



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200414050

Date: JAN - 8 2004

UIC Numbers:

501. 00-00

509. 00-00

4942. 00-00

Contact Person:

Identification Number:

Contact Number:

T. ED. Br 4

Employer Identification Number:

Legend:

F =

N =

G =

H =

J =

K =

Dear Applicant:

This is in response to a letter dated November 4, 2003, from F's authorized representative, who has requested rulings to confirm that the intellectual property owned by F and licensed to the publicly supported charity constitutes an asset used directly in carrying out the F's exempt purpose and, as such, the fair market value of the intellectual property is excludable from the F's minimum investment return base under section 4942 of the Internal Revenue Code.

The information submitted shows that F is an exempt private foundation as described in sections 501(c)(3) and 509(a). It was incorporated on N, exclusively for charitable, scientific and educational purposes within the meaning of section 501(c)(3) of the Code.

G was the originator of a series of television programs, and in connection with the programs, G developed certain intellectual property which had been used in connection with the programs and other educational services directed to helping children, their families and those who support them, and to promoting their healthy emotional, social, and intellectual development. Upon G's death, the intellectual property owned by G was bequeathed to F, which seeks to license the same to a publicly supported charity for use in furtherance of its charitable and educational purposes.

During G's lifetime, he licensed the intellectual property to H to be used in connection with the programs and other educational services directed to helping children, their families and those who support them, and to promoting their healthy emotional, social, and intellectual development. None of the intellectual property had been used during G's lifetime for commercial purposes.

H, which was incorporated on J, is a K nonprofit corporation. It is exempt from federal income tax pursuant to section 501(c)(3) as an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1). Its purpose is the promotion of educational programs dedicated to children and their families. Up to the time of G's death, he was the Chair of H.

The intellectual property was used throughout H's history in the production of programs and products. Pursuant to prior agreements between G and H, H had the right to use the intellectual property in furtherance of its educational purposes, including the production of programs for nonprofit educational television and the distribution of the products. F desires that H continue to produce, display and license the programs for distribution or transmission on and to nonprofit educational television and to otherwise produce, author and distribute the products in furtherance of H's educational purposes and in accordance with the practice of G during his lifetime.

F has agreed to license the intellectual property in furtherance of both F's and H's exempt educational and charitable purposes. H will not pay royalties for the use of the property. It will pay any fees and expenses incurred in connection with protection and defense of the property.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of an organization organized and operated exclusively for, among others, charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 509(a) of the Code provides for classification of certain organizations described in Code Section 501(c)(3) as private foundations.

Section 4942(a) and 4942(b) of the Code provides for taxes on the undistributed income of a private foundation. Code section 4942(c) defines the term "undistributed income" to mean the excess of the distributable amount for the taxable years over the qualifying distributions made out of such distributable amount. Section 4942(d) defines the term "distributable amount" to mean the sum of the minimum investment return plus amounts described in Section 4942(f)(2)(C), reduced by the unrelated business income and net investment income taxes imposed on the Foundation.

Section 4942(e) of the Code defines the term "minimum investment return" as five percent of the aggregate fair market value, net of acquisition indebtedness, of all assets of a private foundation other than those used or held for use directly in carrying out the foundation's exempt purpose.

Section 4942(g) of the Code defines the term "qualifying distributions," in general, as amounts paid to accomplish exempt purposes or to acquire an asset used or held for use directly in carrying out exempt purposes.

Section 53.4942(a)-2(c)(3)(i) of the Foundation and Similar Excise Taxes Regulations provides that an asset is "used or held for use directly in carrying out the foundation's exempt purpose" if the asset is actually used in carrying out the exempt purpose or if immediate use in carrying out the exempt purpose is not practical and there are definite plans to commence such use within a reasonable period of time.

Section 53.4942(a)-2(c)(3)(ii) of the regulations illustrates this principle by including as examples of assets which are used (or held for use) directly in carrying out a foundation's exempt purpose: the portion of a building used by the foundation directly in its charitable, educational, or other similar exempt activities; and physical facilities used in such activities, such as paintings or other works of art owned by the foundation which are on public display, research facilities and related equipment.

Rev. Rul. 74-498, 1974-2 C.B. 387, holds that a collection of paintings, owned by a private foundation formed to further the arts, that are loaned under an active loan program for exhibition in museums, universities and similar institutions, are being used directly in carrying out the foundation's exempt purpose within the meaning of section 4942(e)(1)(A) of the Code, and the value of the paintings is excludable in computing the foundation's minimum investment return.

Rev. Rul. 75-207, 1975-1 C.B. 361, held that the value of an island owned by a private foundation dedicated to preserve the natural ecosystems and historical and archaeological remains of the island may be excluded from a private foundation's minimum investment return under section 4942(e) of the Code.

Section 53.4942(a)-2(c)(3)(ii)(f) of the regulations provides that property leased by a foundation in carrying out its charitable, educational, or other similar exempt purposes at no cost or at a nominal rent to the lessee is an example of an asset which is used (or held for use) directly in carrying out a foundation's exempt purpose.

Rev. Rul. 69-572, 1969-2 C.B. 119, provides that a lease between two parties, both of whom were exempt under section 501(c)(3) would be considered as substantially related to the charitable purposes of the lessor where the lease was substantially below market value and there was a close relation between the purposes and functions of the parties.

E has requested the following rulings: (1) that the intellectual property will be used (or held for use) directly in carrying out the E's exempt purposes within the meaning of section 4942(e), and (2) that the expenses and costs incurred in maintaining the intellectual property for its ultimate charitable use constitute "qualifying distributions" within the meaning of section 4942(g).

With respect to the use of the intellectual property as a charitable use asset, F will license the intellectual property to H to be used in H's exempt educational activities dedicated to children and families, the use which will further the F's exempt educational and charitable purposes. H will pay no royalties to F for its use of the intellectual property. In consideration for the license and rights granted to H under a license agreement between F and H, H agreed to assume the responsibility for ensuring the integrity of the intellectual property. H will be responsible for the payment of all fees and expenses associated with the protection and defense of the intellectual property.

With regard to whether the expenses and costs incurred in maintaining the intellectual property for F's ultimate charitable use constitute "qualifying distributions" within the meaning of section 4942(g), F states that the fees and expenses associated with the maintenance and renewal of registrations for the intellectual property are costs which are necessary to maintain the intellectual property on an ongoing basis so that may be used for exempt purposes.

Accordingly, based on the facts and circumstances as stated above, we rule that:

1. F's intellectual property will be used (or held for use) directly in carrying out the F's exempt purposes within the meaning of section 4942(e).
2. The expenses and costs incurred in maintaining the intellectual property for its ultimate charitable use constitute "qualifying distributions" within the meaning of section 4942(g).

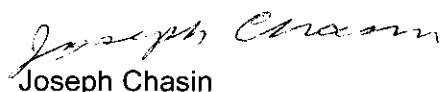
This ruling is based on the understanding that there will be no material changes in facts upon which it is based.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to Foundation's authorized representative. A copy of this letter should be kept in Foundation's permanent records.

If there are any questions about this ruling, please contact the person whose name and telephone are shown in the heading of this letter.

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

Sincerely,



Joseph Chasin
Acting Manager, Exempt Organizations
Technical Group 4