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IRS Lists Factors for Determining if Entity Is an Instrumentality of State or Local Government.

The IRS listed the six factors that it takes into consideration when determining whether an entity is an instrumentality of a state or local government within the meaning of section 3121(b)(7)(F) for employment tax purposes.

UIL: 3121.02-08

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Refer Reply To: CC:TEGE:EOEG:ET2 – GENIN-130256-13

Dear * * *:

This is in response to your request for a general information letter dated June 21, 2013, concerning whether a wholly privately owned company can be a political subdivision or an instrumentality of a State or political subdivision within the meaning of Internal Revenue Code (Code) § 3121(b)(7)(F).

Section 3121(b)(7) was added to the Code by the Omnibus Budget Reconciliation Act of 1990. This section generally expands the definition of employment for purposes of the Federal Insurance Contributions Act to include service as an employee for a state or local government entity. Section 3121(b)(7) requires in relevant part that an "instrumentality" be "wholly owned" by the state, or any political subdivision thereof. The fact that employees of an entity are members of a § 3121(b)(7)(F) "retirement system" is not determinative of whether the entity is an instrumentality of a state or political subdivision. An entity that is wholly privately owned cannot qualify as an instrumentality of a state or political subdivision within the meaning of § 3121(b)(7).

In Revenue Ruling 57-128, 1957-1 C.B. 311, the Service provided the following six factors to be taken into consideration when determining whether an entity is an instrumentality of a state or local government within the meaning of § 3121(b)(7): (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.

If an entity cannot satisfy the factors of Revenue Ruling 57-128, the entity is not an instrumentality of a state or local government within the meaning of § 3121(b)(7) even if its employees participate in a retirement system maintained by a state or local government.

We hope this general information is helpful. If you have any questions, please contact * * * of my staff. * * * can be reached at * * *.

Sincerely,

Lynne Camillo

Branch Chief, Employment Tax

Branch 2

(Exempt Organizations/

Employment Tax/Government Entities)

(Tax Exempt & Government Entities)

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