

**Availability of Federal Income Tax Exclusion in IRC § 115 for Government Risk Pools That Include
Nonprofit Corporations Pursuant to RCW Chapter 48.62**

Overview of Facts—To Be Delivered Orally

1. Historical Overview.

- Historically, state law limited participation in risk pools to state and local government entities.
- In 2004, however, the legislature amended the law to allow nonprofit corporations to join with local government entities in self-insurance risk pools for property and liability risks. See RCW 48.62.036. The legislature made this change in order to benefit nonprofit corporations, in recognition of the public good that they provide. See RCW 48.62.036 (Notes of Legislative Findings and Intent).
- The change allowed risk pools to admit any kind of nonprofit corporation as a participant, regardless of the nature of the nonprofit corporation's activities and regardless of whether the nonprofit corporation fulfills a uniquely governmental purpose.

2. Inclusion of Nonprofit Corporations in Washington Risk Pools.

- A number of local government risk pools in Washington presently include nonprofit corporations.
- Most of the nonprofit corporations that participate in the risk pools are charitable, educational or religious-based organizations, such as social service organizations, that presumably are exempt from federal income tax pursuant to Internal Revenue Code ("IRC") § 501(c)(3).
- Some of the nonprofit corporate participants may be community groups (such as festival associations or booster organizations) that are exempt from federal income tax as civic leagues pursuant to IRC § 501(c)(4) or as local chambers of commerce pursuant to IRC § 501(c)(6).
- A review of the names of the nonprofit corporations suggests that few, if any, appear to be so closely integrated with state or local government that they would qualify for exemption from federal income tax under IRC § 115 as discussed below.¹

3. Current Federal Tax Status of Risk Pools.

- All of the risk pools are themselves incorporated as nonprofit corporations under Washington's nonprofit corporation act and are registered as nonprofit corporations with the Washington Secretary of State.
- All of the risk pools rely for federal income tax exemption on IRC § 115, discussed below.
- Some of the risk pools have obtained letter rulings or other written guidance from the Internal Revenue Service ("IRS") confirming that their income is exempt from income tax pursuant to IRC § 115. That guidance may have been obtained before the admission of nonprofit corporations to the risk pool.
- None of the governmental risk pools in Washington has applied to the IRS for recognition as exempt from income tax under any other provision, including IRC § 501(c)(3).

¹ The Internal Revenue Service ("IRS") will recognize an entity as exempt pursuant to IRC § 115 only if its articles of incorporation require that, upon dissolution, the entity's assets be distributed solely to a state or local government or to another entity qualified under IRC § 115 (distributions to 501(c)(3) organizations or to the federal government are prohibited). See Rev Proc 2003-12.