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MEMORANDUM

June 27, 1994

TO: CAROL KOVARNIK, Administrative Assistant
Business and Finance
Olympic Educational Service District No. 114

FROM: JAN FRICKELTON
Assistant Attorney General


SUBJECT: ESD--Tax Exempt Donations

This memorandum and its attachment provide a supplement to my earlier memorandum of August 2, 1991 explaining the federal tax exemption allowed for charitable donations to ESDs.

Charitable contributions are tax exempt under both § 501(c)(3) and § 170(c), depending upon which section applies. In the case of ESDs, charitable donations are tax exempt according to § 170(c) because ESDs qualify as political subdivisions of the state. The federal tax law in § 170(c) provides tax deductible status to charitable deductions used exclusively for public purposes by any political subdivision of the state.

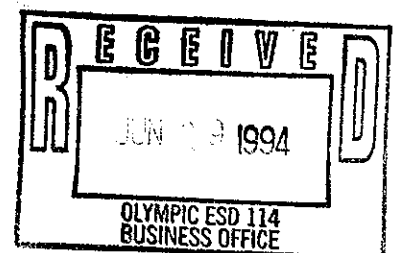
In other words, for donation purposes, § 170(c) is equivalent to § 501(c)(3).

If you have any additional questions, please give me a call at (206) 586-0727.



JAN FRICKELTON
Assistant Attorney General
(206) 586-0727

JF:clp



ATTORNEY GENERAL OF WASHINGTON

M E M O R A N D U M

June 9, 1994

TO: Jan Frickelton
Assistant Attorney General

FROM: Melissa Jackson Spence
Law Clerk

SUBJECT: Tax Exempt Donations to Educational Service Districts

You have asked me to respond to Carol Kovarnik's letter regarding tax exempt donations to Olympic Educational Service District (ESD) No. 114.

Questions Presented

1. Under the federal tax code, is ESD 114 eligible for private foundation grants when ESD 114 is considered a "political subdivision" under 26 U.S.C. § 170(c) but does not have 26 U.S.C. § 501(c)(3) classification?
2. Under the federal tax code, is "political subdivision" classification under § 170(c) equivalent for tax exempt donation purposes to § 501(c)(3) classification?

Brief Answers

1. Yes. Although ESDs do not have § 501(c)(3) classification, as "political subdivisions", ESDs may still accept private foundation grants. Such acceptance has no impact on the foundation's ability to deduct the contribution from the foundation's income tax.
2. Yes. For donation purposes, § 170(c) is equivalent to § 501(c)(3): both allow tax deductions for charitable contributions.

Analysis

Under 26 U.S.C. § 170, any charitable contribution for exclusively public purposes to a "political subdivision" of the State is tax deductible. Section 170 (a), (c). Because ESDs qualify as "political subdivisions",¹ any charitable donations to the Olympic ESD 114 for public purposes are tax exempt to the donor.

¹ See memorandum dated August 2, 1991 from Janet Frickelton to the Olympic ESD 114; RCW 28A.310.010; and AGLO 1977 No. 39.

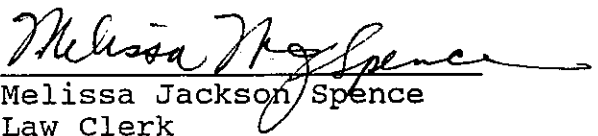
Ms. Jan Frickelton
June 9, 1994
Page 2

Under 26 U.S.C. § 501, certain qualified organizations such as corporations or trusts organized exclusively for religious, charitable, scientific, or educational purposes, among others, are also eligible for charitable deductions, provided that the organization is not disqualified from § 501(c)(3) classification. Lobbying activities, for example, would disqualify an organization from § 501(c)(3) classification. Thus, ESDs do not have § 501(c)(3) classification because ESDs are government entities and not corporations or trusts, and ESDs are not operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes.

However, because ESDs are classified as political subdivisions under § 170(c), the lack of § 501(c)(3) classification has no import for tax exemption purposes; charitable contributions to ESDs are tax deductible. Thus, for donation purposes, "political subdivision" status is equivalent to § 501(c)(3) classification.

Most donors probably require 501(c)(3) status because the donors want to ensure that the charitable contribution will be used according to the terms of the grant (i.e., that the donation will not be used for such activities as lobbying, supporting political campaigns, or benefitting private shareholders or individuals). But, because ESDs are political subdivisions and are thus subject to public audit and general governmental oversight, the donor can assume that a grant to an ESD will be spent properly.² Thus, § 501(c)(3) classification is not needed to ensure that the contribution will be used according to the terms of the grant.

I trust that this analysis will provide Ms. Kovarnik with the information necessary to answer potential donors' questions regarding the equivalency of § 170(c) and § 501(c)(3) classifications. Please let me know if I can be of further assistance.


Melissa Jackson Spence
Law Clerk

² See memorandum dated January 21, 1994 to North Central ESD No. 171.