

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: January 23, 2004

October 29, 2003

Section 414 -- Definitions and Special Rules

414.00-00 Definitions and Special Rules

414.07-00 Governmental Plan

T:EP.RA:UK

Attn.:

Legend:

Organization A
Council B
Employer C
County D
City E
City F
State M
Statute I
Statute G
Statute H
Plan X

Dear *** :

This is in response to a letter dated March 7, 2003, submitted on your behalf by your authorized representative, as supplemented by correspondence dated May 4, 2003, requesting rulings under [section 414\(d\) of the Internal Revenue Code](#) (the "Code"). The following facts and representations were submitted in connection with your request. Organization A is a federally recognized Indian tribe and the governing body of Organization A is Council B. Employer C is a tribal police department which was created by Council B in 1994. In 1997 State M passed Statutes I and G which authorize Employer C to exercise the powers of a State M law enforcement agency with respect to the geographical area held by the United States in trust for Organization A, to appoint state licensed peace officers, and to grant those officers the same powers as peace officers employed by municipalities and counties in State M if certain requirements are met. This legislation also specifies the ways in which Employer C is subject to the laws, operations, jurisdiction and practices of County D's Sheriff's Office and the County D Attorney. One requirement is that Employer C's peace officers be licensed by State M's board of peace officer standards and training (the "Board"). State M created the Board to set training and licensing standards for peace officers in State M. The Board is mandated by State M's legislature to promulgate rules governing peace officers. Pursuant to this statutory mandate, the Board has promulgated voluminous rules governing the education, licensure, and continuing education of peace officers. Included are rules governing the certification of schools delivering peace officer training, the minimum education requirements for peace officer license applicants, and rules governing the licensure examination itself, including the eligibility requirements for sitting for the exam.

Also included are specific rules setting forth the requirements for maintaining a peace officer license. To receive a renewal of a license, officers must certify that they have completed a certain number of continuing education classes approved and accredited by the Board, and peace officers must uphold the specific standards of conduct promulgated by the Board. Failure to meet these standards of conduct may result in the suspension or revocation of the officer's license by the Board. If Employer C's peace officers fail to maintain their state peace officer licenses, they no longer qualify under the definition of peace officer in Statute I, and the provisions of Statute G, granting them full police powers, no longer apply.

Statute G also requires that Organization A enter into a mutual aid agreement with County D, City E and City F to define and regulate the provision of law enforcement services and to provide for mutual aid and cooperation. Organization A has entered into agreements with each of these three political subdivisions of State M. In addition to the routine powers of a State M law enforcement agency, Employer C will provide emergency aid to County D's Sheriff and the Cities' chiefs of police at their request, and at all times while rendering such aid Employer C will be under the authority of the chief law enforcement officer of the jurisdiction requesting such aid. Emergency assistance is also provided to Employer C within the parameters set forth in the agreements. The agreements treat Organization A's police department, Employer C, in the same manner as a state law enforcement agency with respect to the geographical area held in trust by the United States for Organization A (the Organization A reservation), and Statute G treats Organization A as a governmental unit for purposes of entering into these agreements.

Employer C's police officers are subject to the supervision of the County D's Sheriff's Office and the County D Attorney with regard to criminal investigations, crime scene handling, and criminal prosecution. Under Statute G, County D's Sheriff's Office is responsible for receiving and jailing persons arrested by Employer C's police officers, and the County D Attorney is responsible for prosecuting any person arrested, investigated or detained by Employer C's police officers for violation of the criminal laws of State M. Those arrested do not remain in Employer C's custody, and only the County D Attorney has the authority to determine whether to prosecute an individual otherwise within the jurisdiction of Employer C. Criminal background checks are performed through the county's or State M's database. The method by which Employer C handles law enforcement data is also controlled by Statute G and Employer C's police officers are dispatched by means of a dispatch service controlled and maintained by County D. Recently, State M passed Statute H which provides that tribal police officers within the meaning of Statute I may participate in Plan X if the tribal police department receives rulings from the Internal Revenue Service that it is an agency or instrumentality of State M and contributions made by the tribal police department to a retirement plan on behalf of employees of the tribal police department are contributions made to a governmental plan within the meaning of Code [section 414\(d\)](#).

Accordingly, based on the above facts and representations, you have requested the following rulings:

(1) that Organization A's police department is an agency or instrumentality of State M for purposes of enforcing state law, and

(2) that the contributions made by Organization A to Plan X on behalf of its Board licensed police officers are contributions to a governmental plan under Code [section 414\(d\)](#).

Code [section 414\(d\)](#) provides, in part, that the term "governmental plan" means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

[Revenue Ruling 89-49, 1989-1 C.B. 117 \("Rev. Rul. 89-49"\)](#), provides that a plan will not be considered a governmental plan within the meaning of Code [section 414\(d\)](#) merely because the sponsoring organization has a relationship with a governmental unit or some quasi-governmental power. Under [Rev. Rul. 89-49](#), one of the most important factors to

be considered in determining whether an organization is an agency or instrumentality of the United States or any state or political subdivision is the degree of control that a governmental entity or entities exercise over the organization's everyday operations. Other factors include: (1) whether there is specific legislation creating the organization, (2) the source of funds for the organization, (3) the manner in which the organization's trustees or operating board are selected, and (4) whether the applicable governmental unit considers the employees of the organization to be employees of the applicable governmental unit. The revenue ruling clarifies that although all of the above factors are considered in determining whether an organization is an agency or instrumentality of a government, the mere satisfaction of one or all of the factors is not necessarily determinative.

In this case, Employer C's authority to exercise the powers of a state law enforcement agency is granted by State M through Statutes I and G, and this authority can be revoked at any time. If the conditions delineated in these statutes are met, Employer C's police officers are granted the same authority as that of county or municipal peace officers, and they are treated as employees of an agency or instrumentality for purposes of participating in Plan X. Employer C's peace officers must be licensed by State M's Board and are subject to its continuing oversight, authority and requirements. Employer C is subject to control by County D, and Cities E and F. Employer C is required to use County D's jails for the custody and incarceration of individuals that it arrests and is subject to the authority of the County D Attorney who decides whether to investigate a crime or pursue prosecution. The agreements entered into between Organization A and County D and Cities E and F further control the day to day operations of Employer C by defining the terms of mutual aid and cooperation of the respective police functions. Specifically, Employer C is subject to the control of the County D Sheriff and the Chiefs of Police of Cities E and F when providing emergency or back up assistance to those jurisdictions. Thus, Employer C is distinguishable from the entity described in [Rev. Rul. 89-49](#) because of the extensive control over the day to day operations of Employer C exercised by State M or political subdivision thereof.

Accordingly, based on the above facts and representations, we conclude with respect to your ruling requests that contributions made by Employer C to Plan X on behalf of its peace officers who are licensed by the Board are considered contributions by an agency or instrumentality of State M, or political subdivision thereof, for purposes of Code [section 414\(d\)](#), and participation in Plan X by such peace officers of Employer C will not adversely affect the status of Plan X as a governmental plan within the meaning of [section 414\(d\)](#). No opinion is expressed as to the federal tax consequences of the transaction described above under any other provisions of the Code.

The above rulings are based on the assumption that Plan X is qualified under Code section 401(a) and its trust exempt under section 501(a) at all relevant times.

This ruling is directed only to the specific taxpayer that requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office. Should you have any questions, please contact

Sincerely yours,

Madan Dua
Acting Manager Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
Deleted Copy of Ruling
cc:

This document may not be used or cited as precedent. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#).

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