

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

**200436019**Date: **JUN - 4 2004**

Contact Person:

ID Number:

Telephone Number:

Employer Identification Number:

Legend:A =B =C =D =

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.

A was created by a state statute and is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and is classified as a nonprivate foundation under section 509(a). A operates B, a hospital, which is exempt from federal income tax under section 501(c)(3) of the Code and is classified as a nonprivate foundation under section 509(a).

A was created under a state statute which authorizes the creation of public trusts for the use and benefit of municipalities in C for public purposes and functions. You have stated that A must assume full responsibility for providing medical and hospital care to residents of the municipality, which is its primary mission. Its primary source of revenue is from providing services to patients.

D is responsible for appointing the board of trustees of A, which is responsible for managing, controlling and administering B.

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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.

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.

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.

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 establish, operate, furnish and regulate health care facilities for the treatment of those persons needing surgical or medical care) 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 Trustees are appointed by D, which must also approve the issuance of any obligations creating a lien or encumbrance on the real property owned by A. In addition, A was created by a statute of C, must be audited for each fiscal year which is presented to various governmental entities and C has control over the termination of A and upon the disposition of its assets.

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 is based on the understanding that there will be no material changes in the facts upon which they 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 as precedent.

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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.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Seto', with a long horizontal line extending to the right.

Michael Seto  
Manager, Exempt Organizations  
Technical Group 1