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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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Contact Person:

Identification Number:

Telephone Number:

Uniform Issue List No.: 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

A was created by the Housing Authority of the City of B ("Housing Authority") under C State statute. A is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and is classified as a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi). The Housing Authority is a governmental entity, created by the State of C. A has no members. A provides low-income housing for the city of B.

A has a five member Board of Directors, two of whom are appointed by the Board of Commissioners of the Housing Authority, and three of whom are appointed by the unanimous vote of the first two Board members. Therefore, the Housing Authority effectively controls A.

A's financial support is received from grants that originated from the United States Department of Housing and Urban Development. ("HUD") A is not included in the financial statements of the State of C. However, A must be audited for each fiscal year and the results presented to HUD.

HUD officials and personnel approve all of A's expenses. A does not have a taxable subsidiary, does not engage in public fund-raising efforts, and its activities do not provide significant benefits to any private interest. Under A's Articles of Incorporation, if A is terminated, its assets will be distributed to the Housing Authority, or, if that is not available, to a successor organization with the same purpose of A.

Ruling Requested

A satisfies the requirements of being an affiliate of a governmental unit of 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) generally requires the filing of annual information returns by exempt organizations.

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) of the Code 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 Income Tax 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 regulations provides, in part, that the terms "operated by," "supervised by"' and "controlled by" as used in section 509(a)(3)(b) of the Code 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

You have stated that A 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 A is exempt from federal income tax under section 501(c)(3) of the Code and is classified as a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. A was created by state statute and is managed by a Board of Directors; two of whom are appointed by the Board of Commissioners of the Housing Authority, and three of whom are appointed by the unanimous vote of the first two Board members. Therefore, the Housing Authority effectively controls A. Thus, A 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, A meets the requirement of Section 4.02(b)(i) of Rev. Proc. 95-48.

A was created by the Housing Authority, which is a governmental entity created by the State of C. The Board of A is effectively controlled by the Housing Authority, which was created by the State of C. Therefore, A possesses the affiliation factor in Section 4.03(a) of Rev. Proc. 95-48.

A's financial support is received from grants from the Federal government. Therefore, A possesses the affiliation factor in Section 4.03(b) of Rev. Proc. 95-48.

A is not included in the financial statements of the State of C. However, A must be audited for each fiscal year and the results presented to HUD. HUD officials and personnel approve all of A's expenses. Therefore, since A is financially accountable to a governmental unit, A possesses the affiliation factor in Section 4.03(c) of Rev. Proc. 95-48.

Under A's Articles of Incorporation, if A is terminated, its assets will be distributed to the Housing Authority, or a successor to the Housing Authority. Therefore, A possesses the

affiliation factor in Section 4.03(e) of Rev. Proc. 95-48.

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

A has no taxable subsidiaries, does not participate in joint ventures with non-exempt entities; does not engage 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, A meets the requirement of Section 4.02(b)(iii) of Rev. Proc. 95-48.

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

Ruling

A satisfies the requirements of being an affiliate of a governmental unit of 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,

/s/

Lawrence M. Brauer
Acting Manager
Exempt Organizations
Technical Group 1
Enclosure

Notice 437