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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Number: 0115.00-00

Mr. Gary Barnes, Chief Financial Officer
WestEd
4665 Lampson Avenue
Los Alamitos, CA 90720-5199

Person to Contact:

Adrian Michur
Telephone Number:
(202) 622-3089

Refer Reply to:

CC:DOM:FI&P:2 PLR-253942-96

Date: MAY 1 1997

- X = WestEd
EIN: 94-3233542
- Y = Far West Laboratory for Educational Research and Development
EIN: 94-1625540
- Z = Southwest Regional Laboratory for Educational Research and Development
EIN: 94-2428178
- Pact = Joint Powers Agreement
- Law 1 = Section 6500, Title 1, Division 7, Chapter 5, Article 1, California Government Code
- Law 2 = Section 6502, Title 1, Division 7, Chapter 5, Article 1, California Government Code
- Law 3 = Section 6507, Title 1, Division 7, Chapter 5, Article 1, California Government Code
- Law 4 = Section 6508, Title 1, Division 7, Chapter 5, Article 1, California Government Code
- Letter 1 = Determination letter dated August 16, 1966
- Letter 2 = Letter dated October 18, 1966
- District 1 = San Francisco District
- District 2 = Los Angeles District
- State 1 = California
- State 2 = Arizona
- State 3 = Nevada
- State 4 = Utah

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Dear Mr. Barnes:

This is in reply to a letter dated November 25, 1996, and subsequent correspondence, requesting a ruling that the income of X is excludable under section 115 of the Internal Revenue Code. The information submitted for consideration is summarized below.

X, Y and Z are public agencies under Law 1 of State 1. The members of X are Y and Z. The members of Y and Z are agencies of State 1, State 2, State 3 and State 4.

Under Law 2 of State 1, public agencies may agree to jointly exercise any power common to the agencies, even though one or more of the contracting agencies may be located outside State 1. Such agreements are known as "Pacts" and establish an entity that is itself a public agency for purposes of Law 1.

Under Law 3 of State 1, a Pact is a public entity separate from the parties forming it.

Under Law 4 of State 1, a Pact that has the power to hire employees, make contracts, or to hold, receive, or dispose of property can sue or be sued in its own name. X, Y, and Z each have these powers.

In Letter 1, the District Director of District 1 informed Y that it was not subject to federal income tax. The letter states that it is a determination letter, and cites section 115(1) of the Code.

In Letter 2, the District Director of District 2 informed Z that it was not subject to federal income tax, stating that Z was an instrumentality of a state.

Y and Z formed X to combine or merge the educational research and related educational activities previously conducted separately by Y and Z. X's goal, as stated in the documents relating to its formation as a Pact, is to develop fundamental improvements in education and to conduct educational research to benefit the public and private schools, colleges, and universities of States 1, 2, 3, and 4 ("Schools"). X's activities include:

1. Participating in school reform by converging educational research into practical applications, providing knowledge and assistance to Schools.
2. Distributing educational knowledge to Schools through publications, conferences, seminars, and electronic networks.

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3. Helping to plan and execute long-term educational reform programs.
4. Implementing new curricula within school districts.
5. Conducting applied educational research on practical questions, such as how students learn and what is needed to implement schoolwide changes.
6. Providing strategic policy analysis, evaluating efforts to change, and developing educational products such as training modules, instructional videos, planning guides and casebooks.

The goals and activities of X are virtually identical to those of Y and Z.

X is funded by federal, state, and local government, as well as private foundations, which provide grants and research contracts. X conducts its activities throughout the United States, but concentrates them in States 1, 2, 3, and 4. X's activities are conducted exclusively by its own employees, who are hired and paid directly by X. X is controlled by a board of directors composed of all of the directors of Y and Z. The directors of Y and Z are appointed by the governing bodies or executive officer, as the case may be, of the public agencies that are the membership of Y and Z.

Section 115(1) of the Code 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 any political subdivision of a state.

Rev. Rul. 71-589, 1971-2 C.B. 94, provides that the income from property held in trust by a city that was to be used by the city for certain charitable purposes is not subject to federal income tax. Although Rev. Rul. 71-589 does not explicitly so state, the holding in the revenue ruling means that a determination was made that the income in question was derived from the exercise of an essential governmental function and accrued to a political subdivision within the meaning of section 115(1) of the Code. Rev. Rul. 71-589 specifically mentions several types of functions that the trust might perform, such as support of a hospital, schools, maintenance of a park, or other purposes ordinarily recognized as municipal functions.

Rev. Rul. 90-74, 1990-2 C.B. 34, concerns an organization that is formed, operated and funded by political subdivisions to pool their casualty risks, or other risks arising from their obligations concerning public liability, workers' compensation, or employees' health. Rev. Rul. 90-74 states that the income of

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the organization is excluded from gross income under section 115(1) of the Code if private interests do not participate in the organization or benefit more than incidentally from the organization. In Rev. Rul. 90-74 the benefit to the employees of the political subdivisions was excepted as incidental.

Under Rev. Rul. 77-261, 1977-2 C.B. 45, the income from a fund, established under a written declaration of trust by a state for the temporary investment of cash balances of the state and its political subdivisions, which purchase units of participation and have an unrestricted right of withdrawal, is excludible from gross income. The fund, however, is classified as a corporation and must file a federal income tax return.

Providing the Schools of States 1, 2, 3, and 4 with X's services is an essential governmental function because it is of direct benefit to the agencies comprising the memberships of Y and Z. These agencies are engaged in providing educational services, independently of the activities of X, Y, and Z. The fact that the work-product of X may be shared with private schools within States 1, 2, 3, and 4 or the rest of the United States, or to nonprivate schools within the rest of the United States, is merely an incidental private benefit. There are no facts indicating that the work-product of X is not the proprietary material of X, Y, or Z.

Accordingly, the income of X is excludable from gross income under section 115 of the Code.

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

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

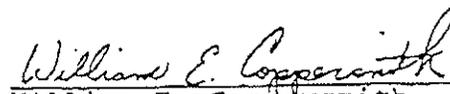
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In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Acting Assistant Chief Counsel
(Financial Institutions & Products)

By:



William E. Coppersmith
Chief, Branch 2

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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Number: 0115.00-00

Person to Contact:

Telephone Number:

Refer Reply to:

CC:DOM:FI&P:2 PLR-253942-96

Date: MAY 1 1997

X =

Y =

Z =

Pact =

Law 1 =

Law 2 =

Law 3 =

Law 4 =

Letter 1 =

Letter 2 =

District 1 =

District 2 =

State 1 =

State 2 =

State 3 =

State 4 =

This document may not be used or cited as precedent.
Section 6110 (i) (3) of the Internal Revenue Code.