

Internal Revenue Service

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4041.00-00

University of Texas System  
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Date: 20 MAR 1984

University System = University of Texas System  
EIN: 74-6000203 DO 74 TY 84  
B = University of Texas at Arlington  
C = University of Texas at Austin  
D = University of Texas at Dallas  
E = University of Texas at El Paso  
F = University of Texas of the Permian Basin  
G = University of Texas at San Antonio  
H = University of Texas at Tyler  
I = University of Texas Institute of Texan  
Cultures at San Antonio  
J = University of Texas Health Science  
Center at Dallas  
K = University of Texas Medical Branch at  
Galveston  
L = University of Texas Health Science  
Center at Houston  
M = University of Texas Health Science  
Center at San Antonio  
N = University of Texas System Cancer  
Center  
O = University of Texas Health Center at  
Tyler  
State = State of Texas  
Board = Board of Regents of the University of  
Texas System  
University = University of Texas

Dear Sir or Madam:

This is in response to a letter submitted on behalf of the University System and its component institutions requesting rulings concerning the tax status of these organizations.

According to the information submitted, the establishment of the University was mandated by section 10, article 7 of the constitution of State. Subsequently, the legislature

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established the University System under section 65.02 of Title 3, Tex. Education Code Ann. (Vernon) and organized thereunder the University and its component educational institutions listed as following: B, C, D, E, F, G, H, I, J, K, L, M, N, and O (collectively referred to as the "University System").

Statutory provisions vest the management, operation and control of the University System in the Board. Nine individuals, appointed by the governor of State with the advice and consent of the senate, serve on the Board and are included within the statutory definition of state employees. Additionally, the treasurer of the State has been designated as the treasurer of the University System.

The Board is authorized to prescribe the courses and programs of study that are required to obtain a degree from any of the component institutions in the University System. However, the Board may not establish a four-year undergraduate degree program at a component institution that has not been authorized to do so by specific legislation without obtaining prior approval by a two-thirds vote of the coordinating board of the University System and a specific act of the legislature.

The Board is empowered to make appointments in the component institutions under its control. In its discretion, the Board may also remove any officer, member of the faculty, or employee connected with the University System. The Board is authorized to accept gifts and donations for the benefit of the University System and any of its component institutions. Additionally, the Board has the power of eminent domain to acquire any land that may be necessary for the use of the University System and the taking of such property has been declared to be for the use of the State.

Section 115(1) of the Internal Revenue 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 thereof.

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Section 115 of the Code does not apply to the states or their political subdivisions, such as counties or towns (or integral parts thereof). Generally, the activities of states and their political subdivisions are exempt from federal income taxation in accordance with the constitutional law doctrine of intergovernmental tax immunity. Also, see Rev. Rul. 71-131, 1971-1 C.B. 28 and Rev. Rul. 71-132, 1971-1 C.B. 29, which hold that income derived from the operation of liquor stores by a state is not subject to federal income tax. Thus, section 115 only applies to organizations that are separate and apart from the state and its political subdivisions.

Based on the information submitted, we conclude that section 115 of the Code does not apply to the income of the University System and its component institutions because they are not organizations established separately from the State. The activities and organizational structure of the University System and its component institutions are established as an integral part of the State's public education program. Therefore, we conclude that the University System and its component institutions are not subject to federal income taxation because they are agencies within State's government.

Section 170(a) of the Code provides, subject to certain limitations, a deduction for contributions and gifts to or for the use of organizations described in section 170(c), payment of which is made within the taxable year.

Section 170(c)(1) of the Code provides, in part, that the term "charitable contribution" means a contribution or gift to or for the use of a state or any political subdivision thereof, but only if the contribution or gift is made exclusively for public purposes.

Section 170(b) of the Code provides, in part, that in the case of an individual, the deduction provided in section 170(a) shall be allowed for any charitable contribution to a governmental unit referred to in section 170(c)(1) to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

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Because we have determined that the University System and its component institutions are agencies within State's government, these organizations are described in sections 170(b)(v) and 170(c)(1). Therefore, we conclude that contributions to the University System and its component institutions are deductible by donors under section 170 of the Code provided such contributions are made for exclusively public purposes.

Section 2522(a)(1) of the Code provides that in determining the amount of taxable gifts for the calendar year there may be deducted in the case of a donor who was a citizen or resident of the United States at the time the gifts were made, all gifts included in the "total amount of gifts" made by the donor during the calendar year which were made to or for the use of the United States, any state or political subdivision thereof or the District of Columbia for exclusively public purposes.

Section 4.04 of Rev. Proc. 84-1, 1984-1 I.R.B. 10 provides that no gift tax ruling may be issued except to an actual taxpayer upon a specific set of facts. For purposes of the gift tax, the taxpayer is the donor. However, to the extent that the University System is a charity described in section 2522(a)(1) of the Code and all other requirements of section 2522 are met at the time of the gift, transfers to the University System and its component institutions will meet the requirements of that section of the Code.

We regret that we are unable to issue rulings with respect to sections 2055 and 2106 of the Code. Section 5.02 of Rev. Proc. 84-1 provides that the National Office will not rule on matters relating to the application of the estate tax to the property or estate of a living person.

We also are unable to issue a ruling as to the application of section 2602 of the Code. Section 5.02(1) of the foregoing Rev. Proc. provides that rulings are not issued until after the generation skipping trust, or trust equivalent, has been established. Rulings are not issued on a generation skipping transfer tax matter before distribution or termination takes place.

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Section 4041(g)(2) of the Code exempts from the taxes on diesel and special motor fuels imposed by section 4041 sales for the exclusive use of any state, political subdivision thereof, or the District of Columbia. Comparable exemptions from the tax on fuel used in commercial transportation on inland waterways, the tax on heavy trucks and trailers, the manufacturers excise taxes, the tax on communications and the highway use tax are provided by sections 4042(e)(3), 4053(b), 4221(a)(4), 4253(i), and 4483(a), respectively. Also, section 4991(b)(1) of the Code exempts oil from the windfall profit tax imposed by section 4986 where the oil is from an economic interest held by a state or political subdivision thereof and all the net income therefrom is dedicated to a public purpose.

Because the University System and its component institutions are a part of the State, they qualify for the state exemptions from federal excise taxes cited above.

Section 2 of Rev. Proc. 84-1 provides that procedures for obtaining rulings that apply specifically to federal firearms taxes under subtitle E of the Code are under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms. Therefore, we are unable to issue rulings with respect to sections 5123, 5214, 5362, and 5853 of the Code.

Section 509(a) of the Code provides that the term private foundation means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A).

Section 501(c)(1) provides for the exemption of corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from federal income taxes.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

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Section 6033(a)(1) of the Code provides that, except as provided in paragraph (2), every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe.

Section 1.6033-2(g)(1) provides that a state institution, the income of which is excluded from gross income under section 115(a), and which is otherwise exempt under section 501(a) is not required to file an annual information return on Form 990.

Rev. Rul. 60-384, 1960-2 C.B. 172 provides that a wholly-owned state or municipal instrumentality which is a separate entity (emphasis added) and which is organized and operated exclusively for purposes described in section 501(c)(3) of the Code may qualify for exemption. A state or municipality itself, however, would not qualify as an organization described in section 501(c)(3).

Chapter 13 of the Exempt Organizations Business/Master File Handbook provides guidelines and procedures for listing organizations in the Cumulative List of Organizations in Publication 78 (Pub. 78).

Generally, the organizations listed in Pub. 78 are those that have applied for, and received a determination or ruling letter recognizing them to be exempt under section 501(c)(3). Since the University System and its component institutions have not applied for recognition of exemption under section 501(c)(3) and received a ruling or determination letter favorably recognizing such status and are not organizations exempt under section 501(c)(1), they do not meet the criteria for listing in Pub. 78. The University System and its component institutions were removed from the Exempt Organizations Master File because they had been erroneously listed as organizations recognized to be exempt under section 501(c)(1).

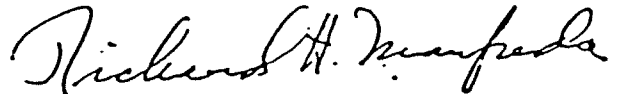
No opinion is expressed as to the federal income tax consequences of the transaction described above under any

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other provision of the Code.

This ruling is directed only to the organizations that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,



Chief, Individual Income  
Tax Branch

Enclosures 2  
Copy of this letter  
Copy for section 6110 purposes