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

200150040

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: SEP 21 2001

Contact Person:

Identification Number:

Telephone Number:

Uniform Issue List No:
501.36-04

T:EO:B2

Employer Identification Number:

Legend:

M =
N =
O =

Dear Applicant:

This letter is in reply to the letter dated October 6, 2000, as amended by letter dated June 4, 2001, in which M requested a ruling with respect to the tax consequences of its proposed O program.

M is an organization recognized by the Internal Revenue Service as exempt from federal income tax as a charity under section 501(c)(3) of the Internal Revenue Code. Our records show that M is not a private foundation because it is a supporting organization, as described in section 509(a)(3), of N.

N is an organization recognized by the Service as exempt from federal income tax under section 501(c)(3) of the Code. Our records show that N is not a private foundation because it is described in sections 509(a)(1) and 170(b)(1)(A)(vi). N owns and operates two separate nursing-home facilities for the aged, an extended care facility and an assisted living facility.

M intends to engage in a fund-raising campaign for the support and benefit of N. As part of that campaign, M intends to sell charitable gift annuities and to solicit contributions in the form of remainder interest in charitable remainder trusts. M, with the permission of N, intends to incorporate the following statements, which it refers to as the O program, into its fund-raising literature:

> Upon transfer of property to M in exchange for a charitable gift annuity, the donor and/or beneficiary are automatically enrolled in M's O program, guaranteeing access to the best long-term care facilities in the County.

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This program extends priority admission into N's extended care facility or assisted living facility within a maximum of fifteen days, for donors, their family members, and friends.

The O program also applies to all persons establishing a charitable remainder trust which designates M as a charitable beneficiary.

M states that neither it nor N will incur any economic cost as a result of the O program. M also states that the O program does not provide any measurable financial or economic benefit to donors, and that the program is merely a fund raising technique that is in the nature of an acknowledgment or courtesy. M also states that neither it nor N receives any consideration from any other person for priority admission similar to that which the O program will provide to a donor.

M has requested a ruling that for purposes of determining whether an annuity issued by M is a charitable gift annuity within the meaning of section 501(m)(5) of the Code, the O program will not be treated as an additional consideration issued in exchange for property within the meaning of section 514(c)(5).

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

Section 509(a)(3) of the Code provides that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than an organization which

(A) is organized, and at all times thereafter is 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 section 509(a)(1) or (2),

(B) is operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a)(1) or (2), and

(C) is not 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 organizations described in section 509(a)(1) or (2).

Section 501(m)(1) of the Code provides that an organization described in section 501(c)(3) of the Code shall be exempt from tax under section 501(a) only if no substantial part of its activities consists of providing commercial-type insurance.

Section 501(m)(3)(E) of the Code provides that the term "commercial-type insurance" shall not include charitable gift annuities.

Section 501(m)(5)(B) of the Code states that for purposes of section 501(m)(3)(E), the term "charitable gift annuity" means an annuity if a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and the

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annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property).

Section 514(c)(5)(A) of the Code provides, in part, that for purposes of section 514, the term "acquisition indebtedness" does not include an obligation to pay an annuity which is the sole consideration issued in exchange for property.

From the facts presented, as stated above, it is clear that the O program, in and of itself, does not involve the passing of consideration to or from either the donor, M, or N, and that neither M nor N will incur any economic cost as a result of the O program. It is also clear that the O program does not provide any measurable financial or economic benefit to donors. Therefore, the O program should not be treated as consideration given to a donor in addition to an annuity or income interest in a charitable remainder trust.

Accordingly, based on the facts and circumstances as stated above, we rule that for purposes of determining whether an annuity issued by M is a charitable gift annuity within the meaning of section 501(m)(5) of the Code, the O program will not be treated as an additional consideration issued in exchange for property within the meaning of section 514(c)(5).

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 Tax Exempt and Government Entities (TE/GE) Customer Service 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 Ohio TE/GE Customer Service office.

Except as we have specifically ruled herein, we express no opinion as to the consequences of these transactions under the cited provisions or under any other provisions of the Code.

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

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) Terrell M. Berkovsky