

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: January 30, 2004
November 3, 2003

Section 414 -- Definitions and Special Rules
414.00-00 Definitions and Special Rules
414.07-00 Governmental Plan

T:EP:RA:T1

Attn.:

Legend:

- Employer A.....
- Band B.....
- County C.....
- County D.....
- County E.....
- County F.....
- City G.....
- State M.....
- Statute H.....
- Statute I.....
- Statute J.....
- Plan X.....

Dear *** :

This is in response to a letter dated June 17, 2003, as supplemented by correspondence dated October 23, 2003, in which you request a ruling under [section 414\(d\) of the Internal Revenue Code](#) (the "Code"). You submitted the following facts and representations in connection with this request.

Band B is a federally recognized band of Indians and Employer A is the police department for Band B. Pursuant to Statutes J and H, Employer A may exercise the powers of a State M law enforcement agency and appoint peace officers who have the same powers as peace officers of political subdivisions of State M, if certain requirements are met. These powers include the power to arrest, charge a person with duties of preventing and detecting crime, and enforce the criminal laws of State M. Employer A performs this function on behalf of State M in Counties C, D, E, and F and City G (such political subdivisions of State M hereinafter referred to as, collectively, the "Counties").

State M regulates the training, education, and standard of conduct relating to Employer A through the licensing process. State M created a training and standards board for peace officers (the "Board") to set training and licensing standards for all peace officers in State M, which are the same for Employer A and political subdivisions of State M including the Counties. The Board is mandated by legislation to promulgate rules governing peace officers. Pursuant to this mandate, the Board has promulgated voluminous rules governing education, licensure, and the continuing education requirements for police officers. Included are rules governing the certification of schools providing police officer training, the minimum educational requirements for police officers, and rules governing

the licensure examination such as eligibility to take the exam. The Board also established various rules for renewing a license. To renew a license, officers must certify that they have completed 48 hours of continuing education classes approved and accredited by the Board during a three-year period. In addition, officers must uphold the specific standards of conduct prescribed by the Board, and failure to meet these standards may result in the suspension or revocation of the officer's license by the Board. If Employer A's peace officers fail to maintain their state peace officer licenses, they no longer qualify under the definition of peace officer in Statute J, and the provisions of Statute H, granting them full police powers, no longer apply.

Statute I permits two governmental units to enter into agreements to work cooperatively and jointly. With respect to the exercise of police powers, under Statute H, an Indian tribe must enter into a mutual aid "cooperative agreement" pursuant to Statute I in order to exercise concurrent jurisdictional authority with a county sheriff. Statute H specifically treats an Indian tribe that satisfies certain requirements as a state governmental unit for purposes of entering into the agreements enabled by Statute I. Statute H requires Band B to enter into a mutual aid cooperative agreement with the Counties. Band B has entered into such a cooperative agreement with the Counties to define and regulate the provision of law enforcement services on the Band B reservation lands that lie within the Counties (the "Agreement").

Many of the provisions of the Agreement are required by Statute H. Under the Agreement, the respective County Sheriff or officer in charge of each County Sheriff's Office has the ultimate discretion to control any designated crime scene and Employer A's peace officers are subject to his or her authority. The Agreement provides that with respect to the arrest of any individual by an Employer A peace officer that occurs within that part of the Band B reservation that lies within one of the Counties, the custody of such individual must be transferred to the respective County's jail for custody and incarceration. Employer A has agreed to work under the direction of each County Attorney's Office in performing supplemental investigations including interviewing necessary witnesses or executing any process including search warrants and warrants for arrest. The responsibility for prosecuting crimes and initiating petitions for any person arrested, investigated or detained by Employer A in one of the Counties lies with that County's Attorney's Office. Each County Attorney's Office initiates all supplemental investigations, interviews witnesses and executes all necessary process including search warrants and warrants for arrest and Employer A's peace officers may be required to perform these functions on behalf of each County Attorney's Office.

Employer A provides back up to the Sheriff's Office of each of the Counties, and many of the law enforcement tools utilized by Employer A's peace officers are controlled by each County. All criminal background checks performed by Employer A are through the databases of the Counties. Employer A's peace officers are dispatched to emergencies through a 911-dispatch service operated, controlled and maintained by each County. Any time Employer A responds to a call for service of an alleged violation of State M criminal law, it is required to contact as soon as possible the County dispatch in the County where the incident or investigation is located. Under the Agreement, Employer A is also required to prepare investigative reports in accordance with the County's procedures. The Agreement may be terminated at any time by any party, and Employer A will cease to act as a state law enforcement agency under Statutes J and H in the jurisdiction of the terminating County.

In 2000, State M passed legislation authorizing Employer A's peace officers to become participants in Plan X, contingent on receiving rulings from the Internal Revenue Service that Employer A is an agency or instrumentality of State M for purposes of enforcing state law and that contributions made to Plan X by Employer A are contributions made to a governmental plan under Code [section 414\(d\)](#).

Based on the above facts and representations, you request a ruling that contributions to Plan X made by Employer A on behalf of its peace officers are considered contributions by an agency or instrumentality of State M or political subdivision thereof for purposes of Code [section 414\(d\)](#), and the participation in Plan X by Employer A's peace officers will

not adversely affect the status of Plan X as a governmental plan within the meaning of [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.

[Rev. Rul. 89-49, 1989-1 C.B. 117](#), 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 A is distinguishable from the entity described in [Rev. Rul. 89-49](#) because the Counties and State M control the scope and conditions pursuant to which Employer A may operate as a law enforcement agency. State M controls all aspects regarding the licensure and qualifications of Employer A's peace officers. As a law enforcement agency, Employer A prevents and detects crime and enforces State M's criminal laws on behalf of State M and the Counties on the Band B reservation lands that lie within the Counties. While Employer A arrests individuals, this power is granted through legislation which can be revoked at any time, and the exercise of that power is subject to all of the conditions and procedures imposed by statute or through the Agreement. If the Agreement is terminated by one of the Counties, Employer A will cease to act as a law enforcement agency in the jurisdiction of the terminating County. State M heavily regulates the training, education, licensure and standards of conduct of Employer A's peace officers through the Board, and the Agreement vests ultimate authority for law enforcement in each County's Sheriff's Office. State M legislation treats Employer A as an agency or instrumentality of a political subdivision of State M for purposes of enforcing the law, entering into cooperative agreements with other governmental units, and participating in Plan X.

Under Statute H, Statute I, and the Agreement, Employer A is subject to the control of the Sheriff's Office of each County that is party to the Agreement. It is provided in the Agreement that nothing shall be construed to limit or to release each County Sheriff or State M from criminal jurisdiction or responsibility otherwise possessed by the Counties and State M under applicable law. Each County Sheriff's Office controls all aspects of a crime scene within the respective County, and Employer A's peace officers are subject to the authority of the County Sheriff or officer in charge. Employer A relies on the Counties' jails to receive individuals arrested by Employer A and has no detention facilities of its own. Each County's Attorney's Office has exclusive authority to decide whether to further investigate crimes and prosecute them. Employer A is subject to all of the reporting requirements of each County. Thus, State M and the Counties effectively control all aspects of Employer A's day to day operations. Accordingly, based on the above facts and representations, we conclude that with respect to Employer A's peace officers providing law enforcement services within the Counties pursuant to the Agreement, contributions to Plan X made by Employer A 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 Employer A's peace officers 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 related trust exempt from tax 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.

Should you have any questions or concerns regarding this letter, 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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