

Private Letter Ruling 200724019

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LEGEND:

Commission = \* \* \*

Fund = \* \* \*

State = \* \* \*

Dear \* \* \*

This responds to your request for a ruling that Commission is an instrumentality of State for purposes of § 141 of the Internal Revenue Code (the "Code"), and eligible to receive contributions to the Fund that are deductible as charitable contributions under § 170(a).

FACTS AND REPRESENTATIONS

You make the following factual representations. Commission was established by State to supervise Fund, which was specifically created by an act of the State legislature to provide financial assistance to State citizens who incur brain and spinal cord injuries. Commission also collects information from public and private health and social agencies regarding individuals who suffer spinal cord or head injuries, and refers such individuals to available resources for treatment and rehabilitative services.

Commission receives funding for Fund from penalty assessments for violations relating to driving under the influence of alcohol and drugs, federal grants, and gifts and donations from individuals, private organizations, or foundations. Fund is kept as a separate fund in the Treasury of State. All assets contributed to Fund are owned by State, and no private individual or private entity has any interest in or rights to such assets at any time.

All members of Commission are appointed for two year terms. One-third of the Commission members are appointed by State agencies and the rest of the Commission members are appointed by the governor of State. The governor of State may remove any Commission member for cause. Commission is assigned to the department of human resources of State, and is subject to audit by the accounting office of State. No disbursements may be made from Fund without the recommendation of Commission and the approval of the governor of State.

LAW AND ANALYSIS

Section 170(a)(1) allows, subject to certain limitations, a deduction for charitable

contributions as defined in § 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, or any political subdivision of any of the foregoing, or the United States or the District of Columbia.

Entities eligible to receive tax deductible contributions include not only governmental units described in § 170(c)(1) but also wholly owned instrumentalities of States or political subdivisions. See Rev. Rul. 75-359, 1975-2 C.B. 79; Rev. Rul. 79-323, 1979-2 C.B. 106.

Revenue Ruling 57-128, 1957-1 C.B. 311, sets forth the following 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.

Commission is used for a governmental purpose and performs a governmental function on behalf of State. Commission provides financial assistance to State citizens who incur brain and spinal cord injuries, and refers them to available resources for treatment and rehabilitation. Commission also collects information from public and private health and social agencies regarding individuals who suffer spinal cord or head injuries.

There are no private interests in Commission, and State has the power and interests of an owner. Fund is kept as a separate fund in the Treasury of State. All assets contributed to Fund are owned by State, and no private individual or private entity has any interest in or rights to such assets at any time. All members of Commission are appointed by either State agencies or the governor of State for two year terms. The governor of State may remove any Commission member for cause.

Fund was specifically created by an act of State legislature, and Commission was established by State to supervise Fund.

The financial affairs of Commission are controlled by State. Commission is assigned to the department of human resources of State, and is subject to audit by the accounting office of State. No disbursements may be made from Fund without the recommendation of Commission and the approval of the governor of State.

## CONCLUSION

We conclude that Commission is an instrumentality of State. Contributions to Commission are deductible to the extent allowed under § 170.

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.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to Commission's authorized representative.

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

Sincerely yours,

Assistant Chief Counsel  
(Exempt Organizations/Employment  
Tax/Government Entities)

By:  
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