



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200607025**
Release Date: 2/17/06
235247/SE:T:E:RA:T:PE:1

Date: November 23, 2005

Contact Person:

Identification Number:

Telephone Number:

UIL Number: 6033.01-00

Employer Identification Number:

LEGEND:

A =
B =
C =
E =
F =
G =

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.

Facts

The State of B is composed of various counties, including C county. C county is governed by an elected county council. The C county council appointed a Board of Trustees ("Board") to manage A.

A is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and is classified as an organization described in sections 509(a)(1) and 170(b)(1)(A)(iii).

A's exemption letter from the IRS dated E states that it does not have to file annual Form 990 due to the specific exemption contained in section 6033(a) of the Code. For unknown reasons, A's prior CPA has filed Form 990 annually for many years. A does not generate any unrelated business income.

In order to reduce costs and increase efficiency, A's Board combined operations with F, another hospital exempt under section 501(c)(3) of the Code. After approval by both Boards of A and F, and approval by the C county council, the alliance of these two hospitals resulted in the creation of a third non-profit corporation, G. G is also exempt under section 501(c)(3). G currently manages the assets of A and F, assumed the liabilities of A and F, and consolidated the operation of the healthcare facilities and services provided by A and F. An equal number of Board members from A and F appoint the Board of G. The B Supreme Court has ruled that A's participation in G does not constitute a commercial joint venture.

A has no for-profit subsidiary or any affiliation with a for-profit entity. G paid all the compensation of A's officers and reported this compensation on G's annual Form 990. G also reported A's activities on G's annual Form 990. A's financial support is received from G. A must be audited for each fiscal year and the results presented to the Board of A, which is composed of members appointed by the C county council. C county officials and personnel approve all of A's expenses. C county owns A's facilities. A has no taxable subsidiary, does not engage in public fund-raising efforts, and its activities do not provide significant benefits to any private interest. Under A's Articles of Incorporation, if A is terminated, its assets will be distributed to C county.

Ruling Requested

A meets the requirements to be treated as an affiliate of a governmental unit under Rev. Proc. 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. Section 6033(a)(1) generally requires the filing of annual information returns by exempt organizations.

Section 512(a)(1) of the Code defines unrelated trade or business taxable income as the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less the allowable deductions directly attributable to such business activity, with certain modifications.

Section 514 of the Code defines unrelated debt-financed income as income produce from debt-financed property from an unrelated business, as discussed in section 512.

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

Section 6033(a)(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) of the Code.

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) of the Code 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 the requirements of Section 4.02(b) of Rev. Proc. 95-48.

Section 4.02(b) of Rev. Proc. 95-48 provides the following criteria to be used to determine whether an organization meets the requirements of Section 4.02(b): (1) the organization is either operated, supervised or controlled (within the meaning of section 1.509(a)-4(g)(1)(i) of the Income Tax 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 4.04 of Rev. Proc. 95-48 provides that in making a ruling or determination whether the organization's filing of form 990 is otherwise necessary to the efficient administration of the internal revenue laws under section 4.02(b)(iii), all relevant facts and circumstances shall be considered. These include the extent to which the organization has taxable subsidiaries or participates in joint ventures with non-exempt entities; whether it engages in substantial public fund-raising efforts; and whether its activities provide significant benefits to private interests.

Section 1.509(a)-4(g)(1)(i) of the regulations provides, in part, that the terms "operated by," "supervised by" and "controlled by" as used in section 509(a)(3)(b) of the Code 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

A does not have a ruling that meets the criteria of Section 4.02(a) of Rev. Proc. 95-48 and therefore it must meet the requirements in Section 4.02(b).

The Internal Revenue Service has determined that A is exempt from federal income tax under section 501(c)(3) of the Code and 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.) All of the members of A's Board are appointed by C county. Thus, 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. Accordingly, A meets the requirement of Section 4.02(b)(i) of Rev. Proc. 95-48.

A was created by the C county council. Therefore, A possesses the affiliation factor in Section 4.03(a) of Rev. Proc. 95-48.

A's financial support is received from G, which is a project approved by C county. Therefore, A possesses the affiliation factor in Section 4.03(b) of Rev. Proc. 95-48.

A must be audited for each fiscal year and the results presented to the Board of A, which is composed of members appointed by the C county council. C county officials and personnel approve all of A's expenses. Therefore, since A is financially accountable to a governmental unit, A possesses the affiliation factor in Section 4.03(c) of Rev. Proc. 95-48.

Under A's Articles of Incorporation, if A is terminated, its assets will be distributed to C county. Therefore, A possesses the affiliation factor in Section 4.03(e) of Rev. Proc. 95-48.

Therefore, since A possesses two or more of the affiliation factors listed in Section 4.03 of Rev. Proc. 95-48, A meets the requirements of Section 4.02(b)(ii).

A has no taxable subsidiary, does not participate in a joint venture with any for-profit entity, does not engage in substantial public fund-raising efforts; and does not provide significant benefits to private interests. A's hospital activities are already reported on G's annual Form 990. Therefore, since the filing of Form 990 is not otherwise necessary to the efficient administration of the internal revenue laws, A meets the requirement of Section 4.02(b)(iii) of Rev. Proc. 95-48.

Since A is described in section 501(c)(3) of the Code and meets the requirements of Section 4.02(b) of Rev. Proc. 95-48, A is treated as an "affiliate of a governmental unit" under Section 4.02 of Rev. Proc. 95-48.

Ruling

A meets the requirements to be treated as an affiliate of a governmental unit under Rev. Proc. 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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Thank you for your cooperation.

Sincerely yours,

/s/

Lawrence M. Brauer
Acting Manager
Exempt Organizations
Technical Group 1

Enclosure
Notice 437