Uniform Issue List: 414.07-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200307090

NOV 19 2002

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Attention:

Legend:

Employer A =

Employer B =

Board C =

County D =

County E =

State M =

Agreement F =

Agreement G =

Statute O =

Statute P =

Plan X =

Dear :

This is in response to your request for a ruling dated November 22, 2000, as supplemented by additional correspondence dated March 22, 2002, August 5, 2002, August 20, 2002, and September 17, 2002, submitted by your authorized representative, as to whether contributions made by Employer A on behalf of certain employees to Plan X are considered contributions by an agency or instrumentality of State M or political subdivision thereof for purposes of section 414(d) of the Internal Revenue Code (the "Code").

You have submitted the following facts and representations.

State M maintains Plan X. Plan X provides retirement, disability, and spousal benefits to certain peace officers and firefighters. Plan X is a contributory defined benefit plan intended to qualify under Code section 401(a) as applicable to a governmental plan defined in Code section 414(d). Employer A is the law enforcement agency for Employer B, a federally recognized band of Indians. Employer A exercises the powers of a State M law enforcement agency pursuant to Statute P.

In 1991, the State M Legislature authorized Employer A, upon complying with certain Statute P requirements, to exercise the powers of a State M law enforcement agency, to appoint state licensed peace officers, and to grant those officers the same powers as peace officers employed by local units of government. Employer A has exercised the powers of a State M law enforcement agency since meeting these statutory requirements in 1991. These are the full powers of arrest and to charge a person with the duties of preventing and detecting crime and enforcing the general criminal laws of State M. These are the same powers the Legislature of State M has granted law enforcement agencies of State M and its local units of government. Employer A performs the functions of preventing and detecting crime and enforcing the general criminal laws on behalf of State M and County D, a political subdivision of State M.

Employer A's peace officers are required to meet the same licensure and training standards as peace officers appointed by other law enforcement agencies of State M and its local units of government. Statute P defines a peace officer as an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by Board C, charged with the prevention and detection of crime, the enforcement of the general criminal laws of the state, and who has the full powers of arrest. Like every other law enforcement agency in State M and its local units of government, Employer A can only appoint peace officers licensed by State M.

State M regulates the training, education, standards of conduct and other standards relating to Employer A's peace officers through the licensing process. The State M Legislature created Board C to set training and licensing standards for peace officers in State M. Board C is mandated by the Legislature to promulgate rules governing peace officers. Relying upon this statutory mandate, Board C 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 educational 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 the specific rules setting forth the requirements for maintaining a peace officer license. To receive a renewal of their license, officers must certify that they have completed 48 hours of continuing education classes approved and accredited by Board C during a three year period. In addition, officers must uphold the specific standards of conduct promulgated by Board C. Failure to meet these standards of conduct may result in the suspension or revocation of the officers' license by Board C.

To maintain their state licenses, Employer A's peace officers are required to comply with State M's statutes and Board C's rules governing licensure, training, continuing legal education, and standards of conduct. These are the same standards that apply to other peace officers appointed by all other law enforcement agencies of State M and its local units of government.

Statute P also requires Employer A to enter into mutual aid cooperative agreements with the County D Sheriff under Statute O to define and regulate the provision of law enforcement services. Statute P only grants concurrent jurisdictional authority to Employer A and its peace officers in very limited circumstances. Employer A has entered into Agreement F with the County D Sheriff pursuant to Statute O.

Among other things, Agreement F grants ultimate discretion to control any designated crime scene to the County D Sheriff or officer in charge of the County D Sheriff's Department and requires Employer A's peace officers to undertake the commands of the County D Sheriff. Employer A's peace officers and County D's Deputy Sheriffs provide backup to each other. Agreement F also stipulates that the geographical authority of Employer A is specifically governed by Statute P.

In addition to exercising the routine powers of a State M law enforcement agency within County D, Employer A provides back-up to the Sheriff's Department of County E. Pursuant to Statute O, Counties D and E, amongst other counties of State M, have signed Agreement G which authorizes peace officers from one county to assist officers in another county upon request. Such assistance must be for major emergency or public safety concerns and not for routine law enforcement duties or to substitute for

active personnel of the requesting county. While both Counties D and E are signatories to Agreement G, Employer A is not.

When assistance in another county is requested, the Sheriff's Department in County D makes the determination as to whether County D's Sheriff's personnel or Employer A's personnel respond to a major emergency or public safety concern. In the event Employer A's peace officers are asked to provide backup to County E, it is done so pursuant to a separate agreement (Agreement F) between County D and Employer A. Thus, in instances where Employer A's peace officers are providing backup to County E, they are still working under the supervision and control of the County D Sheriff's Department. As stipulated in Agreement G, in the event a "responding" county furnishes law enforcement officers to a "requesting" county, such officers remain under the direction and control of the "responding" county.

Many of the law enforcement tools utilized by Employer A's peace officers are controlled by County D. All criminal background checks performed by Employer A are through the database maintained by County D. Employer A's peace officers are dispatched to emergencies through the 911 Dispatch service operated, controlled, and maintained by County D.

Statute P places responsibility for receiving and jailing persons arrested by Employer A's peace officers with the Sheriff of the county in which the violation occurred. Accordingly, Employer A's peace officers work with and deliver to the respective county jails individuals they arrest. Those arrested do not remain with Employer A.

Statute P places responsibility for prosecuting and initiating petitions for any persons arrested, investigated, or detained by Employer A's peace officers with the County D Attorney's Office. Employer A, under Agreement F, has agreed to work under the direction of the County D Attorney's Office in performing supplemental investigations, interviewing witnesses, and executing all necessary process including search warrants.

A small portion of the funds for Employer A's operating budget comes from federal and state grants. The remainder is funded by Employer B.

The 2000 State M Legislature authorized Employer A's peace officers to become members of Plan X contingent on the Service ruling that Employer A is an agency or instrumentality of State M for purposes of enforcing state law and that contributions made by Employer A to Plan X on behalf of its peace officers are contributions to a governmental plan within the meaning of Code section 414(d).

Based on the foregoing, 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).

Section 414(d) of the Code provides that a "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 provides that a plan will not be considered a governmental plan merely because the sponsoring organization has a relationship with a governmental unit or some quasi-governmental power. 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 thereof 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. 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 Revenue Ruling 89-49 the Service ruled that the retirement plan discussed in the ruling was not a governmental plan within the meaning of section 414(d) of the Code because, among other reasons, the degree of control which the municipalities exerted over the entity in its everyday operations was minimal.

In this case, Employer A performs the functions of preventing and detecting crime and enforcing State M's general criminal laws on behalf of State M and County D. Employer A works with the County D Sheriff pursuant to Agreement F in this regard. It works with County D and other county jails to receive individuals arrested by Employer A's peace officers. Employer A works with and for the County D Attorney's Office in preparing complaints, performing supplemental investigations, and serving process.

Employer A's authority to exercise the powers of a law enforcement agency has been granted by Statute P. The exercise of that power is subject to conditions imposed by statute. (These conditions include subjecting Employer A's peace officers to the same tort liability and data disclosure requirements as State M's other law enforcement agencies). The state has the authority to revoke Employer A's ability to act as a law enforcement agency at any time. The state has the power to, and does, heavily regulate the training, education, licensure, and standards of conduct of Employer A's peace officers through Board C.

Control and supervision of Employer A is vested in State M and County D through its Sheriff and County Attorney. According to Agreements F and G, when personnel of Employer A provide backup law enforcement services to County D or County E,

Employer A's peace officers are still under the control and supervision of County D. Pursuant to Statute P, State M has the ultimate control and supervision of Employer A. It has granted Employer A the authority to exercise the powers of a law enforcement agency, to appoint peace officers and to allow those officers the same powers as peace officers employed by local units of government.

Employer A is distinguishable from the entity described in Revenue Ruling 89-49. State M and its political subdivision County D control the scope and conditions pursuant to which Employer A may operate as a law enforcement agency. State M controls all aspects of Employer A's peace officer's qualifications and licensure. State M and County D control all aspects of Employer A's operations including authorizing arrest powers, the emergency dispatch and criminal background checks, the ultimate control of the crime scene, the detention of those arrested by Employer A's officers, controlling the types of investigations to be performed, and when and how process is served. State M and County D, not Employer A, decide whether those arrested should be prosecuted. Thus, State M and County D exercise a significant degree of control over the operations of Employer A.

Accordingly we conclude 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).

No opinion is expressed as to the federal tax consequences of the transaction described above under any other provisions of the Code.

The above ruling is based on the assumption that Plan X will be otherwise qualified under section 401(a) of the Code, and the related trust will be tax exempt under section 501(a).

This ruling is directed only to the specific taxpayer, Employer A, that requested it. Section 6110(k)(3) of the Code 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. If you have any questions, please call , T:EP:RA:T1 at

Sincerely,

Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
Deleted Copy of Ruling

CC: