



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **200846041**

Release Date: 11/14/08

Date: August 19, 2008

Uniform Issue List:

501.03-15

501.03-22

509.03-00

4948.00-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(4). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

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. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosures:

Notice 437

Redacted Proposed Adverse Determination Letter

Redacted Final Adverse Determination Letter



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

Date: July 3 2008

Contact Person:

Uniform Issue List:

501.03-15  
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Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A =  
M =  
Q =  
R =  
S =  
T =  
Country 1 =  
Country 2 =  
Year =

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(4). The basis for our conclusion is set forth below.

M is a foreign private foundation located in Country. M was established in Year by the heirs of A, a Country 2 industrialist and philanthropist. M is operated for the promotion of social welfare, specifically in promoting the common good and general welfare of the people of Country 1, Country 2 and elsewhere. M's largest source of support is investment income earned on its endowment.

M's purposes include providing financial aid to students of Country 2 nationality for studies abroad. M operates in Q in Country 1. Through R, M grants scholarships to students to study at R or S. Persons granted scholarships must enter into contracts, committing a return to Country 2. M also supports cultural, philanthropic, social and ecological works relevant to Country 2. It will also promote vocational training and education as well as awarding music and literary prizes as well as publishing such works. M also manages T.

M is governed by a board composed of five to nine members appointed by A's family; a

minimum of three members from A's family and their descendents. The board is headed by a president who must be one of the members of Country 1 nationality. Upon dissolution, the M's net assets will be distributed to entities with similar purposes as M's.

Law:

Section 509(a) of the Internal Revenue Code provides that a private foundation means "a domestic or foreign organization described in 501(c)(3) ... ." (emphasis added).

Section 509(b) of the Code provides that for purposes of this title, if an organization is a private foundation ... on October 9, 1969, such organization shall be treated as a private foundation for all periods after October 9, 1969 ... unless its status as such is terminated under section 507.

Section 1.509(b)-1(a) of the Income Tax Regulations explains that if an organization was described in 501(c)(3) of the Code and was a private foundation on October 9, 1969, it is to be treated as private foundation for all subsequent periods, "even though it may also satisfy the requirements of an organization described in some other paragraph of section 501(c)." This section cites the example of a 501(c)(3) organization in existence on October 9, 1969 that would continue to be treated as a private foundation even though it also qualified under section 501(c)(4).

Section 508(a) of the Code provides that for an organization formed after October 9, 1969, it is not described in section 501(c)(3) unless it provides timely notice. Section 508(b) provides that organizations described in 501(c)(3), including those in existence on October 9, 1969, are presumed to be private foundations.

Analysis:

Based on the foregoing, the rules for a foreign private foundation mirror the rules for domestic organizations. A foreign private foundation previously not recognized as exempt in the United States and created after October 9, 1969 could apply and be recognized as exempt under section 501(c)(4) if it so qualified. In contrast, a foreign private foundation in existence on October 9, 1969 would be presumed to be a private foundation and could not apply and be recognized as exempt under another provision. The facts provided indicate that you were in existence on October 9, 1969 and are therefore presumed to be a private foundation.

The next question is whether this result could be affected by the application of section 4948 of the Code, which provides an excise tax on the investments of foreign private foundations and other rules regarding foreign private foundations. Section 4948(a) applies a 4 percent tax on gross investment income from sources within the United States of every foreign organization which is a private foundation. Section 4948(b) provides that section 507, section 508, and the other provisions of chapter 42, do not apply to any foreign organization which has received substantially all of its support from sources outside the United States. The regulations indicate that substantially all means at least 85 percent. See *section 53.4948-1(b) of the Foundation and Similar Excise Tax Regulations*.

We do not believe that section 4948 of the Code impacts the issue of whether a foreign private foundation can be recognized as exempt under a provision other than section 501(c)(3).

Rather, the foreign organization would be subject to the same rules discussed above. Unlike sections 508 and 509, section 4948 does not appear to have been intended to address private foundation status classification—rather, as discussed below, it was intended to modify the general private foundation rules that would have been difficult to apply in the case of organizations the activities of which are, for the most part, outside of the United States.

Section 4948(a) of the Code is the substitute for the section 4940 tax for foreign organizations. It only applies to investment income derived from sources within the United States. This provision does not affect the paragraph of 501(c) under which a foreign organization can be recognized.

Section 4948(b) and (c) of the Code apply special rules and a special sanctions regime for foreign private foundations most of the support of which are from sources outside the United States. First, we note that these subsections would have no effect on foreign organizations receiving less than 85 percent of their support from sources outside the United States. Thus, a foreign private foundation receiving 84 percent of its support from sources outside the United States could be recognized as a section 501(c)(4) organization, assuming it was not in existence on October 1, 1969. Such a foreign private foundation could not be recognized as exempt under section 501(c)(4) if it was in existence on October 1, 1969.

The last question, then, is whether the rule of section 4948(b) of the Code, that section 508 does not apply to organizations receiving 85 percent or more of their support from sources outside the United States, affects a foreign organization's ability to be recognized as exempt under section 501(c)(4). The argument could be made that since section 508(a) does not apply to these organizations, these organizations may be described in section 501(c)(3) without filing a Form 1023.<sup>1</sup> That does not, however, make the foreign organization a section 501(c)(3) organization or compel that the foreign organization come in and be recognized under section 501(c)(3). Cf. Section 509(b), which provides that if an organization is a private foundation on October 1, 1969, that status continues until terminated under section 507.

We also note that the legislative history of section 4948 of the Code does not even refer to the requirements of section 508(a). Rather, there are references to the "change in status" (section 507), "governing instruments" (section 508(e)), and the chapter 42 excise taxes, all of which that would be impractical to apply to foreign organizations. This also suggests that section 4948 was a modified tax and sanctions regime for foreign private foundations, not relevant to determining whether the organization should be classified as a private foundation or precluding recognition as a type of exempt organization other than section 501(c)(3).

Finally, as noted above, section 4948(b) and (c) of the Code only apply to organizations the foreign source support of which is 85 percent or more. We do not see any logical or policy basis, or any congressional intent, to distinguish between organizations based on this particular percentage of source of income, at least in terms of choice of paragraph under which to be recognized.

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<sup>1</sup> See Treas. Reg. § 1.508-1(a)(2)(vi) provides that "[A] foreign organization shall, for purposes of section 508, be treated in the same manner as a domestic organization, except that section 508 shall not apply to a foreign organization which is described in section 4948(b)."

Conclusion:

Based on the foregoing, since M was in existence prior to October 1, 1969 and it has not received any deductible contributions, it cannot be recognized as exempt under section 501(c)(4) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service  
TE/GE (SE:T:EO:RA:T:2)

1111 Constitution Ave, N.W.  
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements