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Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA. Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Whether certain agencies and boards are 149(1)(c) entities.

POSITION: Will need to be reviewed on a case by case basis.

REASONS: As outlined below.

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HEADQUARTERS

Income Tax Rulings

Attention: Paulette Salloum

Directorate

Rob Meers

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June 11, 2014

2014-052141

Paragraph 149(1)(c) – Municipalities or Municipal Body Performing a Function of Government

This is in response to your e-mail of November 20, 2013, regarding whether certain agencies and boards are considered municipalities or municipal or public bodies performing a function of government and therefore exempt from income tax under paragraph 149(1)(c) of the Income Tax Act (the "Act").

Unlike the Excise Tax Act, the Income Tax Act does not define the term municipality. The CRA's previous position was that an entity could be considered a municipality for the purpose of paragraph 149(1)(c) of the Act on the basis of the functions it exercises. However, in *Tawich Development Corporation v. Deputy Minister of Revenue of Quebec*, the Quebec Court of Appeal found that merely exercising municipal functions was not sufficient to attribute to a body the status of a municipality. Instead, the Court held that this status could only be achieved as a result of statute, letters patent or order (in other words it has to be created by the province).

For income tax purposes, paragraph 149(1)(c) of the Act allows for an exemption from tax on the taxable income of a person for a period when that person was a municipality in Canada, or a municipal or public body performing a function of government in Canada. The terms "municipal body", "public body" and "function of government" are not defined in the Act.

We consider a municipal body to have similar characteristics to a municipality. Typically, it is considered to be a body established or exercising a power under a municipal act or a similar statute of a province or territory with respect to governing the affairs or purposes of a geographic area and is accountable to those governed by it.

A public body is typically a body that acquires both its existence and its authority from a statute enacted by a legislature, and whose functions and transactions are for the benefit of, and affect the whole community of, persons to which its authority extends. Generally, a public body has a governance purpose and is accountable to those governed, regulated or represented by it. Historically, we have required that to be performing a function of government an entity must have the ability and powers to govern, tax, pass by-laws and/or provide municipal- or provincial-type services to its members/citizens.

It is unlikely that the agencies or boards you have inquired about would meet the criteria outlined above and, as such, be considered a municipal or public body performing a function of government. However, paragraph 149(1)(d.5) of the Act, subject to subsections 149(1.2) and (1.3), exempts from tax the income of a corporation, commission or association if:

- \* not less than 90% of the capital of the corporation is owned by one or more 149(1)(c) entities (e.g., a municipality); and

- \* during the period, the income of the corporation from activities carried on outside the geographical boundaries of the 149(1)(c) entities (e.g., boundaries of the municipality) does not exceed 10% of its income for the period.

Paragraph 149(1)(d.6) of the Act, subject to subsections 149(1.2) and (1.3), provides that the exemption may be available to the wholly-owned subsidiary of a corporation, commission or association to which paragraph 149(1)(d.5) or 149(1)(d.6) itself applies such that if an entity is exempt, its wholly-owned subsidiaries may also be exempt from tax. This exemption continues to apply all the way down a chain of subsidiaries as long as each is wholly-owned and each meets the same 10% geographical boundary income test as required in paragraph 149(1)(d.5).

Whether the entities listed in the XXXXXXXXXX's submission are exempt entities and therefore not subject to income tax is a question of fact that can only be determined upon a review of each entity. However, it would appear that, based on the information provided in the submission, the agencies and boards would likely be exempt under paragraph 149(1)(d.5) or (d.6) of the Act.

We trust that these comments will be of assistance.

For your information, unless exempted, a copy of this memorandum will be severed using the Access to Information Act criteria and placed in the Canada Revenue Agency's electronic library. A severed copy will also be distributed to the commercial tax publishers for inclusion in their databases. The severing

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