DEPARTMENT OF THE TREASURY 200243050
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

UIL 170.12-06

Date: JUL 29 2002

Contact Person:

Identification Number:

Telephone Number:

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Employer Identification Number:

Legend:

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Dear Sir or Madam:

We have considered your ruling request regarding the federal income tax consequences of establishing an employee benefit fund that provides grants and/or loans to your employees and/or their families and those of your affiliates in times of financial hardship.

FACTS:

You are a non-profit, non-stock corporation exempt as an organization described in section 501(c)(3) of the Internal Revenue Code and classified as a hospital under sections 509(a)(1) and 170(b)(1)(A)(iii). You operate an acute care inpatient hospital.

You are part of an affiliated group of tax-exempt health care providers. The purpose of you and your affiliates is to provide health care services to area residents. Collectively, you and your affiliates employ over 2,000 people. The employees of you and your affiliates include physicians, nurses, administrative personnel, maintenance staff and a medical support staff.

Your employees have approached you and suggested establishing a fund from which grants might be made to assist health system employees in meeting emergencies and financial hardships. In response, you have established a fund, A ("Fund"), to

provide emergency assistance to financially needy persons who suffer economic hardship due to accident, loss, or disaster.

Persons eligible for assistance include all health system employees, both full and part-time, retirees and volunteers of you and your affiliates and the family members of the foregoing persons (collectively the "Eligible Persons"). The Fund will be supported by contributions from Eligible Persons as well as from the general public. You and your affiliates are prohibited from making contributions to the Fund.

A fifteen-member committee governs the Fund. All of the committee members are employees of you or one of your affiliates. Members of the committee are appointed by your Corporate Director of Human Resources. Committee members are selected from different vocations and endeavors within the health system.

When an Eligible Person is in an emergency situation and is in need of financial assistance, he or she can apply to the committee for help. The committee will review all applications for assistance from the Fund. The applications will not contain information identifying the applicant. The operations of the committee, the procedures used in determining assistance, and the form of the grant application are set forth in the A Articles of Formation and Governance ("Fund Articles").

The Fund's grants will be based on need and the specific hardship or disaster the applicant claims. Each application must state the total income of applicant's household and be accompanied by proof of the claim such as a photograph or sworn affidavit of a third party or such other helpful information as the committee may request. Applicants may apply for grants as many times as necessary. Awards to a single applicant may not exceed five thousand dollars in any grant or ten thousand dollars in the aggregate over the course of a single Fund year.

The duties and responsibilities of the Committee include: (a) to authorize distributions from the Fund; (b) to be the ultimate authority responsible for the grants provided by the Fund; (c) to ensure that all grant applicants with the same financial hardship are receiving the same level of grants from the Fund; (d) to follow the comprehensive review program for applications for grants from the Fund; (e) to participate actively in the application process of the Fund; and (f) to ensure that the fund and grants made from the Fund comply with all applicable federal and state laws and regulations.

The Corporate Director of Human Resources shall cause records to be kept of each grant recipient and grant applicant. Such records shall include the name and address of each recipient, the amount distributed to each, the purpose for which the aid is given, and the relationship, if any, between the recipient and the Committee member

or members, officers or trustees.

No grant may be guaranteed to any person nor can any contribution to the Fund be earmarked for a specific individual. No person who contributes to the Fund is guaranteed to receive a grant from the Fund. Any interest that accrues on the Fund's contributions will be added to the Fund. No member of your board of trustees or member of management or of your affiliates will have any control or influence over grants from the Fund or the operation of the committee. In the event a committee member is able to discern the true identity of a grant applicant after redaction of the application, the committee member shall not reveal such knowledge to the other members of the committee and shall immediately recuse himself or herself from participating in the review of the application of the discerned applicant.

The committee must follow a conflicts of interest policy set forth in the Fund Articles when contemplating making a grant to a committee member or an immediate family member of a committee member of the Fund. This conflict of interest policy set forth in the Fund Articles supplements any state laws governing conflicts of interest applicable to nonprofit and charitable corporations.

You have requested the following rulings:

1. The creation and operation of the Fund will not jeopardize your status as an organization described in section 501(c)(3) of the Code.

2. Contributions to the Fund by your employees and employees of your affiliates will be deductible as charitable contributions under section 170(c)(1) of the Code.

APPLICABLE LAW:

Exemption Issues

Section 501(c)(3) of the Code describes as exempt from federal income tax, as provided under section 501(a), organizations organized and operated exclusively for, among others, charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c) of the Income Tax Regulations defines private shareholders or individuals within the meaning of section 501(c)(3) as persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages 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.

Section 1.501(c)(3)-1(d)(1) of the regulations provides that an organization is not organized or operated exclusively for an exempt purpose unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of designated individuals.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" includes relief of the poor and distress or of the underprivileged.

Section 1.170A-4A(b)(ii)(D) of the regulations defines a needy person as being a person who lacks the necessities of life, involving physical, mental, or emotional well being, as a result of poverty or temporary distress. Examples of needy persons include a person who is financially impoverished as a result of low income and lack of financial resources, a person who temporarily lacks food or shelter (and the means to provide for it), a person who is the victim of a natural disaster (such as fire or flood), a person who is the victim of a civil disaster (such as civil disturbance), a person who is temporarily not self sufficient as a result of a sudden and severe personal or family crisis (such as a person who is the victim of a crime of violence or who has been physically abused).

Rev. Rul. 56-304, 1956-2 C.B. 306, provides for record-keeping requirements when charitable organizations make distributions to individuals. It states that adequate records and case histories should be maintained to show the name and address of each recipient, the amount distributed to each, the purpose for which the aid was given, the manner in which the recipient was selected and the relationship, if any, between the recipient and members, officers, or trustees of the organization, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service.

Deductibility of contributions

Under section 170(a), (b), and (c) of the Code, an individual taxpayer is entitled to a deduction for charitable contributions or gifts to or for the use of qualified charitable organizations, payment of which is made during the taxable year.

The term "charitable contribution" is defined in section 170(c)(2) of the Code to include a contribution or gift to or for the use of a corporation, trust, community chest, fund, or foundation: (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States; (B) organized and operated exclusively for religious,

charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals; (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and (D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible, by reason of section 170(c)(2), only if it is used within the United States or any of its possessions exclusively for purposes specified in section 170(c)(2)(B).

ANALYSIS:

Exemption Issues and Section 501(c)(3) of the Code

The operation of the Fund will be the making of grants to Eligible Persons based upon need. The making of a grant follows submission of an application by an Eligible Person to a committee of employees. Grants from the Fund are awarded to Eligible Persons based on predetermined standard criteria. The process for the selection of beneficiaries is undertaken on an objective and nondiscriminatory basis designed to provide relief to persons who are needy and distressed. No beneficiary is entitled to such relief as a matter of entitlement. Thus, the Fund is not operated in a manner that benefits the private interests of any designated individuals.

The Fund Articles require the committee to review information submitted by an Eligible Person before making a grant and to keep records and minutes of its proceedings which will include data such as case histories and the purpose for which aid is given. The committee is also required to keep this information following the application period to use as a tool in determining whether the Fund is achieving its purpose. Thus, sufficient records are maintained to substantiate the operations and decisions of the committee.

All Eligible Persons are capable of applying for a grant from the Fund. The class of eligible beneficiaries is sufficiently large and open-ended so that it constitutes a charitable class.

The Fund derives its support exclusively from voluntary employee contributions and contributions from the general public. You and your affiliates do not make contributions to the Fund. Thus, the Fund is distinguished from a program designed to offer a type of employee welfare benefit to employees. No part of the Fund is used for funding your obligation to pay salaries to employees.

Accordingly, we rule that the establishment and administration of the Fund as described in this ruling is consistent with and will not adversely affect your status as an organization described in section 501(c)(3) of the Code.

Deductibility of Contributions and Section 170 of the Code

A contribution for purposes of section 170 of the Code is a voluntary transfer of money or property that is made with no expectation of procuring a financial benefit commensurate with the amount of transfer. See H.R. Rep. No. 1337, 83rd Cong., 2nd Sess. A44 (1954); S. Rep. No. 1622, 83rd Cong., 2nd Sess. 196 (1954).

A class of beneficiaries designated by the donor or by the donee's charter may be challenged where the class of prospective beneficiaries is so limited in size that the donee organization is considered to benefit specified individuals. Such contributions must be examined in light of the totality of the surrounding facts and circumstances to determine if the class of beneficiaries is too narrow to qualify the contributions for a deduction under section 170 of the Code. See Rev. Rul. 62-113, 1962-2 C.B. 10; Rev. Rul. 79-81, 1979-1 C.B. 107; Peace v. Commissioner, 43 T.C. 1 (1964), acq., 1965-2 C.B. 13. An example of too small a class can be seen in Charleston Chair Co. v. United States, 203 F.Supp. 126 (E.D. S.C. 1962). In that case, a corporation was denied a deduction for amounts given to a foundation established to provide educational opportunities for employees and their children where the foundation's educational benefits inured to only four children of the corporation's employees and where 30 percent of the foundation's income was paid to the son of the corporation's president and foundation trustee.

Generally, questions about section 170 deductibility arise when a corporation contributes to a foundation and the corporation's employees make up the beneficiary class. In Rev. Rul. 56-138, 1956-1 C.B. 202, for example, deductions were denied for contributions to a trust created by an employer principally to pay employee pensions, but which were also used to provide additional benefits to employee or their beneficiaries on the basis of need. See also T.J. Moss Tie Company v. Commissioner, 18 T.C. 188 (1952), nonacq., 1952-2 C.B. 5.

In the present case, although you set up the Fund, your (and your affiliates') employees, as well as the general public, will make contributions to the Fund and, thus, questions do not arise whether the employer will substantially benefit from the contributions. Neither you nor your affiliates will contribute to the Fund. Awards of the Fund are payable only after a determination of need in the discretion of a 15-member committee. Awards to a single applicant may not exceed $5,000 in any one grant or $10,000 in the aggregate over the course of a single Fund fiscal year. Contributions may not be earmarked, and there is no guarantee that funds will be available for past

contributors should they have a need arise and apply to the Fund for assistance. Thus, contributions cannot be made to the Fund with the expectation of procuring a financial benefit. The Fund derives its income from voluntary contributions, and no part of its income inures to the benefit of any individual. The class of potential beneficiaries consists of several thousand employees and retired employees (and their families) of five employers as well as volunteers. Such a class of potential beneficiaries is not so limited in size that the donee organization is considered to benefit specified individuals.

Accordingly, we conclude that contributions to the Fund by your employees and employees of your affiliates are deductible by the donors under section 170 of the Code, as charitable contributions to a section 501(c)(3) entity.

CONCLUSIONS:

Accordingly, we rule as follows:

1. The creation and operation of the Fund, as adopted, will not jeopardize your status as an organization described in section 501(c)(3) of the Code.

2. The contributions made to the Fund by your employees and the employees of your affiliates are deductible by the donors as a contribution described in section 170 of the Code.

This ruling is based on the understanding that there will be no material change in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Service. This ruling is further based on the understanding that no grants will be made which will result in the provision of excessive compensation to employees, and that adequate records will be kept pursuant to Rev. Rul. 56-304, supra.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

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. Because this letter could help resolve future questions about your income tax responsibility, please keep a copy of this ruling in your permanent records.

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.

200243050

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

(signed) Marvin Friedlander

Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1