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

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: NOV - 1 2001

Contact Person:

S.I.N. # 513.00-00

Identification Number:

Telephone Number:

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Dear Sir or Madam:

This is in reply to your request for rulings regarding the federal tax consequences associated with the transactions described below. Ruling requests 2, 3 and 4 will be answered directly by the Office of Associate Chief Counsel (TE/GE) since they are within the jurisdiction of that office. Ruling request 1 will be answered by this letter.

O is a T nonprofit corporation and is recognized as exempt from federal income tax under section 501(a) of the Internal Revenue Code (the Code) as an organization described in section 501(c)(3) of the Code. O is also classified as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. O operates an aquarium and the aquarium carries out research and conservation activities and operates animal exhibits as well as live educational programs. To further its exempt purpose, O operates a motor vessel (the Vessel) that holds 333 passengers and is used to conduct whale-watching expeditions in the waters off the coast of U. You represent that O conducts whale-watching tours from mid-April through mid-October for several hours a day in the open ocean. You further indicate that inclement weather and rough seas that are typical of a U winter render year-round whale-watching trips impracticable if not impossible.

You state that recent terrorist activities have caused massive collateral damage to the V metropolitan area. You indicate that part of the collateral damage included the significant crippling of the V regional public transportation network. Transportation by commuter rail and

vehicle has been compromised substantially. You indicate that because the capacity of the rail and auto prongs of the region's transportation network has been compromised so significantly, heavy crowding has resulted and the Port Authority Director has urged that commuters seek alternative public transportation routes. Ferries were one alternative form of transportation recommended. In an attempt to alleviate the acute shortage of public transportation in the region caused by recent tragic events and to reduce the burden placed on the Port Authority to provide alternative public transportation, O proposes to use its Vessel to provide ferry service to commuters in the N. O will amend its Articles of Incorporation to provide that its purposes include the charitable activity of facilitating public transportation.

O proposes to enter into a management agreement (the Agreement) with M, an S limited liability corporation, under which M will provide certain services to O. You represent that the duration of the Agreement will be no longer than six months and will end on April 15, 2002. The Agreement is not to be extended beyond this date and is not renewable. Under the Agreement, the Vessel will transport commuters between certain points of the V metropolitan area. Under the Agreement, as amended, it is proposed that the Vessel will run from 5:00 AM to 10:00 AM and from 2:00 PM to 9:30 PM local time each weekday. The Agreement provides that O shall provide one (1) licensed captain and up to three (3) crew members as back up or contingency crewmembers. Further, the Agreement provides that N shall provide all other crew members, including, but not limited to, passenger service and galley crew and the cleaning crew during the hours of operation specified in the Agreement.

You indicate that O will charge w per one way ticket for passage on its Vessel. You state that this amount was determined in accordance with commercially reasonable practices and indicate that your fare is less than or the same as fares charged by similar ferry services. Also, as part of the Agreement, M is to oversee any galley services provided aboard the Vessel. You indicate that any such service will be for passenger convenience only and will be merely incidental to the primary purpose of providing alternative public transportation to commuters of the V area. You represent that any galley service provided would consist of coffee and other beverages and light snacks such as chips, bagels or donuts. M will retain a portion of the receipts from the galley service and a per capita charge of x for each passenger transported as reasonable compensation for its services. You state that you do not intend to profit from this activity.

Based on the above, you have requested the following rulings:

1. The activity at issue in the proposed transaction does not constitute an unrelated trade or business, determined by applying section 513(a);

2. The Agreement is a management contract within the meaning of section 141 of the Code and the associated Regulations;

3. Such management contract meets the Safe Harbor requirements of Revenue Procedure 97-13; and, consequently,

4. The Agreement will not adversely affect the status of the qualified 501(c)(3) bonds, as

defined under section 145(a) of the Code, the proceeds of which were used to finance the purchase of the Vessel.

Section 513(a) of the Code provides that the term unrelated trade or business means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

Section 1.513-1(a) of the Income Tax Regulations (the Regulations) provides, in general, as used in section 512, the term "unrelated business taxable income" means the gross income derived by an organization from any unrelated trade or business regularly carried on by it, less the deductions and subject to the modifications provided in section 512.

Section 1.513-1(c)(1) of the Regulations provides that in determining whether trade or business from which a particular amount of gross income derives is regularly carried on within the meaning of section 512, regard must be had to the frequency and continuity which with the activities productive of the income are conducted and the manner in which they are pursued.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term charitable is used in section 501(c)(3) in its generally accepted legal sense and includes, among other things, the erection or maintenance of public buildings, monuments or works.

Rev. Rul. 71-29, 1971-1 C.B. 150 provides that a grant to a city transit authority for the purpose of maintaining a mass transportation system qualifies as a charitable disbursement in furtherance of an organization's exempt purposes.

In the general law of charity, certain purposes beneficial to the community as a whole have been deemed charitable. The charitable element in facilitating public transportation is established in the Statutes of Charitable Uses, 43 Eliz. I, c.4 (1601), which recognized as charitable the "repair of bridges, ports, havens, causeways... and highways".

The information submitted indicates that your purpose in conducting the ferry service for a strictly limited period of time is to aid the V region in meeting its public transportation needs pending restoration of its damaged public transportation system. Based on all the facts and circumstances in your ruling request, including your intent not to profit from the short-term delivery of ferry services to meet a public emergency, this activity meets a charitable purpose. Accordingly, we rule that providing ferry service in the manner and for the purposes described in your ruling request will not constitute an unrelated trade or business within the meaning of section 513(a) of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

This ruling does not address the applicability of any section of the Code or Regulations to the

facts submitted other than with respect to the sections described.

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.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

A copy of this letter will be forwarded to your Exempt Organizations Area Manager.

Sincerely,

(signed) Marvin Friedlander
Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1