

SENATE COMMITTEE ON INTERNATIONAL RELATIONS AND TRADE
80TH LEGISLATURE

SENATOR EDDIE LUCIO, JR.
Chair



September 18, 2007

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OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street
Austin, Texas 78701

RQ-0627-GA

FILE # ML-45366-07
I.D. # 45366

Dear General Abbott:

As chair of the Senate International Relations and Trade Committee, I ask for your opinion on a question relating to the application of certain provisions of Sections 11.182 and 11.1826, Tax Code, to a community housing development organization for a specific ad valorem tax year. In particular, I ask whether Subsections (c) and (e), Section 11.1826, Tax Code, in conjunction with Subsection (g), Section 11.182, Tax Code, may be applied so as to restrict a community housing development organization's eligibility for an exemption from ad valorem taxation under Section 11.182, Tax Code, for the 2004 ad valorem tax year.

Subsections (c) and (e), Section 11.1826, Tax Code, read as follows:

(c) Not later than the 180th day after the last day of the organization's most recent fiscal year, the organization must deliver a copy of the audit to the department and the chief appraiser of the appraisal district in which the property is located.

(e) Property may not be exempted under Section 11.182 for a tax year unless the organization owning or controlling the owner of the property complies with this section, except that the audit required by this section must address compliance with the requirements of Section 11.182.

Subsection (g), Section 11.182, Tax Code, reads as follows:

(g) To receive an exemption under Subsection (b) or (f), an organization must annually have an audit prepared by an independent auditor. The audit must include a detailed report on the organization's sources and uses of funds. A copy of the audit must be delivered to the Texas Department of Housing and Community Affairs and to the chief appraiser of the appraisal district in which the property subject to the exemption is located.



Section 11.1826, Tax Code, was added by Chapter 1156, Acts of the 78th Legislature, Regular Session, 2003 (House Bill No. 3546). Section 11.1826 took effect January 1, 2004.

Harmonizing these related, yet distinct, provisions raises several questions. For example, section 11.1826 first became effective January 1, 2004. Because the audit requirement thereunder, including the 180 deadline set out in subsection (c), pertains to audits of operations during the preceding year, would organizations be held to this deadline as to the audit for 2003, a fiscal year preceding the effective date of Section 11.1826, or would this deadline first take effect as to the audit for fiscal year 2004, the first year in which Section 11.1826 was in effect generally? Second, might this answer be different for newer community housing development organizations formed pursuant to Section 11.1825, which took effect simultaneously with Section 11.1826, as opposed to older organizations formed under original Section 11.182, and which is available only to organizations who qualified for exemption for at least a portion of 2003. See Section 11.182 (j). This latter question arises from the fact that Section 11.1826 directs these older organizations to comply with the audit requirements of Section 11.182, which in turn, requires delivery of an audit, but sets no statutory deadline for doing so. This leaves applicability of the deadline to older 11.182 organizations in doubt, not only generally, but in particular with respect to an audit covering fiscal year 2003, prior to Section 11.1826's enactment.

Accordingly, I ask whether Sections 11.182 and 11.1826, Tax Code, required a community housing development organization seeking an exemption under Section 11.182 for the ad valorem tax year that began January 1, 2004, to have submitted an audit of its operations for year 2003 to the Texas Department of Housing and Community Affairs and to the appraisal district "[n]ot later than the 180th day after the last day of the organization's most recent fiscal year" in order to qualify for the exemption.

Thank you very much for your consideration of this question. Please do not hesitate to contact me if you need any additional information regarding this request.

Sincerely,



Eddie Lucio, Jr.

State Senator

Chair, Senate International

Relations and Trade Committee