Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:

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LEGEND:

Corporation =

Department =
Commission =

State X =
City A =

Date 1 =
Date 2 =
Date 3 =

Provision 1 =

Provision 2 =

Provision 3 =

This is in response to a letter dated February 4, 1998, requesting a ruling concerning the exclusion of income of the Corporation from gross income under § 115 of the Internal Revenue Code. Corporation also has requested a ruling under § 141 of the Code. Pursuant to Section 8.02(1) of Rev. Proc. 98-1 C.B. 7, 31, that ruling will be addressed in a separate response.

FACTS

Corporation is a "state infrastructure bank" under a federal pilot program established under the National Highway System Designation Act of 1995, P.L. 104-59 ("the "Highway Act") which became law on November 28, 1995. Corporation acts on behalf of Commission that governs Department and supervises public

transportation in State X. According to the Application submitted by the Department to the Federal Highway Administration and the Federal Transit Administration on Date 1, the initial project to be undertaken under the State X infrastructure program is the inter-modal center located in City A. In addition, Corporation is involved in numerous road, bridge, and inter-modal transportation projects at various locations throughout State X.

Section 350 of the Highway Act authorizes the Secretary of Transportation to establish state infrastructure banks and multistate infrastructure banks by entering into cooperative agreements with 10 States. Under the Highway Act, a state is allowed to transfer certain federal highway and transit funds to separate accounts to be held by the infrastructure bank. An infrastructure bank may make loans or provide other assistance to a public or private entity to pay costs of projects eligible for assistance under § 350. On Date 2, State X was selected to participate in the pilot state infrastructure program under the Highway Act.

The Department was created by Provision 1 as part of the executive department of the State. Under Provision 2, the Department is in charge of the Commission; the Commission has "authority over all state transportation programs and facilities as provided by law, including, but not limited to, bridges, highways, aviation, railroads, mass transportation, ports, and waterborne commerce". Provision 3 gives the Commission the "authority to locate, relocate, establish, acquire, construct, maintain, control, and as provided by law to operate, develop or fund public facilities as part of any state transportation program such as but not limited to, aviation, mass transportation, railroads, ports, and waterborne commerce..."

Under the laws of State X, the Commission comprises six members appointed by the governor with the advice and consent of the State senate. The Commission is given authority to supervise highways and bridges that are constructed, improved, and maintained through the use of state and federal funds; to prescribe rules and regulations fixing the duties of all persons employed by the state highways and transportation commission; to aid county engineers and other officials of civil subdivisions in establishing gradients and alignments, and preparing suitable systems for maintenance of highways and bridges; to prepare standard plans, specifications, and estimates for all state highways and for the repair and improvement of highways and bridges by civil subdivisions as well as for the construction of bridges; to promote highway improvement throughout State X; and to construct, under its own direction and supervision, all roads, culverts, or bridges.

On Date 3, the Commission authorized the formation of Corporation to act as the infrastructure bank for State X. Corporation is a nonprofit, public benefit corporation organized under the laws of State X. According to the Articles of Incorporation, Corporation is organized for the following purposes:

(1) To benefit and carry out the purposes of the Commission by providing, or assisting in the provision of, the funding, establishment, acquisition, development, promotion, planning, design, construction, improvement, acquisition, maintenance, or operation of transportation projects, facilities, equipment, and systems in State X.

(2) To cooperate with the Commission toward the continued economic, social, industrial, cultural, and commercial growth of State X, act in the public interest, and promote the health, safety, and general welfare of the citizens of State X by providing financing and other assistance to public and private entities carrying out or proposing to carry out transportation projects in State X.

(3) To issue revenue bonds and refunding revenue bonds for the purposes set forth herein.

(4) To secure and obtain to the extent authorized by law rights-of-way for transportation projects.

(5) To perform functions normally undertaken by the Commission and its staff, thus reducing the burdens and demands on limited funds available to the Commission.

The Corporation has no members or shareholders as such; its business and affairs are managed by a self-perpetuating Board of Directors. The Board consists of seven members, all of whom must be approved by the Commission. The directors are divided into three groups. Group 1 consists of two current members of the Commission. Group 2 consists of three employees of the Department: the Chief Engineer, the Chief Operating Officer, and the Director of Multimodal Operations. Group 3 consists of two at-large members with knowledge in the field of business or finance.

The Bylaws of the Corporation provide that no part of the net earnings or other assets of the Corporation inure to the benefit of, or are distributable to, any director, officer, contributor, or other private person, having, directly or indirectly, any personal or private interest in the activities of the Corporation, except that the Corporation is authorized to pay reasonable compensation for

services rendered and to make payments and distributions to further the purposes of the Corporation.

The Board has adopted amendments to the Articles of Incorporation and Bylaws to provide that upon dissolution of the Corporation and after payment of all debts and satisfaction of all liabilities and obligations of the Corporation, any remaining assets of the Corporation are distributed to the Commission, if then in existence, and, if not in existence, then to State X.

LAW AND ANALYSIS

Section 115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a state or political subdivision of a state.

When determining if § 115(1) applies, the Service considers all the facts and circumstances relating to the organization to determine whether the organization performs an essential governmental function and whether the income of the organization accrues to a state or a political subdivision of the state.

Rev. Rul. 90-74, 1990-2 C.B. 34, concerns an organization formed, operated, and funded by political subdivisions to pool their casualty risks and other risks arising from their obligations concerning public liability, workers' compensation, or employees' health obligations. The ruling states that the income of such an organization is excluded from gross income under § 115(1) so long as private interests do not participate in the organization or benefit more than incidentally from the organization. The benefit to the employees of the insurance coverage obtained by the member political subdivisions was deemed incidental to the public benefit.

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income from a fund, established under a written declaration of trust by a state, for the temporary investment of positive cash balances of a state and its political subdivisions, is excludable from gross income under § 115(1) of the Code. The ruling reasons that the investment of positive cash balances by a state or political subdivision in order to receive some yield on the funds until needed to meet expenses is a necessary incident of the power of the state or political subdivision to collect taxes and raise revenue.

Corporation acts on behalf of Commission in facilitating the construction, improvement, maintenance, and repair of highways, bridges, and roads throughout State X. In addition, Corporation is involved in several inter-modal transportation projects throughout the state. Based upon Rev. Rul. 90-74 and Rev. Rul. 77-261, the Corporation performs an essential governmental function within the meaning of § 115(1) of the Code.

Corporation is organized as a non-profit corporation under the laws of State X. Every corporation as defined in § 7701(a)(3), subject to taxation under subtitle A, is required to file an income tax return regardless of whether it has taxable income and regardless of its gross income. Accordingly, Corporation will be required to file income tax returns pursuant to § 6012(a)(2).

Except as specifically ruled upon above, no opinion is expressed or implied as to the federal tax consequences of the transaction described above under any other provision of the Internal Revenue Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the provisions of a power of attorney currently on file, we are sending a copy of this ruling letter to your authorized representative.

Sincerely,

Assistant Chief Counsel
(Financial Institutions and Products)

By: Alice M. Bennett
Alice M. Bennett
Chief, Branch 3

enclosures: Copy of letter for section 6110 purposes