



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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Dear *****:

This letter is in response to your request for an information letter of May 3, 2005, regarding a small family cemetery, exempt under section 501(c)(13) of the Internal Revenue Code (“Code”), which has built an endowment over the years that far exceeds its current needs. You would like to know if it is permissible for a 501(c)(13) cemetery company to make distributions from income to section 501(c)(3) public charities.

Section 501(a) of the Code provides that an organization described in section 501(c) is exempt from federal income tax. Section 501(c)(13) provides for exemption from federal income tax for “[c]emetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.”

Neither the Code nor the Income Tax Regulations (“Regulations”) expressly permit or prohibit a cemetery company exempt under section 501(c)(13) from making distributions of income to section 501(c)(3) public charities. Furthermore, there are no revenue rulings or court cases that address this issue under federal law.

Section 501(c)(13) of the Code provides for exemption for cemetery companies “owned and operated exclusively for the benefit of their members or which are not operated for profit.” Additionally, section 1.501(c)(13)-1(a) of the Regulations provides, “A mutual cemetery company which also engages in charitable activities, such as the burial of paupers, will be regarded as operating in conformity with this standard” – referring to the requirement that an exempt cemetery company must be owned by and

operated exclusively for the benefit of its lot owners. Furthermore, contributions to a cemetery company are treated as charitable contributions under section 170(c)(5) of the Code as are contributions to a public charity under section 170(c)(2).

Inasmuch as neither the Code nor Regulations expressly prohibit a 501(c)(13) cemetery company from making contributions to a 501(c)(3) public charity and contributions to both a 501(c)(13) cemetery company and to a 501(c)(3) public charity are treated as charitable contributions under section 170(c), distributions of income by a 501(c)(13) cemetery company to a 501(c)(3) public charity appear to be within the general ambit of a nonprofit cemetery company engaging in charitable activities.

You should check with the appropriate state attorney general to determine the consequences (proscriptions due to dedication of assets) pertaining to cemetery companies distributing money to charities under that state's law.

We hope this information is of assistance to you. This information letter is for your general information only. This information letter is not a ruling, and it may not otherwise be used or cited as precedent.

If you have any questions, please contact ***** (ID #*****) at *****.

Sincerely,

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3