

What is a political subdivision?

The term "political subdivision", for purposes of this section denotes any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.

The I.R.S. explains the rules on political subdivision as follows:

Section 1. 103-1(b) of the Income Tax Regulations provides that the term 'political subdivision' denotes any division of any state or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit. (The foregoing interpretation of what constitutes a 'political subdivision' for purposes of section 103 of the Code has been frequently used for defining the term 'political subdivision' for purposes of other Code sections.) The three generally acknowledged sovereign powers are the power to tax, the power of eminent domain, and the police power. See Commissioner v. Estate of Alexander J. Shamberg, 3 T.C. 131 (1944), acq., 1945 C.B. 6, aff'd, 144 F.2d 998 (2d Cir. 1944), cert. denied, 323 U.S. 792 (1945). See also Rev. Rul. 73-563, 1973-2 C.B. 24.

Rev. Rul. 77-164, 1977-1 C.B. 20, and Rev. Rul. 77-165, 1977-1 C.B. 21, state that it is not necessary that all the powers enumerated in Shamberg be delegated. (See, for example, Rev. Rul. 61-181, 1961-2 C.B. 21, where it is held that a delegation of but one sovereign power will be sufficient for political subdivision status if the delegation is substantial.) However, possession of merely an insubstantial amount of any or all of those powers is not sufficient for political subdivision status. All of the facts and circumstances must be taken into consideration, including the public purposes of the entity and the extent to which it is subject to control by a government.

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As thus defined, a political subdivision of any State or local governmental unit may or may not, for purposes of this section, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of any such unit. Treas. Regs. 1.103-1(B)

A description of an organization, a Center formed to combat child sexual abuse in a County, which was held not to be a "political subdivision" by the I.R.S. is as follows:

Center was formed by a written agreement pursuant to State Law A which provides that units of local government may contract or otherwise associate among themselves in any manner not prohibited by law or ordinance, State Law B, an intergovernmental cooperation law which authorizes state and local governing bodies to cooperate in the performance of their responsibilities by contracts and other agreements, and State Law C which pertains to child abuse including establishing facilities such as Center. County is one of the parties to the agreement, as are X municipal jurisdictions, each of which lies wholly or partly

within County.

Center was formed to combat child sexual abuse in County, to coordinate the treatment, service, investigation and prosecutorial components of child sexual abuse into a unified system designed to provide an effective multidisciplinary approach to dealing with child sexual abuse incidents and victims. Center is an agency responsible for investigating all reports of child sexual abuse, except that each municipal police agency retains the right to conduct any independent investigation within its jurisdiction in cooperation with the Center. Entities such as Center are supported by State S, pursuant to Part 3 of State Law C.

The governing board of Center includes (1) the State's Attorney for County, a State S official elected by voters in County, (2) Coordinator, a State S official based in County, (3) Program Coordinator, a County government official, (4) Police Official, representing the separate municipal police departments among the X municipalities (5) Juvenile Official, representing juvenile officers of the municipalities located in County, and (6) the Mental Health Official, a County official. Coordinator and Program Coordinator (2 and 3, above) share one vote; all other members have one vote. PLR8837084

This sexual abuse center is not a political subdivision because the "Center possesses neither the power to tax nor the power of eminent domain. Insofar as Center possesses powers which regulate the health and welfare of residents of County, Center may have some measure of sovereign power. However, it is in an insubstantial amount, insufficient to confer 'political subdivision' status upon Center."

Although 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, it is not enough to make the Center a political subdivision.

Some of the other I.R.S. rulings on "political subdivision" are:

Rapid transit authority Rev. Rul. 73-563

State owned liquor stores: Rev. Rul. 71-131 and 71-132

Water district: LTR 8952016 (9/28/89)

Mental health board LTR 8925015

Community sports/entertainment complex promotion agency LTR 8832047 (5/17/88)

Other legal definitions of federal agencies are found in 5 U.S.C. 101- 105 (executive department list, 101; military department list, 102; government corporation defined, 103; independent establishment, 104; and executive agency, 105)

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**

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**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 IRC 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.