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Person To Contact:
, ID No.

Telephone Number:

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Legend

- X =
- Y =
- T =
- C =
- D =
- P =
- B =
- Z =
- \$x =
- \$y =

Dear . :

This letter is in response to a request for a letter ruling that \$y payments X makes to certain individuals are not subject to information reporting under § 6041 of the Internal Revenue Code because the payments are excludable from the gross income of the recipients of the payments as gifts under § 102.

FACTS

The information submitted indicates that X, which is organized under the laws of Y, is an organization exempt from federal income tax under § 501(a) as an organization described in § 501(c)(3). X received an advance ruling that X will be treated as a publicly supported organization until at least T. X was established to honor all D who have lost their lives in flight, training, or any other related activities. X will accomplish its purposes through the following activities:

- Relief to Families: X will provide funds, both short term and long term, for the health, education, and support of the families of the D who died as a result of

the loss of the P (P Families), and to the families of D who may perish in the future while participating in or related activities.

- Memorials: X will provide funds to assist in constructing and erecting memorials to honor those who (i) lost their lives while onboard the P or during the associated rescue efforts, (ii) participated in those rescue efforts, or (iii) participated in the retrieval of debris associated with the P.
- Legacy Programs: X intends to establish legacy programs in the memory of the P.

X will benefit a broad and indefinite charitable class consisting of the P Families, the members of public who will both benefit from the public monuments to be erected and from one or more of the legacy programs, and families of D perishing in a future disaster who receive relief through X's support of the B Fund.

X has received financial support from over Z individuals and businesses. Based on the generosity of these individuals and corporations, X has received donations of just over \$x. The Board of Directors of X has control over all donations received by X and has the power to decide whether any particular contribution will be used to provide relief to the P Families, to pay costs of erecting the memorials, or to commence or continue the legacy programs. The use of the funds results from decisions made by X's Board of Directors and does not result from the contributors to X having pre-selected the beneficiaries of their contributions.

Although X interacts and cooperates with C, neither C nor any other part of the United States government controls X. X will not receive any funding from C or any other part of the United States government.

A principle funding priority of X is to provide funds for the health, education, and support of the P Families. After consideration of the needs of the P Families, the Board of Directors of X determined that it will distribute just under \$y to each of the P Families. This is because the needs of the P Families cannot be sufficiently met through other means, which is especially true for those P Families that have lost their main breadwinners. By distributing approximately \$y to each of the P Families, X intends to correct the deficiency in existing financial support provided to these families using charitable giving to fill the gap. Thus, by distributing approximately \$y to each of the P Families, X will serve its charitable purpose of relieving the distress of the P Families caused by the loss of a family member. X, however, has no moral or legal obligations to make the distributions to the P Families.

X will not impose any restrictions on how members of the P Families use the distributions made to them. X will not require the P Families to use the distributions to pay tuition or fees for enrollment or attendance as a student at an educational institution, to pay fees or costs of books, supplies, or equipment required for courses of instruction, or to pay any other type of education expense.

No member of the P Families will perform any services for, or benefit, X or anyone else as a condition to receiving a distribution from X. X will not require or request any member of the P Families to give dedication speeches at the erected memorials, make any public appearance for, or for the benefit of, X or anyone else, or to perform any other types of services. Although approval of the P Families may be sought prior to erecting certain of the memorials, the members of the P Families are not under any obligation to provide any input on the memorials. X will receive no consideration in return for the distributions made to the P Families and has no expectation or anticipation of receiving any future financial benefit because of making those distributions.

LAW

Section 61(a) provides that, except as otherwise provided by law, gross income means all income from whatever source derived.

Section 102(a) provides that the value of property acquired by gift is excluded from gross income. Under § 102(a) a gift “must proceed from a “detached and disinterested generosity,’ ...’out of affection, respect, admiration, charity or like impulses.” *Commissioner v. Duberstein*, 363 U.S. 278, 285 (1960), 1960-2 C.B. 428, 431.

Rev. Rul. 2003-12, 2003-1 C.B. 283, *Situation 2*, considered whether a grant received by an individual under a § 501(c)(3) charitable organization’s program to pay or reimburse certain expenses incurred as a result of a disaster was includable in the individuals’ gross income. Rev. Rul. 2003-12 cites Rev. Rul. 99-44, 1999-2 C.B. 549, for the proposition that “in general, a payment made by a charity to an individual that responds to the individuals needs, and does not proceed from any moral or legal duty, is motivated by detached and disinterested generosity.” In *Situation 2*, the grants made by the charitable organization are designed to help distressed individuals with unreimbursed medical, temporary housing, or transportation expenses they incur as a result of a flood. Under these facts, Rev. Rul. 2003-12 concludes that payments made by the § 501(c)(3) charitable organization are made out of detached and disinterested generosity rather than to fulfill any moral or legal duty, and thus, are excluded from gross income of the recipients under § 102. Rev. Rul. 2003-12 also concludes that the amounts excluded from gross income under the ruling are not subject to information reporting under § 6041.

Section 6041(a) provides, in part, that all persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year, shall render a true and accurate return to the Secretary.

Section 1.6041-1(b)(1) of the Income Tax Regulations explains that “persons engaged in trade or business” includes not only those so engaged for gain or profit, but also

organizations the activities of which are not for the purpose of gain or profit, including organizations referred to in § 501(c).

As used in § 6041, "gains, profits, and income" means gross income, not the gross amount paid.

CONCLUSION

Based strictly on the information submitted and representations made, we conclude that X is not required by § 6041 to prepare and file an IRS Form 1099 or any other information return form with respect to the \$y payment it makes to each recipient, because each payment of \$y made by X is excluded from each recipient's gross income as a gift under § 102(a).

The ruling contained in this letter is based upon the facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of an examination process.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with the Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter should be attached to any tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110.

Sincerely,

Michael J. Montemurro
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2)