



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200410016

DEC 9 2003

U.I.L. 0414.0-00

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T:EP:RA:TY

Attn: XXXXXXXX

Legend:

State A	=	***
Plan X	=	***
Group B Employees	=	***
Board C	=	***
Director D	=	***
Statute M	=	***
Statute N	=	***
Plan W	=	***

Dear ***:

This letter is in response to your request for a private letter ruling dated ***, as supplemented by correspondence dated ***, *** and ***, submitted on your behalf by your authorized representative, concerning whether Plan X is a governmental plan under section 414(d) of the Internal Revenue Code ("Code").

The following facts and representations were made in support of your ruling request,

Plan X is a defined benefit plan created by State A pursuant to Statute M. Plan X was created effective *** as an amendment and continuation of Plan W. The continuation of Plan W under a new name, Plan X, was mandated by Section 2-301 of Statute M. Plan X received its most recent determination as to its qualified status under section 401(a) of the Code in a favorable determination letter dated ***.

The purpose of Plan X was to provide membership to additional political subdivisions and/or agencies of State A. The plan document that relates to Plan X is the relevant sections of Statute **M**.

Section 2-303 of Statute **M** provides that the overall responsibility for the administration of Plan X resides in Board C. Section 2-303 provides that Board C shall be composed of thirteen members: the Assistant Commissioner of Public Safety of State A, the Director of State A Finance or his designee, three (3) members to be appointed by the Governor of State A one of whom shall be a retired member of Plan X, one (1) member to be appointed by the Speaker of the State A House of Representatives, one (1) member to be appointed by the President Pro Tempore of the State A Senate, two (2) members of the Highway Patrol Division and one (1) member of the Communication Division of the Department of Public Safety, one (1) member of the State A Bureau of Investigation, one (1) member of the State A Bureau of Narcotics and Dangerous Drugs Control and one (1) member of the Alcoholic Beverage Laws Enforcement Commission, elected by and from the membership of Plan X.

Among its responsibilities, Board C is responsible for the policies and rules for the general administration of Plan X. Section 2-303 H of Statute **M** provides that Board C shall appoint an executive director, Director D, who shall be responsible to Board C. Subject to the policy direction of Board C, Director D shall be the managing and the administrative officer of Plan X, and as such shall have charge of the office, records, supervision and direction of the employees of Plan X.

Section 2-304 A of Statute **M** provides that Board C shall have the responsibility for the management of Plan X.

Section 2-303.1 A of Statute **M** provides that Board C shall discharge its duties with respect to Plan X solely in the interest of the participants of Plan X and their beneficiaries, as well as for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering Plan X.

Section 2-303.1 G of Statute **M** provides that Board C shall compile a quarterly financial report of all of the funds in Plan X on a fiscal year basis. The report shall be compiled pursuant to uniform reporting standards prescribed by the State A Pension Commission for all state retirement systems. The report shall include several relevant measures of investment value, including acquisition cost and current fair market value with appropriate summaries of total holdings and returns. The report shall be distributed to the Governor of State A, the State A Pension Commission, the Legislative Service Bureau, the Speaker of the State A House of Representatives and the President Pro Tempore of the State A Senate.

Section 2-303.1 H of Statute **M** provides that after July 1 and before October 1 of each year, Board C shall publish an annual report pursuant to the uniform reporting standards prescribed by the State A Pension Commission for all state retirement systems. The report shall be submitted to the Governor of State A, the Speaker of the State A House

of Representatives, the President Pro Tempore of the State A Senate, the State A Pension Commissioner and the members of Plan X. The annual report shall cover the operation of Plan X during the past fiscal year, including income, disbursements, and the financial condition of Plan X at the end of the fiscal year. The annual financial statements must be audited and filed in accordance with the requirements set forth for financial statement audits in Statute N.

Section 212A of Statute N provides that all government entities shall have an audit in accordance with generally accepted auditing standards. For fiscal years ending after December 31, 1995, all government entities receiving public funds that are included in the reporting entity of State A shall file a copy of the audit with the Director of State Finance no later than four (4) months after the end of the fiscal year of the government entity. Statute N further provides that reporting entities of State A include all government entities included in the State A Comprehensive Annual Financial Report. The government entities included in the State A reporting entity shall be determined by the Director of State A Finance using criteria set by the Governmental Accounting Standards Board. You represent that Plan X is subject to Statute N and is audited in accordance with the requirements of Statute N.

The primary source of contributions to Plan X is from participating State A agencies in the form of Group B Employees' contributions which are picked up by the State A agency under section 414(h) of the Code, as well as State A agency contributions on behalf of such employees and employee contributions equal to eight percent (8%) of the actual base salary. In addition to a percentage of motor vehicle agency fees and vehicle inspection fees, five percent (5%) of State A taxes collected by the State A Insurance Commissioner on insurance premiums is contributed to Plan X. Section 2-303.4.A of Statute M provides that all employee and employer contributions and dedicated revenues shall be deposited in the State A Treasury.

Section 2-300 6 of Statute M defines the Group B Employees who are eligible to participate in Plan X. Group B Employees are all law enforcement officers of State A agencies as named in Section 2-300 6 of Statute M. You represent that these designated State A agencies constitute the participating employers who participate in Plan X. The state agencies that constitute the participating employers do not have a choice about participating in Plan X. The State A legislature determines which agencies will be participating employers in Plan X. Only the State A legislature has the power to include additional agencies or remove existing agencies as participating employers of Plan X.

The only beneficiaries of Plan X are Group B Employees and their beneficiaries as defined in Statute M.

Based on the aforementioned facts, you have asked for a ruling that Plan X is a governmental plan under section 414(d) of the Code.

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 is the degree of control that the federal or state government has over the organization's everyday operations. Other facts 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.

With respect to the first factor of Rev. Rul. 89-49, Section 2-301 of Statute M, which created Plan X, specifically states that Plan X is established as a plan for the payment of retirement benefits and certain medical and hospital expenses of members of Plan X. Thus, there is specific legislation creating Plan X.

With respect to the second factor of Rev. Rul. 89-49, Plan X does not receive specific funding from State A. Plan X is a contributory pension plan and is funded with Group B Employees' contributions that are picked up by State A participating agencies under section 414(h) of the Code, as well as State A participating agency contributions made on behalf of the Group B Employees and employee contributions equal to eight percent (8%) of the actual base salary. Further, Plan X receives five percent (5%) of State A taxes collected on insurance premiums by the State A Insurance Commissioner in addition to a percentage of motor vehicle agency fees and vehicle inspection fees.

With respect to the third factor of Rev. Rul. 89-49, State A exercises considerable control over Plan X through Board C. Board C is charged with the general administration and management of Plan X. Board C consists of thirteen members: the Assistant Commissioner of Public Safety of State A, the Director of State A Finance or his designee, three (3) members to be appointed by the Governor of State A one of whom shall be a retired member of Plan X, one (1) member to be appointed by the Speaker of the State A House of Representatives, one (1) member to be appointed by the President Pro Tempore of the State A Senate, two (2) members of the Highway Patrol Division and one (1) member of the Communication Division of the Department of Public Safety, one (1) member of the State A Bureau of Investigation, one (1) member of the State A Bureau of Narcotics and Dangerous Drugs Control and one (1) member of the Alcoholic Beverage Laws Enforcement Commission, elected by and from the membership of Plan X.

Board C also appoints Director D who is the managing and administrative officer of Plan X and who is responsible for the day-to-day operation of Plan X. Board C, under the direction of Director D, is required under Sections 2-303.1 G and H of Statute M to make quarterly and annual financial reports on the financial condition of Plan X and to submit such reports to the Governor of State A and other State A officials. Further, State A exercises oversight authority over Plan X's operations by the requirement that the annual financial statements be audited and filed in accordance with the requirements found in Statute N, a State A statute that prescribes the rules for audits of government entities.

With respect to the fourth factor of Rev. Rul. 89-49, Group B Employees are not considered to be direct employees of State A. Rather, a participating agency as designated in Section 2-300 6 of Statute M that is required to participate in Plan X and that makes contributions to Plan X on behalf of its Group B Employees is a participating employer and the direct employer of the Group B Employees. A participating agency that participates in Plan X is then subject to all the rules, regulations, and policies enacted by Board C. Board C is responsible for the policies and rules for the general administration of Plan X.

In view of the foregoing, we conclude that Plan X is a governmental plan for purposes of section 414(d) of the Code.

No opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code. No opinion is expressed as to the validity of the pick up arrangement of Plan X under section 414(h) of the Code.

This ruling is based on the assumption that Plan X is qualified within the meaning of section 401(a) of the Code, and its related trust is tax-exempt under section 501(a) at all time relevant to this ruling.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

If you have any questions, please contact ***, ***, SE:T:EP:RA:T:2 at ***.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

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