Federal Tax Treatment of States, Political Subdivisions, and Governmental Charities (Including Contributions to Them)

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States, political subdivisions and governmental charities received a lot of attention after TCJA

- Governmental charities, new and old, essential to popular SALT work-around
  - Credit against state taxes for contributions to these governmental charities
  - Proposed regs attempt to shut down
- Mistake in new sec. 4960 excise tax on entity for certain excessive compensation
  - Statue makes clear application to sec. 501(c)(3) organizations
  - Statutory language as drafted failed to include entities that are political subdivisions or integral parts thereof
  - Maybe technical correction some day but no idea when
Tests for Qualifying as State or Political Subdivision

- Implied statutory immunity (not constitutional intergovernmental immunity)
  - Applicable GCM and revenue rulings are cryptic at best.
- Must have sovereign powers per sec. 103
  - Not need to have all, but these powers cannot be insubstantial.
  - E.g., revenue rulings where toll road authorities without power to tax qualify as political subdivision
Sec. 170(c)(1): Charitable contribution deduction

- Applies to contributions to or for the use of states and political subdivisions.
- But only if for “exclusively public purposes.”
- But no determination letter
  - Generic Governmental Information Letter
  - Pay for private ruling

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Sec. 170(c)(1) deduction for contributions TO states or their political subdivisions

- Donations TO states or political subdivisions qualify for 50% or 60% (currently for cash) AGI limit.
- Revenue Rulings and private letter rulings re such donations
  - Pay little attention to what is and isn’t a public purpose.
  - Focus on extent of private benefit.
Affiliates of governments can also qualify under section 501(c)(3).

- If so, contributions deductible under familiar sec. 170(c)(2).
- Revenue Rulings so recognizing go back to 1950’s and 1960’s. Not new to SALT workarounds.
- Applicant must be treated as separate entity.
  - But IRS both generous and inconsistent re whether separate.
- Must lack sovereign powers
  - Substantial sovereign powers disqualify from 501(c)(3) status.
  - But power of eminent domain OK.
Many public universities have applied for and received c-3 determination letters

- University of California (1939)
- University of Colorado (1945)
- University of Michigan (1961)
- University of Nebraska (1973)
- Florida State University (1973)
- The Ohio State University (2013)
- University of Florida (2014)
- University of Wisconsin (2014)
- Clemson, Arizona, Arizona State, or University of Texas not found on EO Business Master File
Governmental charities get special treatment under section 501(c)(3).

- A strange hybrid – a platypus of the tax world, with seemingly contradictory features.
- No Annual Information Return on Form 990.
- No intermediate sanctions under section 4958.
AND ability to voluntarily relinquish exempt status.

- Unique ability
  - Otherwise, to lose exemption, organization must violate some rule, as not filing 990 for 3 years
- Ability first recognized in 2012, after government hospitals not want to comply with sec. 501(r)
- Notice 2019-9 (12/31/18) giving preliminary guidance on section 4960 specifically reminds governmental charities of this option
- Current description of procedures to do so found in Rev. Proc. 2019-5 (1/2/19)
Pre-TCJA, IRS determination letter was key motivation for getting 501(c)(3) status.

- Donors, especially foundations, want to see IRS determination letter re deductibility under section 170.
- Once SALT workarounds resolved, I suggest giving determination letters under section 170(c)(1).
- Such determination letters would avoid current distortion of rules otherwise generally applicable to section 501(c)(3) organizations that results from need for special treatment of governmental charities.