

Internal Revenue Service

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October 20, 2010

LEGEND:

Authority =

State =

City =

Year 1 =

a =

Dear :

This responds to your request for a ruling either that (1) Authority qualifies as a political subdivision for purposes of § 103 of the Internal Revenue Code (the "Code"), or (2) the debt of Authority is issued on behalf of City within the meaning of § 1.103-1(b) of the Income Tax Regulations.

Facts and Representations

You make the following factual representations. In Year 1, pursuant to State legislative authority (the "Act"), Authority was created as a public corporation to acquire, construct, operate, maintain, repair, and replace piers, terminal and warehouse facilities on the land and in the waters within the limits of City.

Authority is governed by a seven member Board of Directors (the "Board"). The Board consists of the City Manager, the President of the City Council, a representative

appointed by the State Department of Transportation, and four members of the general public who are residents of City and who are elected by a majority of the legal voters of City. The Board members have four-year terms, and serve without compensation.

The City Manager is subject to removal from his position as City Manager by a majority vote of all of the members of the City Council. The President of the City Council is subject to removal for cause from his position as President by a unanimous vote of the remaining members of the City Council. The City Council has no powers of removal over the Board members as such.

Authority may take by eminent domain real property within the boundaries of City, but only with the consent of at least a majority of the City Council and only as the Board considers necessary for the purpose of constructing and maintaining Authority's piers, docks and warehouses, highways and other port facilities.

At the end of each fiscal year, Authority must submit an annual report to the City Council, showing all transactions and balances, together with recommendations and plans for the improvement and operation of Authority's facilities.

The Authority is authorized under the Act to issue bonds and negotiate notes to finance its operations, provided the total bonds and notes outstanding do not exceed at any one time the principal amount of \$a. The bonds and notes are legal obligations of Authority, and must be signed by the Board members or a majority thereof. Authority may charge such fees as, in its judgment, are necessary for parking, docking, and storage facilities. The net earnings of Authority may not inure to the benefit of any private person.

So long as Authority's facilities are free of all indebtedness, all its obligations have been discharged, and all its leases have been terminated, and upon a determination by the Board that there is no further need for Authority to exist, Board shall cease to function, and all Authority property of every description shall revert to City.

Law and Analysis

Political Subdivision

Section 103(a) provides that gross income does not include interest on any state or local bond.

Section 1.103-1(a) provides, in part, that interest upon obligations of a state, territory, possession of the United States, the District of Columbia, or any political subdivision thereof (hereinafter collectively or individually called "state or local government unit") is not includable in gross income.

Section 1.103-1(b) 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.

Three generally acknowledged sovereign powers of states are the power to tax, the power of eminent domain, and the police power. Commissioner of Estate of Alexander v. 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 of these powers be delegated in order to treat an entity as a political subdivision for purposes of the Code. However, possession of only an insubstantial amount of any or all of the sovereign powers is not sufficient. All of the facts and circumstances must be taken into consideration, including the public purposes of the entity and its control by a government. Rev. Rul. 77-164, 1977-1 C.B. 20.

Consideration of these principles as they apply to the facts of this case, leads us to conclude that Authority is not a political subdivision for purposes of § 1.103-1(b). Authority’s power of eminent domain allows it to condemn and hold real estate within City, but Authority is required to seek approval from the City Council before Authority may exercise its power of eminent domain. Authority thus possesses only an insubstantial amount of a sovereign power. It has no other sovereign powers.

On Behalf of Issuer

Section 1.103-1(b) provides, in part, that an obligation issued by or on behalf of any governmental unit by a constituted authority empowered to issue such an obligation is the obligation of such a unit.

Revenue Ruling 57-187, 1957-1 C.B. 65, holds that bonds issued by an industrial development board (the “entity”) are considered issued on behalf of a political subdivision of the state under the following conditions: (1) the issuance of bonds is authorized by a specific state statute; (2) the bond issuance has a public purpose; (3) the governing body of the entity is controlled by the political subdivision; (4) the entity has the power to acquire, lease, and sell property and issue bonds in furtherance of its purposes; (5) earnings do not inure to the benefit of private persons; and (6) upon dissolution, title to all bond-financed property reverts to the political subdivision.

Comparing Rev. Rul. 57-187 to the facts as represented, we conclude that Authority does not qualify as an “on behalf of issuer” for purposes of § 1.103-1(b).

In contrast to the entity in the revenue ruling, the Board is not controlled by City since, of the seven Board members, one Board member is appointed by the State Department of Transportation, and four Board members are elected to their positions on the Board in a general election by all voters of City, and none of the Board members may be removed by the City Council.

Conclusion

Based on the information submitted and representations made, we conclude that (1) Authority does not qualify as a political subdivision for purposes of § 103, and (2) bonds issued by Authority will not be treated as issued on behalf of City for purposes of § 103.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

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

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to the authorized representatives of Authority.

The ruling contained in this letter is based upon information and representations submitted by Authority and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions and Products)

By:

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cc: