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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 19 2005

Uniform Issue List: 414.07-00

T:EP:RA:TI

Attention:

Legend:

Employer A =

Organization B =

Council C =

County D =

County E =

City F =

State M =

Agreement G =

Agreement H =

Agreement I =

Statute N =

Statute O =

Statute P =

Statute Q =

Plan X =

Dear :

This is in response to your request for a ruling dated January 24, 2005, as supplemented by additional information dated April 4, 2005, and April 19, 2005, under section 414(d) of the Internal Revenue Code (the "Code"). The following facts and representations were submitted in connection with your request.

Organization B, a federally recognized Indian tribe ("tribe"), is located in Counties D and E and City F within State M. The governing body of Organization B is Council C. Employer A is the law enforcement agency for Organization B. Employer A exercises the powers of a State M law enforcement agency pursuant to Statute N.

Council C created Employer A, a tribal police department, in [REDACTED]. The police department's responsibilities include the enforcement of tribal and state law within the geographic boundaries of Organization B (the Organization B reservation). Organization B funds its tribal police department and pays the salaries for its employees out of tribal governmental appropriations and federal grants.

In order to promote the ability of a tribe and State M to provide effective and efficient law enforcement services on the tribe's reservation, State M passed legislation (Statutes N and O) treating tribal police departments as state law enforcement agencies and treating their police officers as state peace officers, provided certain requirements are met.

Statute N authorized Employer A 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. This legislative authorization to exercise state police powers was predicated on Employer A meeting the following four statutory requirements: 1) agreeing to be subject to liability for its torts and those of its peace officers and other employees acting within the scope of their employment or duties arising out of the law enforcement agency function to the same extent as any other State M municipal law enforcement agency; 2) filing with State M's board of peace officer standards and training (the "Board") a bond or certificate of insurance for liability coverage with the statutory maximum single occurrence amounts and an annual cap for all occurrences within a year of three times the single occurrence amount (requirements similar to those imposed on municipalities); 3) filing with the Board a certificate of insurance for liability of its law enforcement officers, employees, and agents for lawsuits under the United States Constitution; and 4) agreeing to be subject to State M laws relating to data practices of law enforcement agencies.

Employer A has exercised the powers of a State M law enforcement agency since meeting these statutory requirements in [REDACTED]. These include arresting and charging a person, 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'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 O defines a peace officer as: 1) an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the Board, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full powers of arrest; and 2) a peace officer who is employed by a law enforcement agency of a federally recognized tribe and who is licensed by the Board. Like every other law enforcement agency in State M and its local units of government, Employer A can only appoint peace officers licensed by the Board.

State M regulates the training, education, and standards of conduct relating to Employer A's peace officers through the licensing process. The State M Legislature created the Board to set training and licensing standards for peace officers in State M. The Board is mandated by Statute O to promulgate rules governing peace officers. Relying upon this statutory mandate, the Board has promulgated extensive rules governing the education, licensure, and continuing education of peace officers. Included are rules governing the certification of schools delivering peace officer training and 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 a certain minimum number of hours of continuing education classes approved and accredited by the Board during a three year period. In addition, officers must uphold the specific standards of conduct promulgated by the Board. Failure to meet these standards of conduct may result in the suspension or revocation of an officer's license by the Board. If the police officers of Employer A, therefore, fail to maintain their State M peace officer licenses, they no longer qualify under the definition of peace officer in Statute O, and the provisions of Statute N, granting them police powers under state law, no longer apply.

Statute N provides that in order to coordinate, define, and regulate the provision of law enforcement services on reservation lands, governmental units and the tribe shall enter into agreements pursuant to Statute P. For the purposes of entering into these agreements, the tribe shall be considered a governmental unit as that term is defined in Statute P. Statute P defines "governmental unit," in general, to include every city, county, town, school district, other political subdivision of State M or another state, or another state, and any agency of State M or the United States, and includes any instrumentality of a governmental unit. For purposes of Statute P, an instrumentality of a governmental unit means an instrumentality having independent policy making and appropriating authority.

Statute N, therefore, requires Organization B to enter into mutual aid cooperative agreements, pursuant to Statute P, with Counties D and E and City F to define, coordinate, and regulate the provision of law enforcement services on the respective parts of the Organization B reservation that lie within Counties D and E and City F. For matters arising within the boundaries of City F, the City F Police Department will be the law enforcement agency with which Employer A coordinates its efforts. For matters arising outside of the boundaries of City F, the County D and County E Sheriffs' Departments will be the law enforcement agencies with which Employer A coordinates its efforts.

Organization B has entered into Agreement G with County D, Agreement H with County E, and Agreement I with City F. The agreements provide that Organization B's police officers will operate according to County D, County E, and City F procedures when exercising state authority; that Organization B's officers will coordinate activities with the City F Police Department and the Sheriffs' Departments of Counties D and E; that Organization B's officers will transfer arrested individuals to the County D and County E jails to be processed by the County D and County E Sheriffs pursuant to state procedures; that persons arrested by Organization B's officers under state law will be subject to prosecution by the County D or County E Attorney's Office pursuant to state procedures; that Organization B's officers will participate in the radio dispatch system of County D and County E pursuant to their procedures; that Organization B's officers will prepare investigative reports in accordance with applicable procedures of County D, County E, or City F; that Organization B's officers will be obligated to attend hearings in county court as necessary; and, that individuals arrested in City F by Organization B's officers will be incarcerated in County D's jail and prosecuted, depending on the nature of the offense, by the City F Attorney's Office

or the County D Attorney's Office pursuant to a cooperative aid agreement between County D and City F. In practice, when enforcing state laws, Organization B's officers will be under the supervision and direction of the County D and County E Sheriffs, the City F Chief of Police, and the County D and County E Attorneys. The Sheriffs, Chief of Police and County Attorneys will have ultimate authority over crime scenes and criminal investigations. Agreements G, H, and I provide that nothing in the Agreement shall be construed to limit or release County D, County E, or City F, respectively, from criminal jurisdiction or responsibility otherwise possessed by the County or City under applicable law.

In light of Organization B's compliance with Statute N and its agreements with County D, County E, and City F, Employer A is treated by the state legislature as a law enforcement agency of State M. Employer A's licensed police officers are recognized by the legislature of State M as state peace officers, and as such are entitled to enforce state laws within the geographic boundaries of the Organization B reservation.

Plan X provides retirement, disability, and surviving spouse benefits to certain peace officers and firefighters in State M. These benefits are authorized and governed by Statute Q. Plan X is a contributory defined benefit plan. Pursuant to Statute Q, the State M Legislature authorized Employer A's peace officers to become members of Plan X contingent on the Internal Revenue 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 the following rulings:

- 1) that Employer A is an agency or instrumentality of State M for purposes of enforcing state law, and
- 2) that contributions made by Organization B to Plan X on behalf of its Board licensed police officers are contributions to a governmental plan within the meaning 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 within the meaning of Code section 414(d) 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 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, County E, and City F, political subdivisions of State M. Employer A operates in coordination with the County D and County E Sheriffs' Departments and the City F Police Department pursuant to joint powers agreements in this regard. Employer A's police officers will be under the supervision and direction of the Sheriffs, Chief of Police, and County or City Attorneys who have ultimate authority over crime scenes and criminal investigations.

State M exercises considerable control over the everyday activities and actions of Employer A. Extensive state standards govern the qualifications of police officers, because by definition a peace officer of Employer A must be licensed by the Board in order to be considered a state peace officer. Employer A police officers who are licensed by the Board are licensed under State M law, which means that they must comply with the continuing education and licensing requirements of State M. If Employer A's police officers fail to maintain their state peace officer licenses, they would no longer qualify under the definition of peace officer under Statute O and would no longer be authorized to exercise State M police powers.

There are situations where Employer A police officers may be placed under the direct control of local state law enforcement officers, and when Employer A police officers are exercising state authority they operate under state and county procedures. State M law also governs the duties, liabilities, and data practices of the Employer A police officers. The day-to-day results of law enforcement activity within the geographic boundaries of the Organization B reservation are largely controlled by State M procedures and institutions. When an Employer A police officer arrests someone for a violation of state law, that person is taken to a jail run by County D or County E. Whether or not a suspect apprehended by an Employer A police officer is prosecuted is a decision made by the County D, County E, or City F Attorney's Office, not any Organization B prosecuting authority.

Employer A's authority to exercise the powers of a State M law enforcement agency has

been granted by Statute N. The exercise of that power is subject to conditions imposed by statute. State M has the authority to revoke Employer A's ability to act as a state law enforcement agency at any time. The laws being enforced are those of State M. State M has the power to, and does, heavily regulate the training, education, licensure, and standards of conduct of Employer A's peace officers.

Under the express provisions of Statutes N and P, State M treats Council C of Organization B as a state governmental unit for purposes of law enforcement activities. Council C of Organization B is treated as a unit of state government for the purpose of entering into cooperative agreements with other State M law enforcement agencies.

Accordingly, based on the above facts and representations, we conclude with respect to your ruling requests that contributions made by Employer A to Plan X on behalf of its peace officers who are licensed by the Board are considered contributions by an agency or instrumentality of State M, or political subdivision thereof, for purposes of Code section 414(d), and participation in Plan X by such peace officers of Employer A 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 rulings are based on the assumption that Plan X is qualified under section 401(a) of the Code and its related trust exempt under section 501(a) at all relevant times.

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

If you have any questions concerning this letter, please call [REDACTED], SE:T:EP:RA:T1
[REDACTED] at [REDACTED]

Sincerely,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

Notice of Intention to Disclose
Deleted Copy of Ruling