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

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Date:

JUN 22 2000

Contact Person:

ID Number:

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OP:E:EO:T3

Employer Identification Number:
EO Area Manager Office:

X=

Dear Sir:

This letter is in response to your letter dated April 13, 2000, and subsequent correspondence requesting a ruling under sections 170(b)(1)(A)(vi) and 509(a)(1) of the Internal Revenue Code.

The Internal Revenue Service has recognized X as an exempt organization under section 501(c)(3) of the Code and issued it an advance ruling that it qualifies as a public charity under section 509(a)(1). The advance ruling period ended December 31, 1999.

X was established to help improve the effectiveness of the nonprofit sector through the collection and presentation of comprehensive information about nonprofit organizations. X's purpose is to support the evolution of a more efficient nonprofit marketplace where information about the operations and finances of nonprofit organizations is readily accessible and actively utilized by decision makers inside and outside the nonprofit sector. X's principal activity in pursuit of this objective is maintaining a comprehensive website where visitors can obtain information about charitable organizations.

X's website has become a major source of information about nonprofit organizations on the Internet. As such, it is poised to become a major resource for meeting philanthropy's needs to adapt to rapidly changing communications technology. Currently, the X website provides financial and programmatic information about more than 700,000 charitable organizations in the database, including 620,000 public charities. Through an arrangement with the Internal Revenue Service and working in collaboration with another organization, X's database includes information on Form 990, Form 990 EZ and Form 990 PF which may be accessed on its website.

X believes that by providing easy public access to accurate information about charities, it serves both the organizations themselves and potential donors. X's website enables donors to seek out and compare charities, monitor their performance, and give with greater confidence.

As a part of its larger efforts to promote philanthropy by distributing information, X will establish a donor advised fund (hereafter "DAF") on its website as one of several of X's programs or activities. The DAF will enable donors to make charitable contributions electronically over the Internet while having X's comprehensive database at their fingertips to inform their decisions. The fundamental purpose of the DAF is to maximize the potential of X's database to encourage increased and better-focused philanthropy.

The DAF will operate like an on-line nationwide community foundation, giving donors the ability to contribute to X, support charitable activity all around the country, and participate in philanthropy not only by making gifts but also by making informed recommendations about how the funds should be disbursed. As part of the DAF project, X also intends to establish an undesignated fund not subject to donor advice and supported by contributions through the DAF and X's other resources. Once operational, X will make grants from this fund to charities as it believes is appropriate.

X anticipates that initially, potential donors will access the DAF from X's own webpage after viewing an information report on one or more charitable organizations. Eventually, donors may access the DAF before they research specific charities and then do the research in conjunction with offering recommendations to accompany their gifts to X. In addition, the DAF pages will educate donors by offering examples of gifts that have been recommended by other donors contributing to the DAF and gifts X has made from its undesignated fund.

The DAF pages will inform potential donors explicitly that contributions to the DAF are unconditional and irrevocable. Moreover, in order to complete a gift to the DAF, donors will have to affirmatively acknowledge that they understand and accept that contributed funds belong to X and are subject to X's exclusive control by clicking on a specific field. The DAF pages will be candid with donors, however, by clearly indicating that ultimate discretion over transfers out of the DAF lies with X. Recommendations from a donor may be followed only after conducting appropriate due diligence. X will confirm that the recommended recipient is a public charity listed in the X database and is prepared to accept the donation.

X has also represented that it is generally the policy of X to follow the advice of the donor/advisor. However, all solicitations for funds, whether written or oral, will specifically state that X will not be bound by the advice offered by the donor. X will take appropriate steps to ensure that all fundraising communications reflect the policy.

X will accept recommendations to make donations only to organizations listed in its database as qualified public charities. The DAF pages will alert donors to this policy and explicitly advise them that no disbursements can be made to individuals, private foundations, or other donor advised funds. The DAF will correspond with the donee charity informing them that they may not recommend gifts from the DAF with a donor-advised fund nor use the gift to provide a benefit to the donor who has recommended the gift. If the DAF receives a gift that does not meet its requirements, it will contact the donor by e-mail and request another recommendation. If the donor does not provide an appropriate recommendation, the contribution will be placed in X's undesignated fund and distributed to a public charity of X's choosing. The DAF will not accept contributions from private foundations, other donor advised funds, or from members of X's board of directors.

The DAF will provide donors with two basic giving programs. The first will permit donors to make a contribution of not less than $10 that is intended to be incorporated in a short-term charitable giving program and dispensed accordingly. Donors to this program will generally give their recommendations for distributions at the time they make their gifts. The second program envisions donors contributing a more substantial amount that will be utilized in a longer term program of charitable giving. Recommendations for distributions may be made immediately or over the following months or years.

In general, the principal difference between the two giving programs will be in the length of time that funds are held by X. In addition, X will require that its longer-term funds not unduly delay the distribution of contributed funds to active charities. Accordingly, X will send periodic notices to all donors whose accounts remain inactive for a long period (roughly six months), reminding them to make recommendations and advising them of worthy opportunities for giving. If an account remains inactive for more than one year, X will alert the donor that if no recommendations are provided promptly, at least 5

percent of the funds in the account will be transferred to X's undesignated account for distribution as X sees fit. In any event, X will ensure that at least 5 percent of the aggregate amount of funds held in the DAF will be paid out as grants to public charities.

Investment income attributable to the funds in the first program will be retained by X to cover administrative expenses, and any excess may be distributed to X's undesignated fund. Funds held in accounts in the second program will likely earn investment income that will be allocated pro rata to the individual accounts to the extent it exceeds expenses and be available for distribution according to donor recommendations. Donors in the second program may be provided periodic reports about how X's investments are performing and the total amount held in their specific fund. However, donors will not be able to provide any advice on how X's funds are invested. In both programs, X will charge a small processing fee to cover expenses. No fees or expenses will be payable to donor-advisors.

Donors will make contributions exclusively in cash, either through electronic credit card transactions or other electronic means. In the future, X expects to be able to receive electronically transferred gifts of publicly traded stock. X does not intend to accept gifts of closely held stock, other financial instruments, real property, or tangible personal property. X will transfer funds to recipients recommended under the first giving program very quickly, perhaps in less than a day. X also plans to pursue follow up contacts with recipient organizations to ensure appropriate charitable use of donated funds.

Unless the donor wished to remain anonymous, X will provide the recipient charity information about the source of the gift. All recipient charities will be notified that the funds they receive are to be used exclusively for charitable purposes and not for the private benefit of the donor who recommended the contribution. The DAF will deliver a similar cautionary message to donors as they enter into the program. The donors and recipient charities will also be informed that X will investigate allegations of misuse of grant funds, such as use of grant funds to provide specific benefits to the donor or the donor's designee, and will seek to recover any funds that have been misused.

X has no current plans to promote the DAF separate and apart from the general information services available through its web site. It views the DAF as an additional function that increases the utility of its database.

X has requested the following ruling:

X may treat contributions made through the DAF as support from the general public for purposes of the public support test under sections 170(b)(1)(A)(vi) and 509(a)(1).

LAW AND ANALYSIS

Section 509(a) provides, in substance, that an organization described in section 501(c)(3) is a private foundation unless it is described in section 509(a)(1), (a)(2), or (a)(3) of the Code. Section 509(a)(1) includes an organization described in section 170(b)(1)(A)(vi) of the Code.

Section 1.170A-9(e) of the Income Tax Regulations provides in general that an organization is publicly supported if the total amount of support it normally receives from governmental units, from the general public, or from a combination of these sources equals at least 33 1/3 percent of the total support normally received by the organization.

Section 1.507-2(a)(8)(i) of the Regulations, provides in general, that in order to effectuate a transfer of "all its right, title, and interest in and to all of its net assets" a transferor (private foundation)

may not impose any material restriction or condition that prevents the transferee organization from freely and effectively employing the transferred assets, or the income derived therefrom, if furtherance of its exempt purposes.

The issue raised by X's ruling request has an indirect connection with section 1.507-2(a)(8) of the regulations. While that regulation applies to a specific situation involving a terminating private foundation, an issue not present in this case, the Regulation bears in general on the question of what organization exercises dominion and control over an asset so as to be considered its owner. For example, the regulations under section1.170A-9(e)(11) make reference to the regulations under 1.507-2(a)(8) for this purpose.

Considering the facts of this case, as stated above, when viewed in the context of section 1.507-2(a)(8) of the Regulations, we conclude that gifts and contributions placed with the DAF are assets of X. Accordingly, we hold as follows:

X may treat contributions made through the DAF as support from the general public for purposes of the public support test under sections 170(b)(1)(A)(vi) and 509(a)(1).

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. We are sending a copy of this ruling letter to your authorized representative listed on the power of attorney on file with this office.

Sincerely,

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

cc: