Rev. Rul. 65-26 (IRS RRU), 1965-1 C.B. 444, 1965 WL 12881

Internal Revenue Service (I.R.S.)
Revenue Ruling

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SECTION 3121.—DEFINITIONS, 26 CFR 31.3121(b)(7)-1: Services in employ of States or their political subdivisions or instrumentalities.

(Also Section 3306; 31.3306(c)(7)-1.)

***1** The *N* Municipal League was organized by individuals under the private, not for profit corporation laws of the State of *Y*. It has not been designated as an agent or instrumentality by any municipal corporation. The activities of the League are governed by its board of trustees, with no control and supervision vested in any public authority. *Held*, the League is not a wholly owned instrumentality of political subdivisions of the State of *Y*, and services performed in its employ are not excepted from 'employment' under sections 3121(b)(7) and 3306(c)(7) of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, respectively.

Advice has been requested as to whether the *N* Municipal League, organized and operated under the circumstances described below, is a wholly owned instrumentality of political subdivisions of a State for Federal employment tax purposes.

The *N* Municipal League was incorporated by individuals under the laws of the State of *Y* relating to private, not for profit corporations. Its purposes are the improvement of municipal government and the promotion of the general welfare of the cities and villages of the State by appropriate means, including research, the fostering of conferences, and publications. The League's governing body is a board of trustees, comprised of qualified officials of member cities or villages.

The board of trustees holds and controls the League's property, manages its lawful business, approves an annual budget, and submits annual reports to its members. Officers are chosen by the board from among its members. The board appoints a director who is the secretary and treasurer. The director manages the League's affairs under the general direction of the board, and appoints the various employees.

The League's activities consist of publishing a monthly magazine featuring articles on governmental matters; conducting conferences, surveys and research projects on governmental subjects and publishing the results in pamphlets; and sponsoring or participating in municipal law institutes and seminars. The League also spends more than an insubstantial part of its time and money in appearances before legislative bodies in attempts to influence legislation and, therefore, does not qualify as an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954. Income is derived from membership dues, sales of publications, advertising and conference receipts, and is expended in carrying out its activities. The League's accounts are audited at the end of each year by an independent accountant selected by the board of trustees.

Under the laws of the State of *Y* relating to corporations not for profit, such a corporation has the capacity possessed by natural persons to perform all acts not repugnant to law. Its corporate powers, property, and affairs shall be exercised, conducted and controlled by a board of not less than three trustees. All property, real or personal, acquired by a corporation not for profit shall be the absolute property of such corporation, unless at the time of acquiring the property it is otherwise in writing specified. The State of *Y* has no special statute for the incorporation of a league of this nature as an instrumentality of political subdivisions.

***2** Section 3121(b)(7) of the Federal Insurance Contributions Act (chapter 21, subtitle C of the Code) excepts from 'employment' service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any

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one or more of the foregoing which is wholly owned by one or more States or political subdivisions. Section 3306(c)(7) of the Federal Unemployment Tax Act (chapter 23, subtitle C of the Code) contains a similar provision.

In cases involving the status of an organization as an instrumentality of a State or political subdivision thereof, the following factors are taken into consideration: (1) Whether it is used for a governmental purpose and performs a governmental function; (2) whether performance of its function is on behalf of one or more States or political subdivisions; (3) whether there are any private interests involved, or whether the States or political subdivisions involved have the powers and interests of an owner; (4) whether control and supervision of the organization is vested in public authority or authorities; (5) whether express or implied statutory or other authority is necessary or exists for the creation and use of the organization; and (6) the degree of financial autonomy and the source of its operating funds. See Rev. Rul. 57-128, C.B. 1957-1, 311.

In the instant case, all of the factors enumerated above are not met. The *N* Municipal League has not been designated by any municipal corporation as its agent or instrumentality, as would be possible under the constitution of the State. The activities of the League are governed by its board of trustees who, although municipal officers, are acting as individuals with no power of agency from their respective municipalities. Thus, control and supervision of the League are not vested in any public authority.

Accordingly, it is held that the *N* Municipal League is not a wholly owned instrumentality of political subdivisions of the State of *Y*. Services performed in the employ of the League are not excepted from 'employment' under sections 3121(b)(7) and 3306(c)(7) of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, respectively, and the taxes imposed by these Acts are applicable to the wages for such services.

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