

# Private Letter Rulings Help Six Ohio Land Banks Aggressively Pursue More Land Donations

Since their inception, County Land Reutilization Corporations (a/k/a Ohio Land Banks) have been somewhat of an anomaly from a tax perspective. Presumably tax-exempt as a result of their Internal Revenue Code Section 115 government instrumentality status, these organizations, to date, have struggled to unequivocally explain their tax status to prospective land donors. In some cases, such uncertainty has restricted the land banks from procuring land that has been vacated or neglected and in need of improvement to help otherwise blighted neighborhoods encourage economic development.

In recent months, however, uncertainty has changed to clarity for six Ohio land banks that worked with outside legal counsel from Cleveland-based Walter | Haverfield to secure official private letter rulings from the IRS. Legal counsel was needed to secure the tax rulings because of the complexity of the underlying legal arguments. As a result of the favorable private letter rulings, these six land banks can now provide documentation to donors that their donations are tax-exempt.

Unlike most other organizations working on behalf of the general public, land banks are hybrid organizations that combine the private sector efficiency of a nonprofit corporation with some specific public purposes, powers and funding of a governmental organization. They were created to facilitate the reutilization of vacant, abandoned and tax-foreclosed properties to promote housing development. Under the Ohio statute, only counties with a population in excess of 60,000 can apply to form a land bank.

Patrick Bravo, executive director of the Summit County Land Bank, saw the effort to secure the private letter ruling as well worth the effort. "It's just smart business to figure out how you're treated from a tax perspective," said Bravo.

The ambiguity over the tax status of Ohio land banks is largely due to their unique structure. Not truly public agencies, they are non-profits that do not automatically enjoy 501(c)(3) status. They operate under Internal Revenue Code Section 115 that excludes from taxable income any income from essential government purposes and functions that accrue to a government unit. While that designation has sufficed for some land banks, many have struggled to explain this concept to potential donors of property who wanted certainty that, if they donated to the land bank, they would qualify for a tax deduction. Unlike typical charities or other tax-exempt organizations that apply to the IRS and get a determination letter under

501(c)(3), land banks had nothing to show donors that the IRS approved of their status and that contributions made to them would be deductible.

Land banks essentially have three options to pursue for proving their tax-exempt status. They can secure a tax opinion from a law firm, which is valid only in certain situations and does not demonstrate definite IRS approval; they can file for 501(c)(3) status, which subjects the organization to more filing requirements on an ongoing basis, including possible exposure to the unrelated business income tax; or they can request a private letter ruling, which serves as official word from and is considered binding by the IRS.

"We felt the private letter ruling was the best option for making donors feel confident that their donations are tax-exempt," said Bravo. "The idea of not knowing for sure was getting in the way of some donations, so now we've effectively eliminated that hurdle."

Bravo further believes that these private letter rulings may also open the door to other grant opportunities.

The private letter rulings specifically state that all land bank income is excluded from taxable income under Section 115 and that contributions to them are considered tax-deductible to the donors under Section 170. The rulings are specific to each land bank and do not apply to other land banks that have not undergone the required filing and qualification process.

The role of Walter | Haverfield's attorneys in the process was to ensure the right documents were filed and to properly respond to the various IRS questions and objections. Having successfully navigated the challenging tax obstacle course for the first six land banks, the process should be faster and easier for subsequent land banks that choose to pursue a private letter ruling.

"This is definitely something that other land banks should consider," said Bravo. ■

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