



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200413015

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

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Contact Person:

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T. E. Br L

Legend:

P =

S =

Dear Sir or Madam:

This is in reply to your rulings request of December 12, 2001, concerning P's proposed transfer of endowment funds to its own supporting organization S.

P and S are exempt from federal income tax under section 501(c)(3) of the Code. P is not a private foundation under section 509(a) of the Code because P is a financially publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. P will focus on raising funds and protecting historical archives. P will transfer endowment assets to S.

S is not a private foundation under section 509(a) of the Code because S is a supporting organization for the benefit of P under section 509(a)(3) of the Code. S has been organized as part of a reorganization of P to conduct P's endowment and investment activities. In order to reduce costs, P and S also anticipate sharing assets and services (and allocating the costs between themselves), such as personnel, accounting, computer facilities, maintenance and security, and fundraising.

The following rulings are requested:

1. The organization and operation of S, as described, will not adversely affect the status of P as organization described in section 501(c)(3) of the Code.
2. The organization and operations of S, as described, including S's fundraising activities, S's receipt of contributions directly from the public, and its status as a nonprivate foundation supporting and benefiting P, will not adversely affect the status of P as a nonprivate foundation described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code, assuming P will normally receive at least one-third (or one-tenth) of its total support from the government and the general public.

3. Any transfers of funds or assets between P and S, and any other transfers of cash, assets, and other property, or ongoing sharing of assets, personnel, service, facilities, expenses and/or allocation of costs between P and S will not jeopardize the continued status of P as an organization described in sections 501(c)(3), 509(a)(1), or 170(b)(1)(A)(vi) of the Code, nor will they constitute unrelated business taxable income to P under sections 511 through 514 of the Code.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for the charitable and/or other exempt purposes stated in that section.

Section 509(a) of the Code describes organizations exempt from federal income tax under section 501(c)(3) of the Code are private foundations subject to the provisions of Chapter 42 of the Code.

Section 509(a)(1) of the Code provides that an organization that is financially publicly supported under section 170(b)(1)(A)(vi) of the Code is not a private foundation.

Section 509(a)(3) of the Code and section 1.509(a)-4(g) of the Income Tax Regulations provide that a "supporting organization" under those sections is not a private foundation.

Sections 511 of the Code provide for tax on the income that a section 501(c)(3) organization, otherwise exempt from income tax, derives from any unrelated business, as defined in section 513 of the Code.

Section 512 of the Code provides rules that except or modify the computation of the taxable income from an unrelated business.

Section 513 of the Code provides that an unrelated business is a business that is regularly carried on, without volunteer labor, and that does not itself further exempt purposes (disregarding the need or use of the organization for the income obtained from the business).

Section 1.502-1(b) of the Income Tax Regulations provides that if a subsidiary organization of a tax-exempt organization would itself be exempt on the ground that its activities are an integral part of the exempt activities of the parent organization, its exemption will not be lost because, as a matter of accounting between the two organizations, the subsidiary derives a profit from its dealings with its parent organization, for example, a subsidiary organization which is operated for the sole purpose of furnishing electric power used by its parent organization, a tax-exempt educational organization, in carrying on its educational activities. However, the subsidiary organization is not exempt from tax if it is operated for the primary purpose of carrying on a trade or business which would be an unrelated trade or business (that is, unrelated to exempt activities) if regularly carried on by the parent organization. For example, if a subsidiary organization is operated primarily for the purpose of furnishing electric power to consumers other than its parent organization (and the parent's tax-exempt subsidiary organizations), it is

not exempt since such business would be an unrelated trade or business if regularly carried on by the parent organization. Similarly, if the organization is owned by several unrelated exempt organizations, and is operated for the purpose of furnishing electric power to each of them, it is not exempt since such business would be an unrelated trade or business if regularly carried on by any one of the tax-exempt organizations. For purposes of this paragraph, organizations are related only if they consist of:

- (1) A parent organization and one or more of its subsidiary organizations; or
- (2) Subsidiary organizations having a common parent organization.

Analysis

1.

It is clear from the statutory words of section 509(a)(3) of the Code, and the regulations thereunder as well, that the existence and operations of a supporting organization, such as S, do not necessarily adversely affect the exemption of its supported organization, such as P.

It is allowable for a supporting organization, such as S, to be created from the assets of its parent organization, such as P, under the facts presented.

2.

P wants to be under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code, which require public contributions. S wants to be under section 509(a)(3) of the Code, the tests for which generally do not take into account the nature of S's support. Contributions made to S by donors do not enter into P's financial support test. S's status under section 509(a)(3) does not affect P's status under sections 509(a)(1) and 170(b)(1)(A)(vi).

3.

P appoints the governing body of S; S is a supporting organization under section 509(a)(3) for the benefit of P; and the exempt operations of P and S are directed toward the same charitable and educational programs. Business activities between related section 501(c)(3) organizations, such as a parent and subsidiary as here, for necessary goods and services generally do not give rise to exemption concerns. See section 1.502-1(b) of the regulations. Also, under the facts presented, the asset transfers and cost-sharing between P and S for the goods and services described will not constitute unrelated business for P or S.

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Accordingly, we rule that:

1. S's organization and operations as described will not adversely affect P's status as an organization described in section 501(c)(3) of the Code.
2. S's organization and operations, as part of the reorganization of P as described, including S's fundraising activities with P, S's receipt of contributions directly from the public and/or holding and investment of contributions, and S's status as a supporting organization under section 509(a)(3) of the Code benefiting P, will not adversely affect P's status as a nonprivate foundation described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code, assuming P will normally receive at least one-third (or one-tenth) of its total support from the government and the general public.
3. Any transfers of funds or assets between P and S, and any other transfers of cash, assets, and other property, or ongoing sharing of assets, personnel, service, facilities, expenses and/or allocation of costs between P and S, will not jeopardize P's continued status as an organization described in sections 501(c)(3), 509(a)(1), and 170(b)(1)(A)(vi) of the Code, nor will they constitute unrelated business taxable income to P under sections 511 through 514 of the Code.

Because this rulings letter could help to resolve any questions, please keep it in your permanent records. This rulings letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that this rulings letter may not be used or cited as precedent.

Sincerely,

—S—

Michael Seto
Acting Manager, Exempt Organizations
Technical Group 2