

transportation system. Trustees serve for two year terms and are eligible for reappointment for successive terms. Trustees serve at the pleasure of authority that appointed them. The Board is required to hold regular public meetings not less than four times a year.

State statute provides that the Board has all powers reasonably necessary to carry out its purpose including the power to: (1) acquire, lease, construct, maintain, repair, police, and operate a railroad and establish rules for use of the railroad and other properties subject to its jurisdiction, (2) set level of services and rates for transportation of passengers, except that the Board may not eliminate or reduce levels of service for the transportation of people or property without the approval of the State Department of Transportation and (3) upon the approval of the State Board of Transportation issue revenue bonds. In exercising these powers the Board is not subject to any other laws relating to commuter transportation systems or railroads.

The Board may also exercise the power of eminent domain in order to further its purposes. If the Board cannot agree with owners, lessees or occupants of any real estate selected by the Board, it may proceed to procure the property by condemnation. The fact that property over which the railroad must be constructed and operate is already in use or acquired for use for a public purpose is not a bar to the right of the Board to condemn the property for its use. State statute specifically provides that the Board does not have the power to levy taxes.

State statute provides that the powers granted to District are in all respects for the benefit of the people of State and that operation and maintenance of a railroad project by District constitutes the performance of an essential governmental function. District is not required to pay any taxes or assessments upon any project or property acquired or used by District or upon the income from such projects or property. Bonds issued by District are exempt from state tax.

LAW AND ANALYSIS

In general, the income of states and their political subdivisions is not subject to federal income tax, in the absence of specific statutory authorization to tax that income. See Rev. Rul. 87-2, 1987-1 C.B. 18; Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29.

The term "political subdivision" is not defined in the Code but § 1.103-1(b) interprets the term, and this interpretation has been used to define the term for federal tax purposes. Section 1.103-1(b) interprets "political subdivision" to represent any division of a state or local government that is a municipal corporation, or a division of such state or local government that has been delegated the right to exercise sovereign power. See Rev. Rul. 78-276, 1978-2 C.B. 256.

Sovereign powers include the power to tax, the power of eminent domain, and the police power. It is not necessary that an entity have all three powers delegated to it, but in order to be considered a political subdivision the entity must have a substantial amount of one or all of these powers delegated to it by a state or local governmental unit. Possession of only an insubstantial amount of any or all of the sovereign powers is insufficient. See Rev. Rul. 77-164, 1977-1 C.B. 20. Police power includes the power to promulgate and enforce transportation regulations. In Rev. Rul. 73-563, 1973-2 C.B. 24, the Internal Revenue Service determined that a rapid transit authority authorized to set rates, determine routes and enforce its regulations by maintaining a security force possessed police powers. See also, Alexander J. Shamberg, 3 T.C. 131, 143 (1944).

District is a municipal corporation created by State statute and delegated the sovereign power of eminent domain. In addition, District may police and establish rules for the use of railroad and other properties subject to its jurisdiction. Accordingly, District possesses more than an insubstantial right to exercise the sovereign powers of a state or governmental unit.

Based on all the facts and circumstances we can conclude that District is a political subdivision within the meaning of § 1.103-1(b). District is not required to file federal income tax returns or pay federal income tax on its income.

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,

Barbara E. Beckman
Assistant Chief, Branch 2
Division Counsel/Associate
Chief Counsel
(Tax Exempt and Government
Entities)

Enclosures;
Copy of this letter
Copy for § 6110 purposes

CC: