200043052

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

Date: JUL 28 2000

Contact Person:

ID Number:

Telephone Number:

T:EO:RA:T:4

UIL Nos.
501.03-08
509.01-02
4945.04-00

Employer Identification Number:

LEGEND:

B =
C =
X =
Y =

Dear Applicant:

This letter responds to X's request dated June 2, 2000 for rulings regarding the tax effects of a private foundation's proposed grant to a public charity for the purchase of an historic mansion.

FACTS:

X is a private foundation described in sections 501(c)(3) and 509(a) of the Code. X makes grants for a variety of exempt purposes.

Y is also described in section 501(c)(3) and has an advance public charity ruling under sections 509(a)(1) and 170(b)(1)(A)(vi). Y's purposes are to promote education in the fields of B and C.

X recently received a grant proposal from Y requesting funds to allow Y to purchase and refurbish a Mansion. The Mansion is listed in the national and State registers of historic places and located within the city's historic district. Y plans to amend its articles of incorporation to add an additional exempt purpose of historic preservation. X made a grant to Y to cover the expenses of planning for the possible purchase of the Mansion. X proposes to grant Y the funds needed to purchase the Mansion, conditional upon Y raising from other sources the additional funds necessary to renovate and maintain the Mansion. Y plans to occupy part of the first floor of the Mansion for use in its exempt programs (to hold conferences and operate a museum), and to lease the second floor and remainder of the first floor to a 501(c)(6) trade association connected with the fields of B and C and to for-profit organizations. Certain first-floor facilities (training center and conference room) will be used jointly by Y and the trade association. The public will have access to the areas of the Mansion occupied by Y during Y's regular business hours, and to the other parts of the Mansion by appointment at a mutually agreeable time.

X and Y, and the directors, officers, and substantial contributors of X and Y, have no family or business relationship with each other or with the seller of the Mansion. Y has one common officer with the trade association and could have overlapping board members (none currently) given their overlapping

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spheres of interest, but no more than 40% of Y's board members will board members or officers of the trade association. All leases of Mansion facilities by Y will be on arm's length terms. The consideration for Y's lease to the trade association will be determined by independent appraisal, and any Y directors with a conflict of interest will recuse themselves from approving such lease.

RULINGS REQUESTED:

X requests the following rulings:

(1) The grant from X to Y will not constitute a taxable expenditure under section 4945 of the Code.

(2) The grant from X to Y will not adversely affect the exempt status of X.

(3) The grant will constitute an unusual grant under sections 1.170A-9(e)(6)(ii) and 1.509(a)-3(c)(4) of the Code.

(4) The expansion of Y's original exempt purposes to include historical preservation of the Mansion, and acceptance and use of the grant in the manner described above, will not adversely affect Y's exempt status under section 501(c)(3) of the Code.

LAW:

Sections 170(c)(2)(B) and 501(c)(3) of the Code refer to organizations organized and operated exclusively for charitable, educational, or other exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 4945(d) of the Code defines a "taxable expenditure" by a private foundation as an amount paid or incurred--

(1) to attempt to influence legislation,
(2) to influence a specific public election or carry on a voter registration drive,
(3) to grant funds to an individual for travel, study, or similar purposes unless certain requirements are met,
(4) to grant funds to an organization unless it is described in sections 509(a)(1), (2), or (3) or 4940(d)(2) or unless the private foundation exercises expenditure responsibility with respect to the grant in accordance with section 4945(h), or
(5) for a non-170(c)(2)(B) purpose.

Section 1.170A-9(e)(6)(ii) of the Income Tax Regulations provides that a contribution may be excluded from the numerator and denominator of the public-support fraction (i.e., treated as an unusual grant) if the contribution meets the criteria of section 1.170A-9(e)(6)(iii). The exclusion is generally intended to apply to substantial contributions or bequests from disinterested parties which contributions or bequests:

(a) Are attracted by reason of the publicly supported nature of the organization;

(b) Are unusual or unexpected with respect to the amount thereof; and

(c) Would, by reason of their size, adversely affect the status of the organization as

normally being publicly supported for the applicable period.

In the case of a grant (as defined in section 1.509(a)-3(g) of the regulations) which meets the requirements of this subdivision, if the terms of the granting instrument require that the funds be paid to the recipient organization over a period of years, the amount received by the organization each year pursuant to the terms of such grant may be excluded for such year. However, no item of gross investment income may be excluded.

Section 1.170A-9(e)(6)(iii) of the regulations provides that in determining whether a particular contribution may be treated as an unusual grant all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. For some of the factors similar to the factors to be considered, see section 1.509(a)-3(c)(4).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes under section 501(c)(3) of the Code unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Section 1.509(a)-3(c)(4) of the regulations provides that among the factors to be considered are:

(i) Whether the contribution was made by any person (or persons standing in a relationship to such person which is described in section 4946(a)(1)(C) through (G) of the Code) who created the organization, previously contributed a substantial part of its support or endowment, or stood in a position of authority, such as a foundation manager (within the meaning of section 4946(b)), with respect to the organization. A contribution made by a person other than those persons described in this subdivision will ordinarily be given more favorable consideration than a contribution made by a person described in this subdivision.

(ii) Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer.

(iii) Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum.

(iv) Except in the case of a new organization, whether, prior to the receipt of the particular contribution, the organization (a) has carried on an actual program of public solicitation and exempt activities and (b) has been able to attract a significant amount of public support.

(v) Whether the organization may reasonably be expected to attract a significant amount of public support subsequent to the particular contribution. In this connection, continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future support from the general public.

(vi) Whether, prior to the year in which the particular contribution was received, the organization met the one-third support test without the benefit of any exclusions of

unusual grants.

(vii) Whether neither the contributor nor any person standing in a relationship to such contributor which is described in section 4946(a)(1)(C) through (G) continues directly or indirectly to exercise control over the organization.

(viii) Whether the organization has a representative governing body as described in section 1.509(a)-3(d)(3)(i) of the regulations.

(ix) Whether material restrictions or conditions (within the meaning of section 1.507-2(a)(8)) have been imposed by the transferor upon the transferee in connection with such transfer.

Section 53.4945-2(a)(5)(i) of the regulations provides that a grant by a private foundation to an organization described in section 509(a)(1), (2) or (3) of the Code does not constitute a taxable expenditure by the foundation under section 4945(d), other than under section 4945(d)(1), if the grant by the private foundation is not earmarked to be used for any activity described in section 4945(d)(2) or (5), is not earmarked to be used in a manner which would violate section 4945(d)(3) or (4), and there does not exist an agreement, oral or written, whereby the grantor foundation may cause the grantee to engage in any such prohibited activity or to select the recipient to which the grant is to be devoted. For purposes of this paragraph (a)(5)(i), a grant by a private foundation is earmarked if the grant is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes.

Rev. Rul. 75-470, 1975-2 C.B. 207, held educational and charitable under section 501(c)(3) of the Code an organization that promoted an appreciation of history through acquiring, restoring, and preserving homes having special historical or architectural significance, and opening the structures for viewing by the general public. Operations were financed from admission fees and public contributions. The Service reasoned that the organization operated like a museum.

Rev. Rul. 86-49, 1986-1 C.B. 243, held charitable and educational under section 501(c)(3) of the Code an organization that preserved the historic or architectural character of a community by purchasing historically or architecturally significant properties, placing restrictive covenants on them, occasionally restoring them, and selling them on arm's length terms. The Service reasoned that the organization educated the public and prevented community deterioration.

RATIONALE:

Each of the requested rulings is discussed in turn below.

1. Ordinarily, a grant to a public charity described in IRC 509(a)(1) does not constitute a taxable expenditure. The proposed grant is earmarked for a use that will further the exempt purposes of Y, as discussed below, and does not involve lobbying, political campaigning, or other non-exempt purposes.

2. As discussed below, the proposed grant will be used in furtherance of Y's exempt purposes, and therefore will not adversely affect the 501(c)(3) status of X.

3. Under the circumstances, the proposed grant will be an unusual grant, disregarded for purposes of calculating public support under section 170(b)(1)(A)(vi). The proposed grant is an unusually large contribution from a disinterested party, appears to be made by reason of Y's publicly supported nature, and would, by reason of its size, adversely affect Y's status as publicly supported for the

applicable period. Aside from the planning grant, which may be regarded as related to the proposed grant, X has made no prior contributions to Y and holds no influence within Y. The proposed grant is in the form of cash. Although X has yet to attract a significant amount of public support, X is a new organization and may reasonably be expected to attract a significant amount of public support once it occupies the Mansion and its programs become fully operational. X exercises no control over Y. Y has a representative governing body of experts in the fields of B and C. It is represented that no material restrictions or conditions (within the meaning of section 1.507-2(a)(8) of the regulations) have been imposed by X upon Y in connection with such transfer.

4. Preservation of historically significant property (such as the Mansion in question) for the education of the public is a recognized exempt purpose, and Y's amendment of its organizing documents to include such purpose is permissible. Under the circumstances, Y's proposed acquisition and use of the Mansion, partly in direct furtherance of its exempt purposes and partly for the production of income, will not adversely affect Y's 501(c)(3) status.

RULINGS:

Accordingly, we rule as follows:

(1) The grant from X to Y will not constitute a taxable expenditure under section 4945 of the Code.

(2) The grant from X to Y will not adversely affect the exempt status of X.

(3) The grant will constitute an unusual grant under sections 1.170A-9(e)(6)(ii) and 1.509(a)-3(c)(4) of the Code.

(4) The expansion of Y's original exempt purposes to include historical preservation of the Mansion, and acceptance and use of the grant in the manner described above, will not adversely affect Y's exempt status under section 501(c)(3) of the Code.

Except as we have ruled above, we express no opinion as to the tax consequences of the transaction under the cited provisions of the Code or under any other provisions of the Code.

This ruling is directed only to X. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Because this letter could help resolve any future tax questions relating to X's activities, X should keep a copy of this ruling in X's permanent records.

We are providing our Ohio Tax Exempt & Government Entities office a copy of this ruling.

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter
Manager, Exempt Organizations
Technical Group 2

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