Exhibit 7.20.4-10 (09-01-2006)
Organizations Closely Affiliated With State or Indian Tribal Governments

GUIDE SHEET FOR IRC §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). The guide sheet assumes that the organization would otherwise qualify as an exempt organization and focuses on issues peculiar to organizations closely affiliated with state or Indian tribal governments. See the accompanying Reference Guide, which is keyed to the numbered items, for assistance in completing this guide sheet.

	Yes	No
1. **Is the applicant a corporation, association, or trust?** A "Yes" response is favorable. A "No" response indicates that a concern needs to be resolved.		
2. **Does the organization meet the organizational test?** A "Yes" response is favorable. A "No" response indicates that a concern needs to be resolved.		
3. **Is the organization a wholly owned integral part of a State or local government?** A "Yes" response indicates that a concern needs to be resolved. 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 concern needs to be resolved. A "No" response is favorable.		
5. **Does the organization have substantial regulatory or enforcement powers (sovereign powers)?** A "Yes" response indicates that a concern needs to be resolved. Answer question 5a, below. A "No" response is favorable. Skip to question 6.		
a. **If "Yes," are they regulatory or enforcement powers that are specifically excepted from disqualifying an organization under IRC 501(c)(3)?** A "Yes" response is favorable. A "No" response indicates that a concern needs to be resolved.		
6. **Has the organization requested an exception from the Form 990 filing requirement under Rev. Proc. 98-45?** If "Yes," continue. If "No," stop.		
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," the organization 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?** If "Yes," stop. If "No," continue.		
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)?** If "Yes," stop. If "No," continue.		
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.** If "Yes," stop. A "No" response indicates that a concern needs to be resolved.		

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REFERENCE GUIDE FOR IRC §501(c)(3) ORGANIZATIONS CLOSELY AFFILIATED WITH STATE OR INDIAN TRIBAL GOVERNMENTS

The reference guide is keyed to the guide sheet numbering.

1. Entity Requirement

IRC 501(c)(3) requires the existence of a separately organized entity: a corporation, trust, or association. A corporation, trust or association, even owned by a State or municipality, may qualify under IRC 501(c)(3). Rev. Rul. 60-384, 1960-2 C.B. 172, amplifying Rev. Rul. 55-319, 1955-1 C.B. 119, describes such entities as a "clear counterpart" of an IRC 501(c)(3) organization.

Corporation: The separately organized entity requirement is generally met if the organization is incorporated as a not-for-profit entity under state corporation law or under Indian tribal law.

Trust: Likewise, if the organization is established as a trust, it is regarded as a separately organized entity.

Association: Generally, an association (unincorporated organization) with at least two members is treated as a separately organized entity.

> An eligible entity, such as a limited liability company, that has been determined to be, or claims to be, exempt from federal income taxation under IRC 501(a) is treated as having made an election to be classified as an association. See the check-the-box regulations in Reg. 301.7701-3(c)(1)(v). A limited liability company with a single owner can elect to be classified as an association or be disregarded as an entity separate from its owner. See Reg. 301.7701-3(a).
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> For a further discussion of limited liability companies qualifying as exempt organizations, see the following Continuing Professional Education articles: CPE 2000, Article H, *Limited Liability Companies as Exempt Organizations*, and CPE 2001, Article B, *Limited Liability Companies as Exempt Organizations – Update.*

Created by Legislation

Many times an entity is created by legislation, such as by state statute, tribal council resolution, a local ordinance or an act of the state legislature. The legislation and any other documents under which the organization was established must be analyzed to determine whether a separate organization was created.

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For example, a hospital district may be authorized by an act of the state legislature. The legislation may authorize the creation of an organization as a "public body corporate and politic" pursuant to a resolution filed by a local governmental legislative body, such as a city or county council, or ratified by an elected official, or approved by the voters. Sometimes the legislation requires that the approved organizational documents must be filed with the secretary of state. Other times, the legislation requires that an appropriate court must certify the approved organizational documents. Examination of the legislation and all the relevant documents will determine whether an entity is separately organized.

Example:

State statute authorizes the formation of an Older Persons' Commission (Commission) established by an Interlocal Agreement between local townships. The state statute provided that a Commission may operate an older persons' activity center for purpose of improving the social, legal, health, housing, educational, emotional, nutritional, recreational, and mobility status of older persons. The Interlocal Agreement established the Commission as an independent entity, separate and distinct from the townships. The Interlocal Agreement was signed by the townships. Generally, these facts and circumstances would be sufficient to establish the Commission as an entity that was separately organized.

Indian Tribal Governments

A federally recognized Indian tribal government and its political subdivisions, including Alaska Native governments, are treated like states for certain federal tax purposes. (See IRC 7871.) Rev. Proc. 2002-64, 2002-2 C.B. 717, provides a list of federally recognized Indian tribes for federal tax purposes. Rev. Proc. 86-17, 1986-1 C.B. 550, and Rev. Proc. 84-36, 1984-1 C.B. 510, provide a list of entities that are treated as political subdivisions of Indian tribal governments for federal tax purposes.

Note: Rev. Proc. 86-17, 1986-1 C.B. 550, Rev. Proc. 84-37, 1984-1 C.B. 513, and Rev. Proc. 2003-1, 2003-1 I.R.B. 1 (updated annually), also provide guidance as to how federally recognized tribal governments and their enterprises can qualify for treatment as a state or a political subdivision.

Organization Formed by Indian Tribal Governments

Exemption applications under IRC 501(c)(3) related to Indian tribes will generally fall into one of three categories.

First, a separate organization may be formed under state law by a federally recognized Indian tribe or by tribal members to address such issues as relief of the poor and distressed, eliminating prejudice and discrimination, combating community deterioration and juvenile delinquency, or defending human and civil rights secured by law, establishing health clinics, schools, rehabilitation centers, cultural and historic societies, and similar organizations.

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Second, a federally recognized Indian tribal government may form a separate corporation under tribal law to accomplish the activities described in the preceding paragraph. These corporations are treated as separate entities for purposes of qualifying for exemption.

Third, a corporation organized under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 477, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 503, shares the same tax status as a tribal government and, accordingly, it is not eligible for IRC 501(c)(3) exemption. See Reg. 301.7701-1(a)(3); Rev. Rul. 94-16, 1994-1 C.B. 19; Rev. Rul. 94-65, 1994-2 C.B. 14.

2. Organizational Test

An organization closely affiliated with a state or local government (including an organizations closely affiliated with a federally recognized Indian tribal governments) must meet the organizational test of Reg. 1.501(c)(3)-1(b) to qualify for exemption under IRC 501(c)(3). Therefore, an organization's creating document must contain language specifying an appropriate exempt purpose.

In addition, the organization's assets must be permanently dedicated to exempt purposes on dissolution either by specific provision in its creating document or by operation of state law. Assets dedicated to a State, local government, or federally recognized Indian tribe for a public purpose upon dissolution will meet the dissolution clause requirements. See Reg. 1.501(c)(3)-1(b).

Where the organization's creating document does not satisfy the organizational test, it would have to amend its creating document to meet the organizational test.

For a further discussion of the organizational test, see the Continuing Professional Education article, CPE 2004, *Organizational Test – IRC 501(c)(3)*. In particular, Rev. Proc. 2003-12, 2003-1 C.B. 316, and Exhibit 1 of this CPE article provide guidance on the dissolution provision for an organization described in IRC 501(c)(3) whose income is also exempt under IRC 115(1).

State Legislation and the Organizational Test

The organizational test often poses a problem when an organization is created pursuant to a state statute, a local ordinance, an act of the state legislature, or a tribal council resolution. The problem arises because the "organizational document" is often contained in the statute, ordinance, act, or resolution and it may contain neither the exempt purpose language nor a standard dissolution clause. This type of organization may face difficulty in having its organizational document amended. In this circumstance, if a careful reading of the creating provision shows that the organization will operate exclusively for exempt purposes and that upon dissolution its assets will be distributed for exempt purposes, it may be deemed to have met the organizational test.

Furthermore, if the creating provision of an organization created pursuant to a state statute, a local ordinance, an act of the state legislature, or a tribal council resolution provides that upon dissolution all of its assets will be distributed to a state, a federally recognized Indian tribal

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government, or a political subdivision of a state or federally recognized Indian tribal government, it may be deemed to have met the dedication of assets portion of the organizational test provided there is no indication of private use. The assumption is that the assets will be used for a public purpose as is required by Reg. 1.501(c)(3)-1(b)(4).

In some circumstances, it may be more efficient for the organization to establish a separately incorporated entity as the applicant that can be established to satisfy the organizational test requirements than to seek to amend a state statute, a local ordinance, or an act of the state legislature.

3. Integral Part of Government

A state or local government or political subdivision of a state or local government is not eligible for exemption under IRC 501(c)(3). As stated in Rev. Rul. 60-384, 1960-2 C.B. 172, a state or municipality itself would not qualify since its purposes are not exclusively those described in 501(c)(3). See for example, Estate of John C. F. Slayton v. Commissioner, 3 B.T.A. 1343. It follows, therefore, that where the particular activity in question is being conducted as an integral part of a state or municipal government, exemption under IRC 501(c)(3) would not be permitted.

An organization wholly owned by a state is not recognized as a separate entity for federal tax purposes if it is an integral part of a state. Reg. 301.7701-1(a)(3).

4. Tribal Government

A federally recognized Indian tribal government or political subdivision of a tribe is not eligible for exemption under IRC 501(c)(3) consistent with Rev. Rul. 60-384, *supra*. See Reg. 305.7701-1 for a definition of Indian Tribal government.

5. Regulatory or Enforcement Powers

Rev. Rul. 60-384, 1960-2 C.B. 172, provides that even though a wholly owned state or municipal organization may be separately organized, it is not eligible for IRC 501(c)(3) exemption if it has substantial regulatory or enforcement powers in the public interest. These powers traditionally are referred to as sovereign powers.

The three generally acknowledged sovereign powers are:

- Power to levy and collect tax on its behalf
- Power of eminent domain
- Police power

However not all sovereign powers are necessarily disqualifying regulatory or enforcement powers. Thus, the fact that an organization has one of the sovereign powers listed above does not automatically preclude the organization from qualifying under IRC 501(c)(3).

Examples:

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Determining a Tax Rate

A limited power to determine a tax rate necessary to support an organization's operations that is more related to the disposition of tax revenues than to the exercise of the taxing power of the political unit involved does not constitute a disqualifying regulatory or enforcement power. Rev. Rul. 74-15, 1974-1 C.B. 126, provides that an exempt organization is permitted to certify or determine a tax rate. For purposes of qualification under IRC 501(c)(3), solely, there is no distinction between the power to recommend or certify a tax rate, the power to determine a tax rate, and the power to levy, assess or impose a tax. The disqualifying regulatory or enforcement power is the power to collect tax levied on its behalf. Thus, if an organization has the power to collect tax levied on its behalf, it will not qualify under IRC 501(c)(3).

Eminent Domain

A public hospital is described in Rev. Rul. 67-290, 1967-2 C.B. 183.

Campus Policing

Rev. Rul. 77-165, 1977-1 C.B. 21, provides that a public university with governmental power limited to policing and traffic control on the campus to preserve order and provide for public safety within the confines of its own property is not, thereby, disqualified under IRC 501(c)(3) because the powers are insufficient to constitute the exercise of the state's police power. Therefore, a limited power equivalent to a university or college campus police force would not disqualify an otherwise qualified organization.

Investigation Authority

In Rev. Rul. 74-14, 1974-1 C.B. 125, a public housing authority that is authorized to investigate whether unsanitary or unsafe housing conditions exist does not qualify for exemption under IRC 501(c)(3) because it has the power to conduct investigations by entering property and issuing subpoenas. The power to investigate and subpoena involves the power to compel testimony under threat of imprisonment if the testimony is not forthcoming. Therefore, the housing authority possesses disqualifying regulatory or enforcement powers.

Sovereign Powers

In Texas Learning Technology Group v. Commissioner, 958 F.2d 122 (5th Cir. 1992), the court upheld the judgment of the Tax Court stating that the subject organization did not qualify as a political subdivision under IRC 509(a)(1) and 170(b)(1)(A)(v) because it was not authorized to exercise sovereign powers.

6. Exceptions from Filing Form 990 (or Form 990-EZ) under Rev. Proc. 95-45

Rev. Proc. 95-48, 1995-2 C.B. 418, (which supplements Rev. Proc. 83-23, 1983-1 C.B. 687), exercises the Commissioner's discretionary authority under IRC 6033(a)(2)(B) by specifying that two additional classifications, governmental units and affiliates of governmental units, which are exempt from federal income tax under IRC 501(a), are not required to file annual information returns on Form 990, *Return of Organization Exempt From Income Tax*.

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As noted, this revenue procedure specifies two classes of organizations that are not required to file the annual information return:

1. Governmental units described in section 4.01 of Rev. Proc. 95-48, and
2. Affiliates of governmental units described in section 4.02(a) or (b) of Rev. Proc. 95-48.

7. Rev. Proc. 95-48 Exceptions

a. Section 4.01 of Rev. Proc. 95-48

The section 4.01 governmental unit filing exception requires that the organization qualify as a governmental unit. An organization that comes within this exception is:

- A state or local governmental unit as defined in Treas. Reg. 1.103-1(b), which includes a "State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof,"

- An organization entitled to receive deductible charitable contributions as an organization described in IRC 170(c)(1), which is a "State, territory, 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,"

- An "Indian tribal government or a political subdivision thereof" under IRC 7701(a)(40) and 7871.

b. Section 4.02(a) of Rev. Proc. 95-48

The section 4.02(a) affiliate of a governmental unit filing exception requires that the organization have a ruling from the Service or determination letter stating that:

- Its income is excluded from gross income under IRC 115,

- It is entitled to receive deductible contributions under IRC 170(c)(1), or

- It is a wholly owned instrumentality of a state or political subdivision of a state for employment tax purposes (IRC 3121(b)(7) and 3306(c)(7))

c. Section 4.02(b) of Rev. Proc. 95-48

The majority of cases will involve the section 4.02(b) “affiliate of a governmental unit” filing exception. The following two requirements must be satisfied for treatment as a section 4.02(b) affiliate of a governmental unit:

1. First, the organization is "operated, supervised, or controlled by" governmental units, or by organizations that are affiliates of governmental units, within the meaning of Treas.

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Reg. 1.509(a)-4(g)(1)(i). This means that a governmental unit, an organization that is an affiliate of a governmental unit, or a public official acting in an official capacity, must appoint the majority of the members of the organization's governing body. A governing body elected by the public pursuant to local statute or ordinance also satisfies this requirement.

2. Second, the organization must satisfy two of the five affiliation factors listed in the revenue procedure indicating actual oversight of its financial affairs and activities by the governmental unit. Those five affiliation factors are listed below.

    1. One or more governmental units, organizations that are affiliates of governmental units, or public officials acting in their official capacity, created the organization.

    2. The organization receives its support principally from taxes, tolls, fines, government appropriations, or fees collected pursuant to statutory authority. Amounts received as government grants or other contract payments are not qualifying support.

    3. The organization is financially accountable to one or more governmental units. This factor is present if the organization is (1) required to report to governmental unit(s), at least annually, information comparable to that required by Form 990, and (2) is subject to financial audit by the governmental unit(s) to which it reports. A report submitted voluntarily by the organization does not satisfy this provision. Also, reports and audits pursuant to government grants or other contracts do not satisfy this provision.

    4. 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 (although it is not financially accountable to governmental units).

    5. If the organization is dissolved, its assets will (by reason of a provision in its articles of organization or by operation of law) be distributed to one or more governmental units, or organizations that are affiliates of governmental units.

Approval of Filing Exception

Approval of the filing exception described under section 4.02(b) of Rev. Proc. 95-48 will not be granted if the organization's filing of Form 990 is otherwise necessary to the efficient administration of the internal revenue laws. Each situation would depend on the interest of the Service and the public in securing access to the information provided through an annual information return.

Other Form 990 Exceptions

The following classes of organizations are not required to file Form 990:

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An exempt organization (other than a private foundation) having gross receipts each year that normally are not more than $25,000 is not required to file Form 990. See Rev. Proc. 83-23, 1983-1 C.B. 687.

"A state institution, the income of which is excluded from gross income under IRC 115(a)," is not required to file Form 990. See Reg. 1.6033-2(g)(v). The exception contained in Reg. 1.6033-2(g)(v) is dependent on the organization having no income within the scope of unrelated business income tax, such as a state college or university. See GCM 37657 (8/31/78).

Additional classes of organizations that are not required to file Form 990 are enumerated in Publication 557, *Tax-Exempt Status for Your Organization.*