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LEGEND:

Univ of TEXAS

- State - State of Texas
- University System - University of Houston System
EIN: - 74-6001399
- A - University of Houston--University Park
- B - Institute for Urban Studies
- C - Institute of Labor and Industrial Relations
- D - University of Houston--Clear Lake
- E - University of Houston--Downtown
- F - University of Houston--Victoria
- G - Texas Center for Superconductivity
- Statute - Tex. Educ. Code Ann. Ch. 111 (Vernon 1972 & Supp. 1991)

Dear Mr. Caudill:

This is in response to your letter of May 11, 1990, and subsequent correspondence submitted on behalf of the University System and its component institutions requesting rulings concerning the tax status of these organizations.

According to the information submitted, the University System and its component institutions, A, B, C, D, E, F, and G, were established by Statute by the legislature of State. The University System provides oversight and coordination of the activities of the system and each component institution within the system. A, D, E, and F are coeducational institutions of higher education. B is an institute for urban studies. C is an institute that provides education, research, and support services in the field of labor and industrial relations. G is a research and development center that is a component of A.

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The University System receives appropriations from the legislature of State. The control, organization, and management of the University System is vested by Statute in a Board of Regents ("Board") appointed by the governor with the advice and consent of the senate of State. The Board is authorized to enact bylaws, rules, and regulations necessary to the governance of the University System, and it has been held that its rules have the same force as enactments of the legislature of State.

The Board is authorized to prescribe the courses and programs of study that are required to obtain a degree from any of the component institutions, within certain limitations. The Board may not establish new component institutions without specific authorization by the legislature.

The Board is empowered to make appointments in the component institutions under its control. In its discretion, the Board may also remove any officer, member of the faculty, or employee when the interest of the University System requires it.

The Board may receive donations, gifts, and endowments for the purposes designated by the donors if such purposes are not inconsistent with the laws of X or with the objectives or proper management of the University System.

The Board has the power of eminent domain to acquire any land within certain counties that may be necessary for the use of the University System in carrying out its purposes. Additionally, the Board has the power to promulgate rules and regulations for the safety and welfare of students, employees, and property. Campus peace officers may be employed for such purposes, and these officers have the same power to maintain order, preserve peace, and make arrests as is now held by peace officers of State.

Section 115 of the Internal Revenue Code provides that gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a state or any political subdivision thereof.

Section 115 applies to agencies and instrumentalities that are separate entities, that is, organizations that are not integral parts of the government of a state or a political subdivision. However, section 115 does not apply to activities conducted directly by states or their political subdivisions, such as counties, cities or towns.

The term "political subdivision" is not defined in the Internal Revenue Code. However, section 1.103-1(b) of the Income

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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.

Three generally acknowledged sovereign powers of states are the power to tax, the power of eminent domain, and the police power. Estate of Shanberg v. Commissioner, 3 T.C. 131, 143 (1944), aff'd, 1945 C.B. 6, aff'd, 144 F.2d 998 (2d. Cir. 1944), cert. denied, 323 U.S. 792 (1945). It is not necessary that all three of these powers be delegated in order to treat an entity as a political subdivision for purposes of the Internal Revenue Code. Rather, 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. Reg. Bul. 77-164, 1977-1 C.B. 20.

In this case, the University System was formed pursuant to statute to achieve recognized public purposes. Its revenue and assets may inure only to the benefit of the public. It possesses the sovereign power of eminent domain and sovereign police powers. Therefore, based upon the facts presented, we conclude that the University System is a political subdivision of State.

Furthermore, considering the public purposes of the component institutions and the control and financing of the component institutions by the University System, we conclude that A, B, C, D, E, F, and G are integral parts of the University System and, therefore, integral parts of a political subdivision of State.

Section 170(a) of the Code provides, subject to certain limitations, a deduction for contributions and gifts to or for the use of organizations described in section 170(c), payment of which is made within the taxable year.

Section 170(c)(1) of the Code defines the term "charitable contribution" to include contributions or gifts to or for the use of a state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States, or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

Section 170(b) of the Code provides, in part, that in the case of an individual, the deduction provided in section 170(a) shall be allowed for any charitable contribution to a governmental unit referred to in section 170(c)(1) to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

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Because we have determined that the University System is a political subdivision of State, it is an organization described in sections 170(c)(1) and 170(b)(1)(A)(v). Since A, B, C, D, E, F, and G are integral parts of the University System, contributions or gifts to A, B, C, D, E, F, and G are the same as contributions or gifts to the University System. Accordingly, bona fide contributions and gifts made to the University System or directly to A, B, C, D, E, F, or G, are deductible by donors to the extent provided in section 170(b)(1)(A) provided such contributions and gifts are made for exclusively public purposes. We express no opinion as to whether a particular transfer for which the section 170 deduction is claimed is in fact a bona fide contribution or gift and not a transfer made in anticipation of or consideration for a particular benefit expected to accrue to the taxpayer-donor.

An organization described in section 170(b)(1)(A)(v) of the Code is not a private foundation as defined in section 509(a). Because we have determined that the University System is an organization described in section 170(b)(1)(A)(v), we conclude that the University System, including its component institutions A, B, C, D, E, F, and G, is not a private foundation as described in section 509(a).

No opinion is expressed as to the federal income tax consequences for the organizations described above under any other provision of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(2) of the Code provides that it may not be used or cited as precedent.

Yours truly,
Assistant Chief Counsel
(Financial Institutions &
Products)

BY Alice M. Bennett
Alice M. Bennett
Chief, Branch 3

Enclosure:

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