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Uniform Issue List: 414.00-00

**Internal Revenue Service**

Department of the Treasury
Washington, DC 20224

**Person To Contact**

**Telephone Number:**

**Refer Reply To:**
T:EP:RA:T3
**Date:**

JUL 2 2001

Attention:

**Legend:**

Union A =

City B =

Fund D =

Plan X =

Dear

This is in response to a letter from your authorized representative dated July 6, 2000, requesting a ruling concerning the status of Plan X under section 414(d) of the Internal Revenue Code.

Plan X was established in ******, as a defined contribution profit-sharing annuity plan. It is financed exclusively by contributions from the City B and provides benefits exclusively to City B civil servants who are employed in job titles represented by Union A. Employees do not contribute to Plan X.

Plan X was established as the result of collective bargaining agreements between City B and Union A. Plan X, a governmental plan pursuant to section 414(d) of the Code, was determined to be qualified under section 401(a) in a determination letter issued by the Internal Revenue Service on **********. Currently, there are ******* participants in Plan X, but several hundred more participants are expected to be added as annuity contribution

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agreements supplemental to the basic collective bargaining agreements are concluded between Union A and City B.

Five officers of Union A constitute, *ex officio*, the Board of Trustees of Fund D (the Plan X trust). In their capacity as Fund D Trustees, they set policy for and administer Plan X. As Union officers, their job responsibilities exclusively are to represent City B in the titles represented by Union A and to serve as trustees on separate, tax-qualified benefit funds administering supplemental health benefits, prepaid legal services benefits, educational benefits and annuity benefits for these same Union A represented employees.

Four of the five Fund D Trustees are not considered employees of City B although all were employees of City B and are on leave of absence to serve as officers of Union A. One Trustee presently remains a City B employee on what City B denominates as "released-time" to perform labor-management activities pursuant to which he works full-time as an Union A officer. City B is thus contributing to Plan X on his behalf and he is a participant in Plan X.

The five officers come from the ranks of City B employees in municipal job titles represented by Union A. Since their elections, the officers, with the previously noted exception, are employed by Union A. Consequently, the four officers of Union A who are employed by Union A are not eligible to participate in Plan X, even though they are also Trustees of Fund D, because Plan X is limited to employees of City B.

At a meeting of the Board of Trustees on **********, the Trustees of Fund D determined that Plan X should be amended (1) to include as participants the Trustees and (2) to add Union A as a contributing employer on behalf of the Union A officers who are the Trustees provided the Internal Revenue Service will allow such amendment to Plan X without jeopardizing the tax-qualified status of Plan X. Plan X, as so amended will be submitted to the appropriate area office of the IRS for a new determination letter.

Based on the foregoing, you request a ruling that the inclusion of the Trustees of Fund D, employed by Union A, as Plan X participants, will not affect Plan X's status as a governmental plan under section 414(d) of the Code.

Section 414(d) of the Code provides that for purposes of part I of subchapter E of Title I of the Code, 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.

Under section 413(a), certain modifications to the qualified plan rules provided under section 413(b) apply to a qualified retirement plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers. For such a plan, sections 413(b)(1) through (7) generally provide that the participation, nondiscrimination, exclusive benefit, vesting, funding deduction rules are applied as if all participants in the plan are employed by a single employer. A governmental plan would be affected similarly to the extent such rules are otherwise applicable. Pursuant to section 413(b)(8), employees of employee representatives are treated as employees of an employer described section 413(a) for purposes of applying the modifications to the qualified plan rules provided under section 413(b). Under section 1.413-1(i)(1) of the Income Tax Regulations, the plan and affiliated health and welfare plans are deemed to be employee representatives.

If employees covered by section 413(b)(8) with respect to a plan that is otherwise a governmental plan were to affect the plan's status as a governmental plan, significant changes in the application of many of the qualified plan rules descried in section 413(b)(1) through (7) would result. It appears, however, that section 413(b)(8) is intended to include employees of employee representatives in applying the qualified plan rules as modified pursuant to sections 413(b)(1) through (7) to a plan, and not to cause significant changes to the application of these rules with respect to a plan.

In this case, because Plan X is a qualified governmental plan maintained pursuant to a collective bargaining agreement between employee representatives and City B, it is subject to section 413(b) of the Code. Thus, under section 413(b)(8), the officers of Union A would be eligible to be included in Plan X. Accordingly, we conclude that the inclusion of the Fund D Trustees who are employees of Union A would not affect Plan X's status as a governmental plan under section 414(d).

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

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

Frances V. Sloan

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

CC:

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