

What is a government instrumentality?

A government instrumentality is not defined in the tax code. Rev. Rul. 57-128, 1957-1 C. B. 311 articulates six criteria to identify instrumentalities. In cases involving the status of an organization as an instrumentality of one or more states or political subdivisions, the following factors are taken into consideration:

- whether it is used for a governmental purpose and performs a governmental function;
- whether performance of its function is on behalf of one or more states or political subdivisions;
- whether there are any private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner;
- whether control and supervision of the organization is vested in public authority or authorities;
- if express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality, and whether such authority exists; and
- the degree of financial autonomy and the source of its operating expenses.

In addition, “[a]n entity must also have a separate existence from the political subdivision.”

Although the foregoing criteria were developed under sections 3121(b)(7) and 3306(c)(7) of the Code, which exclude from the definition of 'employment,' services 'performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby,' Rev. Rul. 75-359, 1975-2 C.B. 79, uses the same tests to determine whether an organization is a wholly-owned instrumentality of a state or political subdivisions of a state for purposes of distinguishing between charitable contributions made 'to' rather than 'for the use of' governmental units described in section 170(c)(1) of the Code. PLR8837084

The sexual abuse center described in the preceding section was not a “political subdivision” but it is an “instrumentality.”

In the instant case all of the foregoing factors are met. The Center performs and aids in functions described in State Law C, parts 1, 2 and 3. Center acts on behalf of X municipal political subdivisions plus the County. There are no private interests involved either during its operation or upon its dissolution. The political subdivisions each have the powers and interests of an owner. Control of the Center is vested in a board of governors. Although neither representatives of the State nor representatives of any one political subdivision control the board of governors, a clear majority of the members of the board are selected by virtue of their respective governmental positions and represent either the State or one of its political subdivisions on the board. Thus, control and supervision of the Center is vested in public authorities. State Laws A, B, and C contain the necessary authority to create Center. The information submitted further indicates that Center has financial attorney from the various political subdivisions. PLR8837084

Another example of an organization that was determined by the IRS to be an instrumentality is an Agency authorized pursuant to a State Act which provided

for a delivery system for human resources to the residents of State. The Agency was subsequently incorporated as a State nonprofit corporation.

Agency's stated purposes in its charter are to: (1) effectively and efficiently deliver human resource programs and services to eligible recipients in the thirteen county Area; (2) own and dispose of property both real and personal and receive and

dispense funds and contributions from any federal or state assistance program under which such an agency can serve as grantee, contractor, or program sponsor or from private or local sources; and (3) operate within the meaning of the Act. Agency's bylaws provide that the Agency "shall have the responsibility to provide both a forum and a vehicle for local authority to administer and to assure implementation and operation of human resource programs."

The Agency provides employment training, child care, in-home services to the elderly, disabled, and economically disadvantaged, assistance to low-income families, transportation for the elderly, disabled and economically disadvantaged, counseling, and health care services.

The I.R.S. determined that this Agency met all six factors in Rev. Rul. 57-128. PLR200303025

Helpful Sources

Guthry, Peter. Dealing with government related entities – A brave new world. ALI-ABA CLE (1991)

Aprill, Ellen P. The Integral, the essential and the instrumental: Federal Income tax treatment of governmental affiliates, 23 J. Corp. L. 803 (1998)

McCray, Richard A. Sr. and Marvin Fridlander, "Organizations closely affiliated with state or Indian tribal governments reference guide", IRS Exempt Organizations CPE TIP FY 2004

Internal Revenue Service

Exempt Organizations Continuing Professional Education (CPE)

Technical Instruction Program FY 2004

Organizations closely affiliated with state or Indian tribal governments reference guide

Richard A. McCray, Sr. and Marvin Friedlander

Guide sheet for section 501(C)(3) organizations closely affiliated with state or Indian Tribal Governments

Instructions. This guide sheet is designed to assist in the processing of an IRC 501(c)(3) exemption application submitted by an organization that is closely affiliated with state government (including federally recognized Indian tribal governments). See the Reference Guide for assistance in completing this guide sheet. Contact EO Technical for additional help.

Yes No

1. Is the applicant a corporation, association, or trust? (A Yes response is favorable. A "No" response indicates that a problem exists.)
2. Does the organization meet the organizational test? (A Yes response is favorable. A "No" response indicates that a problem exists.)
3. Is the organization a wholly owned integral part of a State or local government? (A Yes response indicates that a problem exists. A No response is favorable.)
4. Is the organization a federally recognized Indian tribal government or a political subdivision of a federally recognized Indian tribal government? (A Yes response indicates that a problem exists. A No response is favorable.)
5. Does the organization have substantial regulatory or enforcement powers (sovereign powers)? (A Yes response indicates that a problem exists. A No response is favorable.)

If "Yes, are they regulatory or enforcement powers that are specifically excepted from disqualifying an organization under IRC 501(c)(3)?

- Determining a tax rate (Rev. Rul. 74-15)
- Conducting campus policing (Rev. Rul. 177-165)

(A Yes response is favorable. A No response indicates that a problem exists.)

6. Has the organization requested an exception from the Form 990 filing requirement under Rev. Proc. 98-45? If Yes, continue.
7. Has the organization requested an exception from filing Form 990 because it is a governmental unit under Section 4.01 of Rev. Proc. 95-48, or because it is an affiliate of a governmental unit under either Section 4.02(a) or Section 4.02(b) of Rev. Proc. 95-48? (If Yes, must meet a, b or c below.)
 - a. Does the organization meet Section 4.01 because it a governmental unit (1) as defined in Reg. 1.103-1(b), (2) an organization described in IRC 170(c)(1), or (3) an Indian tribal government or a political subdivision of an Indian tribal government under IRC 7701(a)(40) and 7871?
 - b. Does the organization meet Section 4.02(a) because it possesses a ruling or determination from the Service that (1) its income is excluded from gross income under I

RC 115, (2) it is entitled to receive deductible contributions under IRC 170(c)(1), or (3) it is a wholly owned instrumentality of a State or political subdivision of a State for employment tax purposes under sections 3121(b)(7) and 3306(c)(7)?

- c. Does the organization meet Section 4.02(b) because (1) the organization is controlled by a governmental unit, (2) it satisfies at least two of the five affiliation factors listed in Section 4.03, and (3) its filing of Form 990 is not otherwise necessary for efficient tax administration.