

# **Federal Tax Treatment of County Land Banks**

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# How is a Land Bank Taxed?

- Could be considered an agency of the county
- BUT it is a separate not for profit corporation and has some community board members
- Could be considered a charity or social welfare organization
- BUT it is controlled by the county treasurer and subject to many of the same open government rules as state and county agencies

# A Closer Look at the Options

- Section 115 Entity AKA government instrumentality
- Section 501(c)(3) charity
- Section 501(c)(4) social welfare organization
- Hybrid Organization

# What Makes Ohio Land Banks Special?

- ORC Chapter 1724
- County Treasurer must create and grant the Land Bank authority
- Government officials must be on the board of directors
- Subject to open records laws and public entity audit rules
- Granted additional foreclosure procedures
- Can be allocated a portion of the County's delinquent tax collections

How does the Land Bank  
Structure fit into the available  
Tax Structures?

# Section 501(c)(3)

- “[O]rganized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition . . . or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . and which does not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office.”

# Section 501(c)(4)

- “Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare . . . and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.”
- No part of the net earnings of a 501(c)(4) entity may inure to the benefit of any private shareholder or individual

# Section 115 Entity Defined

- All income must be derived from activities that further essential governmental purposes
- All income not used in furtherance of the governmental purposes must accrue to a state or other political subdivision
- No more than incidental private benefits



# 115 Entity Versus Political Subdivision

- A political subdivision is a government unit in its own right while a 115 entity is not
- Political subdivision = a state government unit that is granted sovereign powers of the state such as the power to tax, the power of eminent domain, or the police power
- Examples of political subdivision are counties, municipalities, villages and their agencies

# What activities qualify as essential governmental functions?

- Financing public projects
- Creating a police department
- Providing emergency services
- Economic development
- Revitalization of neighborhoods to fight urban blight

# Alternative Approach: Hybrid Organization

# When to Use a Hybrid

- If the organization wishes to provide donors with an IRS determination letter and does not mind the annual filing requirement
- If the organization cannot ensure 100% of income will be from essential governmental functions
- Can use either 501(c)(3) or (c)(4) and be an organization whose income is also partially or wholly excluded under 115

# Methods of Formalizing the Organization's Status

- Private Letter Ruling
- Application for Tax Exemption
- Tax opinion letter
- Governmental Information Letter

# Ongoing Compliance Issues

# Annual Filing Requirements

- Tax Exempt organizations under 501(c)(3) or (4) or Hybrid
  - Form 990
  - Form 990-T
- Pure Section 115 organizations are not required to file annual information returns with IRS

# Other Tax Ramifications

- FICA and FUTA
  - 115 entities may be exempt from filing
  - 501(c)(3) organizations are exempt from FUTA only
  - 501(c)(4) organizations must withhold both
- Unrelated Business Income Tax AKA UBIT
- Accepting Tax Deductible Contributions



# Comparison of Section 115 and Sections 501(c)(3) and (4)

# Section 501(c)(3) or (4)

- Possible UBIT
- Annual form 990 filing
- Organized and Operated exclusively for charitable or social welfare purposes
- No private inurement
- No political activity
- 501(c)(3)
  - Can receive deductible contributions
  - No FUTA

# Section 115

- Operates to further essential governmental purposes
- No private inurement
- No political activity
- No financial activities that do no further an essential governmental purpose

# Analysis Used under Section 170

# Accepting Charitable Contributions

- A 501(c)(3) organization is able to accept tax deductible contributions
- Contributions to a 501(c)(4) are NOT tax deductible
- Political Subdivisions may accept tax deductible contributions
- Government instrumentalities may also accept deductible contributions
- What is a government instrumentality for 170 purposes follows a slightly different analysis than for 115
- Rev. Ruling 57-128 applies six factors

# Rev. Ruling 57-128 Factors

- Whether the organization performs governmental functions
- Whether the organization functions on behalf of one or more states or political subdivisions
- Whether any private interests are involved
- Level of control vested in a public authority
- If authorization by the political subdivision is required to create or use the organization
- The degree of financial autonomy and the source of operating funds

# What Does IRS Consider when Reviewing a Private Letter Ruling Request?

# Key Factors under Section 115

- Sources of revenue
- Whether 100% of the organization's activities are in furtherance of essential governmental purposes
- Whether unused income accrues to the County or state
- Dissolution Provision in Articles of Incorporation
- Language in governing documents describing Section 115



# Key Factors under Section 170

- Source of Income Streams
- Amount of government control and oversight
- Conflict of Interest policies
- Whether any private interests are involved and could benefit from operations
- Confirm the organization is not already a political subdivision

# Best Practices Under Section 115

- Describe the Section 115 income exclusion correctly in governing documents
- Maintain and follow a strict conflicts of interest policy to prevent private inurement
- Ensure the dissolution clause sends all remaining assets to the County
- Do not engage in joint ventures with private parties

# Case Study: COCIC

- Originally a Community Improvement Corp structured as a 501(c)(4)
- In 2012, restated the Articles of Incorporation to be a County Land Reutilization Corp with intent to be treated as a 115 organization
- Joint ventures left over from pre-2012 raised concerns regarding private inurement or non-essential governmental function activity
- Reinstating 501(c)(4) status with some income excludable under 115

Questions?