

# **Bond Case Briefs**

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## **IRS LTR: Organization Is Instrumentality of State and May Receive Contributions.**

The IRS ruled that a member institution of a state board that approves operating and capital budgets of each institution in the state's university and community college system is an instrumentality of the state and may receive charitable contributions under section 170(c)(1).

Index Number: 501.03-26

Release Date: 3/14/2014

Date: August 9, 2013

Refer Reply To: CC:TEGE:EOEG:E0 - PLR-127207-12

Dear \* \* \*:

This is in reply to your letter dated June 18, 2012, requesting a ruling on behalf of Organization. You requested a ruling that Organization is an instrumentality of State and is eligible to receive charitable contributions under Section 170(c)(1) of the Internal Revenue Code ("Code").

### **FACTS AND REPRESENTATIONS**

State Board was established in Year 1 by act of State legislature; the act was codified at Statute. State Board is an integral part of State. The government, management and control of the State university and community college system are vested in State Board. State Board approves the operating and capital budgets of each of the institutions in the State university and community college system. Organization is a member institution of the State Board and serves a governmental purpose of educating the citizens of the State. Organization was established as an instrumentality of State operating as a public institution of higher learning. The purpose of Organization is to support educational excellence in State. Organization represents that contributions made to it are for exclusively public purposes.

Organization is governed by State Board composed of x members (including four ex officio members who shall be the Governor, the Commissioners of Education and Agriculture, and the Executive Director of Commission. A majority of the members of the State Board are appointed by the Governor of State.

Organization is attached for administrative purposes to Commission, which establishes a formula for distribution of public funds through which Organization receives State operating and capital appropriations. State exercises oversight of Organization's finances through Commission.

### **LAW**

Revenue Ruling 57-128, 1957-1 C.B. 311, sets forth the factors to be taken into account in determining whether an entity is an instrumentality of one or more governmental units: (1) whether the organization 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 have

the power and interests of an owner; (4) whether control and supervision of the organization is vested in a public authority or authorities; (5) whether express or implied statutory or other authority is necessary for the creation and/or use of the organization, and whether this authority exists; and (6) the degree of financial autonomy of the entity and the source of its operating expenses. Each of these factors must be evaluated in order to determine if Organization is an instrumentality of the State.

Section 170(a)(1) allows, subject to certain limitations, a deduction for charitable contributions as defined in section 170(c), payment of which is made within the taxable year. Section 170(c)(1) includes in the definition of "charitable contribution" a contribution or gift made for exclusively public purposes to or for the use of a state, a possession of the United States, a political subdivision of either a state or possession of the United States, the United States, or the District of Columbia. Entities eligible to receive tax deductible contributions include not only governmental units described in section 170(c)(1), but also wholly owned instrumentalities of states and political subdivisions.

## ANALYSIS

Organization satisfies the first factor listed in Rev. Rul. 57-128, which requires it to have a governmental purpose and perform a governmental function. The purpose of Organization is to support education in State.

Organization satisfies the second factor, as it performs its function on behalf of State Board. State Board is established pursuant to Statute. State Board is an integral part of State. Organization therefore performs its function on behalf of State.

Organization satisfies the third factor, because no private interests are involved and the State has the power and interest of an owner. Organization is controlled by State Board, an integral part of the State. State Board approves the operating and capital budgets of Organization.

Organization satisfies the fourth factor. Organization is governed by State Board. State Board was created by act of State legislature. Control and supervision of Organization is therefore vested in a public authority.

Organization satisfies the fifth factor, because State Board was created by an act of the State legislature. Organization is a member institution of State Board and provides educational benefits to the people of State. Thus, statutory authority is necessary for the Organization to provide educational services to State.

Organization satisfies the sixth factor, which considers the source of operating expenses as well as the degree of financial autonomy. Organization's source of operating funds is from money, services and property from Commission. Organization is statutorily limited to specific purposes.. State indirectly controls Organization's finances because State controls State Board. A majority of State Board members are appointed by the Governor. Committee requires Organization to maintain financial records consistent with the requirements of Committee.

Organization satisfies all factors enumerated in Revenue Ruling 57-128. Accordingly, Organization is an instrumentality of State and is eligible to receive charitable contributions under Section 170(c)(1) of the Code.

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

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not

be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Casey A. Lothamer  
Senior Technician Reviewer  
(Exempt Organizations Branch)  
(Tax Exempt & Government Entities)

AUGUST 9, 2013  
Citations: LTR 201411018

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