

Internal Revenue Service

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Department of the Treasury

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Person to Contact:

Telephone Number:
(202) 622-7900
Refer Reply To:
CC:ITA:2 PLR-135425-01

Date: 12/14/01

Taxpayer =
X =
State Y =
\$a = \$
\$b = \$
\$c = \$
\$d = \$
\$e = \$

EIN:

Dear :

This responds to your letter dated April 30, 2001, requesting a ruling on the proper federal income tax treatment of a proposed fund-raising activity involving the sale of the right to use niches and cenotaphs to members of the Roman Catholic community at a price which significantly exceeds the fair market value.

REQUESTED RULINGS:

- 1) Taxpayer's proposal of offering columbarium niches and cenotaphs for greater than fair market value falls within the guidelines for qualifying as a charitable contribution with a partial consideration component under § 170 of the Internal Revenue Code.
- 2) No part of the payments received by Taxpayer with respect to rights to use the columbarium under the proposed Donor Agreement will be unrelated business income under § 511.

APPLICABLE FACTS:

Taxpayer is a parish of the Roman Catholic Church with principal offices located at X in state Y. Taxpayer is a tax-exempt entity under section 501(c)(3) of the Internal Revenue Code and is classified as a church and as an organization which is not a private foundation under §§ 170(b)(1)(A)(i) and 509(a)(1). The functions of Taxpayer

include ownership and operation of church property within the parish.

Taxpayer represents that conducting funeral masses, burying the dead and performing other sacraments for the dying and the bereaved are basic religious functions of the Roman Catholic Church directly associated with its fundamental doctrines. As part of its ministry, the Church has, for many centuries, provided consecrated burial grounds and crypts, more recently, columbaria for the internment of deceased loved ones.

Taxpayer is currently constructing a columbarium on the church's property which will include niches for the internment of cremated remains and cenotaphs for remembrances of loved ones buried elsewhere. Taxpayer proposes to initiate a fund-raising program under which members of the Catholic community may purchase the right to use the niches and cenotaphs at a price which significantly exceeds the fair market value (FMV). It is proposed that a buyer/donor wishing to use a niche or cenotaph will execute a Donor's Agreement. The Donor's Agreement does not obligate Taxpayer to furnish other goods or services customarily offered by funeral homes, nor does Taxpayer intend to do so. The proposed payments, pre-development and post-development, and the estimated FMV for these donations are as follows:

| <u>Item</u> | <u>Pre-Development</u> | <u>Post-Development</u> | <u>FMV</u> |
|--------------------------|------------------------|-------------------------|------------|
| Hillside Companion Niche | \$a | \$b | \$d |
| Cenotaph | \$c | \$c | \$e |

LAW AND ANALYSIS

Requested Ruling No. 1:

Section 170(a)(1) permits a deduction for a charitable contribution, as defined in § 170(c). Section 170(c) defines a charitable contribution as a contribution or gift to or for the use of certain qualifying organizations.

A contribution or gift, for the purposes of § 170 is a voluntary transfer of money or property made by the transferor without receipt or expectation of a financial benefit commensurate with the money or property transferred. See Section 1.170A-1(c)(5) of the Income Tax Regulations.

Rev. Rul. 67-246, 1967-2 C.B. 104, states that, to be deductible as a charitable contribution for federal income tax purposes under section 170, a payment to or for the use of a qualified charitable organization must be a gift. To be a gift for such purposes, there must be, among other requirements, a payment of money or transfer of property without adequate consideration. The Supreme Court has stated that the "sine qua non of a charitable contribution is a transfer of money or property without adequate consideration." United States v. American Bar Endowment, 477 U.S. 105, 118 (1986).

Rev. Rul. 67-246 establishes a two-part test for determining when part of a dual

character payment is deductible. First, the payment is deductible only if and to the extent it exceeds the market value of the benefit received. Second, the excess payment must be "made with the intention of making a gift." Rev. Rul. 67-246 further states generally, where a transaction involving a payment is in the form of a purchase of an item of value, the presumption arises that the gift was not made for charitable contribution purposes, the presumption being that the payment in such a case is the purchase price. If a charitable contribution deduction is claimed with respect to the payment, the burden is on the taxpayer to establish that the amount paid is not the purchase price of the privileges or benefits and that part of the payment, in fact, does qualify as a gift. Thus, in showing that a gift has been made, it is essential for the taxpayer to establish that the portion of the payment that is claimed as a gift represents the excess of the total amount paid over the FMV of any substantial privileges or benefits received in return.

Accordingly, Rev. Rul. 67-246 states that if payments solicited for a charitable fund-raising activity are designed to be partly a gift and partly the purchase price of certain privileges or benefits, the organization conducting the activity should employ procedures that make clear not only that a gift is being solicited in connection with the activity, but also the amount of the gift being solicited. To do this, the amount of property attributable to the purchase of privileges or benefits and the amount solicited as a gift should be determined in advance of solicitation. In making such a determination, the FMV of any substantial privileges or benefits attributable to the purchase must be taken into account. After making such a determination the charitable organization should notify its donors of the amounts allocable to each component of the payment. See Rev. Rul. 67-246, 1967-2 C.B. at 105-6; Rev. Proc. 90-12, 1990-1 C.B. 471.

In the instant case, Taxpayer proposes a charitable fund-raising activity designed to be partly a gift and partly the purchase price of certain privileges or benefits. Specifically, Taxpayer plans to offer the right to use the columbarium's niches and cenotaphs on its property to members of the Catholic community at a price which significantly exceeds FMV. Taxpayer is employing procedures that make clear not only that a gift is being solicited in connection with the activity, but also the amount of the gift being solicited. Taxpayer informs potential buyer/donors of the FMV of the niches and cenotaphs along with pre- and post-development prices. Taxpayer notifies buyers/donors of the amounts allocable to each component of the payment by way of a Donor's Agreement which states that the FMV for a niche is \$d and \$e for a cenotaph.

Based on the facts presented, the proposed transactions clearly take the form of a purchase and contribution. Taxpayer has satisfied the two-part test in Rev. Rul. 67-246. Thus, Taxpayer's proposal of offering columbarium niches and cenotaphs for greater than FMV falls within the guidelines for qualifying as a charitable contribution with a partial consideration component under § 170.

Requested Ruling No. 2:

Section 501(c)(3) provides for the exemption from federal income tax of

organizations organized and operated exclusively for charitable and religious purposes.

Section 511 imposes a tax on the “unrelated business taxable income” of organizations otherwise exempt from federal income tax under § 501(c)(3).

Section 512(a)(1) defines “unrelated business taxable income” as the gross income derived by any organization from any unrelated trade or business as defined in § 513 regularly carried on by it, less the allowable deductions which are directly connected with the carrying on of such trade or business.

Section 513(a) defines the term “unrelated trade or business” as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under § 501.

Section 513(c) provides that the term “trade or business” includes any activity carried on for the production of income from the sale of goods or the performance of services.

Section 1.511-2(a)(3)(iii) provides that, beginning in 1969, but with certain transitional rules covering tax years beginning before January 1, 1976, churches are subject to the tax on unrelated business taxable income under § 511.

Section 1.513-1(a) provides that, unless one of the specific exceptions of § 512 or 513 applies, the gross income of an exempt organization subject to § 511 is includible as unrelated business income if: (1) the income is from a “trade or business,” (2) such trade or business is “regularly carried on” by the organization, and (3) the conduct of such trade or business is not substantially related (aside from the need for, or the production or use of, the funds) to the organization’s performance of its exempt functions.

Section 1.513-1(b) provides that, for purposes of § 513, the term “trade or business” has the same meaning that it has in § 162 and, generally, includes any activity carried on for the production of income from the sale of goods or performance of services.

Section 1.513-1(c)(1) provides that, in determining whether a trade or business from which a particular amount of gross income derives is “regularly carried on” within the meaning of § 512, regard must be had to the frequency and continuity with which the activities productive of the income are conducted and the manner in which they are pursued.

Section 1.513-1(d)(2) provides that for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute

importantly to the accomplishment of those purposes.

In Senate Report Number 91-552, 91st Congress, 1st Session 70 (1960). 1969-3 C.B. 469, on the Tax Reform Act of 1969, Public Law 91-172, the Committee on Finance stated that, in the case of churches, the term unrelated business income will not include the operation and maintenance of cemeteries as long as they are carried on in connection with the church.

Rev. Rul. 79-359, 1979-2 C.B. 226, holds that an organization providing traditional religious burial services qualifies for recognition of exemption under § 501(c)(3). It states that provision of burial services to members of a religion in compliance with the requirements of the religion's laws perpetuates traditional religious customs and obligations and contributes to the advancement of religion.

In the instant case, the proposed sales of niches and cenotaphs will be a trade or business carried on within the meaning of §§ 1.513-1(b) and (c). Thus, the issue here depends on whether such activity is substantially related to the parish's exempt purposes as required by § 513(a). The parish church's columbarium's niches and cenotaphs will be used for decedents with respect to whom the Roman Catholic Church has conducted or expects to conduct a funeral ceremony (or ceremony in which Roman Catholic ordained clergy or those under vows preside or participate). Based on the legislative history cited above, a church's operation and maintenance of a cemetery or this columbarium with niches and cenotaphs for decedents of the church's religious denomination would not be an unrelated trade or business. As in Rev. Rul. 79-359, providing traditional burial services that directly support and maintain basic tenets and beliefs of a religion regarding the burial of its members furthers the religious and charitable purpose of advancement of religion and, thus, is related to furtherance of exempt purposes under § 501(c)(3).

Accordingly, based on the facts presented we rule as follows. Taxpayer's sales of the rights to use the columbarium's niches and cenotaphs, in connection with anticipated funeral ceremonies to be performed there or elsewhere by the Roman Catholic Church with respect to the decedents, will be substantially related (aside from the production of income) to the parish's exempt religious and charitable purposes under § 501(c)(3) and, thus, will not be an unrelated trade or business under § 513(a), and will not result in unrelated business taxable income under § 511.

RULINGS:

Based solely on the facts and representations submitted, we conclude and rule as follows:

(1) Taxpayer's proposal of offering columbarium niches and cenotaphs for greater than FMV falls within the guidelines for qualifying as a charitable contribution with a partial consideration component.

(2) Taxpayer's sales of the rights to use the columbarium's niches and cenotaphs will

be substantially related (aside from the production of income) to the parish's exempt religious and charitable purposes under § 501(c)(3) and, thus, will not be an unrelated trade or business under § 513(a), and will not result in unrelated business taxable income under § 511.

DISCLAIMERS AND LIMITATIONS:

Except as specifically ruled above, no opinion is expressed as to the federal tax treatment of the transaction under any other provisions of the Code and the Income Tax Regulations that may be applicable or under any other general principles of federal income taxation. Neither is any opinion expressed as to the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling.

This ruling is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) of the Code provides that it may not be cited as precedent.

Sincerely yours,
CLIFFORD M. HARBOURT
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Income Tax & Accounting)

cc: