



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 15 2003

Uniform Issue List: 414.07-00

Attn.:

Legend:

- Employer A.....
- Council B.....
- County C.....
- Board D.....
- State M.....
- Statute F.....
- Statute G.....
- Statute H.....
- Plan X.....

Dear :

This is in response to a letter dated March 19, 2003, submitted on your behalf by your authorized representative, as supplemented by correspondence dated May 4, 2003, June 2, 2003, August 5, 2003, August 11, 2003 and August 21, 2003, requesting a ruling under section 414(d) of the Internal Revenue Code (the "Code"). The following facts and representations were submitted in connection with your request.

Council B is a federally recognized band of Indians and Employer A is the police department for Council B. Pursuant to Statutes F and G, 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 County C.

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 County C. 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.

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

Many of the provisions of the Agreement are required by Statute G. Under the Agreement, County C's Sheriff or officer in charge of County C's Sheriff's Office has the ultimate discretion to control any designated crime scene in County C 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 Council B reservation that lies within County C, the custody of such individual must be transferred to County C's Sheriff for incarceration in County C's jail pursuant to State M law. Employer A's peace officers are required to prepare investigative reports for County C and County C may require that they perform supplemental investigations including interviewing necessary witnesses or executing any process including search warrants. The responsibility for prosecuting crimes and initiating petitions for any person arrested, investigated or detained by Employer A in County C lies with the County C Attorney's Office. County C's 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 its behalf.

Employer A's peace officers are required under the Agreement to contact the County C dispatcher as soon as they respond to a call for service of an alleged violation of State M criminal law in County C, so that County C may generate a report and track the call. This dispatcher service is operated, controlled and maintained by County C. The Agreement further provides that Employer A is required to provide the County C Sheriff's Office with information reports and forms sufficient so that it can discharge its duties relating to State M crime reporting, and Employer A is subject to the laws of the state regarding data practices. All criminal background checks are performed through the databases maintained by County C and other political subdivisions of State M. In addition, Employer A is required to keep County C informed of its liability insurance and coverage at all times. The Agreement also specifies that Employer A and the County C Sheriff supply back up personnel to each other. The Agreement may be terminated at any time by either party, and Employer A will cease to act as a state law enforcement agency under Statutes F and G in County C if and when the Agreement is terminated.

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).

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 of the degree of control County C and State M exercise over the day to day operations of Employer A. As a law enforcement agency, Employer A prevents and detects crime and enforces State M's criminal laws on behalf of the state and County C within that portion of the Council B reservation that lies within County C. While Employer A has the full power of arrest, 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 Employer A or County C, Employer A will cease to act as a law enforcement agency in County C. 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 County C'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 G, Statute H, and the Agreement, Employer A is subject to the direction and control of County C's Sheriff's Office. It is provided in the Agreement that nothing shall be construed to limit or to release County C or the County C Sheriff from criminal jurisdiction or responsibility otherwise possessed by the County under applicable law. County C's Sheriff's Office has the authority to control all aspects of a crime scene within County C, and Employer A's peace officers are subject to the authority of the County C Sheriff or officer in charge of the Sheriff's Department. Employer A has no detention facilities and must transfer custody of any individual it arrests to the County C Sheriff's Office. The County C 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, information and data practice requirements of State M and County C. Thus, State M and County C effectively control all aspects of Employer A's 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 County C 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 such 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.

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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.

The original of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office. Should you have any questions or concerns, please contact _____, at _____

Sincerely yours,



Donzell H. Littlejohn, Acting Manager
Employee Plans Technical Group 1

Enclosures:

Notice of Intention to Disclose
Deleted Copy of Ruling