the donors to the extent provided by § 170(a) of the Code.

This ruling letter is effective as of the date the proposed amendments to the interlocal agreement are adopted by Council.

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.

In accordance with a Power of Attorney on file, we are sending a copy of this letter to your representative.

Sincerely,

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

Enclosures;