



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200410017

U.I.L. 0414.0-00

DEC 9 2003

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T:EP:RA:T4

Attn: XXXXXXX

Legend:

- State A = ***
- Plan X = ***
- Group B Employees = ***
- Board C = ***
- Director D = ***
- Association E = ***
- Organization F = ***
- Organization G = ***
- League H = ***
- Statute M = ***

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 *** in order to consolidate the various existing retirement plans of State A municipalities that were established for the benefit of Group B Employees. The

consolidation was mandated by Section 49-105.2 B of Statute M. Section 49-100.2 of Statute M provides that Plan X shall be a body corporate and an instrumentality of State A, and that Plan X shall be the responsibility of State A and not that of the participating municipalities. 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 streamline and provide various economic efficiencies to the administration of the separate retirement plans maintained by various State A municipalities for Group B Employees. Statute M required the consolidation of these separate retirement plans and the transfer of those assets to Plan X pursuant to section 49-122.2 of Statute M. All aspects of Plan X are found in Statute M.

Section 49-122.5 of Statute M provides that the overall responsibility for the operation, administration and management of Plan X resides in Board C. Section 49-100.7 of Statute M provides that Board C shall be responsible for the policies and rules for the general administration of Plan X. That section further provides that Board C shall establish rules and regulations for the administration of Plan X and for the transaction of its business consistent with law, which rules and regulations shall be filed with the Secretary of State of State A.

Section 49-100.3 provides that Board C is composed of thirteen members: one member shall be appointed by the Speaker of the House of Representatives of State A; one member shall be appointed by the President Pro Tempore of the State A Senate; two members shall be appointed by the President of League H; five members shall be the Board of Trustees of Association E; one member shall be the President of Organization F or his designee; one member shall be the President of Organization G or his designee; one member shall be the State A Insurance Commissioner or his designee; and one member shall be the Director of State A Finance or his designee.

Section 49-100.5 of Statute M provides that Board C shall keep a record of all of its proceedings, which shall be open for inspection at all reasonable hours. A report including such information as the operation of Plan X for the past fiscal year, including income, disbursements, and the financial condition of Plan X at the end of each fiscal year and showing the valuation of Plan X assets, investments, and liabilities, shall be delivered to the Governor of State A after the end of each fiscal year. The State A

Auditor and State A Inspector shall make an annual audit of the accounts of Plan X in accordance with State A statutes.

Section 49-100.9 G of Statute M provides that Board C shall compile a quarterly financial report which shall be distributed to the Governor of State A, the Pension Committee of State A, the Legislative Service Bureau of State A, the Speaker of the House of Representatives of State A, and the President Pro Tempore of the State A Senate. This quarterly report shall include several relevant measures of investment value, combined and individual rate of returns of the investment managers by category

of investment, commissions, and fees or payments for investment services performed on behalf of Board C.

Section 49-100.9 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 State Pension Commission. 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 Commission 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.

Among its many responsibilities, Board C is responsible for the policies and rules for the general administration of Plan X. Section 49-100.6 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 49-122.5 of Statute M provides that Director D, with his staff and consultants, shall be responsible to Board C for the day-to-day operation of Plan X and other duties, which are assigned by Board C. Director D shall be responsible to Board C. Board C must also discharge its duties solely in the interest of and for the exclusive benefit of the Group B Employees and their beneficiaries.

Section 49-100.9 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.

The primary source of contributions to Plan X is from the participating State A municipalities in the form of Group B Employees' contributions which are picked up by the State A municipal employer under section 414(h) of the Code, as well as State A municipal employer contributions on behalf of such employees. In addition, thirty four percent of State A taxes collected by the State A Insurance Commissioner on insurance premiums are contributed to Plan X.

Section 49-100.1 6 of Statute M, in general, defines a Group B Employee to mean an eligible firefighter of a participating municipality. Section 49-100.1 12 provides that any municipality with a municipal or fire protection district is considered an eligible employer under Plan X. Section 49-105.2 of Statute M provides that an eligible employer may join Plan X on the first day of any month. Such election by an eligible employer to participate in Plan X is irrevocable and the eligible employer shall become a participating municipality in Plan X. An eligible employer that elects to become a member of Plan X and as such makes contributions to Plan X on behalf of its Group B Employees is considered a participating municipality under Section 49-100.1 9 of Statute M.

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 49-105.2 B of Statute M, which created Plan X, specifically states that Plan X is an instrumentality of State A. Thus, there is specific legislation creating Plan X and specifically identifying it as an instrumentality of State A.

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 municipal employers under section 414(h) of the Code, as well as State A municipal employer contributions made on behalf of the Group B Employees. Further, Plan X receives thirty four percent of

State A taxes collected on insurance premiums by the State A Insurance Commissioner.

With respect to the third factor of Rev. Rul. 89-49, State A exercises considerable control over Plan X. Section 49-100.2 of Statute M provides that the maintenance of Plan X is the responsibility of State A and not that of the participating State A municipalities. State A also exercises 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, four of whom are appointed by the Speaker of the House of Representatives of State A, the President Pro Tempore of the State A Senate, and the President of League H. The other nine members are five members from the Board of Trustees of Association E, the President of Organization F or his designee, the

President of Organization G or his designee, the State A Insurance Commissioner or his designee, and the Director of State A Finance or his designee. 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. Section 49-100.9 G and Section 49-100.9 H of Statute M require Board C 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 pursuant to Section 49-100.5 of Statute M which provides that the State A Auditor and the State A Inspector shall perform an annual audit of the accounts of Plan X in accordance with State A statutes.

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 municipality that has elected to participate in Plan X and that makes contributions to Plan X on behalf of its Group B Employees is considered to be the direct employer of a Group B Employee. A participating municipality that participates in Plan X is then subject to all of the rules, regulations, and policies enacted by Board C. As mentioned earlier, Board C is responsible for the policies and rules for the general administration of Plan X, which pursuant to Section 49-100.2 of Statute M is the responsibility of State A.

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

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.

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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