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

200209055

Date: NOV 29 2001

Contact Person:

Identification Number:

Telephone Number:

Uniform Issue List
170.07-01
4942.03-05
4945.04-06

T:EO:B2

Employer Identification Number:

LEGEND:
W=
X =
Y =
Z =

Dear Sir or Madam:

This letter responds to X's request, dated April 6, 2000, for rulings under Sections 4945 and 4942 of the Internal Revenue Code concerning grants to Y, a foreign organization.

STATEMENT OF FACTS

X is recognized as a charitable tax-exempt organization under Internal Revenue Code Section 501(c)(3) and as a private foundation under Section 509(a). X proposes to make one or more grants to Y to support educational programs for poor children and other charitable projects that Y conducts around the world.

Y was created within Z. Z is part of the ecclesiastical hierarchy that supports W, a religious organization. Y's mission is to express care for the needy, thereby encouraging human fellowship and making manifest the charity of Christ. To implement this purpose, Y has three objectives:

1. To be an instrument for carrying out special initiatives in the field of humanitarian actions when disasters occur, or in the field of integral human promotion;

2. To foster Charity and encourage the faithful to give a concrete witness to evangelical charity; and

3. To encourage and coordinate the initiatives of organizations affiliated with W through the exchange of information and by promoting fraternal cooperation in favor of integral human development.

In addition, Y distributes funds for disaster-oriented relief and support of integral human promotion in developing countries.

Structurally, Y has no separate legal identity apart from Z. The head of W appoints the President, Secretary, Under-secretary, Members and Consultors of Y.

Rulings Requested

The following rulings were requested:

1) That X may reasonably conclude Y, as part of Z, is the equivalent of a church described in Section 170(b)(1)(A)(i);

2) That X does not need to exercise expenditure responsibility over grants to Y in order to prevent such grants from being taxable expenditures under Section 4945; and

3) That X can treat grants to Y as qualifying distributions in the year paid.

Statement of Law

Section 4945(d)(4) of the Code provides that a private foundation grant to an organization other than a public charity described in Sections 501(c)(3) and 509(a)(1), (2) or (3) will be a taxable expenditure unless the foundation exercises expenditure responsibility as defined in Section 4945(h). However, Regulation Section 53.4945-6(c)(2)(ii) provides that, in the case of a foreign organization that does not have an IRS determination letter stating that it is a tax exempt public charity, a grant will not be treated as a grant to an organization that is not described in Section 501(c)(3) if in the foundation's "reasonable judgment" the organization satisfies the requirements of Section 501(c)(3). Similarly, Regulation Section 53.4945-5(a)(5) provides that a grant to a foreign organization will not be treated as a grant to an organization other than a public charity if the foundation makes a "good faith determination" that the foreign organization is described in Section 509(a)(1), (2) or (3).

Internal Revenue Procedure (Rev. Proc.) 92-94, 1992-2 C.B. 507 summarizes the regulations as requiring a foundation that wishes to have a grant to a foreign organization treated as a grant to a public charity must complete the following two steps:

1. the foundation manager of the grantor must make "a reasonable judgement" that the grantee organization is an organization described in section 501(c)(3) other than 509(a)(4)).

2. the grantor must make a good faith determination based on the affidavit of the grantee or an opinion of counsel of either the grantor or the grantee, that the grantee is described in section 509(a)(1), (2), or (3), or section 4942(j)(3).

Section 4942 requires foundations to distribute an amount equal to a set percentage of their investment assets for charitable purposes each year. Under Section 4942(g)(3), grants to other private foundations count as qualifying distributions for purposes of this rule only if the foundation satisfies the requirements of Section 4942(g)(3). As under the expenditure responsibility rules, Regulation Section 53.4942-3(a)(6) allows a foundation to treat a grant to a foreign organization as a grant to a public charity if the foundation makes a "good faith determination" that the organization would satisfy the requirements of Section 509(a)(1), (2), or (3).

Section 501(c)(3) provides exemption from federal income tax for organizations organized and operated exclusively for, inter alia, religious and educational purposes. Section 509(a)(1) defines public charities to include churches described in Section 170(b)(1)(A)(i). Although neither the Code nor regulations define the term "church" as used in Section 170(b)(1)(A)(i), the Internal Revenue Service has adopted fourteen identifying features for purposes of determining whether an entity is a church. These features are: (1) a distinct legal existence; (2) a recognized creed and form of worship; (3) a definite and distinct ecclesiastical government; (4) a formal code of doctrine and discipline; (5) a distinct religious history; (6) a membership not associated with any other church or denomination; (7) a complete organization of ordained ministers ministering to their congregations; (8) ordained ministers selected after completing prescribed courses of study; (9) a literature of its own; (10) established places of worship; (11) regular congregations; (12) regular religious services; (13) schools for the religious instruction of the young; and (14) schools for the preparation of its ministers.

Analysis

Y is an administrative unit within Z. Therefore, a grant to Y is a grant to Z. Accordingly, X will not have to exercise expenditure responsibility over a grant to Y, if in its reasonable judgment Z is described in Section 501(c)(3) and if X makes a good faith determination, based on an affidavit from Z or a opinion of counsel, that Z is a public charity described in Section 509(a)(1), (2) or (3).

Based on the information submitted, X can reasonably conclude Z is described in Section 501(c)(3) as organized and operated exclusively for religious purposes. X has demonstrated Z possesses all fourteen of the identifying features the IRS uses to determine whether an organization is a "church" for purposes of sections 509(a)(1) and 170(b)(1)(A)(i). Thus, X may in good faith conclude Z is the equivalent of a public charity. Therefore, X need not exercise expenditure responsibility over grants to Y to prevent a taxable expenditure under Section 4945 and may treat such grants as qualifying distributions without having to comply with the technical requirements of Section 4942(g)(3).

Rulings

1) X may reasonably conclude Y is part of a church described in Section 170(b)(1)(A)(i);

2) X does not need to exercise expenditure responsibility over grants to Y in order to prevent

such grants from being taxable expenditures under Section 4945; and

3) X can treat grants to Y as qualifying distributions in the year paid.

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 questions about the application of Chapter 42 of the Code to X's activities, X should keep a copy of this ruling in its permanent records.

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.

Sincerely,

/S/

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2