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

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: JUN 11 2002

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Contact Person:

Identification Number:

Telephone Number:

Fax Number:

T:ED:B1

Employer Identification Number:

A =
B =
C =
D =

Dear Sir or Madam:

We have considered a ruling request concerning the proposed merger of A and B.

FACTS

A is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code. It is also classified as a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. B is also an organization exempt from federal taxation under section 501(c)(3) and is classified as a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi). A and B provide sexuality education and reproductive health care services to the public in different counties of a particular state.

It is proposed that B will merge into A and A will simultaneously change its name to C. Following the proposed merger, C will be the organization serving the geographic areas previously served by A and B.

A and B determined that a merger of their two organizations would allow provision of a broader array of reproductive healthcare services, better serve the entire geographic area, and would enhance efficiency and reduce costs. Following the proposed merger, the surviving entity will continue the charitable activities of each of the merging organizations with, it is believed, the same broad-based public financial support. The merger will be accomplished pursuant to state law. The Plan of Merger has been approved and adopted by the Boards of Directors of A and B. The merger will be effective upon the filing of the required documents with the state authorities. On the filing of the Certificate of Merger, the individual corporate existence of B will cease and A

will survive, while changing its name. The proposed Certificate of Merger also makes changes to the Certificate of Incorporation of the surviving entity concerning the geographic area to be served but does not change its purposes.

Once the merger is accomplished, C will carry on all of the health care and related activities currently conducted by A and B. As stated in the current Certificate of Incorporation of A, the purposes of the surviving entity will be:

(a) To provide leadership for the universal acceptance of family planning as an essential element of responsible parenthood, stable family life and social harmony - through education for family planning; the provision of the necessary services and the promotion of research in the field of human reproduction; and

(b) To establish, maintain and operate diagnostic and treatment centers within the meaning of the Public Health Law, provided, however, that no such diagnostic and treatment center shall be operated without the prior approval of D.

RULINGS REQUESTED

The following rulings are respectfully requested:

1. The proposed merger of A into B will not adversely affect the tax-exempt status of A under section 501(c)(3) of the Code and subsequent to the proposed merger A (then to be known as C) will continue to be tax exempt under section 501(c)(3).

2. Subsequent to the proposed merger of B into A, A (then to be known as C) will retain its classification as a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

3. The proposed merger of B into A will not adversely affect the qualification of A (then to be known as C) to receive tax deductible charitable contributions as an organization described in section 170(b)(1)(A)(vi) of the Code.

4. To the extent that liabilities, funds, assets, services or personnel are transferred to A by B pursuant to the merger, such transfers will not generate unrelated business taxable income or result in the recognition of any gain or loss under Sections 511 through 514.

LAW AND ANALYSIS

Section 501 (a) provides an exemption from federal income tax for organizations described in section 501(c)(3), including organizations that are organized and operated exclusively for charitable, educational or scientific purposes.

Section 1.501(c)(3)-I (d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. The promotion of health, education, and research has long been recognized as a charitable purpose.

Section 509(a) provides that all organizations described in Section 501(c)(3) are private foundations except those described in sections 509(a)(1), (2), (3) or (4). Section 509(a)(1) excludes from the term "private foundation" an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Section 170(b)(1)(A)(vi) of the Code describes, in part, an organization, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes and which normally receives a substantial part of its support (exclusive of income received in 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(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public.

Section 511(a) of the Code imposes a tax on the unrelated business income of organizations described in section 501(c) of the Code.

Section 512(a)(1) of the Code defines unrelated business taxable income as the gross income derived by an organization from any unrelated trade or business regularly carried on by it, less the allowable deductions which are directly connected with the carrying on of the trade or business, with certain modifications.

Section 512(b)(5) of the Code defines the term "unrelated business taxable income" as the gross income derived from any unrelated trade or business regularly carried on by the organization, less allowable business expenses directly connected with the carrying on of such trade or business. This section excludes all gains and losses from the sale, exchange, or other disposition of property other than (1) stock in trade or other property which would be property includable in inventory if on hand at the end of the year, and (2) property held primarily for sale to customers in the ordinary course of the organization's trade or business.

Section 513(a) of the Code defines unrelated trade or business as any trade or business the conduct of which is not substantially related (aside from the need of the organization for funds or the use it makes of the profits derived) to the exercise of the organization's exempt purposes or functions.

Section 1.513-1(d)(2) of the regulations provides, in part, that a trade or business is related to exempt purposes only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes; and it is substantially related for purposes of section 513 of the Code only if the causal relationship is a substantial one. Thus, for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of exempt purposes.

After the merger of B into A, A will continue the provision of reproductive education, research and health care services to the community. An organization described in section 501(c)(3) does not jeopardize its tax-exempt status by transferring its assets to, or accepting assets from, another organization also exempt under section 501(c)(3) of the Code when the assets transferred are used to further exempt charitable purposes. Consequently, the current tax-exempt status of A under section 501(c)(3) will not be adversely affected by the proposed merger. A will continue to be organized and operated exclusively for the same charitable and educational purposes of carrying on the programs presently provided by A and B. A will continue to qualify for exempt status under section 501(c)(3) and will continue to qualify as a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

With respect to the unrelated business income tax, the proposed merger is a one-time event. The proposed transfers will be one-time transfers and, therefore, will not possess the characteristics of a trade or business "regularly carried on." In effectuating the merger, the sharing of services and facilities, the transfer of cash and assets, and the assumption of liabilities, will be substantially related to the exercise or performance of the exempt purposes of A and B and will, therefore, not constitute unrelated trade or business activities subject to tax.

Contributions to organizations exempt from federal income tax under section 501(c)(3) do not fall within the definition of unrelated business income under section 512, nor do such contributions create taxable gain or loss to the transferor or transferee. Therefore, the contribution of assets and liabilities from B to A as a result of the merger will not generate unrelated business taxable income.

The transfer of corporate ownership or membership, the transfer or sharing of assets and the assumption of liabilities as of the time of merger and or on an ongoing basis will not result in the recognition of any taxable gain or loss or constitute unrelated business taxable income under Sections 511 through 514. The tax on unrelated business income is not applicable to a merger between exempt organizations because the Code and regulations exclude from the definition of unrelated trade or business any activity or property transfer which contributes importantly to the accomplishment of an organization's exempt purposes.

RULINGS

In consideration of all of the above, we rule as follows:

1. The proposed merger of A into B will not adversely affect the tax-exempt status of A under section 501(c)(3) of the Code and subsequent to the proposed merger A (then to be known as C) will continue to be tax exempt under section 501(c)(3).

2. Subsequent to the proposed merger of B into A, A then to be known as C, will retain its classification as a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

3. The proposed merger of B into A will not adversely affect the qualification of A, then to be known as C, to receive tax deductible charitable contributions as an organization described in section 170(b)(1)(A)(vi) of the Code.

4. To the extent that liabilities, funds, assets, services or personnel are transferred to A by B pursuant to the merger, such transfers will not generate unrelated business taxable income or result in the recognition of any gain or loss under sections 511 through 514.

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

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

This ruling does not address the applicability of any section of the Code or regulation to facts submitted other than with respect to the sections described.

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 yours,

(signed) Marvin Friedlander

Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1