



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities

Date:
02/12/2024
Taxpayer ID number (last 4 digits):

Form:

Tax periods ended:

Person to contact:

Name:
ID number:
Telephone:
Fax:
Last day to file petition with United
States Tax Court:

Release Number: 202419023
Release Date: 5/10/2024
UIL Code: 501.03-00

CERTIFIED MAIL - Return Receipt Requested

Dear _____ :

This is a final determination regarding your foundation classification. This modifies our letter dated _____, in which we determined that you were an organization described in Internal Revenue Code (IRC) Section 509(a)(3). This letter modifies your foundation status to a private non-operating foundation section 509(a) effective _____.

Your tax-exempt status under IRC Section 501(c)(3) is not affected. Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes a notice to the contrary. Because this letter could help resolve any questions about your private foundation status, please keep it with your permanent records.

We previously provided you a report of examination explaining the proposed modification of your tax-exempt status. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On _____, you signed Form 6018, Consent to Proposed Action, in which you agreed to the modification of your foundation classification to a private non-operating foundation. This is a final determination letter with regards to your federal tax-exempt status under Section 509(a).

Because you are a private foundation, you are required to file Form 990-PF, Return of Private Foundation. If you have not already filed these returns and you have not received instructions for filing substitute Forms 990-PF, you should file these returns with the appropriate Service Center for the tax year ending December 31, _____, and for all tax years thereafter in accordance with the instructions of the return.

If you are subject to the tax on unrelated business income under IRC Section 511, you must also file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return.

What you must do if you disagree with this determination

If you want to contest our final determination, you have 90 days from the date this determination letter was mailed to you to file a petition or complaint in one of the three federal courts listed below.

How to file action for declaratory judgement

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of IRC Section 7428 in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia.

Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status. You may write to the courts at the following addresses:

United States Tax Court

400 Second Street, NW
Washington, DC 20217
ustaxcourt.gov

US Court of Federal Claims

717 Madison Place, NW
Washington, DC 20005
uscfc.uscourts.gov

US District Court for the District of Columbia

333 Constitution Avenue,
NWWashington, DC 20001
dcd.uscourts.gov

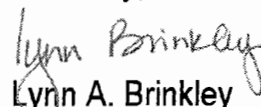
You may also be eligible for help from the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Taxpayer Advocate assistance can't be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

You can get any of the forms or publications mentioned in this letter by calling 800-TAX- FORM (800-829-3676) or visiting our website at www.irs.gov/forms-pubs.

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

Sincerely,



Lynn A. Brinkley
Director, Exempt Organizations Examinations

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ISSUE:

- 1.) Does _____ qualify as a Type III functionally integrated supporting organization under IRC Section 509(a)(3)?
- 2.) Does _____ qualify as a publicly supported organization defined under IRC Section 509(a)(2)?
- 3.) Does _____ qualify as a publicly supported organization defined under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi)?

FACTS:

_____, _____, as an _____ for the _____ (_____) was established on _____, an organization exempt under section 501(c)(3) of the Internal Revenue Code.

The named _____ and _____ . The _____ was granted exemption under IRC Section 501(c)(3) pursuant to a ruling dated _____, _____. It was determined that _____ was not a _____ because it met the definition of a _____ under IRC section 509(a)(3). Since its initial determination, _____ has not received a determination classifying it as a Type, I, II or III supporting organization.

On its filed Form _____ for year ending _____, _____ states that it was not a _____ because it met the requirements of a Type III functionally integrated supporting organization as defined in IRC section 509(a)(3).

Under the Pension Protection Act of 2006 (PPA) supporting organizations are classified as Type I, Type II, or Type III supporting organizations. Treas. Reg § 1.509(a)-4(i) sets forth the requirements for an organization to qualify as a section 509(a)(3) supporting organization that is “operated in connection with” one or more publicly supported organizations. Type III supporting organizations are required to meet a “responsiveness test” and an “integral part” test. Before enactment of the PPA, there were two alternative ways for a Type III supporting organization to meet the responsiveness test: the significant voice test and the _____ test. Under _____, Treas. Reg. § 1.509(a)-4(i)(2)(iii), required that (1) the supporting organization be a _____ under state law, (2) each publicly supported organization that _____ supports be named as a _____ under the _____ governing instrument, and (3) each beneficiary organization have the power to enforce the trust and compel an accounting under State law. The _____ method of satisfying the responsiveness test was effectively removed when section 1241(c) of the PPA eliminated the charitable trust test, effective _____. Consequently, as of _____, _____, a charitable trust can no longer qualify as a Type III supporting organization unless it meets the significant voice test.

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The agreement requires that after payment of all administrative expenses, percent of income shall be accumulated, and the remaining percent shall be available for distribution to for the purpose of or . The agreement states that in the event that ceases to qualify as an exempt organization, a will be selected which meets the exemption qualification and is located in . In addition, in the event of termination of , any remaining assets shall be distributed to or any or that is exempt under IRC section 501(c)(3) of the revenue code.

The agreement states that is created and shall be operated exclusively for charitable, religious or educational purposes; that no part of the trust shall inure to the benefit of any private individual; and that no part of the activities of the trust shall consist of carrying on propaganda or otherwise attempting to influence legislation or of participating in, intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

On its filed Form for year ending , , the listed as the organization. is a described in section 170(b)(1)() ().

For the year ending , , the reported total revenue of \$ comprising \$ in income, \$ in and \$ in .

The uses a as its tax year. Although it receives occasional from the , it relies mostly on income. The table below summarizes the information reported on the Form for years used for the Public Support percentage computation:

In response to Information Document Request 1 and during conversations with the and the following information was communicated regarding the relationship with :

- There is no overlap in the governing body of and .

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- does not appoint the or and does not exert any influence or control over .
- has no authority with respect to the administration and operation of . is completely independent in the manner it assets, in setting the policy and asset allocation, in selecting securities to buy and sell and in the timing of decisions. can make no demands on how operates, invests and manages assets held or how and when makes distributions.
- The forwards an accounting statement of the and transactions at the beginning of to the . No other information is included; no other statements are sent during the year and no , transaction or asset allocation or performance reviews are conducted.
- The until such time requests a . The made no distributions to in .

LAW:

IRC Section 501(c)(3) requires tax exempt entities be organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, to foster national and amateur sports competition and prevention of cruelty to children or animals.

Treas. Reg. 1.501(c)(3)-1(a)(1) provides that in order to be exempt as an organization described under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

IRC Section 509(a) defines the term "private foundation" to mean any domestic or foreign organization described in section 501(c)(3) other than an organization described in section 509(a)(1), (2), (3) or (4). Organizations which fall into the categories excluded from the definition of "private foundation" are generally those which either have broad public support or actively function in a supporting relationship to such organizations. Organizations which test for public safety are also excluded.

Organizations described in IRC Section 501(c)(3) that meet the requirements of IRC Section 509(a)(3) are commonly referred to as "supporting organizations."

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IRC Section 509(a)(3) provides that certain “supporting organizations” (in general, organizations that provide support to another section 501(c)(3) organization that is not a private foundation) are classified as public charities rather than private foundations. To qualify as a supporting organization, an organization must meet all three of the following tests:

- (A) it must be organized and always operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more “publicly supported organizations”. In general, supported organizations of a supporting organization must be publicly supported charities described in sections 509(a)(1) or (a)(2) (the “**organizational and operational tests**” – Treasury Regulation 1.509(a)-4(b));
- (B) it must not be controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more publicly supported organizations (the “**control test**” – Treasury Regulation 1.509(a)-4(j)).
- (C) it must be operated, supervised, or controlled by or in connection with one or more publicly supported organizations (the “**relationship test**” – Treasury Regulation 1.509(a)-4(f));

Organizational Test:

Treas. Reg. 1.509(a)-4(b)(1) provides that a supporting organization must be organized exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified supported organizations.

Treas. Reg. 1.509(a)-4(c)(1), provides that to qualify for classification under IRC Section 509(a)(3), a supporting organization’s governing instrument must meet the following requirements:

1. The first requirement limits the organization’s purposes to supporting one or more supported organizations and may not contain any provisions inconsistent with these purposes.
2. Treas. Reg. Section 1.509(a)-4(c)(1) states that the organization must not empower itself to engage in activities that are not in furtherance of the authorized purposes.
3. The third requirement calls for the supporting organization to specify the publicly supported organization they are supporting.
4. Treas. Reg. 509(a)-4(c)(1)(iv) states an organization must not be empowered to support or benefit any organization other than the specified publicly supported organizations.

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Operational Test: Treas. Reg. 1.509(a)-4(e)(1) provides that a supporting organization will be regarded as operated exclusively to support one or more specified publicly supported organizations only if it engages solely in activities which may include making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefited by the specified publicly supported organization.

Treas. Reg. 1.509(a)-4(e)(2) provides that a supporting organization may also satisfy the operational test by using its income to carry on an independent activity or program, which supports or benefits the specified publicly supported organization(s) which is called permissible activities.

Treas. Reg. 1.509(a)-4(e)(3) states that the supporting organization may carry on its own programs designed to support or benefit the specified publicly supported organization. Supporting organizations may also engage in fund raising activities, such as fund-raising dinners and unrelated trade or business to raise funds for the supported organization or their permissible beneficiaries.

Control Test:

To qualify for IRC Section 509(a)(3) classification, Treas. Reg. 1.509(a)-4(j) requires the organization to satisfy the control test. It's designed to prevent the supporting organization's being controlled, directly or indirectly, by disqualified persons as defined in IRC Section 4946, except for Section 509(a)(1) or (2) organizations and a manager of the supporting organization who is not a disqualified person for another reason.

If a person is a disqualified person with respect to a supporting organization, he or she will continue to be a disqualified person even if a supported organization appoints or elects that person to be a director, trustee, or officer of the supporting organization. Disqualified persons include the following:

- Substantial contributor
- Certain 20 percent owners
- Family members
- Corporations, partnerships, etc.

Relationship Test:

Treas. Reg. 1.509(a)-4(f)(2) provides that, to satisfy the relationship test, a supporting organization must hold one of three statutorily described close relationships with the supported organization. The organization must be:

- (i) operated, supervised, or controlled by a publicly supported organization (commonly referred to as “**Type I**” supporting organizations).

A Type I supporting organization must be operated, supervised or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. The relationship between the supported organization(s) and the supporting organization is sometimes described as a parent-subsidiary relationship. Treas. Reg. 1.509(a)-4(g)(1)(i) states that the “operated, supervised, or controlled by” relationship is established if the majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the

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governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations.

- (ii) supervised or controlled in connection with a publicly supported organization (commonly referred to as “**Type II**” supporting organizations)

Treas. Reg. Section 1.509(a)-4(h) states the distinguishing feature of the “supervised or controlled in connection with” relationship is the presence of common supervision or control among the governing bodies of the supporting and supported organizations. This is often described as a “brother-sister” relationship, as distinguished from the “parent-subsidiary” relationship required for Type I, “operated, supervised, or controlled by” organizations. Type II is also distinguished from the Type III, “operated in connection with,” relationship. The common supervision or control provided in the Type II relationship ensures that the supporting organization will be responsive to the needs of the supported organization.

- (iii) Operated in connection with, one or more publicly supported organizations (commonly referred to as “**Type III**” supporting organizations).

A Type III supporting organization must be operated in connection with one or more publicly supported organizations. All supporting organizations must be responsive to the needs and demands of and must constitute an integral part of or maintain significant involvement in, their supported organizations. Type I and Type II supporting organizations are deemed to accomplish these responsiveness and integral part requirements by virtue of their control relationships. However, a Type III supporting organization is not subject to the same level of control by its supported organization(s). Therefore, in addition to a **notification requirement**, Type III supporting organizations must pass separate **responsiveness** and **integral part tests**. The third relationship type was revised by the Pension Protection Act (PPA) of 2006, which made significant changes in Type III requirements to ensure that supporting organizations are responsive to the needs and demands of and must constitute an integral part of or maintain significant involvement in, their supported organizations.

Notification Requirement

Type III supporting organizations have a notification requirement that applies to both FISOs and non-FISOs. Treas. Reg. 1.509(a)-4(i)(2) states that for each taxable year, a type III supporting organization must provide the following documents to each of its supported organizations:

- A written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support the supporting organization provided to the supported organization during the supporting organization's taxable year immediately before the taxable year in which the written notice is provided (and during any other taxable year of the supporting ending after December 28, 2012, for which such support information has not previously been provided);

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- A copy of the supporting organization's most recently filed Form 990, "Return of Organization Exempt from Income Tax," or other annual information return required to be filed under section 6033; and
- A copy of the supporting organization's governing documents in effect on the date of the notification is provided, including its articles of organization and bylaws (if any) and any amendments to those documents, unless the documents have been previously provided and not subsequently amended.

Responsiveness Test

The responsiveness test requires that the Type III supporting organization be responsive to the needs or demands of the publicly supported organizations. In order to meet this test, Treas. Reg. 1.509(a)-4(i)(3)(ii) states that a supporting organization must demonstrate that:

- one or more officers, directors, or trustees of the supporting organization are elected or appointed by the board members of the supported organization, or;
- one or more board members of the governing body of the supported organization are also officers, directors, or trustees of, or hold other important offices in the supporting organization, or;
- the supporting organization's officers, directors, or trustees maintain a close and continuous working relationship with the officers, directors, or trustees of the supported organization.

In addition, the supported organization must demonstrate a significant voice in the supporting organization's investment policies, the timing of grants, the manner of making grants, and the selection of grant recipients by such supporting organization, and in otherwise directing the use of the income or assets of the supporting organization.

Treas. Reg. 1.509(a)-4(i)(3)(iv) provides examples of responsiveness test.

Example 2.

Y is an organization described in section 501(c)(3) and is a trust under State law. The trustee of Y (Trustee) is a bank. Y supports charities P, Q, and R, each an organization described in section 509(a)(1). Y makes annual cash payments to P, Q, and R. Once a year, Trustee sends to P, Q, and R the cash payment, the information required under paragraph (i)(2) of this section, and an accounting statement. Trustee has no other communication with P, Q, or R. Y does not meet the responsiveness test of this paragraph (i)(3).

In Rev. Rul. 75-437, 1975-2 C.B. 218 it was held that an exempt charitable trust, established solely to provide college scholarships to county high school graduates, that is trustee by an independent bank trustee, is a private foundation and not a supporting organization within the meaning of section 509(a)(3) of the Code. It was further held that the responsiveness test was not satisfied because the publicly supported organizations do not have a significant voice in the investment policies of the trust or the timing and making of grants.

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Integral Part Test

Treas. Regs. 1.509(a)-4(i)(1)(iii) provides that, the integral part test requires the Type III supporting organization maintain significant involvement in the operations of one or more publicly supported organizations, and that such publicly supported organizations are in turn dependent upon the supporting organization for the type of support which it provides. There are two alternative methods for satisfying the integral part test: “**functionally integrated**” or “**non-functionally integrated**”. Both the notification requirement and the responsiveness test are the same for functionally integrated type III supporting organization (FISOs) and non-functionally integrated type III supporting organization (Non-FISOs), the integral part test is different for FISOs and non-FISOs.

Functionally Integrated (FISO) requirements:

Treas. Regs. 1.509(a)-4(i)(4) states that a supporting organization will be considered functionally integrated if it engages in activities substantially all of which directly further the exempt purposes of one or more supported organization. The supporting organization must engage in the activities of or carry out the purposes of the supported organization. The activities are those which the supported organization would have otherwise performed.

The supporting organization must satisfy one of these three tests for functionally integrated:

- Activities test
- Parent of supported organizations
- Supporting a governmental entity

1. *Activities Test (Treas. Reg. (§1.509(a)-4(i)(4)(i)(A))*

Treas. Reg. (§1.509(a)-4(i)(4)(i)(A)) states for an organization to satisfy the integral part test for a functionally integrated Type III supporting organization is to engage in activities substantially all of which directly further the exempt purposes of one or more supported organizations to which the supporting organization is responsive and which, but for the involvement of the supporting organization, would normally be engaged in by the supported organization(s).

- Direct furtherance prong (Treas. Reg. Section (§1.509(a)-4(i)(4)(ii))

Substantially all of the supporting organization’s activities must be direct furtherance activities.

Direct furtherance activities are conducted by the supporting organization itself, rather than by a supported organization.

Fundraising, managing non-exempt-use assets, grant-making to organizations, and grant-making to individuals (unless it meets certain requirements) are not direct furtherance activities.

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- But for prong: Treas. Reg. Section §1.509(a)-4(i)(4)(ii)(A)(2)

In addition, substantially all of such activities must be activities in which, but for the supporting organization’s involvement, the supported organization would normally be involved.

2. Parent of Supported Organizations (Treas. Reg. (§1.509(a)-4(i)(4)(i)(B))

- Governance: The supporting organization must have the power to appoint a majority of the officers, directors or trustees of each of its supported organizations.
- Substantial degree of direction. In addition, the supporting organization must perform “parent-like” activities by exercising a substantial degree of direction over the policies, programs and activities of the supported organizations.

3. Supporting a Governmental Entity (Treas. Reg. §1.509(a)-4(i)(4)(i)(C))

Notice 2014-4, 2014-2 IRB 274) provides that a Type III Supporting organization will be treated as meeting the requirements of Treas. Reg. §1.509(a)-4(i)(4), and hence will be treated as functionally integrated, if it:

- Supports at least one supported organization that is a governmental entity to which the supporting organization is responsive within the meaning of §1.509(a)-4(i)(3); and
- Engages in activities for or on behalf of the governmental supported organization that perform the functions of, or carry out the purpose of, that governmental supported organization and that, but for the involvement of the supporting organization, would normally be engaged in by the governmental supported organization itself.

Non-Functionally Integrated (non-FISO) requirements:

The integral part test for a non-FISO is in Treas. Reg. Section 1.509(a)-4(i)(5). In general, a non-FISO must satisfy both a distribution requirement (Treas. Reg. Section 1.509(a)-4(i)(5)(ii)), and an attentiveness requirement (Treas. Reg. Section 1.509(a)-4(i)(5)(iii)).

- The supporting organization must pay substantially all of its income to or for the use of the publicly supported organization(s).
- The amount of support received by the supported organization(s) must be sufficient to ensure the attentiveness (attentiveness requirement) of such organizations to the operations of the supporting organization.
- A substantial amount of total support of the supporting organization must go to those publicly supported organizations that meet the attentiveness requirement.

Rev. Rul. 76-208, 1976-1 C.B. 161 defines “substantially all” for purposes of the integral part test as at least 85 percent and prohibits counting accumulating income even if it must be paid to the supported organization.

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Distribution Requirement

A Type III non-FISO must distribute its “distributable amount” each taxable year to or for the use of one or more supported organizations. The distributable amount for a taxable year is an amount equal to or the greater of either:

- a) Eighty-five percent of the supporting organization’s adjusted net income for its prior taxable year, reduced by the amount of taxes imposed on the supporting organization under subtitle A of the Internal Revenue Code during the immediately preceding taxable year, or
- b) The “minimum asset amount” (as defined in Treas. Reg. Section 1.509(a)-4 (i)(5)(ii)(C)), which equals 3.5 percent of the excess of the aggregate fair market value of the supporting organization’s non-exempt-use assets in the taxable year immediately before the taxable year of the required distribution, over the acquisition indebtedness for the non-exempt-use assets, with certain adjustments.

Attentiveness Requirement

Each taxable year, a non-FISO must distribute one-third or more of its distributable amount to one or more supported organizations that are attentive to the operations of the supporting organization and to which the supporting organization is responsive as stated in Treas. Reg. Section 1.509(a)-4(i)(5)(iii)(A). A supported organization is attentive to the operations of the supporting organization during a taxable year if at least one of the following requirements is satisfied:

- (1) The supporting organization distributes to the supported organization amounts equaling or exceeding 10% of the supported organization’s total support for the prior taxable year. (Treas. Reg. Section 1.509(a)-4(i)(5)(iii)(B)(1)); or
- (2) The amount of support received from the supporting organization is necessary to avoid interruption of a function or activity of the supported organization. The support is considered necessary if it is earmarked for a particular program or activity, as long as the program is a substantial one. (Treas. Reg. Section 1.509(a)-4(i)(5)(iii)(B)(2)); or
- (3) Based on all facts and circumstances, the amount of support received is a sufficient part of a supported organization’s total support to ensure attentiveness. Pertinent factors include the number of supported organizations, the length and nature of relationships, and the purpose to which funds are applied. (Treas. Reg. Section 1.509(a)-4(i)(5)(iii)(B)(3)).

IRC Section 509(a)(2) provides that in order for an organization to be recognized as a public charity organization described under this section, it must satisfy both of the following tests:

- The **One-Third Support Test** described in Section 509(a)(2)(A) must normally receive more than one-third of its support from any combination of gifts, grants, contributions, membership fees, and gross receipts from permitted sources. and

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- The **Not-More-Than-One Third Support Test** described in Section 509(a)(2)(B) must normally receive not more than one-third of its support from gross investment income and the excess of the amount of unrelated business taxable income over the amount of taxes imposed by Section 511.

These two tests are designed to ensure that an organization excluded from classification as a private foundation under Section 509(a)(2) is responsive to the general public rather than to a limited number of donors or other persons.

IRC Section 170(b)(1)(A)(vi) describes an organization "which normally receives a substantial part of its support from a governmental unit...or from direct or indirect contributions from the general public."

Treasury Regulation section 1.170A-9(f)(2) states that an organization is publicly supported if at least 33 1/3 percent of its support is received from grants from governmental units, and direct or indirect support from the general public.

Private Foundation Requirements and Chapter 42 Excise Taxes (in part)

IRC Section 508(e)(1) states, a private foundation shall not be exempt from taxation under section 501(a) unless its governing instrument includes provisions the effects of which are – (A) to require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under section 4942, and (B) to prohibit the foundation from engaging in any act of self-dealing (as defined in section 4941(d)), from retaining any excess business holdings (as defined in section 4943(c)), from making any investments in such manner as to subject the foundation to tax under section 4944, and from making any taxable expenditures (as defined in section 4945(d)).

Taxes on Net Investment Income

IRC Section 4940(a) imposes a tax equaled to 1.39 percent of the net investment income of a private foundation for the taxable year, with respect to the carrying on of its activities.

IRC Section 4940(c)(1) defines net investment income, for purposes of exempt private non-operating foundations, as the sum of the gross investment income and the capital gain net income that exceeds the deductions allowed by this section, except to the extent inconsistent with the provisions of this section.

IRC Section 4940(c)(2) defines gross investment income, for purposes of paragraph (1), as the gross amount of income from interest, dividends, rents, payments with respect to securities loans (as defined in IRC Section 512(a)(5)), and royalties.

Taxes on Failure to Distribute Income

Initial Taxes on Private Foundation

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IRC Section 4942(a) imposes a tax equaled to 30 percent on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second taxable year following such taxable year.

IRC Section 4942(c) defines undistributed Income as the amount by which the distributable amount for such taxable year, exceeds the qualifying distributions made before such time out of such distributable amount. IRC Section 4942(d) defines distributable amount as an amount equal to the sum of the minimum investment return plus the amount described in subsection (f)(2)(C), reduced by the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

IRC Section 4942(e) defines minimum investment return is 5 percent of the excess of the aggregate fair market value of all assets of the foundation other than those which are used (or held for use) directly in carrying out the foundation's exempt purpose, over the acquisition indebtedness with respect to such assets (determined under section 514(c)(1) without regard to the taxable year in which the indebtedness was incurred).

IRC Section 4942(g)(1) defines qualifying distribution as any amount (including the portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to an organization controlled by the private foundation or one or more disqualified persons, or to a private foundation which is not an operating foundation.

Taxes on Taxable Expenditures

Initial Taxes on Private Foundation

IRC Section 4945(a)(1) imposes on each taxable expenditure (as defined in IRC Section 4945(d)) an initial tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the private foundation.

IRC Section 4945(d)(4) states in part, for purposes of this Section, the term “taxable expenditure” means any amount paid or incurred by a private foundation for as a grant to an organization unless

- (A) such organization (i) is described in paragraph (1) or (2) of section 509(a), (ii) is an organization described in section 509(c)(3), or (iii) is an exempt operating foundation.
- (B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

IRC Section 4945(d)(5) states in part, for purposes of this Section, the term “taxable expenditure” means any amount paid or incurred by a private foundation for any purpose other than one specified in IRC Section 170(c)(2)(B).

IRC Section 170(c)(2)(B) lists the following purposes: religious, charitable, scientific, literary, educational, to foster national or international amateur sports competition ..., or for the prevention of cruelty to children or animals.

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Filing Form 4720

Treas. Regs. 53.6011-1(b) states, in part, that every person (including a governmental entity) liable for tax imposed by IRC Sections 4941(a), 4942(a), 4943(a), 4944(a), [or] 4945(a)... and every private foundation ... which has engaged in an act of self-dealing (as defined in IRC Section 4941(d)) (other than an act giving rise to no tax under IRC Section 4941(a)) shall file an annual return on Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code," and shall include therein the information required by such form and the instructions issued with respect thereto. In the case of any tax imposed by IRC Section 4942(a), the annual return shall be filed with respect to each act (or failure to act) for each year (or part thereof) in the taxable period... In the case of a tax imposed by IRC Section 4945(a), ... the annual return shall be filed with respect to each act for the year in which such act giving rise to liability occurred.

Treas. Regs. 1.6033-2(a)(2)(ii)(J) states in the case of a private foundation liable for tax imposed under chapter 42, such information as is required by Form 4720.

TAXPAYER'S POSITION:

Taxpayer's position has not been provided.

GOVERNMENT'S POSITION – ISSUE 1

The _____ does not meet the definition of a supporting organization in Treas. Reg. 1.509(a)-4. There are three types of supporting organizations:

- Type I - operated, supervised, or controlled by,
- Type II - supervised or controlled in connection with, and
- Type III - operated in connection with, one or more publicly supported organizations.

A supported organization is expected to have a say in the operation of the supporting organization as to the investment policies and how the grants are made, to whom, and at what amounts.

A Type I supporting organization is defined in Treas. Reg. 1.509(a)-4(g). The relationship required under any one of these terms is comparable to that of a parent and subsidiary, where the subsidiary is under the direction of, and accountable or responsible to, the parent organization. This relationship is established by the fact that a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the members of one or more publicly supported organization.

A Type II supporting organization is defined in Treas. Reg. 1.509(a)-4(h). It requires common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organization. The last sentence of paragraph (h)(1) states: "Therefore, in order to meet such requirement, the

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control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organizations.”

A Type III supporting organization is defined in Treas. Reg. 1.509(a)-4(i). The regulation requires that it meet the notification requirement, the responsiveness test, and the integral part test. The first step to determine if an organization qualifies under IRC Section 509(a)(3) is to see if it meets the definition of type I, II, or III.

To qualify as a Type I supporting organization, the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations. The Trust does not have board members which are on the board of the supported organization. Because the sole trustee in this case is a bank, the Trust is neither operated, supervised, or controlled by, nor supervised or controlled in connection with the publicly supported church. **The Trust does not meet the definition of a Type I supporting organization.**

To qualify as a Type II supporting organization the supported and supporting organizations must be controlled or managed by the same persons. Treas. Reg. 1.509(a)-4(h)(1) specifically states that in order to meet the requirements of “supervised or controlled in connection with” the control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organizations.

In the case of a Type I or Type II supporting organization, the supported organization(s) are in control of the supporting organization. For Type I, because the supporting organization is a subsidiary of the supported; For Type II, because the same persons control or manage the supporting and the supported organizations. By being in control, the supported organizations are determining the investment policies and the amounts given and to whom the investments are given to; therefore, the supporting organization can’t decide to give to a different organization unless the supported organization allows it. This section does not mean that if an organization gives to more than one organization that it meets the definition of a Type II. To be a Type II supporting organization there must be common supervision and/or control of both the supported and the supporting organizations. Because the _____ in this case is a _____, the _____ is neither operated, supervised, or controlled by, nor supervised or controlled in connection with the publicly supported organization. The _____ does not have common supervision or control with the supported organizations; therefore, it **does not meet the definition of a Type II supporting organization.**

On its Form _____ the _____ made a selection on Schedule _____ indicating that it is a Type III non-functionally integrated supporting organization. Type III supporting organizations, as defined in Treas. Reg. 1.509(a)(4)(i), require that the supported organizations have a significant voice in the investment policy, grants made, recipients, amounts, and when the grants are paid. To meet the definition of a Type III supporting organization, an organization must meet the notification requirement, the responsiveness test, and the integral part test.

The responsiveness test has two parts: relationship of the officers and significant voice. The relationship test requires that one or more officers, directors, or trustees of the supporting organization are elected or appointed

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by the supported organization or one or more of the governing body of the supported organization also hold important offices in the supporting organization; or the board of the supporting organization maintains a close and continuous working relationship with the board of the supported organization, and the supported organization must have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making grants, and the selection of grant recipients, and in otherwise directing the use of the income or assets of the supporting organization.

As established above, the _____ does not have common supervision or control with the supported organizations. The _____ forwards a copy of _____ account statement _____ to point-person at the supporting organization but maintains no other contact with _____. The _____ has complete autonomy and independence over the _____, asset allocation and decisions. The _____ is similar to the organization in Rev. Rul. 75-437, acting independently with the supported organization not having a significant voice in the investment policies of _____. Although the timing of distributions is determined by the supported organization, the distributable amount is strictly determined based on the investment actions of _____. The exempt trust in Rev. Rul. 75-437 failed the responsiveness test, and it was held that it is a _____ and not a _____ within the meaning of section 509(a)(3) of the Code.

To meet the notification requirement the supporting organization must provide a written notice to a principal officer of the supporting organization describing the type and amount of all support it provided during the preceding year, a copy of the Form _____ for the _____, and a copy of the most recent governing documents. The _____ provides a copy of an _____ to the supported organization but does not provide to a _____ of the _____ the required written notice, copies of the _____ and _____. The _____ does not meet the responsiveness test or the notification requirement. Therefore, it **does not meet the definition of a Type III organization.**

The _____ has failed the required tests with respect to its relationships with a supported organization. It does not meet the requirements of IRC 509(a)(3).

GOVERNMENT POSITION – ISSUE 2

The _____ does not meet the requirements of IRC 509(a)(2). To be recognized as a public charity described under IRC 509(a)(2), an organization must satisfy both the One-Third Support Test and the Not-More-Than-One Third Support Test. The _____ meets neither of those tests. Most of the _____ contributions over the prior _____ have come from one of _____, _____ is a Disqualified Person and, as such, _____ contributions are not included when computing the Public Support Percentage. The total contributions received from non-disqualified persons total only \$ _____ over _____ or % of total support, while _____ represents _____ % of the total (see Appendix I). The _____ is organized as an _____ vehicle relying solely on its _____ for making _____. Although it may receive contributions from time to time, _____ comprises the bulk of its support.

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GOVERNMENT POSITION – ISSUE 3

The [redacted] does not meet the requirements of IRC Section 170(b)(1)(A)(vi) as a publicly supported organization with a foundation status described in Section 509(a)(1). The [redacted] does not seek any [redacted] and does not maintain any [redacted] in order to attract support from [redacted]. The [redacted] for [redacted] is [redacted]%. This calculation includes all contributions received over the last [redacted] minus [redacted] exceeding the [redacted]% limitation, as described in Appendix II. Therefore, the [redacted] does not meet the one-third public support test. Moreover, as a [redacted] with no [redacted] and [redacted] and no [redacted], it also does not exhibit any of the required factors and, therefore, does not meet the Facts and Circumstance Test. The Trust occasionally receives contributions from the [redacted]; however, it relies almost exclusively on its [redacted] for making [redacted] to the [redacted].

CONCLUSION

The [redacted] does not meet the requirements of IRC Section 509(a)(3) therefore, it is a [redacted]. It needs to file Forms [redacted] and pay the tax on its net beginning with the year ending [redacted], [redacted], and thereafter.

In the case of a [redacted] liable for tax imposed under chapter 42, such information is required by Form [redacted] and [redacted] of the Internal Revenue Code.

The [redacted] tax-exempt status under IRC Section 501(c)(3) remains in effect. The effective date of this reclassification is [redacted], [redacted].

If you agree to this conclusion, please sign and return the attached Form 6018.

If you disagree, please submit a statement of your position.

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APPENDIX I

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APPENDIX II

An organization's support is defined in IRC 509(d) to include amounts received from Gifts, Grants, Gross Receipts from Related activities, Investment income and Unrelated Business Income (UBI). Contributions and membership fees from the general public are included in full except to the extent that the contribution or fee exceeds 2 percent of the organization's total support.

Two Percent Limitation

If a _____ exceeds _____ percent of an organization's total support, the excess is excluded from the numerator of the public support fraction and included (entire amount of the contribution) in the denominator (Treas. Reg. 1.170A-9(f)(6)(i)).

The _____ percent limitation also applies to any person(s) or entity related to _____ as described in IRC 4946(a)(1)(C) through (G) as if made by _____. For example, a _____ and _____ are treated as _____ person for the _____ percent limitation.

The table below shows the calculations for the _____ percent limitation that is applicable in each calendar year and the amount that is excluded _____ in calculating the total public support percentage.