

Private foundation; supporting organization; community trust.

A community trust described in section 1.170A-9(e)(11) of the regulations that was created by a community chest to hold permanently endowed charitable funds and to distribute income to support local charitable organizations that are public charities is a supporting organization under section 509(a)(3) of the Code and is not a private foundation, even if the publicly supported charities are not specified by name.

#### ISSUE

Does the community trust described below qualify for status as a supporting organization described in section 509(a)(3) of the Internal Revenue Code?

#### FACTS

M is exempt from federal income tax under section 501(c)(3) of the Code and is a community trust described in section 1.170A-9(e)(11) of the Income Tax Regulations. M does not qualify as a publicly supported organization described in sections 170(b)(1)(A)(vi) and 509(a)(1). S is a 'community chest' operating in Z city and is a publicly supported organization described in sections 170(b)(1)(A)(vi) and 509(a)(1).

M was created by S for the purpose of holding permanently endowed charitable funds for use in the Z area. M's governing instrument provides that its income will be distributed to support charitable organizations located in the Z area that are exempt under section 501(c)(3) of the Code and are public charities described in section 509(a)(1) or (a)(2). A majority of the trustees of M are appointed by the governing body of S.

M is not controlled directly or indirectly by one or more disqualified persons other than foundation managers as defined in section 4946 of the Code.

#### LAW AND ANALYSIS

Section 509(a) of the Code defines the term 'private foundation' as an organization described in section 501(c)(3) other than organizations described in section 509(a)(1), (2), (3), or (4). Section 509(a)(3) provides that the term 'private foundation' does not include an organization that:

(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 1.509(a)-4(d)(1) of the regulations provides, in part, that the manner in which the publicly supported organizations must be 'specified' in the articles for purposes of section 509(a)(3)(A) of the Code will depend upon whether the supporting organization is 'operated, supervised, or controlled by' or 'supervised or controlled in connection with' such organizations or whether it is 'operated in connection with' such organizations.

Section 1.509(a)-4(d)(2) of the regulations provides, in part, that the 'specified organizations' referred to in section 509(a)(3)(A) of the Code may be specified by class or purpose rather than by name if (1) the supporting organization is 'operated, supervised, or controlled' (within the meaning of section 1.509(a)-4(g)) by a publicly supported organization and (2) the supporting organization's articles require that it be operated to support or benefit one or more beneficiary organizations that are designated by class or purpose and that include the controlling publicly supported organization.

Section 1.509(a)-4(g) of the regulations provides, in part, that the term 'operated, supervised, or controlled by' presupposes a substantial degree of direction over the policies, programs, and activities of a supporting organization by one or more publicly supported organizations. The relationship required under this term 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 of one or more publicly supported organizations.

In this case, M is required by the terms of its governing instrument to distribute its income to section 501(c)(3) organizations that are described in section 509(a)(1) or (a)(2) of the Code and that are located in the Z area. Even though the publicly supported organizations are not specified by name, M nevertheless meets the requirements of section 509(a)(3)(A) because, S, the controlling organization, is specified by class or purpose in a manner that satisfies the conditions of section 1.509(a)-4(d)(2) of the regulations. Since M is organized and operated exclusively for the benefit of such class of organizations, M satisfies the requirements set forth in section 509(a)(3)(A).

S, a publicly supported organization, appoints a majority of the trustees of M. Therefore, M is operated, supervised, or controlled by S within the meaning of section 509(a)(3)(B) of the Code and section 1.509(a)-4(g) of the regulations.

Since M is not controlled by any disqualified persons other than foundation managers described in section 4946 of the Code, the requirement set forth in section 509(a)(3)(C) is satisfied.

#### HOLDING

The M community trust, under the circumstances described above, is a supporting organization described in section 509(a)(3) of the Code and thus is not a private foundation.