

Private foundation; charitable trust granting scholarships. An exempt charitable trust whose sole purpose is to grant scholarships to students graduating from the public high schools in a city and that is trustee by the city council with its funds managed by the city treasurer is a supporting organization within the meaning of section 509(a)(3) of the Code and is not a private foundation.

Advice has been requested whether the charitable trust described below is a supporting organization within the meaning of section 509(a)(3) of the Internal Revenue Code of 1954 and thus not a private foundation.

The trust is recognized as exempt from Federal income tax under section 501(c)(3) of the Code. Its purpose is to grant scholarships to students graduating from the public high school of a particular city. Its trust instrument provides that the city council is the sole trustee and that the trust's funds are to be managed by the city treasurer or by a commission created by the city. The public school system in the city is not separately incorporated but is an integral part of the city government and, pursuant to the city's charter, is under the supervision of the city counsel. One of the purposes of the city as outlined in its charter is to provide for the education of its citizens.

Section 509(a)(3) of the Code excludes from the definition of a 'private foundation' 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 paragraph (1) or (2),

(B) is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (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 paragraph (1) or (2).

Section 1.509(a)-4(c)(1) of the Income Tax Regulations provides that an organization is organized exclusively for one or more of the purposes specified in section 509(a)(3)(A) of the Code only if its articles of organization:

(i) Limit the purposes of such organization to one or more of the purposes set forth in section 509(a)(3)(A);

(ii) Do not expressly empower the organization to engage in activities which are not in furtherance of the purposes

referring to in subdivision (i) of this subparagraph;

(iii) State the specified publicly supported organizations on whose behalf such organization is to be operated (within the meaning of paragraph (d) of this section); and

(iv) Do not expressly empower the organization to operate to support or benefit any organization other than the specified publicly supported organizations referred to in subdivision (iii) of this subparagraph.

Section 1.509(a)-4(c)(2) of the regulations indicates that in satisfying the 'organizational test,' the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes set forth in section 509(a)(3)(A) of the Code.

An organization which is 'operated, supervised, or controlled by' or 'supervised or controlled in connection with' one or more section 509(a)(1) or (2) organizations to carry out the purposes of such organizations, will be considered as satisfying the organizational test if the purposes set forth in its articles are similar to, but no broader than, the purposes set forth in the articles of its controlling section 509(a)(1) or (2) organizations.

Section 1.509(a)-(4)(d)(2)(i) of the regulations provides that the articles of a supporting organization must designate each of the specified organizations by name, unless the supporting organization is 'operated, supervised, or controlled by' or 'supervised or controlled in connection with' such organizations, and the articles of organization of the supporting organization require that it be operated to support or benefit one or more beneficiary organizations which are designated by class or purpose and which include such controlling organizations.

Section 1.509(a)-4(e)(1) of the regulations 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 support or benefit the specified publicly supported organizations. Such activities 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 organizations.

Section 1.509(a)-4(g)(1) of the regulations provides that a supporting organization is 'operated, supervised, or controlled by' one or more publicly supported organizations if 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 membership of one or more publicly supported organizations.

Section 1.509(a)-4(j)(1) of the regulations provides that under section 509(a)(3)(C) of the Code a supporting organization

may not be controlled directly or indirectly by one or more disqualified persons other than foundation managers and other than one or more publicly supported organizations.

Section 4946(a)(1)(I) of the Code provides that a government official (as defined in subsection (c) of section 4946) is a disqualified person only for purposes of section 4941.

The city that operates the public school from whose graduates the scholarship recipients are selected is an organization described in section 170(b)(1)(A)(v) of the Code, because it is a governmental unit referred to in section 170(c)(1). Thus, it is an organization described in section 509(a)(1).

The city, through the city council and the city treasurer or commission appointed by the council, controls the trust. Thus, the trust is 'operated, supervised, or controlled by' a publicly supported organization within the meaning of section 1.509(a)-4(g)(1) of the regulations.

The stated purpose of the trust to grant scholarships to students graduating from the public high school in the city is similar to the educational purpose of the city, as outlined in its charter. Because of this similarity of purpose and because the trust is 'operated, supervised, or controlled by' the city, the organizational test of section 1.509(a)-4(c)(2) of the regulations is satisfied. Where a supporting organization is 'operated in connection with' a section 509(a)(1) or (2) organization, the organizational test requires a more precise statement of purpose and greater specificity in the designation of the beneficiary. See Rev. Rul. 75-437, this page.

In granting scholarships to the graduates of the public high school, the trust is benefiting individual members of the charitable class benefited by the city through its school system. Thus, the requirement of section 1.509(a)-4(e) of the regulations that the supporting organization be operated exclusively to support or benefit one or more publicly supported organizations is also satisfied.

Finally, the trust is not controlled by a disqualified person within the meaning of section 4946 of the Code other than by an organization described in section 509(a)(1).

Accordingly, the trust is a supporting organization within the meaning of section 509(a)(3) of the Code and thus is not a private foundation.