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

Date: APR 30 1999

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T:4

Attn:

Dear Sir:

This letter is in response to your letter of December 15, 1997, requesting a ruling that your tax-exempt status under section 501(c)(3) of the Internal Revenue Code (Code) will not be adversely affected by your funding the renovation, construction, acquisition and operation of fraternity houses located on the campus. You have also requested a ruling that contributions to you for the purpose of funding the renovation, construction, acquisition and operation of fraternity housing will qualify for a charitable contribution under section 170 of the Code, and for estate and gift tax purposes under section 2055 and 2522.

FACTS:

You were incorporated on February 18, 1851, and are exempt from federal income tax under section 501(c)(3) Code. You are not a private foundation under sections 509(a)(1) and 170(b)(l)(A)(ii).

All of your freshman class members are required to reside in freshman dormitories owned by you unless such members reside with their family members. Sophomores, juniors and seniors (collectively, the "Upper Class Persons") are not required to live in housing owned by you. Although the Upper Class Persons are not required to live in College housing, substantially all of the Upper Class Persons live on campus, either in residence halls or in fraternity houses due to the dearth of adequate housing in the area.

There is a limited amount of housing for Upper Class Persons. Currently, you have three residence halls for the Upper Class Persons. Substantially all female Upper Class Persons live in the residence halls, and approximately thirty percent (30%) of male Upper Class Persons live in residence halls. These dormitories contain lounges used for recreational and social events as well as study halls and other miscellaneous facilities and equipment.

265

Three (3) national sororities maintain local chapters on the campus, of which approximately seventy percent (70%) of female Upper Class Persons are members. None of these sororities own chapter houses. Instead, the sororities and their members are housed in portions of the three residence halls owned by you. The sororities reserve dormitory lounges for chapter meetings and social events.

Six (6) national fraternities maintain local chapters on the campus. All of the fraternities are exempt from federal income tax under section 501(c)(7) of the Code. Approximately seventy percent (70%) of the male Upper Class Persons are members of these Fraternities. All of the fraternities have houses on the campus in which their members may live during their sophomore, junior and senior years. You own the property on which the fraternity houses are located and, because the fraternities originally constructed the houses on the property, the fraternities own their respective houses. Historically and currently, you have relied on these fraternity houses to provide housing and facilities for a substantial portion of your students.

Over the past several years, the physical condition of the fraternity houses has declined to such an extent that you have concluded that the present structures do not measure up to the your standards for safe and proper student housing. In addition, the current fraternity houses and dormitories do not provide enough quality housing for the students. Recognizing the need for suitable accommodations and facilities for students' well-being and for recruiting and retaining new students, you have decided to undertake a fund raising program to defray the costs of renovating, constructing, acquiring and operating these fraternity houses.

You represent that the fraternities will transfer title to their houses to you. You will then hold clear title to the fraternity houses and the land on which they stand. You will enter into a written lease agreement with each fraternity for an initial, renewable term of five years. Pursuant to the lease agreements with each of the fraternities, you may inspect the chapter houses at any time, fraternities may not sublet or assign the premises without the your consent, and the fraternities must use the premises solely for the purpose of operating a chapter house. You and the fraternity each will have the right to terminate the lease upon giving the other party to the lease eighteen months prior written notice. Upon such termination, neither party shall have further rights or obligations other than obligations already accrued, for which the party shall remain responsible. The rental rate for the fraternity houses will be adjusted annually during the term of the lease, and will be based on a rate per occupant that will be the same as the rental rate that you charge other students for comparable dormitory housing.

In order to raise money more effectively, contributors will have the opportunity to express a preference that their contributions be used to renovate the house of a specific fraternity. You will hold all contributed funds in your general account, but keep an accounting of the amounts contributed on behalf of each fraternity. While you will attempt to honor the preferences of the donors, you represent that you will have full authority and discretion over all amounts contributed and will accept donations indicating a preference for a particular fund only with the understanding that such designation will not restrict or limit your full ownership rights in the donated property or property acquired by use of the donated property. In addition, a portion of all contributions, regardless of whether a preference has been indicated, will go to you to satisfy the general operating expenses of the fund raising program. You anticipate that this portion will be equal to approximately fifteen percent (15%) of all contributions.

You intend to establish a committee to determine whether and how to spend funds for the construction, renovation, acquisition and operation of equipment or facilities at the fraternity houses

that you own. In making those decisions, you represent that you will consider the amount of funds contributed on behalf of each fraternity house, the relative needs of each fraternity house, and the relative needs of your other facilities and equipment.

You have specifically requested the following rulings:

1. Your tax-exempt status under section 501(c)(3) of the Code will not be adversely affected if you provide grants for the renovation, construction, acquisition and operation of fraternity houses currently located on your campus, and of fraternity and sorority houses which may locate on your campus in the future.

2. Contributions made to you for the purpose of renovating, constructing, acquiring and operating fraternity houses currently located on the campus, and of fraternity and sorority houses which may locate on the College's campus in the future, will qualify for the charitable contribution deduction under section 170 of the Code, and the amount of all gifts and bequests for the same purposes will be deductible for federal estate and gift tax purposes under Code sections 2055 and 2522, respectively.

LAW AND ANALYSIS:

Ruling Request 1:

Section 501(c)(3) of the Code provides for the exemption from federal income tax for organizations organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-l(d)(3)(a) of the Income Tax Regulations provides that the term "educational" as used in section 501(c)(3) relates to the instruction or training of the individual for the purpose of improving or developing his capabilities.

It has long been recognized that providing dormitories and food for students is one of the functions of universities and colleges, and is incident to their educational purpose. See Phinnev v. Douehertv. 10 A.F.T.R. 20 5531 (1962); Milton Smith. Jr. v. Commissioner. 28 B.T.A. 422, 4-27 (1933). This principal was followed in Rev. Rul. 60-367, 1960-2 C.B. 73, where the Service found that providing fraternities and fraternity members with housing and facilities was incident to the educational activities of the college and, therefore, contributions made to the college for the purpose of acquiring or constructing a housing facility for use by a designated fraternity constituted allowable deductions by donors for federal income tax purposes under section 170 of the Code, and for federal estate and gift tax purposes under sections 2055 and 2522, respectively, of the Code.

In Rev. Rul. 60-367, supra, the taxpayer was a college with an enrollment of approximately 600 students, of which 350 lived in fraternity houses and 115 in college owned dormitories. The remaining students lived in private homes or apartments in the town surrounding the college. The fraternities at the college were having difficulty properly maintaining their fraternity houses, and as a result the fraternity houses were not in a physical condition up to the standards desirable for the housing of college students. The college organized a fund raising program for the purpose of acquiring or constructing housing for particular fraternities. The college permitted donors to designate a particular fraternity for their contributions, but the college was not bound by this

designation. While the ruling was targeted at the deductibility of such contributions, the ruling also stated that:

> The college might properly adopt as incident to its educational activities a program to assist in the housing of all its students by providing dormitories, . . . by exercising control over housing for its students, by purchasing or constructing, owning and operating houses for fraternity students, or by a combination of such activities. Furnishing housing for fraternity members would not cease to be a college activity because the college participated in or undertook plans to have the whole or a part of the cost of a fraternity house defrayed by gifts from alumni of a particular fraternity.

Like the college in Rev. Rul. 60-367, supra, you rely on fraternities to provide housing to a large portion of your students. The condition of the chapter houses impacts on your student recruitment, enrollment and retention. You would also have substantial difficulty replacing the housing provided by these chapter houses. Also, similar to the college in Rev. Rul. 60-367, the physical condition of the fraternity houses has declined to such an extent that you have concluded that the present structures do not measure up to your standards for safe and proper student housing. The current fraternity houses and your dormitories do not provide enough quality housing for your students.

Like the housing contemplated in Rev. Rul. 60-367, the fraternity houses on your campus serves substantially the same function as your campus dormitories. You own both the land on which the chapter houses are built and the chapter houses themselves. Pursuant to the lease agreements with each of the fraternities, you may inspect the chapter houses at any time, fraternities may not sublet or assign the premises without the your consent, and the fraternities must use the premises solely for the purpose of operating a chapter house. In the event a fraternity occupying a chapter house is in breach of any of these covenants, or any other covenants in the lease, you may re-enter and assume ownership of the chapter house. You may also terminate the lease without cause upon giving eighteen months prior written notice.

For these reasons, your program to raise funds and make grants to the fraternities for the purpose of the renovation, construction and operation of fraternity houses located on your campus, and for fraternity or sorority houses which may locate on your campus in the future, is incident to your educational purposes.

Ruling Request 2:

Section 170(a)(1) of the Code allows as a deduction, subject to certain limitations and exceptions, any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year.

Section 170(c)(2) of the Code, in part, defines a charitable contribution as a contribution or gift to or for the use of a corporation, created or organized in the United States; organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes; no part of the net earnings of which inures to the benefit of any private shareholder or individual; and which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation.

Section 170(f)(8) disallows a deduction for a charitable contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the

contribution by the donee organization that meets the requirements of section 170(f)(8)(B). Section 170(f)(8)(B) requires that the acknowledgment include the following information: the amount of cash and a description (but not the value) of any property other than cash contributed, whether the donee organization provided any goods or services in consideration, in whole or in apart, for any property contributed, and a description and good faith estimate of the value of any goods or services provided or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

Revenue Ruling 69-573, 1969-2 C.B. 125, holds that a college fraternity that maintains a chapter house for active student members is exempt from federal income taxation under section 501(c)(7) of the Code, rather than section 501(c)(3). Therefore, contributions to the fraternity are not deductible under section 170.

Revenue Ruling 60-367, 1960-2 C.B. 73, holds that contributions made to a college through a fund raising program for the purpose of acquiring or constructing a housing facility for use by a designated fraternity, under certain terms and conditions, are deductible under section 170 of the Code. The college has a clearly defined policy of providing proper housing for all its students. A part of this policy is improving and providing appropriate housing for all fraternity members. The college owns the houses and rents the dwellings to fraternity groups on short-term leases at rates closely comparable to the rentals charged by the college for similar housing facilities. Although donors are permitted to designate a particular fraternity, the only practical benefit of the designation is that a specific chapter house might be finished ahead of the others. The funds are not used for improvements on structures owned by anyone other than the college.

Rev. Rul. 60-367 further states that in order for the gift to be deductible, it must be in reality a gift to the college and not a gift to the fraternity by using the college as a conduit. The college must have the attributes of ownership in respect of the donated property, and its rights as an owner must not, as a condition of the gift, be limited by conditions or restrictions which in effect make a private group the beneficiary of the donated property. In addition, the revenue ruling states that the college should, as an owner, be free to use the property acquired with the gift as its future policy suggests or requires.

In the present case, you have determined that, as part of your policy of providing safe and proper housing for your students, you should conduct a fund-raising campaign to renovate, construct, acquire, and operate the housing for your students who are fraternity members. You will own the dwellings and rent them to the fraternities pursuant to five year renewable leases. The rental rate for the fraternity houses will be based on a rate per occupant that will be the same as the rental rate you charge other students for comparable student housing. Thus the rentals charged for the fraternity housing will be closely comparable to rates charged for similar housing facilities.

Your right to terminate the lease at any time upon giving eighteen months notice causes the leases to be substantially similar to the short-term leases considered in Rev. Rul. 60-367. If you exercise your right to terminate the lease upon giving eighteen months notice, you shall have no further obligations with respect to the fraternity house, except for obligations already accrued under the lease. Thus, you will be able to use the renovated fraternity houses as your future policy suggests or requires.

You will control and determine the amounts spent on each fraternity house, as well as the size, character, and architecture of the accommodations. You will accept gifts designated for the benefit of a particular fraternity only with the understanding that such designation will not restrict or

limit your full ownership rights in either the donated property or property acquired by use of the donated property. In addition, none of the funds raised will be expended or used by any entity other than by you. Therefore, as in Rev. Rul 60-367, the contributions in reality are gifts to you.

Based on the information and circumstances above, we rule that:

1. Your tax-exempt status under section 501(c)(3) of the Code will not be adversely affected if you provide grants for the renovation, construction, acquisition and operation of fraternity houses currently located on your campus, and of fraternity and sorority houses which may locate on your campus in the future.

2. Contributions for the renovation, construction and operation of equipment or facilities at the chapter houses of the fraternities are in reality donations to the College, and are deductible for federal income tax purposes under Code section 170. In order for contributions of $250 or more to be deductible, donors are required to have from you a contemporaneous written acknowledgment that meets the requirements of § 170(f)(8)(B).

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any such change should be reported to the Ohio EP/EO key district office. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records. A copy of this ruling is being forwarded to the Northeast EP/EO key district office. If you have any questions about this letter, please feel free to contact the person whose name and telephone number are listed in the heading of this letter.

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

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4