200326036

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 0 2 2003

Universal Issue List: 414.00-00

T:EP:RA:T3

Attention:

Legend:

Fire Department A =

City B =

State M =

Plan X =

Dear

This is in response to your request for a ruling, dated September 19, 2002, submitted by your authorized representative, as to whether Plan X Is a governmental plan within the meaning of section 414(d) of the Internal Revenue Code (the "Code"). A letter dated December 18, 2002, supplemented the request. You submitted the following facts and representations in support of your request.

Fire Department A is the sponsor of Plan X, a defined benefit plan which you represent is qualified under section 401(a) of the Code.

Fire Department A is the exclusive provider of fire protection services to City B and its residents in all but approximately four square miles out of a total of 67 square miles. City B and Fire Department A are two separate legal entities under State M law. Fire Department A is staffed by approximately **** paid employees and *** non-paid volunteers. Fire Department A is legally governed by its Board of Directors.

Under Article III, Section 1 of Fire Department A's By-Laws, a majority of the members of Fire Department A's Board of Directors must be residents of City B. The Board of Directors is "self-perpetuating", that is, the Board elects its own members. The Chief of Fire Department A is legally and ultimately responsible to Fire Department A's Board of Directors.

City B controls all of Fire Department A's funding and budget. However, Fire Department A generates revenues from certain activities - notably training activities and emergency medical/ambulance services. Agreements with City B require these revenues to be paid over to City B.

Fire Department A's payroll system is separate from that of City B's. Fire Department A has a human resources department that is responsible for the hiring and firing of employees. City B does not undertake these responsibilities. Fire Department A has its own personnel policies, although there is considerable consistency with standard provisions of City B.

All vehicles, equipment, and other personal property used by Fire Department A are owned by and titled in the name of City B. City B leases the vehicles to Fire Department A at the rate of $100.00 per year. A portion of the real property used by Fire Department A is owned by and titled in the name of Fire Department A, and a portion is owned by and titled in the name of City B. City B property is leased to Fire Department A.

Fire Department A is the only contributor to Plan X. Fire Department A's Board of Directors is in charge of Plan X amendments and terminations.

Based on the foregoing, you request a ruling that Plan X is and will be a governmental plan within the meaning of 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 thereof is the degree of control that a governmental entity or entities exercise over the organization's everyday operations. Other factors, including the manner in which the organization's trustees or operating board are selected, are considered in determining whether an organization is an agency or instrumentality of a government. However, the mere satisfaction of one or all of the factors is not necessarily determinative.

In Revenue Ruling 89-49 the Service ruled that the retirement plan discussed in the ruling was not a governmental plan within the meaning of section 414(d) of the Code because, among other reasons, the degree of control which the municipalities exerted over

the entity in its everyday operations was minimal. Fire Department A is not distinguishable from the entity described in Revenue Ruling 89-49.

In this case, Fire Department A is a separate legal entity, governed by its own Board of Directors. City B has no legal control over Fire Department A and its everyday operations. The Board of Directors is "self-perpetuating", that is, the Board of Directors elects its own members. City B does not determine who is on the Board of Directors. The Chief of Fire Department A is legally and ultimately responsible to Fire Department A's Board of Directors, not to City B.

Fire Department A's payroll system is separate from that of City B's. Fire Department A has a human resources department that is responsible for the hiring and firing of employees. City B does not undertake these responsibilities. Fire Department A has its own personnel policies.

Fire Department A is the only contributor to Plan X. Fire Department A's Board of Directors is in charge of Plan X amendments and terminations.

Accordingly, because the amount of control over the day to day operations of Fire Department A by City B is minimal, and because the Board of Directors elects its own members, we conclude with respect to your ruling request that Plan X is not a governmental plan within the meaning 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 provisions of the Code.

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

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions concerning this private letter ruling, please contact ********** (ID **-*****) at (***) ***-**** (not a toll-free number).

Sincerely Yours,

/S/

Frances V. Sloan, Manager
Employee Plans Technical Group 3
Tax Exempt and Government Entities Division

Enclosures:
Notice of Intention to Disclose
Deleted Copy of Ruling

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CC: