



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200607022**

Release Date: 2/17/06
236080/SE:T:EO:T1

Date: November 25, 2005

UIL: 6033.00-00
6033.01-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

A =
B =
C =
D =
E =
F =
G =
H =
J =

Dear _____ :

We have considered your representative's letter requesting that we determine that you meets the requirements of Rev. Proc. 95-48, 1995-2 C.B. 418, and are not required to file Form 990, Return of Organization Exempt from Federal Income Tax.

FACTS

A is the voluntary council on aging for B. A was recognized as an organization exempt from federal income tax under section 501(c)(3) of the Code and as other than a private foundation under section 509(a)(1) and 170(b)(1)(A)(vi) of the Code. A has not been issued a ruling under section 115 of the Code.

A collects facts and statistics and make special studies of conditions pertaining to the employment, financial status, recreation, social adjustment, mental and physical health or other conditions affecting the welfare of the aging people in B; to keep abreast of the latest

developments in these fields of activity; to interpret its findings to the citizens of its service; to provide for the mutual exchange of ideas and information in B and at the state level; to conduct public meetings; to make recommendations for needed improvements and additional resources; to promote the welfare of aging people; to coordinate and monitor services with other local agencies serving the aging people of the parish; and to assist and cooperate with C, D, and other departments of state and local governments serving the elderly, and; to make recommendations relevant to the planning and delivery of services to the elderly of B.

Specific services provided by A to the elderly residents of B include providing transportation, homemakers, prescription assistance, information and assistance, outreach, utility assistance, congregate and home delivered meals, nutritional education, recreation, personal care, in-home respite, and wellness.

In _____, E authorized the chartering of voluntary councils on aging and limited the number of councils to be formed. In 1979, E the created and established F in the office of the Governor. F coordinates the services of all of E's agencies serving the elderly, which includes each voluntary council on aging. The law also established the authority under which the voluntary councils on aging operate. An application for a charter must be approved by the executive director of the F before it is sent to the Secretary of State for the issuance of the charter. The statute also states "immediately upon receipt of the charter by the Secretary of State, voluntary council on aging will be authorized to receive public funds from any governmental or political subdivision and provides that, the functions of each parish voluntary council on aging shall comply with the objectives of state laws and shall be governed by the policies and regulations established by E and upon review and recommendation of G. G, with the approval of the Governor, and upon review and recommendation of H, may revoke the charter of any voluntary council on the aging for noncompliance with the provisions of the law or the policies, regulations, or amendments established by H. The formula used to determine the annual appropriation of state funds to each of the councils on aging is based on the elderly population in each council's service area and is determined under state law. The law requires each voluntary council to file annual financial statements with E.

Although the A is responsible for managing its daily affairs, it is also being supervised and controlled by E through F and G. A is required to prepare an annual financial statement and have it audited. The financial statements are prepared using governmental accounting principles and contain information that is comparable to the information required by Form 990. The audited financial statement must be filed by December 31 of each year with the Legislative Auditor and the financial statement is a public record.

RULING REQUESTED

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

STATEMENT OF 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) 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 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

You have stated that 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 a supporting organization under section 509(a)(3). A was created by state statute. Its Board of Directors is selected from the population to whom it provides services and represents different areas within the service area. Although A is responsible for managing its daily affairs, it is also being supervised and controlled by E through F and G as evidenced by state statute. A is required to prepare an annual financial statement and have it audited in accordance with state law. The financial statements are prepared using governmental accounting principles and contain information that is at least comparable to the information required by Form 990. The audited financial statement must be filed by December 31 of each year with the Legislative Auditor and the financial statement is a public record.

A meets the requirements of section 4.02(b) (ii) because the special charter under which it operates was created by an act of E, and because it is financially accountable to both C and J. It is required to file monthly and annual financial reports with E, and it is required to file annual audited financial statements with J. The audited financial statements, which are filed using a prescribed governmental format, contain at least as much, if not more, information than is required by Form 990. The audited statement is also a public record.

A meets the requirements of section 4.02(b)(iii) because it has no taxable subsidiaries, has no joint ventures with nonexempt entities, does not engage in substantial public fund-raising activities, and its activities are required by state statute to provide benefits to the elderly of B. There are no significant benefits provided to private interests. 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

Therefore, we rule:

A satisfies the requirements of being 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.

Sincerely yours,

Lawrence Brauer
Acting Manager,
Exempt Organizations
Technical Group 1

Enclosure
Notice 437