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

U.I.L.: 4944.03-00

Date: MAY 31 2000

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T3

Employer Identification Number:

Dear Sir or Madam:

This is in response to a supplemental ruling request dated April 7, 2000, submitted on your behalf by your authorized representative. This ruling is seeking the effects on your proposal to expand the geographical area in which you initially proposed to operate. Your prior operations were approved in an earlier ruling letter to you. Subsequent to that ruling you changed your legal structure from a trust to a corporation. You sought and received a favorable ruling on the change and the related transfer of assets. You represent that your operations in your new legal form have been the same as those previously approved. You now propose to expand the geographic scope of your activities to include Latin America, Southeast Asia and Africa.

You plan to make a series of low (or no) interest loans to organizations in the media field (e.g., newspapers, television stations, radio stations, etc.) in various regions of the world, primarily Central and Eastern Europe and the former Soviet Union, Latin America, Southeast Asia and Africa. (Most, and perhaps all, of these organizations are for-profit businesses.) Your primary purpose is to assist in the development of non-governmental, non-partisan, pluralistic, tolerant and non-extremist printed press, radio and television in societies that have historically been "closed" (or non-democratic). Through the creation of indigenous independent media in these countries, you hope to speed the institution-building process towards open societies and democratic systems.

You plan to make low (or no) interest loans (typically for a five (5) year term) to certain media organizations to help insure their autonomy from governmental powers. The terms of the loans will be significantly more favorable than would be available (if at all) from commercial lenders. You will select loan recipients based upon the following primary criteria: (i) whether a loan to the proposed recipient will promote independent, fair, honest and responsible journalism in the affected region; and (ii) whether the proposed recipient has sufficient managerial expertise and financial stability so as to make repayment of the loan likely.

Each loan recipient will sign a promissory note, loan agreement and, where appropriate and enforceable, a security agreement. As part of this documentation, each loan recipient will agree in writing to use the loan proceeds exclusively for proper expenditures in conducting activities being funded, to return any loan proceeds not so expended, and to submit periodic detailed financial reports (at least on a quarterly basis) during the term of the loan setting forth how the loan proceeds were expended and such other information as is typically required by commercial lenders and is required to maintain expenditure responsibility under the Code. The loan recipient will also agree in writing not to expend any loan proceeds for a purpose described in section 170(c)(2)(D) of the Internal Revenue Code. The proceeds of each loan will be distributed over time (to be held in a segregated account), as funds are needed by the loan recipient and as you insure, through monitoring, that the loan proceeds are being used properly.

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Section 4944(a) of the Code provides for a tax on investments by a private foundation which are made in such a manner as to jeopardize the accomplishment of the foundation's charitable purposes.

Section 4944(c) of the Code defines the term "program-related investments" for purposes of section 4944 as investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property.

Section 170(c)(2)(B) of the Code includes purposes which are charitable.

Section 53.4944-3(a)(2)(iii) of the Foundation and Similar Excise Taxes Regulations provides that in determining whether a significant purpose of an investment is the production of income or the appreciation of property, it shall be relevant whether investors solely engaged in the investment for profit would be likely to make the investment on the same terms as the private foundation. However, the fact that an investment produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property. The examples of section 53.4944-3(b) of the regulations illustrate cases of private foundations that make low-interest loans to business enterprises in deteriorated urban areas. The examples indicate that conventional sources of funding were unwilling to provide funds to the enterprises, and that the foundations' primary purpose for making the loans was to encourage the economic development of the area surrounding the business enterprises. The examples conclude that the loans significantly furthered the accomplishment of the foundations' exempt purposes and would not have been made but for the relationship between the loans and the foundation's exempt purposes, and that the loans had no significant purpose involving production of income. Thus, the loans were program-related investments.

Rev. Rul. 71-460, 1971-2 C.B. 231, provides that a domestic corporation that conducts a part or all of its charitable activities in a foreign country is not precluded from exemption under section 501(c)(3) of the Code.

Section 4942(g)(1) of the Code provides that the term "qualifying distributions" includes any amount paid to accomplish one or more purposes described in section 170(c)(2(B). Among the purposes enumerated in section 170(c)(2)(B) are "charitable" purposes.

Section 53.4942(a)-3(a)(2) of the regulations further provides that qualifying distributions include program-related investments as defined in section 4944(c) of the Code.

Section 4945 of the Code imposes a tax on certain "taxable expenditures" of private foundations. Section 4945(d)(4) of the Code provides that any amount paid by a private foundation to any organization (other than a public charity) will be deemed a taxable expenditure unless the foundation exercises expenditure responsibility.

Section 53.4945-5(b)(1) of the regulations provides that a private foundation will be considered to be exercising expenditure responsibility under section 4945(h) as long as it exerts all reasonable efforts and establishes adequate procedures

(i) To see that the grant is spent solely for the purpose for which made,

(ii) To obtain full and complete reports from the grantee on how the funds are spent, and

(iii) To make full and detailed reports with respect to such expenditures to the Commissioner.

Your proposed low (or no) interest loan program as described, accomplishes a charitable purpose because it is an integral part of your charitable purpose to promote the development of independent, non-partisan media in certain regions of the world. Because the loans are made only to those who are unable to obtain funds through commercial sources and are made at an interest rate below the market rate for comparable commercial loans, no significant purpose of the loans involves the production of income.

Accordingly, loans made in the manner described in the original and the expanded geographical area are program-related investments within the meaning of section 4944(c) of the Code, and also constitute qualifying distributions within the meaning of section 4942(g).

Based on the information submitted and the representations made therein, we rule as follows:

The proposed loans, as described, will constitute program related investments within the meaning of section 4944(c) of the Code and, thus, such loans will not be considered investments that jeopardize the carrying out of any of your exempt purposes within the meaning of section 4944(a) of the Code.

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 as precedent.

Sincerely,

(signed) Robert C. Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

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