

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-153306-04

Date:
April 11, 2005

In Re:

Legend

Taxpayer =
Grantee =
M =
X =
Country A =
Z =

Dear :

This is in response to your letter dated October 1, 2004 requesting a ruling as to the proper treatment of a grant under sections 1441 or 1442 of the Internal Revenue Code.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer, and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request for ruling, such material is subject to verification upon examination.

FACTS

Taxpayer is a nonprofit corporation recognized by the Service as a tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code and a private foundation under section 509(a). Taxpayer's charitable purposes include the . Taxpayer's current grant

making activities include grants to support charitable projects in the following program areas:

Taxpayer's program focuses on Z with the goals of between Z and the rest of the world. To achieve these goals, Taxpayer's program targets main areas for support:

Common features among these initiatives include the

As part of its program, Taxpayer proposes to make a grant to Grantee. Grantee is a nonprofit, non-governmental membership organization with its headquarters in country A, and organized under country A law. Grantee's current membership currently consists of Z in M Z countries. Its mission is to

. Grantee is the in Z. Grantee's financial support comes primarily from

Grantee is a foreign person for U.S. tax purposes. Taxpayer has not determined whether Grantee is a foreign corporation, partnership, or trust for U.S. tax purposes. Grantee is not subject to the supervision of a court within the United States or the control of one or more U.S. persons.

Taxpayer's grant to Grantee will be made pursuant to a written grant agreement. The charitable purpose of Taxpayer's grant is to support Grantee's X project to

. The objectives of the X project are to:

Grantee expects to use Taxpayer's grant for the following activities in furtherance of these purposes:

Taxpayer represents that the grant will be used exclusively for purposes described in section 170(c)(2)(B).

Grantee will control disbursement of grant funds within the approved grant budget under the written grant agreement with Taxpayer. In connection with the X project, it is expected that certain individuals performing services for Grantee in connection with the X project will attend and make presentations regarding the project at a number of international conferences and seminars, several of which will take place in the United States. Attendees at these conferences and seminars will consist of

. It is expected that Grantee will pay the costs associated with travel to, and attendance at, these seminars and conferences with a portion of the funds granted by Taxpayer to support the

project. Selection of all such attendees will be made by Grantee in its sole discretion.

Grantee is not engaged in a trade or business within the United States. Grantee will not, nor is Grantee obligated to, perform any services or provide any goods, nor has grantee performed any services or provided any goods, to or for the benefit of Taxpayer in return for the grant.

RULING REQUESTED

Taxpayer's grant to Grantee will not be an amount subject to withholding under sections 1441 and 1442, even if Taxpayer expects that a portion of the grant funds will be used by Grantee to pay for activities conducted in the United States, including travel to and from the United States to participate in such activities.

LAW AND ANALYSIS

(1) Gift Analysis

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.

For a transfer to be excludable as a gift for section 102 purposes, it 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 (upholding a finding by the United States Tax Court that the receipt of a Cadillac automobile from a business colleague, which was given as an expression of appreciation for valuable business information, was not a gift). Rev. Rul. 2003-12, 2003-1 C.B. 283, holds that payments made by a section 501(c)(3) charitable organization out of a detached and disinterested generosity rather than to fulfill any moral or legal duty are excluded from gross income of the recipients under section 102. See *also* Rev. Rul. 99-44, 1999-2 C.B. 549 (payment made by a charity to an individual in response to individual's needs, and not proceeding from any moral or legal duty, is generally motivated by detached and disinterested generosity).

Unlike the donees in *Duberstein* and Rev. Rul. 2003-12, the gift recipient in the present case is a foreign person and is not an individual. However, these distinctions are not legally significant in this context. Section 102 makes no distinction between foreign or domestic persons or between donees that are individuals and donees that are not. What is significant is that Taxpayer made its grant to Grantee for the public purpose of assisting the development of education in Z through the Grantee. That this action was motivated by a "detached and disinterested generosity" rather than the necessity of fulfilling any legal or moral duty may be reasonably inferred. As was stated, Grantee will not provide (and is not obligated to provide) any goods or services

to or for the benefit of Taxpayer in return for the grant. Therefore, the proposed grant by Taxpayer will constitute a gift excludable under section 102 from Grantee's gross income.

(2) Withholding Analysis

Under section 1441, all persons having control, receipt, custody, disposal or payment of certain items of fixed or determinable annual or periodic income ("FDAP") of nonresident alien individuals and partnerships, to the extent such items constitute U.S. source gross income, must deduct and withhold from such items a tax equal to 30 percent. Section 1442 imposes a corresponding responsibility to deduct and withhold tax on items of FDAP of foreign corporations. Treasury Regulation §1.1441-2(b)(1) provides that items of income that are excluded from gross income under a provision of law without regard to the U.S. or foreign status of the owner of the income are not treated as FDAP. The exclusion under section 102 applies without regard to the U.S. or foreign status of the owners of the income. Payment of a gift excludable under section 102 is therefore not an amount subject to withholding under sections 1441 and 1442.

Based on the information submitted and the representations made:

Taxpayer's grant to Grantee is excludable from gross income under section 102 and is therefore not an amount subject to withholding under sections 1441 and 1442. However, if Grantee is a foreign trust that is not described in section 501(c)(3), Taxpayer is required to report the grant on Form 3520 pursuant to the rules of section 6048(a).

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

A copy of this ruling must be attached to any tax return to which it is relevant.

In accordance with the power of attorney on file with this office, a copy of this ruling is being sent to your first representative.

Sincerely,

/s/ Valerie Mark Lippe
Senior Technical Reviewer, CC:INTL:2
Office of Associate Chief Counsel
(International)