

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:FI&P:5/PLR-118656-99
Date:
January 27, 2000

LEGEND:

Authority =

State =

Date 1 =

A =

B =

C =

Port =

Location =

This letter is in response for your request for a ruling that the Authority qualifies as a political subdivision of the State for purposes of § 103 of the Internal Revenue Code.

Facts and Representations

You make the following factual representations. The Authority was created on Date 1 pursuant to State law by the local governmental units A, B, and C. The Authority was created to provide for the development of ports in the State for transportation-related commerce. In accordance with this purpose, the Authority will undertake various improvements and additions to certain existing port facilities located, and will

construct new port facilities to be located, at the Port, and will acquire and develop the facilities necessary for the transportation, in state use, and sale of natural gas that is currently stranded at the Location (the "Project").

As a result of the availability of natural gas through the Project, the cost of electricity to the State's residents will be substantially reduced. Excess gas not used in-state will be available for other uses.

The Authority is governed by a board of directors appointed by its member governmental units A, B, and C. The Authority has the power to acquire, by purchase, lease, contribution, condemnation, or otherwise, real and personal property for the Project. State law provides that the Authority has the same power of eminent domain as that possessed by A, B, and C. Specifically, the Authority may commence eminent domain actions, in its own name, in the appropriate court of the State to acquire land or materials within its physical boundaries for Authority purposes, and may take possession of the property upon commencement of the proceedings.

The Authority's revenues will be derived primarily from the sale of natural gas to municipalities within the State and to other purchasers, which are expected to include governmental and private entities. These revenues will be used first generally to pay operating expenses and debt service and to fund necessary reserves for operation of the Project. Any net income will be shared with the State and all of its municipalities for use in their respective governmental purposes. Upon dissolution of the Authority, its assets will be distributed to its member governmental units.

In addition to contributions from the participating governmental units, the Authority is authorized to issue bonds or any other form of indebtedness to raise funds to finance the Project.

Law and Analysis

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 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.

In determining whether an entity is a division of a state or local governmental unit, important considerations are the extent the entity is (1) controlled by the state or local government unit, and (2) motivated by a wholly public purpose. Revenue Ruling 83-131, 1983-2 C.B. 184.

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 Alexander J. 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 powers enumerated in Shamberg be delegated. Rev. Rul. 77-164, 1977-1 C.B. 20; Rev. Rul. 77-165, 1977-1 C.B. 21. However, possession of only an insubstantial amount of any or all 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.

Indicia that the Authority is governmentally controlled are: (1) the Authority is governed by a board of directors appointed by its member governmental units A, B, and C; (2) the Authority's net revenues inure to the benefit of the State and its municipalities; and (3) the Authority's assets will be distributed to its member governmental units upon dissolution. The Authority is motivated by a wholly public purpose.

Under State law the Authority is granted broad powers of eminent domain within its physical boundaries. The Authority is authorized to commence actions in the appropriate court of the State to enforce this right and will be able to take possession of property upon commencement of the condemnation proceedings rather than after judgment. These exercises of the power of eminent domain are commensurate with a substantial exercise of that power.

Conclusion

Based solely on the representations made, we conclude that the Authority is a political subdivision for purposes of § 103. Accordingly, the Authority is not required to file federal income tax returns or pay federal income tax on its income.

Except as specifically stated above, no opinion is expressed regarding the consequences of this transaction under any provision of the Code or regulations thereunder.

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

Sincerely yours,

Assistant Chief Counsel
(Financial Institutions & Products)

By: _____
Timothy L. Jones
Assistant to the Chief, Branch 5

Enclosure:
Copy for § 6110 purposes

cc: