



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200527019**

Release Date: 7/8/2005

CC:TEGE

Date: 04/14/05

Contact Person:

Identification Number:

Telephone Number:

Uniform Issue List No.: 6033.01-00

Employer Identification Number:

LEGEND:

A =

B =

Dear _____ :

This is in response to a letter from your authorized representative requesting a ruling on your behalf that you meet the requirements of Rev. Proc. 95-48, 1995-2 C.B. 418, to qualify as an affiliate of a governmental unit and therefore not be required to file Form 990, Return of Organization Exempt from Federal Income Tax.

Facts

A was created by B County under B county statute and is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and is classified as a supporting organization under section 509(a)(3). A provides financing for the purchase and construction of public facilities in B County, by issuing various types of debt for the benefit of B County.

A has a three member Board of Directors, consisting of the County Manager of B County, the B County Finance Director and the B County Clerk. A is included in the financial statements of B County. A must be audited for each fiscal year and the results presented to B county. B County officials and personnel approve all of A's expenses. A does not have a taxable subsidiary, does not engage in public fund-raising efforts, and its activities do not provide benefits to any private interest. If A is terminated, its assets will be distributed to B County.

Ruling Requested

You have requested the following ruling:

A satisfies the requirements of being an "affiliate of a governmental unit" of Revenue Procedure 95-48, 1995-2 C.B. 418, and therefore is not required to file Form 990.

Law

Section 501(a) of the Code provides an exemption from federal income tax for organizations described in section 501(c)(3), including organizations that are organized and operated exclusively for charitable, educational or scientific purposes. The promotion of health is a charitable purpose within the meaning of section 501(c)(3).

Section 6033(a)(1) of the Code generally requires the filing of annual information returns by exempt organizations.

Section 6033(a)(2)(A) of the Code provides certain mandatory exceptions to filing annual information returns.

Section 6033a(2)(B) of the Code provides discretionary exceptions from filing such returns where the Secretary determines that such filing is not necessary to the efficient administration of the tax laws.

Rev. Proc. 95-48 provides an exception from filing for governmental units or affiliates of governmental units that are exempt from federal income tax under section 501(c)(3).

Section 4.02 of Rev. Proc. 95-48 provides that an organization will be treated as an affiliate of a governmental unit if it is described in section 501(c) and either (a) It has a ruling from the Service that: (1) its exempt purpose income is excluded under section 115; (2) it is entitled to receive deductible contributions under section 170(c)(1) because the contributions are for the use of a governmental unit, or (3) it is a wholly owned instrumentality of a state or political subdivision for employment tax purposes; or (b) it meets a facts and circumstances test.

Section 4.02(b) of Rev. Proc. 95-48 provides the following criteria to be used to determine whether an organization meets the facts and circumstances test as an affiliate of a governmental unit: (1) the organization is either operated, supervised or controlled (within the meaning of section 1.509(a)-4(g)(1)(i) of the regulations) by governmental units or by an organization's governing body that is elected by the public at large; (2) the organization possesses two or more affiliation factors listed under section 4.03 of the revenue procedure and (3) the organization's filing of Form 990 is not otherwise necessary to the efficient administration of the internal revenue laws.

Section 4.03 of Rev. Proc. 95-48 describes among the affiliation factors the following: (a) the organization was created by one or more governmental units, organizations that are affiliates of governmental units, or public officials acting in their official capacity; (b) the organization is subject to financial audit by the governmental unit to which it reports or the governmental unit or affiliate of a governmental unit exercises control over, or oversees, some or all of the organization's expenditures; and (c) one or more governmental units, or organizations that are

affiliates of governmental units, exercise control over, or oversee, some or all of the organization's expenditures.

Section 1.509(a)-4(g)(1)(i) of the Income Tax Regulations provides, in part, that the terms "operated by", "supervised by" and "controlled by" as used in section 509(a)(3)(b) presupposes a substantial degree of direction over the policies, programs and activities of a supporting organization by one or more publicly supported organizations. The relationship described under any one of these terms is comparable to that of a parent and subsidiary, where the subsidiary is under the direction of and accountable or responsible to the parent organization. This relationship is established by the fact that a majority of the officers, directors or trustees of the supporting organization are appointed or elected by the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations.

Analysis

You have stated that A does not have a letter that meets the criteria of section 4.02(a) of the revenue procedure and therefore it must meet the facts and circumstances test of section 4.02(b).

A is organized and operated primarily for charitable purposes (to provide financing for the purchase and construction of public facilities in B County, as a supporting organization to an existing exempt entity) and has been issued a determination letter that it is exempt from federal income tax under section 501(c)(3) of the Code. A is operated, supervised or controlled by a governmental unit within the meaning of section 1.509(a)-4(g)(1)(i) of the regulations since A's Board of Directors are composed of B County officials, which must also approve all expenses of A. In addition, A was created by B county statute, must be audited for each fiscal year which is presented to B county officials, and if A is terminated, its assets will be distributed to B County. Further, the filing of Form 990 is not otherwise necessary to the efficient administration of the internal revenue laws.

Conclusion

Accordingly, based on all the facts and circumstances described above, we rule:

A satisfies the requirements of being an "affiliate of a governmental unit" of Revenue Procedure 95-48, and therefore is not required to file Form 990.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

Please keep a copy of this ruling in your permanent records.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make

available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

Debra J. Kawecki
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437