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

Date: SEP 0 2 2003

Contact Person:

Identification Number:

Telephone Number:

T:EO:BR 1

Employer Identification Number:

Legend

C=
T=
R=
E=
H=

Dear Sir or Madam:

You request rulings under sections 501(c)(3), 509 and 511 through 514 of the Internal Revenue Code.

Description of Operations

C

C is exempt from federal income tax under section 501(c)(3) of the Code and is described in sections 509(a)(1) and 170(b)(1)(A)(iii). C has one member, T. T formed C to operate its clinic and treat patients with cancer. C also conducts clinical research trials related to cancer, provides education for health care providers in the prevention and treatment of cancer, and promotes coordination and collaboration of community health resources.

T

T is exempt from federal income tax under section 501(c)(3) of the Code and is described in sections 509(a)(1) and 170(b)(1)(A)(iii). T 's primary purpose is to provide treatment, research, and education for cancer and other related diseases. T, as the sole corporate member, provides management, direction, coordination and guidance for the activities of C, R, and E.

R

R is exempt from federal income tax under section 501(c)(3) of the Code and is described in sections 509(a)(1) and 170(b)(1)(A)(iii). R has one member, T, and also serves as the sole member of H. R conducts medical research to develop effective means of treating cancer and related diseases, including drug sensitivity testing and, in conjunction with C and H, clinical trial testing. R also provides outpatient medical and related health care services to patients in its facilities and provides instruction to practicing physicians and surgeons.

H

H is exempt from federal income tax under section 501(c)(3) of the Code and is described in section 509(a)(3) of the Code. H was formed to operate exclusively for the benefit of and carry out the purposes of its sole corporate member, R. H is comprised of a group of physicians involved in research and patient care activities. H's physicians specialize in clinical cancer research by enrolling and treating patients in clinical trials. They also participate in the education and training of students in medical schools and allied health professions. The majority of work involves research to find treatments and potential cures for cancer and related diseases. The services of H are used primarily for a research program operated by R and for clinical care of cancer patients.

E

E is exempt from federal income tax under section 501(c)(3) of the Code and is described in section 509(a)(3) of the Code. E operates exclusively for the benefit of T, its sole corporate member. E's purpose is to solicit, receive, manage, and distribute funds to T and its affiliated organizations.

Reasons for Merger

Healthcare and particularly the fields of medical research and treatment relating to cancer and other malignant diseases have become increasingly complex. The Boards of Directors of T, C and R recognized the need to streamline operations of their respective organizations and decided to combine their operations to improve the provision of cancer treatment to patients, improve efficacy of medical research, and achieve operational economies of scale.

Description of Transaction

The Boards of Directors of T, C and R decided to merge T and R with and into C. The surviving entity, C, will be renamed new T. Following the merger, new T will serve the exempt purposes of the merged entities and all assets and liabilities of the merged entities will be transferred to new T.

New T's Board of Directors will have a minimum of 11 and a maximum of 15 members. You state new T's Board will be comprised of community leaders and no disqualified persons or physicians will be members. In addition to the Board of Directors, new T will have a Board of Governors that will be an advisory Board.

Upon the effective date of the merger, the separate corporate existences of T and R shall cease and thereupon T, R and C shall be a single corporation, C, renamed new T. New T's Articles of Incorporation and By-laws will be amended to include the following: the reorganization of the Board of Directors; the change of the name of C to new T; the revision of new T's purpose to, among other things, reflect the combined operations of C, R and T; and the fact new T will have no members.

As a result of the merger, E's Articles of Incorporation and By-laws will be amended to provide it will support the activities of new T. E's proposed amendments to its Articles of Incorporation and By-laws include the following changes: the revision of any references to entities that will be merged out of existence or whose name will change to reflect the name of new T and the elimination of any references to E's former sole member, thereby reflecting new T as the successor member of E.

As a result of the merger, H's Articles of Incorporation and By-laws will be amended to provide it will support the activities of new T. H's proposed amendments to its Articles of Incorporation and By-laws include the following changes: the revision of any references to entities that will be merged out of existence or whose name will change to reflect the name of new T and the elimination of any references in H's By-laws to the former sole member, thereby reflecting new T as the successor member.

Rulings Requested

1. The merger and amendments will not adversely affect the tax-exempt status of C, E, R, T, new T, and H under section 501(c)(3) of the Code.

2. The merger and amendments will not adversely affect the non-private foundation status of C, E, R, T, new T, and H under section 509(a) of the Code.

3. The transfer of assets and liabilities from R and T to C pursuant to the merger will not result in gain or loss being recognized by C, E, R, T, new T, and H under sections 511 through 514 of the Code.

Law

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

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense.

Revenue Ruling 69-545, 1969-2 C.B. 117, recognizes the promotion of health is a charitable purpose within the meaning of section 501(c)(3) of the Code.

Revenue Ruling 78-41, 1978-1 C.B. 148, concludes that a trust created by an exempt hospital for the sole purpose of accumulating and holding funds to be used to satisfy malpractice claims against the hospital is operated exclusively for charitable purposes and is exempt under section 501(c)(3) of the Code.

Section 509(a) of the Code provides the term private foundation means an organization described in section 501(c)(3) other than one described in section 509(a)(1), (2), (3), or (4).

Section 509(a)(3) of the Code excludes from the definition of a private foundation an organization which is operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a)(1) or 509(a)(2).

Section 509(a)(3) of the Code describes an organization which is organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in sections 509(a)(1) or 509(a)(2). The supporting organization must also be operated, supervised or controlled by the supported organization; supervised or controlled in connection with the supported organization; or operated in connection with the supported organization in order to be classified as a public charity under section 509(a)(3).

Section 1.509(a)-4(a) of the regulations describes in general terms the various tests that a supporting organization must meet in order to be classified as an organization described in section 509(a)(3) of the Code.

Section 1.501(c)(3)-1(d)(5)(iii) of the regulations provides scientific research is regarded as carried on in the public interest if such research is directed toward benefiting the public. Examples of scientific research which is directed toward benefiting the public, and, therefore, carried on in the public interest include (1) scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public, and, (2) scientific research carried on for the purpose of discovering a cure for a disease.

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

Section 512(a)(1) of the Code defines the term "unrelated business taxable income" as the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less certain allowable deductions, computed with the modifications listed in section 512(b).

Section 512(b)(5) of the Code exempts from the definition of unrelated business taxable income all gains and losses from the sale, exchange or other disposition of non-inventory items and items not held for sale in the ordinary course of 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 income or 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 that a trade or business is related to exempt purposes, in the relevant sense, only where the conduct of business activities has a causal relationship to the achievement of exempt purposes; and it is substantially related only if the causal relationship is a substantial one. The regulation states that 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 the goods or performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes.

Section 514 of the Code provides for the taxation under section 512 of income from debt-financed property. Section 514(b)(1)(A)(i) of the Code, however, provides that the definition of debt-financed property does not include any property substantially all the use of which is substantially related to the exercise or performance by such organization of the charitable purposes constituting the basis for its exemption under section 501.

Analysis

The dedication of C's, E's, R's, T's, and H's assets to charitable purposes will not change as a result of the merger and the corresponding amendments to these organizations' respective Articles of Incorporation and By-laws. Each of these organizations prior to the merger and the surviving organizations after the merger will operate to accomplish its respective exempt purpose under section 501(c)(3) of the Code. In regard to new T, it will be performing the charitable activities formally conducted by C, R and T. Therefore, neither the merger nor the corresponding amendments will adversely affect C's, E's, R's, T's, new T's and H's exemption under section of 501(c)(3) of the Code.

Prior to the merger, C, R, and T will continue to perform the activities constituting the basis for their non-private foundation status. After the merger, new T will be performing the same charitable activities previously conducted by C, R, and T, therefore, new T will continue to be described in sections 509(a)(1) and 170(b)(1)(A)(iii) of the Code. E and H will continue to perform the same activities constituting the basis for their non-private status prior to and after the merger. Accordingly, the amendment and merger will not adversely affect C's, E's, R's, T's, new T's and H's respective classification as non-private foundations.

As a parent, T (and its successor, new T) will provide guidance and direction to E and H. E and H will be considered an integral part of new T's system within the meaning of Rev. Rul. 78-41, supra. The merger and related transactions by new T, H, and E will not adversely affect their

exempt status because the system assets will be put to the same charitable uses. The tax on unrelated business income imposed by section 511 of the Code will not be applicable with respect to the transactions among and between C, E, R, T, new T and H because section 513(a) of the Code excludes from the definition of unrelated trade or business any trade or business which contributes importantly to the accomplishment of an organization's exempt purpose. The transfer of assets and liabilities from R and T to C (new T) will not be a taxable gain or loss to because the transfer will be between affiliated exempt entities within the same commonly controlled system. Therefore, the reorganization and transactions described above will not result in unrelated business income under sections 511 through 514 of the Code for C, E, R, T, new T and H.

Conclusion

We rule as follows:

1. The merger and amendments will not adversely affect the tax-exempt status of C, E, R, T, new T, and H under section 501(c)(3) of the Code.

2. The merger and amendments will not adversely affect the non-private foundation status of C, E, R, T, new T, and H under section 509(a) of the Code.

3. The transfer of assets and liabilities from R and T to C pursuant to the merger will not result in gain or loss being recognized by C, E, R, T, new T, and H under sections 511 through 514 of the Code.

These ruling are based on the understanding there will be no material changes in the facts upon which they are based. These rulings are directed only to the organization requesting them. Section 6110(k)(3) of the Code provides they may not be used or cited by others as precedent.

Please keep a copy of this ruling letter in your 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,

Marvin Friedlander

Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1