



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200508018**

Release Date: 2/25/2005

SE:T:EO:RA:T:4

Date: November 29, 2004

Contact Person:

UIL Number: 509.01-02

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

R=

S=

A=

xx=

F=

Dear

You request a ruling under section 509(a)(1) of the Internal Revenue Code.

Facts

On May 23, 2000, you were recognized as exempt under section 501(c)(3) of the Code and described in section 509(a)(1). You were organized to (i) promote the development of the private sector of the country of R, including small businesses, the agricultural sector, and joint ventures with United States through loans, grants, equity investments, feasibility studies, technical assistance, training, insurance, guarantees and other measures and (ii) to carry out all other purposes and policies of S.

Pursuant to the S, you were designated as an organization eligible to receive grants from A. Between 1990 and 1997, A transferred millions of dollars to you to facilitate the achievement of your mandate under S. The transfer of these funds was made pursuant to a grant agreement between you and A.

In 1998, your Board of Directors determined you had accomplished many of your objectives. After a period of consultations with various countries and entities, your winding up and

liquidation plan was approved which provided, that (i) between 1999 and 2001 you would make annual distributions to the treasury of a certain country, (ii) a new entity, F, would be established to advance the purposes of S and build upon your programs, and (iii) you would enter into a grant agreement with F whereby over the course of three years you would make large annual distributions to F. Accordingly, your Board began the process of winding down and you completed the transfer of the entire \$xx million to F.

Currently, you maintain a small portfolio of micro loans which pay dividend and interest income. You continue to liquidate most of your other holdings in order to permit you to make additional transfers to your endowment. You continue to monitor and review the operations of F.

Issues

1. You are not a private foundation within the meaning of section 509(a)(2) of the Code because the annual receipt of dividend and interest income from your debt and equity investments in R are treated as gross receipts.
2. Your income generated by the annual receipt of interest income from investments undertaken pursuant to the winding up and liquidation plan should be treated as gross receipts pursuant to section 509(a)(2) of the Code.
3. Based on the gross receipts earned by you between 1998 and 2001, you are currently not a private foundation within the meaning of section 509(a) of the Code because you are described in section 509(a)(2).

Law

Section 509(a)(2)(A) of the Code requires an organization described in section 509(a)(2) must normally receive more than one-third of its support in each taxable year from any combination of (i) gifts, grants, contributions, or membership fees, and (ii) gross receipts from an activity that is not an unrelated trade or business (within the meaning of section 513), exclusive of receipts from any person, or from any governmental agency, in any taxable year to the extent such receipts exceed the greater of \$5,000 or one percent of the organization's support in such taxable year.

Section 1.509(a)-3(g)(2) of the Income Tax Regulations provides that in distinguishing the term "gross receipts" from the term "grants" (whether from a governmental unit, a nonprofit organization, or a profit making organization), the term "gross receipts" means amounts received from an activity that is not an unrelated trade or business, if a specific service, facility, or product is provided to serve the direct and immediate needs of the payor, rather than primarily to confer a direct benefit upon the general public. In general, payments made primarily to enable the payor to realize or receive some economic or physical benefit as a result of the service, facility, or product obtained will be treated as "gross receipts" with respect to the payee.

Section 509(a)-3(m) of the regulations provides for purposes of section 509(a)(2) of the Code, where the charitable purpose of an organization described in section 501(c)(3) is accomplished through the furnishing of facilities for a rental fee or loans to a particular class of persons, such as aged, sick, or needy persons, the support received from such persons will be considered 'gross receipts' (within the meaning of section 509(d)(2)) from an activity which is not an

unrelated trade or business, rather than 'gross investment income.' However, if such organization also furnishes facilities or loans to persons who are not members of such class and such furnishing does not contribute importantly to the accomplishment of such organization's exempt purposes (aside from the need of such organization for income or funds or the use it makes of the profits derived), the support received from such furnishing will be considered 'rents' or 'interest' and therefore will be treated as 'gross investment income' within the meaning of section 509(d)(4), unless such income is included in computing the tax imposed by section 511. The provisions of this paragraph may be illustrated by the following example:

Example X, an organization described in section 501(c)(3), is organized and operated to provide living facilities for needy widows of deceased servicemen. X charges such widows a small rental fee for the use of such facilities. Since X is accomplishing its exempt purpose through the rental of such facilities, the support received from the widows is considered 'gross receipts' within the meaning of section 509(d)(2). However, if X rents part of its facilities to persons having no relationship to X's exempt purpose, the support received from such rental will be considered 'gross investment income' within the meaning of section 509(d)(4), unless such income is included in computing the tax imposed by section 511.

Rev. Rul. 74-587, 1974-2C.B. 162, held that an organization that devoted its resources to programs to stimulate economic development in economically depressed, high density, urban areas, inhabited mainly by low-income minority or other disadvantaged groups, qualified for exemption under section 501(c)(3). The organization made loans and purchased equity interests in businesses unable to obtain funds from conventional sources because of financial risks associated with their location and/or because of being owned by members of a minority other disadvantaged group. The organization established that its investments were not undertaken for profit but to advance its charitable goals. Funds for its program were obtained from foundation grants and public contributions.

Rationale

You were created to make loans and invest in R. You received section 501(c)(3) exempt status because you were lessening the burdens of government. See Rev. Rul. 74-587, supra. An exempt organization, such as you, that makes loans and purchases equity interests in various businesses will receive dividend and interest income as a result of the performance of its exempt function. Section 1.509(a)-3(g)(2) of the regulations describes the income you received from 1998 to 2001 as gross receipts because the amounts you received are from an activity that is not an unrelated trade or business and is the result of your provision of a specific service or product that serves the direct and immediate needs of the payor. See also, section 509(a)-3(m) of the regulations that provides for purposes of section 509(a)(2) of the Code, where the charitable purpose of an organization described in section 501(c)(3) is accomplished through loans to a particular class of persons, such as aged, sick, or needy persons, the support received from such persons will be considered gross receipts. Accordingly, this support would allow you to be described in section 509(a)(2) of the Code because you normally receive more than one-third of your support from gross receipts.

Conclusion

Accordingly, based on the information furnished, we rule as follows:

1. You are not a private foundation within the meaning of section 509(a)(2) of the Code because the annual receipt of dividend and interest income from your debt and equity investments in R are treated as gross receipts.
2. Your income generated by the annual receipt of interest income from investments undertaken pursuant to the winding up and liquidation plan should be treated as gross receipts pursuant to section 509(a)(2) of the Code.
3. Based on the gross receipts earned by you between 1998 and 2001, you are currently not a private foundation within the meaning of section 509(a) of the Code because you are described in section 509(a)(2).

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

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

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

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

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

/s/

Debra J. Kaweck, Esq.
Manager, Exempt Organizations
Technical Group 4