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TY:

Legend

Corporation X =

Corporation Y =

Corporation Z =

Corporation M =
City =
State =
Partnership =
Fund =
Department G =
r =

Dear :

This is in reply to your request for rulings on behalf of Corporation Y and Corporation Z. You have requested rulings on the following issues:

(1) Whether Corporation Y will be a wholly owned instrumentality of the City for purposes of section 3121(b)(7) of the Internal Revenue Code (Code).

(2) Whether Corporation Y may treat an employee, including a part-time, seasonal employee, as a qualified participant in a retirement system for purposes of section 3121(b)(7)(F) of the Code for any period of service for which the combination of the employer nonelective contributions under Corporation Y's plan intended to qualify under section 401(a) and the employee's elective deferrals under Corporation Y's plan

intended to qualify under section 457(b) exceed 7.5 % of the employee's compensation; and

(3) Whether all currently anticipated income of Corporation Y and Corporation Z will qualify for the exclusion from gross income under section 115 of the Code.

Facts

Corporation Y and Corporation Z were recently formed by a directive of the mayor of the City to take over the activities of Corporation X. Corporation X is a local development corporation under City nonprofit corporation law. Corporation X is recognized under federal tax law as a section 501(c)(3) organization and has received a private letter ruling holding that it is a wholly-owned instrumentality of the City. Corporation X serves as the City's primary vehicle for economic development.

Corporation X strives to lessen the burdens of government and to act in the public interest by promoting economic growth and development in the City, primarily by encouraging and coordinating the use of public and private funds for lending to, and investing in, various private businesses as well as private and public economic projects. Corporation X's activities on behalf of the City include managing property; undertaking capital projects; disposing of land; developing initiatives to support and expand specific economic sectors; serving as the City's development consultant; supporting organizations that promote economic development in the City; administering financial assistance and other incentive programs; advising the City on maritime, freight rail, and aviation policy; and developing workforce initiatives.

As part of its administration of economic development incentive programs, Corporation X formed the Fund as a wholly-owned subsidiary to invest in eligible seed and early-stage technology companies, with such investment intended as an incentive for private firms to invest in these same businesses. The Fund makes its investments in tandem with two funds managed by a private venture capital firm, which performs extensive due diligence to identify appropriate businesses for the program at no cost to the Fund. For each investment the Fund makes, one of the funds managed by the private venture capital firm will make an investment at least equal to the Fund's investment, with sufficient funds held in reserve to make significantly greater subsequent investments if appropriate.

All of Corporation X's income and earnings must be used exclusively for its corporate purposes or must accrue and be paid to Corporation M, a public benefit corporation under State law. No part of its income or other property may inure or be distributed to any private interest. Upon dissolution, any funds or property remaining after the satisfaction of liabilities must be distributed to the City.

The City controls the selection of Corporation X's members. The mayor appoints some of the members directly, some upon nomination by presidents of city political divisions,

some upon nomination by an official of the City council, and one after consultation with the Partnership, with the latter appointee becoming the chairman of the board. The chairman then appoints a number of members from a list approved by the mayor. Appointments are made annually.

The members will elect each year from their number those who will serve as directors. Any director may be removed, with or without cause, at any membership meeting by majority vote.

The City controls the activities of Corporation X through two contracts (the "City Contracts") by which Corporation X provides economic development services for the City. Each contract has an annual term, subject to the City's right to extend it for up to 12 months. The City, through the deputy mayor and other City officials, has extensive authority under the contracts to review, direct, and control Corporation X's programs and expenditures, including the inspection of books and records.

As a local authority under state law, Corporation X must comply with various requirements, such as those for financial reporting, corporate governance, and public disclosure. Corporation X is also subject to the public disclosure requirements of State law.

With only limited exceptions, Corporation X's funding is provided by the City or is generated by the performance of services under the City Contracts, with the vast majority of its expenditures being made out of funds from the City for specific projects. All of Corporation X's expenses are incurred performing services under the contracts. A significant amount of Corporation X's revenues and expenses arise from its administration of the City's electrical subsidy program for certain eligible businesses.

Through its extensive authority under the City Contracts to review and approve Corporation X's budget and project expenditures, as well as its authority to compel Corporation X to pay over Corporation X assets the fair market value of which exceed r dollars, an amount specified in the contracts, the City has effective control over Corporation X's expenditures and financial assets.

Corporation X will merge into Corporation Y and Corporation Y will be the survivor of the merger. Corporation Y is a not-for-profit corporation but not a local development corporation. Corporation Y will further the public purposes for which Corporation X was formed, its governance structure will be identical to that of Corporation X, and it will become a party to the city contracts under which Corporation X operated. Corporation Y's activities will be substantially similar to Corporation X's, with two notable exceptions: in most cases Corporation Y will not acquire real estate by purchase or lease directly from the City for subsequent transfer to private parties, and Corporation Y will engage in legislative advocacy to influence federal, state, and local laws and policies affecting economic development in the City.

Because Corporation Y is not a local development corporation under state law, a new local development corporation, Corporation Z, also has been formed. Corporation Z will have five member/directors, all of them appointed annually by the mayor, with the mayor designating one as chairman of the board. No member of Corporation Z may be a member or director of Corporation Y. Any director may be removed, with or without cause, at any membership meeting by majority vote. After the merger of Corporation X and Corporation Y, Corporation Y will enter into agreements with private parties to sell or lease property to be acquired from the City. Corporation Z will purchase or lease property from the City and then transfer the property (by sale, assignment, or sublease) to Corporation Y or to a third party at Corporation Y's direction.

The primary purpose of the proposed transaction is to separate those functions of Corporation X that must be performed by a local development corporation from those that need not, enabling Corporation Y to participate in legislative advocacy activities that further its public purposes. The proposed merger of Corporation X and Corporation Y will be subject to review by the State attorney general and to approval by the State appellate court.

Corporation Y intends to adopt a new money purchase plan that it intends to be qualified under section 401(a). All Corporation Y employees will become eligible to participate in Corporation Y's plan after two years of service with Corporation Y, except (i) leased employees and (ii) part-time employees and student interns working less than 1,000 hours per year. There will be no minimum age requirement. The plan will provide for employer nonelective contributions only. The employer nonelective contributions will equal % of compensation after two years of service, % of compensation after four years of service, and % of compensation after six years of service. A year of service will be defined using the elapsed time method. For purposes of determining contributions to the plan, compensation will be defined as all income received for services performed, including all pre-tax contributions. The following payments will be excluded from compensation: medical opt-out payments, president awards, reimbursable expenses, and taxable medical benefits for domestic partners. There will be no further allocation requirements to receive an employer nonelective contribution; however, a participant must receive compensation from Corporation Y to be entitled to an allocation of contributions. All employer nonelective contributions will be % nonforfeitable at all times. Under the plan normal retirement age shall be age 65. In-service distributions are permitted only if the participant has attained age 70½. The plan year is defined as the twelve consecutive month period commencing on January 1st and ending on December 31st. However, the plan also provides that if applicable there will be a short Plan year commencing on July 1, 20 and ending on December 31, 20 . Thereafter, the plan year shall end on December 31st of each year.

Corporation Y also intends to adopt a new plan intended to qualify under section 457(b) that will provide for elective deferrals only. All common law employees of Corporation Y who receive any type of compensation from Corporation Y for services rendered to Corporation Y will be able to elect to participate in this plan. There will be no minimum

age requirement. No minimum deferral amount will be required under the terms of the plan, although minimum deferral amounts may be required by other policies of Corporation Y. Participants will be able to elect to defer amounts up to % of their compensation, subject to the limits imposed by the Code. Employees are eligible to contribute to the Deferred Compensation Plan as of their date of hire by Corporation Y. Contribution elections made on an employee's date of hire are effective for the calendar quarter that includes the employee's date of hire and remain in effect until changed or revoked for a subsequent calendar quarter. Contribution elections made subsequent to an employee's date of hire are effective as of the first day of the calendar quarter following the date the election is made and remain in effect until changed or revoked fro a subsequent calendar quarter. Any changes to contribution elections must be made prior to the first day of the calendar quarter to which they apply. Under Corporation Y's procedures an employee may increase or decrease his or her level of contributions to the plan only as of the beginning of each calendar quarter. You have represented that Corporation Y will revise the definition of compensation under this plan to make it identical to the definition of compensation under the plan intended to qualify under section 401(a). Thus, for purpose of both plans, compensation will exclude medical opt-out payments, president awards, reimbursable expenses, and taxable medical benefits for domestic partners. All elective deferrals will be % nonforfeitable at all times, including any made on behalf of part-time, seasonal and temporary employees. The plan year is the calendar year.

Corporation Y will include material in its employee handbook to provide an overview of the two plans that will comprise Corporation Y's retirement plans for employees. The material provides that Corporation Y maintains a "retirement system" consisting of the plan intended to qualify under section 401(a) and the plan intended to qualify under section 457(b). The information also provides that Corporation Y will determine whether an employee is a member of a retirement system prospectively on a payroll period basis. Thus, the payroll period will be the relevant period under section 31.3121(b)(7)-2(d)(1)(ii), except in the case of payroll periods spanning two calendar years in which case the payroll periods will be divided into two periods for purposes of section 31.3121(b)(7)-2(d)(1)(ii) -- one beginning with the first day of the payroll period and ending December 31 and one beginning January 1 and ending with the last day of the payroll period. Thus, where an employee qualifies for a higher rate of employer contributions under the money purchase plan by reason of the employee's completed years of service, and that rate of contributions causes the combined rate of contributions for that employee to exceed %, the employee will be treated as a qualified participant in the retirement system as of the payroll period following the date on which the employee qualifies for this higher rate of contributions (assuming that the rate of contributions under the section 457(b) plan will not have been reduced to cause the combined rate to be less that % for each calendar quarter.

Ruling request (1)

Section 3121(b)(7) provides that "employment" for FICA purposes does not include services performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby.

Rev. Rul. 57-128, 1957-1 C.B. 311, provides that the following six factors are considered in determining whether an organization is a wholly owned instrumentality of a political subdivision or a State: (1) Whether the organization is used for a governmental purpose and performs a governmental function; (2) Whether the performance of the organization's functions is on behalf of one or more states or political subdivisions; (3) Whether there are private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner; (4) Whether control or supervision of the organization is vested in public authority or authorities; (5) Whether express or implied statutory or other authority is necessary or exists for the creation and/or use of the organization; and (6) The organization's degree of financial autonomy and the source of its operating expenses.

Corporation Y satisfies the six-part test in the revenue ruling as follows:

(a) Whether the organization is used for a governmental purpose and performs a governmental function.

Corporation Y is used for the governmental purpose of promoting economic development in the City, and performs the governmental function of conducting the City's economic development projects. Corporation Y will serve the governmental purpose of promoting economic development, which furthers the City's stated goal of increasing employment opportunities. Corporation Y will be conducting the City's economic development program, including construction, rehabilitation, and redevelopment activities. Thus, Corporation Y is used for a governmental purpose and performs a governmental function.

(b) Whether the performance of the organization's functions is on behalf of one or more states or political subdivisions.

Corporation Y performs its economic development functions on behalf of the City. Corporation Y's Certificate of Incorporation provides that the organization is formed for purposes that advance economic development for the City. The City has formed Corporation Y to conduct the City's economic development programs under the direction of the Deputy Mayor and in cooperation with Department G pursuant to contracts with the City. Thus, the performance of Corporation Y's functions is on behalf of the City.

(c) Whether there are private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner.

Corporation Y's Certificate of Incorporation provides that: (1) Corporation Y is not organized for profit, (2) no part of Corporation Y's income or earnings will inure to the benefit or profit of, or be distributed to, any private interest; and (3) upon Corporation Y's dissolution, no private interests will be entitled to any distribution or division of Corporation Y's remaining funds or property.

The City will have the powers and interests of an owner with respect to Corporation Y. Corporation Y's Certificate of Incorporation ensures that, upon dissolution, all the entity's assets will be distributed to the City or Corporation M. Moreover, the City will retain significant control over the governing instruments of Corporation Y through: (1) the Mayor's power to appoint (on his own initiative or upon nomination by another elected official) a majority of Corporation Y's members; and (2) the Mayor's power to compel Corporation Y, at any time, to pay over to the City all of Corporation Y's assets having a fair market value up to the amount, if any, by which Corporation Y's then current fund balance is in excess of r dollars.

Corporation Y satisfies this factor because it is not organized for profit, no income or earnings will inure to the benefit or profit of any private interest, no private interest is entitled upon dissolution to Corporation Y's remaining funds or property, and the City has the powers and interests of an owner with respect to Corporation Y.

(d) Whether control or supervision of the organization is vested in public authority or authorities.

The majority of Corporation Y's members, who elect themselves annually to be its Directors, will be appointed directly by the Mayor or appointed by the Mayor upon nomination of another elected official. Therefore, control of Corporation Y is in effect vested in public authorities.

(e) Whether express or implied statutory or other authority is necessary or exists for the creation and/or use of the organization.

The City Law Department formed Corporation Y pursuant to Mayoral Directive. Corporation Y was not required to be formed pursuant to a Mayoral Directive, but you maintain that the City's approval of Corporation Y's formation and the proposed merger is implicitly required for Corporation Y's operation of the City's economic development program under the City Contracts. In addition, the drafts of Corporation Y's organizational documents were reviewed by the City's Law Department prior to being finalized.

Corporation Y will operate pursuant to the City's authority by virtue of the restrictions that will be imposed on Corporation Y through the City Contracts. As described above, the City Contracts currently subject Corporation X's performance of economic development services to the review, discretion, and control of the Deputy Mayor, and the City has extensive review, approval and oversight rights with respect to Corporation

X's programs and expenditures under the City Contracts. Corporation X's budgets are subject to review and approval of the City Budget Office, and Corporation X is required to obtain the approval of the City Budget Office for expenditures of City funds. The City Comptroller and the Deputy Mayor also have review and approval rights over most Corporation X expenditures. In addition, the Mayor's power to compel Corporation X to pay over to the City all of Corporation X's assets having a fair market value up to the amount, if any, by which Corporation X's then current fund balance is in excess of r dollars provides the City with significant control over Corporation X's operations. Because Corporation Y will assume Corporation X's rights and obligations under the City Contracts on the proposed merger, Corporation Y will be subject to the restrictions imposed by the City Contracts and thus will operate pursuant to the City's authority.

(f) The organization's degree of financial autonomy and the source of its operating expenses.

Each year Corporation Y will prepare a multi-year budget subject to the review, approval, and oversight of the City. With respect to the Corporation Y Capital Budget, the City Budget Office will generally dictate the total anticipated expenditures to be set forth in the City Contracts in the current and future projected years and require Corporation Y to prepare a proposed budget identifying the specific capital projects to be funded and the amounts to be allocated to each. The Corporation Y Capital Budget will be subject to the review and approval of the City Budget Office and will be incorporated into the City's annual budget, which will be reviewed and voted on by the City Council. Each fiscal year, the Corporation Y Capital Budget will be usually evaluated three more times by the City Budget Office, which in the course of such evaluations, may require Corporation Y to make certain reductions, reallocations or other modifications to the then current fiscal year or any subsequent fiscal year included in such budget.

In order to access funds from the Corporation Y Capital Budget, Corporation Y will be required to obtain a certificate to proceed from the City Budget Office. To obtain a certificate, Corporation Y will provide detailed information regarding the proposed expenditure, including, for example, a detailed project budget and narrative, description of the scope of work, the schedule for the work and payments and evidence of sufficient funding to complete the project or a discrete phase thereof. Issuance of a certificate to proceed will be at the discretion of the City Budget Office.

As with the Corporation Y Capital Budget, the Corporation Y Expense Budget will be developed within parameters established by the City Budget Office, and will be subject to the City Budget Office's initial review and approval and thereafter to multiple evaluations by the City Budget Office during each fiscal year.

Pursuant to the City Charter, the City Contracts and expenditures under these contracts must be submitted to the City Controller for registration; no funds may be paid to Corporation Y under the City Contracts until they have been registered. In addition to

the reviews by the City Budget Office and registration with the City Comptroller, Corporation Y will generally be required to obtain the approval of the Deputy Mayor for each expenditure, subject to certain exclusions.

In addition to its control of most of the expenditure made by Corporation Y, as mentioned above, the City will have the authority under the City Contracts, at any time upon the demand of the Mayor or his designee, to compel Corporation Y to pay over to the City all of Corporation Y's assets having a fair market value up to the amount, if any, by which Corporation Y's then current fund balance is in excess of x dollars.

Thus, Corporation Y will have limited financial autonomy, and the City will be the principal source of Corporation Y's operating expenses.

Based on an analysis of the six factors set forth in Rev. Rul. 57-128, Corporation Y will be a wholly owned instrumentality of a political subdivision within the meaning of section 3121(b)(7).

Ruling request (2)

Section 3121(b)(7)(F) provides that the exception for service performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby shall not apply in the case of service performed in the employ of a State or any political subdivision thereof or of any wholly owned instrumentality by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality.

The regulations related to determining who is a member of a retirement system for purposes of section 3121(b)(7)(F) are contained in section 31.3121(b)(7)-2 of the Employment Tax Regulations. These rules generally treat an employee as a member of a retirement system if he or she participates in a system that provides retirement benefits, and has an accrued benefit or receives an allocation under the system that is comparable to the benefits he or she would have or receive under Social Security.

Section 31.3121(b)(7)-2(d)(1)(ii) of the regulations provides that whether an employee is a qualified participant in a defined contribution retirement system is determined as services are performed. An employee is a qualified participant in a defined contribution or other individual account retirement system (within the meaning of paragraph (e)(1) of this section) with respect to services performed on a given day if, on that day, he or she has satisfied all conditions (other than vesting) for receiving an allocation to his or her account (exclusive of earnings) that meets the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to compensation during any period ending on that day and beginning on or after the beginning of the plan year of the retirement system.

The regulations establish a rule for determining whether an employee who is a participant in a defined contribution plan is receiving an allocation under a retirement system that is comparable to the benefits he or she would have or receive under Social Security. Section 31.3121(b)(7)-2(e)(2)(iii) of the regulations provides that a defined contribution retirement system maintained by a State, political subdivision, or instrumentality thereof meets the requirement of providing retirement benefits comparable to social security with respect to an employee if and only if allocations to the employee's account (not including earnings) for a period are at least 7.5 percent of the employee's compensation for services for the State, political subdivision or instrumentality during the period.

Section 31.3121(b)(7)-2(e)(iii) of the regulations provides that the definition of compensation used in determining whether a defined contribution retirement system meets the minimum retirement benefit must generally be no less inclusive than the definition of the employee's base pay as designated by the employer or the retirement system, provided such designation is reasonable under all the facts and circumstances. Thus, for example, a defined contribution retirement system will not fail to meet this requirement merely because it disregards for all purposes one or more of the following: overtime pay, bonuses or single-sum amounts received on account of death or separation from service under a bona fide vacation, compensatory time or sick pay plan, or under severance pay plans.

Section 31.3121(b)(7)-2(e)(iii)(C) of the regulations provides that a defined contribution system does not satisfy this (e)(2) test with respect to an employee unless the employee's account is credited with earnings at a rate that is reasonable under all the facts and circumstances, or employees' accounts are held in a separate trust that is subject to general fiduciary standards and are credited with actual earnings on the trust fund.

Each of Corporation Y's plans provides retirement benefits to Corporation Y employees, credits employee accounts with earnings at a reasonable rate, and uses a definition of compensation that is reasonable and no less inclusive than the employee's base pay up to the social security wage base. Thus, each plan independently could be considered a retirement system.

The issue raised by this ruling request is whether the rule under the regulations about defined contribution plans should be interpreted to provide that contributions under two defined contribution plans (one plan intended to qualify under section 401(a) and providing for nonelective contributions by the employer, and the other intended to qualify under section 457(b) plan and providing for elective contributions) may be taken into account in determining whether an employee has met the minimum benefit requirement and is a member of a retirement system. In essence, the question is whether the two defined contribution plans may be treated as "a retirement system."

Section 31.3121(b)(7)-2(e) of the regulations provides that for purposes of section 3121(b)(7)(F), a retirement system includes any pension, annuity, retirement or similar fund or system within the meaning of section 218 of the Social Security Act that is maintained by a State, political subdivision or instrumentality thereof to provide retirement benefits to its employees who are participants. Whether a plan is maintained to provide retirement benefits with respect to an employee is determined under the facts and circumstances of each case. For example, a plan providing only retiree health insurance or other deferred welfare benefits is not considered a retirement system for this purpose. The legal form of the system is generally not relevant. Thus, for example, a retirement system may include a plan described in section 401(a), an annuity plan or contract under section 403 or a plan described in section 457(b) or (f) of the Internal Revenue Code. In addition, the Social Security system is not a retirement system for purposes of section 3121(b)(7)(F) and this section.

The regulations do not provide that a retirement system may include only one plan. The requirements under the regulations related to a defined contribution retirement system focus on the level of contributions made on behalf of the employee to a retirement system, and indicate that the legal form of the system is generally not relevant. In this case, both plans are defined contribution plans providing retirement benefits to Corporation Y employee. The plans provide reasonable definitions of compensation that are similar, and the plans have the same plan year. The defined contributions under the two plans can be added together to determine a participant's status as a member of a retirement system without administrative difficulty, unlike the situation that could be involved if other types of plans such as defined benefit plans were involved. Therefore, we conclude that the contributions to the two defined contributions plans may be aggregated to determine whether the employee is a qualified participant in a retirement system for purposes of section 3121(b)(7)(F). An employee will be a qualified participant in a retirement system with respect to services performed on any given day if, on that day, he or she has satisfied all conditions other than vesting for receiving an allocation to his or her account for a period (including the day and beginning on after the beginning of the plan year) that is at least 7.5 percent of the employee's compensation. The 7.5 percent can be entirely from one plan or any combination of both plans.

Ruling request (3)

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

In Rev. Rul. 77-261, 1977-2 C.B. 45, income from an investment fund, established under a written declaration of trust by a state, for the temporary investment of cash balances of the state and its participating political subdivisions, was found to be excludable from gross income for federal income tax purposes under § 115(1). The ruling indicated that the statutory exclusion was intended to extend not to the income of

a state or municipality resulting from its own participation in activities, but rather to the income of a corporation or other entity engaged in the operation of a public utility or the performance of some governmental function that accrued to either a state or municipality. The ruling stated that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and which are within the ambit of a sovereign properly to conduct.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the income of an organization formed, funded, and operated by political subdivisions to pool various risks arising from their obligations regarding casualties, public liability, workers' compensation, or employees' health was found to be excludable from gross income under § 115. The IRS determined in this ruling that private interests did not materially participate in the organization, nor did they benefit more than incidentally from the organization.

Corporation Y and Corporation Z were formed to further the public purposes for which Corporation X was formed. Acting together, Corporation Y and Corporation Z will serve as the City's primary vehicle for economic development, primarily by promoting the use of public and private funds as loans to, and investments in, various businesses and economic projects in the City. Promoting economic development constitutes the performance of an essential governmental function within the meaning of § 115(1). See Rev. Rul. 90-74 and Rev. Rul. 77-261.

All of Corporation Y's and Corporation Z's income and earnings must be used exclusively for corporate purposes or must accrue and be paid to Corporation M, a public benefit corporation under state law. None of the income or other property of Corporation Y and Corporation Z may inure to the benefit of, or be distributed to, any private interest. No private interests materially participate in the operation of, or otherwise benefit more than incidentally from, Corporation Y and Corporation Z. In the event of Corporation Y's or Corporation Z's dissolution, any corporate assets remaining after satisfaction of liabilities will be distributed to the City or to Corporation M but only if the income of such an organization is excluded from gross income under § 115. See Rev. Rul. 90-74.

Based solely on the facts and representations submitted by Corporation Y and Corporation Z, we conclude that the income of Corporation Y and Corporation Z is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof for purposes of § 115(1). Consequently, we rule that the income of Corporation Y and the income of Corporation Z are excludable from gross income under § 115(1).

Accordingly, based solely on the information submitted, we rule as follows with respect to the three rulings requested:

(1) Corporation Y will be a wholly owned instrumentality of the City for purposes of section 3121(b)(7).

(2) Corporation Y may treat an employee, including a part-time, seasonal or temporary employee, as a qualified participant in a retirement system for purposes of section 3121(b)(7)(F) of the Code with respect to services performed on a given day, if for any period of service ending with the given day, and beginning on or after the beginning of the plan year, for which the combination of the employer nonelective contributions under Corporation Y's plan that is intended to qualify under section 401(a) and the employee's elective deferrals under Corporation Y's plan that is intended to qualify under section 457(b) exceed 7.5 percent of the employee's compensation.

(3) The income of Corporation Y and the income of Corporation Z are excludable from gross income under § 115(i).

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) 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, copies of this letter are being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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 rulings, it is subject to verification on examination.

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2 (Exempt Organizations/Employment Tax/Government Entities)
(Tax Exempt & Government Entities)