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

200150027

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: AUG 7 2001

Contact Person:

Identification Number:

Telephone Number:

T:EO:B2

Employer Identification Number:

Legend:	UIL Nos.
	170.07-06
B =	501.03-00
X =	508.00-00
	509.02-01

Dear Sir or Madam:

We have considered X's ruling request dated December 3, 1998 regarding X's formation of a limited liability company ("LLC") to receive a contribution of real property subject to potential liabilities.

X is a community trust composed of several component parts treated as a single entity, and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of the Internal Revenue Code. X's governing body is incorporated.

B, an individual, owns certain real Property that B intends to donate to X. X wishes to accept, but is concerned about subjecting itself to potential environmental and premises liability in excess of the value of the Property. To shield itself from such liability, X proposes to organize an LLC under State law. X will be the sole member of the LLC. The LLC will not elect to be treated as separate from its sole member on Form 8832. B will donate the Property in fee simple to the LLC. The LLC will not assume any liabilities associated with the Property arising prior to the transfer. The LLC will not be subject to any material restrictions or conditions (within the meaning of section 1.507-2(a)(8) of the regulations) with respect to the Property. X will treat the Property as its own in preparing periodic financial reports.

To further avoid liability as an agent of the LLC, X will not be the manager of the LLC. X will have the power to appoint and remove the managers at any time without cause. B will initially be the sole manager of the LLC. B will serve without compensation (other than reimbursement of expenses). B is not an officer or director of X and will not acquire any position with X as a result of the contribution. X represents that the Property will be used in a manner

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consistent with X's exempt purposes. All investments and charitable distributions will be subject to X's approval.

X requests the following rulings:

1. The LLC will be disregarded as separate from X, and assets owned or transferred to the LLC will be treated as assets owned or transferred to X for all federal tax purposes.

2. The LLC is not required to submit an application to obtain recognition by the IRS of its status under section 501(c)(3) of the Code in accordance with section 508.

3. The LLC will assume X's income tax status. Accordingly, the LLC will be a public charity described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

4. The acceptance of the contribution of fee simple title to the Property by the LLC will not adversely affect X's exemption under section 501(c)(3) of the Code since the Property will be used for charitable purposes.

5. The fair market value of the Property at the date of conveyance will be deductible by B as a charitable contribution under sections 170(a)(1) and 2522(a)(2) of the Code in the taxable year in which the conveyance is made, in the manner and to the extent provided by section 170. The amount of the contribution is the fair market value of the Property.

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable purposes.

Section 508(a) of the Code provides than an organization shall not be treated as described in section 501(c)(3) (1) unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or (2) for any period before the giving of such notice, if such notice is given after the time prescribed.

Section 509(a)(1) of the Code excludes from the definition of "private foundation" an organization described in section 170(b)(1)(A)(vi).

Section 1.170A-1(c) of the Income Tax Regulations provides generally that the amount of the contribution of property is its fair market value at the time of the contribution.

Section 1.170A-9(e)(10) of the regulations provides that community trusts have often been established to attract large contributions of a capital or endowment nature for the benefit of a particular community or area, and often such contributions have come initially from a small number of donors. While the community trust generally has a governing body comprised of representatives of the particular community or area, its contributions are often received and maintained in the form of separate trusts or funds, which are subject to varying degrees of control by the governing body. To qualify as a "publicly supported" organization, a community trust must meet the 33 1/3 percent-of-support test of section 1.170A-9(e)(2), or, if it cannot meet that test, be

organized and operated so as to attract new and additional public or governmental support on a continuous basis sufficient to meet the facts and circumstances test of section 1.170A-9(e)(3). Section 1.170A-9(e)(11) provides rules for determining the extent to which separate trusts or funds may be treated as component parts of a community trust, fund or foundation (herein collectively referred to as a "community trust," and sometimes referred to as an "organization") for purposes of meeting the requirements of this paragraph for classification as a "publicly supported" organization.

Section 1.170A-9(e)(11)(i) of the regulations provides generally that for purposes of sections 170, 501, and 507-509, and chapter 42 of the Code, any organization that meets certain community trust requirements set forth in the regulations will be treated as a single entity, rather than as an aggregation of separate funds, and all funds associated with such organization (whether a trust, not-for-profit corporation, unincorporated association, or a combination thereof) will be treated as component parts of such organization.

Section 301.7701-3(a) of the Procedure and Administration Regulations provides that a business entity not classified as a corporation (an eligible entity) and having a single member can elect to be classified as an association or to be disregarded as an entity separate from its owner, for federal tax purposes.

Section 301.7701-3(b)(1) of the regulations provides that, unless it elects otherwise, a domestic eligible entity with a single owner is disregarded as an entity separate from its owner.

Section 301.7701-3(c)(1)(v)(A) of the regulations provides that an eligible entity that has been determined to be, or claims to be, exempt from taxation under section 501(a) is treated as having made an election to be classified as an association.

Ann. 99-102, 1999-43 I.R.B. 545, stated that an owner exempt from taxation under section 501(a) of the Code must include, as its own, information pertaining to the finances and operations of a disregarded entity in its annual information return, because the regulations under section 7701 provide that an entity wholly owned by a single owner may be disregarded as an entity separate from its owner (when the entity is disregarded as separate, its operations are treated as a branch or division of the owner).

Pursuant to Ann. 99-102, the LLC is treated as a part of X (i.e., as a disregarded entity) unless it elects treatment as a separate association. The LLC need not submit an application to qualify as a part of X under sections 501(c)(3) and 170(b)(1)(A)(vi) of the Code, assuming that the owner's ownership of the LLC does not adversely affect the owner's 501(c)(3) or 170(b)(1)(A)(vi) status. Under the facts presented, X, viewed together with the LLC, will be described in section 501(c)(3) and (assuming that the applicable support tests are met) 170(b)(1)(A)(vi).

However, we decline to rule on the deductibility of B's contribution of the Property to the LLC under section 170 of the Code. See section 5.14(3) of Rev. Proc. 2000-1, 2000-1 I.R.B. 19.

Accordingly, we rule as follows:

1. The LLC will be disregarded as separate from X for purposes of sections 170(b)(1)(A)(vi), 501(c)(3), 507-509, and chapter 42 of the Code, and for return and public disclosure requirements, and assets owned or transferred to the LLC will be treated as assets owned or transferred to X for such purposes.

2. The LLC is not required to submit an application in accordance with section 508 of the Code to obtain recognition by the IRS of its status as part of an entity described in section 501(c)(3).

3. The LLC will be encompassed within X's income tax status. Accordingly, the LLC will be part of a public charity described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

4. The acceptance of the contribution of fee simple title to the Property by the LLC will not adversely affect X's exemption under section 501(c)(3) of the Code.

Except as we have ruled above, we express no opinion as to the tax consequences of the proposed transaction under the cited provisions of the Code or under any other provisions of the Code.

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

Because this letter could help resolve any future questions about tax liability, you should keep a copy of this ruling in your permanent records.

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,

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2