



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200601039**
Release Date: 01/06/2006
235132

Date: 10-12-2005

Contact Person:

Identification Number:

Telephone Number:

UIL Number: 6033.01-00

Employer Identification Number:

LEGEND:

A =
B =
C =

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 created the University of B (the "University") under B State statute. The Governor of the State of B appoints the Board of Directors of the University. The University created the University of B Healthcare System (the "System") under B State statute, and the System created A. A then created C. The University is the sole member of the System and elects its Board of Directors. A is the sole member of C and elects its Board of Directors.

C is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and is classified as a supporting organization under section 509(a)(3). A provides management services to its four subordinate health care organizations. Three of these organizations are exempt under section 501(c)(3) and one is non-exempt.

C's financial support is received from the general public through fundraisers. C is included in the financial statements of the State of B. C must be audited for each fiscal year and the results presented to the State of B. The State of B officials and personnel approve all of C's expenses. C has no taxable subsidiary, engages in public fund-raising efforts, and its activities

do not provide significant benefits to any private interest. Under C's Articles of Incorporation, if C is terminated, its assets will be distributed, either directly or indirectly, to the System.

Ruling Requested

C 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) of the Code 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).

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 the 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).

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 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 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.

Analysis

C does not have a letter 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 C is exempt from federal income tax under section 501(c)(3) of the Code and is a supporting organization under section 509(a)(3). All of the members of C's Board of Directors are indirectly appointed by the University. Therefore, the University effectively controls C. Thus, C 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, C meets the requirement of Section 4.02(b)(i) of Rev. Proc. 95-48.

C was created by the University, via its subsidiary, System. The University is a governmental entity created by the State of B. The University controls C through its subsidiary, System. The sole member of C is A. Therefore, C possesses the affiliation factor in Section 4.03(a) of Rev. Proc. 95-48.

C's financial support is received from fundraisers from the general public. C's operations are reviewed by A, which is ultimately reviewed by the University. Therefore, C possesses the affiliation factor in Section 4.03(b) of Rev. Proc. 95-48.

C is included in the financial statements of the State of B. C must be audited for each fiscal year and the results presented to the State of B. The State of B officials and personnel approve all of C's expenses. Therefore, since C is financially accountable to a governmental unit, C possesses the affiliation factor in Section 4.03(c) of Rev. Proc. 95-48.

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

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

C has no taxable subsidiary, participates in no joint venture with a non-exempt entity; engages in substantial public fund-raising efforts; and does not provide significant benefits to private interests. Therefore, since the filing of Form 990 is not otherwise necessary to the efficient administration of the internal revenue laws, C meets the requirement of Section 4.02(b)(iii) of Rev. Proc. 95-48.

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

Ruling

C 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.

Thank you for your cooperation.

Sincerely yours,

Lawrence M. Brauer
Acting Manager
Exempt Organizations
Technical Group 1

Enclosure
Notice 437