



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

A =

B =

C =

D =

A requests a ruling on the proposed merger of B, currently a section 501(c)(4) organization, with and into A, currently a section 501(c)(3) organization, thereby effectuating a combination of the assets and activities of both organizations, with A to be the surviving organization and continuing to be exempt under section 501(c)(3) of the Code.

A is a nonprofit corporation formed in 1984 under the laws of C. In 1984 the Internal Revenue Service issue a ruling recognizing A as exempt under section 501(c)(3) of the Code. The Service has determined that A is a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

A's purposes are:

To restore, preserve, maintain and protect the historic character and exterior architectural features of buildings and historic sites and landmarks in the area in C defined as the D district

To ensure, through appearances and testimony before the national and local boards having jurisdiction, and through litigation, if necessary, that the issuance of (i) any permits for construction, alteration, reconstruction, razing of any building or other such work on buildings or structures within the D District, (ii) any zoning changes, (iii) any variances or (iv) any liquor licenses shall conform with the historic character and applicable statues and regulations concerning such matters in the D.

To educate the public with information useful to it and beneficial to the community, including the presentation of public discussion groups, forums, panels, lectures or other similar programs on the restoration, preservation and protection of the historic character and architectural features of the D district, in order to provide a sufficiently full and fair exposition of the pertinent facts and, thereby, permit the public to form independent opinions or conclusions concerning such matters.

A engages in historic-preservation activities. It also supports a local park for which it has solicited donations over the past several years. A has been responsible for the planting of over 500 new trees within the D District, and it has pruned existing trees. In addition, jointly with the B, A sponsors a concerts in the parks program. These concerts are open to the greater C community. It also sponsors educational activities for the community. Most of the A's activities are performed by volunteer members of B.

A employs both an Executive Director and other supplemental office staff in rented facilities. Because B shares A's business premises, these employees also serve B on a time-allocated basis. A estimates that one-half of the employees' time is devoted to A's activities and that the remaining half is devoted to B. Thus, A is reimbursed by B for one-half of its payroll and related overhead expenses.

B is a nonprofit corporation formed in 1963 under the laws of C. In 1977, the Service issued a ruling recognizing B's exemption under section 501(c)(4) of the Code.

The Purposes of B are :

To preserve the historic character and develop the aesthetic values of D. C, by making the C a pleasant place to live, including both the maintenance of historic D as an in-town area of homes and gardens and the beautification of the public areas of D.

To assist the C Police Department in maintaining public order and safety by encouraging and helping the residents of D to organize and conduct a program of public security.

To cooperate with local officials in reducing and preventing criminal activity in the D community by educating residents in the methods and strategies for deterring

criminal activity, including both (i) the encouragement of a neighborhood watch program and (ii) the operation of a neighborhood security program to provide surveillance by uniformed security officers that helps to ensure the safety and protection of persons and property on the public streets, sidewalks, alleys and other public areas in the community.

Membership in B is open to the general public, irrespective of where a member resides. B has more than 1,000 dues-paying members. B holds monthly educational meetings during most of the calendar year. The meetings are well-publicized and are open to the public at large.

As a result of the B's educational efforts, legislation was enacted designating D as an historic district. B has monitored zoning regulations, in order to protect the historical character of the neighborhood, and it has provided educational information to the general public on historic preservation regulations.

B also operates several programs to improve public safety, in cooperation with the local police department. B sponsors a fundraising program to hire neighborhood security officers to assist the local police in patrolling the C District. B regularly provides the volunteers and financial support for summer concerts in the parks programs open to the greater C community.

A and B are closely affiliated. B has evolved into the organization that actually performs most of the educational and charitable functions for which A was originally established. Indeed, because of its assumption of responsibilities and activities on behalf of A, B actually applies and implements A's purposes and activities. For example, B's members are the actual volunteers who implement A's charitable programs, such as planting trees and staffing the concert programs. Some of the board members of A and B overlap. Both A and B share common office space, and the payroll of the same employees is shared one-half by each organization.

Given the current operating situation, it has become financially expensive and cumbersome to maintain two organizations, both of which perform essentially similar functions. Moreover, the existence of two such organizations, one a section 501(c)(3) organization, and the other a section 501(c)(4) organization, has become confusing to public supporters of both organizations, as well as the public at large which benefits from the charitable and educational activities of both organizations. This has had the effect of diminishing the amount of total contributions to both organizations.

If the duplication of costs and additional administrative expenses necessitated by compensating allocations between two organizations were eliminated, as is contemplated as a result of the merger, there would be additional funds available to expend for the charitable and educational activities now carried on by both organizations.

B proposes to liquidate by distributing all of its assets, subject to liabilities, to A by means of a statutory merger. B will terminate and the newly merged organization will continued to be known as A. Upon its acquisition of B's assets and liabilities, A will

undertake the performance of the duties, activities and services currently performed by B.

Under the terms of its current Bylaws, A does not have “members.” It is proposed that, following the merger, A’s Bylaws will be amended to provide for members, and this will be stated in the Plan of Merger. Thus, it is reasonable to assume that the individuals who are now members of B will become members of and contributors to A following the merger, thereby providing even greater public support for A.

RULINGS REQUESTED:

1. The merger of B into A is consistent with A’s charitable and educational purposes under section 501(c)(3) of the Code and B’s current operations pursuant to section 501(c)(4).
2. Following the merger of the B into A, A (performing activities previously performed by both A and the B) will continue to qualify as an organization exempt from federal income taxation under section 501(a), as an organization described in section 501(c)(3).
3. Following the merger A will continue to be classified under section 509(a) as not a private foundation.
4. The transfer to A of all of B’s assets (subject to any liabilities previously undertaken by the B) followed by the complete liquidation of B, will not adversely or retroactively affect the tax-exempt status of the B as an organization described in section 501(c)(4).
5. The transfer of assets by B to A during the course of the merger of B into A, will constitute an “unusual grant” within the meaning of section 1.509(a)-3(c) and (4) of the Regulations. Therefore, the asset transfers shall be excluded, for the purposes of applying the support tests described in section 509(a) to A.
6. Following the merger of B into the A, the surviving A will continue to qualify as an organization described in sections 501(c)(3) and 509(a), to which contributions are deductible as provided in section 170.

LAW:

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income taxation of organizations that are organized and operated “exclusively” for charitable, religious, educational or otherwise-specified exempt purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public, rather than a private, interest.

Section 1.501(c)(3)-1(d)(2) of the Regulations defines “charitable” as used in section 501(c)(3) in the generally accepted legal sense of the term, including—as is relevant to the instant ruling request (i) the advancement of education; (ii) the maintenance of public works; (iii) the lessening of the burdens of Government; (iv) the promotion of social welfare by organizations designed to accomplish any of the previously mentioned purposes; or (v) the lessening of neighborhood tensions . . . to combat community deterioration.

Section 1.501(c)(3)-1(d)(3) of the Regulations defines “educational” to include “the instruction of the public on subjects useful to the individual and beneficial to the community.” Among the examples of educational organizations under Reg. § 1.501(c)(3)-1(d)(3) is Example (2), “[a]n organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs.

Rev. Rul. 78-85, 1978-1 C.B. 150, states that activities devoted to community beautification and the preservation of natural beauty are consistently regarded as charitable. By planting trees, flowers and shrubs, an organization engages in activities that further charitable purposes under section 501(c)(3) because the benefits of such activities flow principally to the general public through the maintenance and improvement of public facilities, notwithstanding the fact that incidental benefits may be derived by nearby private property owners.

Rev. Rul. 68-14, 1968-1 C.B. 243, holds that by planting trees in public areas and assisting municipal authorities in their programs, an organization engages in activities that are charitable in nature, within the meaning of section 501(c)(3), because such activities promote social welfare, combat community deterioration and lessen the burdens of government.

Rev. Rul. 76-147, 1976-1 C.B. 151, holds that (i) an organization whose funds are derived from voluntary membership contributions and which engages in community improvement activities—by identifying community problems, providing general information and encouraging the resolution of such problems by the organization’s members—is combating community deterioration in a charitable manner within the meaning of section 501(c)(3)

Rev. Rul. 76-418, 1976-2 C.B. 145, holds that a nonprofit group that develops plans to reduce vehicle deaths and injuries by providing assistance to local governmental officials and that conducts lectures for community groups and other programs designed to inform the general public on how to be alert and maintain safety is both an educational and a charitable organization within the meaning of section 501(c)(3) and the applicable Treasury Regulations. The organization engages in charitable activities because traffic safety is universally recognized as a governmental responsibility and the organization's work lessens the burdens of government.

Section 509(a) defines a private foundation as an organization described in section 501(c)(3), other than organizations that demonstrate public support in specific ways.

Section 509(a)(1) excludes from the definition of "private foundation" organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Section 170(b)(1)(A)(vi) of the Regulations defines a organization that is not private foundation to include an organization referred to in section 170(c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501(a)) from either a governmental unit referred to in section 170(c)(1) or direct or indirect contributions from the general public.

Section 170(c)(2) defines a charitable contribution to include contributions used within the United States and made to a corporation, trust, community chest, fund or foundation (i) that is organized in the United States, (ii) that is organized and operated exclusively for religious, charitable, educational or otherwise specified exempt purposes, (iii) no part of the net earnings of which inure to the benefit of any private shareholder or individual and (iv) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation and which does not participate or intervene in a political campaign on behalf of or in opposition to a candidate for public office.

Section 1.170A-9(e)(1)(ii) of the Regulations defines a publicly supported organization as one that normally receives a substantial part of its support either from a governmental unit or from direct or indirect contributions from the general public. Sections 1.170A-9(e)(2) and (3), in turn, define an organization as publicly supported if it normally receives 33 1/3-percent support from contributions made directly or indirectly by the general public or, failing the 33 1/3 percent support test, if it normally receives 10-percent support from the general public and meets a facts-and-circumstances test.

Section 1.170A-9(e)(7)(ii) of the Regulations permits the exclusion of "unusual grants" from the analysis of support to determine whether an organization is publicly supported. No single factor is determinative, but the Service may consider factors similar to those listed in section 1.509(a)-3(c)(4). Among those listed by Section 1.509(a)-3(c)(4) as favorable factors are: (i) grants that are in the form of assets which further the exempt purpose of the organization, (ii) whether the organization may reasonably be expected to

attract a significant amount of public support subsequent to the particular contribution and (iii) whether the organization has a representative governing body.

ANALYSIS:

An organization qualifies as an educational and charitable organization exempt under section 501(c)(3) if (1) it engages in instruction beneficial to the community, such as the presentation of public-discussion groups, lectures and similar programs, (2) it promotes social welfare, (3) it lessens neighborhood tensions and combats community deterioration, (4) it engages in community beautification projects, such as planting and neighborhood landscaping, thereby benefiting the general public and maintaining and improving public facilities (notwithstanding any incidental benefits that may flow to nearby property owners), (5) it engages in community-improvement activities by providing general information and encouraging the resolution of problems by community members in order to combat community deterioration or (6) it lessens the burdens of government.

Both A and B perform functions recognized as charitable and educational within the meaning of section 501(c)(3), and all of such functions will be continued by A, the organization that is to survive the contemplated merger. Thus A, as the surviving organization is entitled to retain its exempt status under section 501(c)(3).

The only benefits that could possibly inure to any private individual are those that may be derived by nearby property owners in D as a result of the beautification and security efforts of A and B. But, as Rev. Rul. 78-85, supra, has held, such incidental benefits neither negate nor overcome the principal purpose to provide benefits to the general public. Thus, the merger will not result in the creation of any private benefit or inurement.

Both A and B are largely supported by contributions from the general public and, in the form of a merged organization, will likely meet the 33 1/3-percent-support test. The transfer of B's assets to A as part of the merger will constitute an unusual grant, and should not be incorporated into the 33 1/3 support test.

RULINGS:

1. The merger of B into A is consistent with A's charitable and educational purposes under section 501(c)(3) of the Code and B's current operations pursuant to section 501(c)(4).
2. Following the merger of the B into A, A (performing activities previously performed by both A and the B) will continue to qualify as an organization exempt from federal income taxation under section 501(a), as an organization described in section 501(c)(3).

3. Following the merger A will continue to be classified under section 509(a) as not a private foundation.

4. The transfer to A of all of B's assets (subject to any liabilities previously undertaken by the B) followed by the complete liquidation of B, will not adversely or retroactively affect the tax-exempt status of the B as an organization described in section 501(c)(4).

5. The transfer of assets by B to A during the course of the merger of B into A, will constitute an "unusual grant" within the meaning of section 1.509(a)-3(c) and (4) of the Regulations. Therefore, the asset transfers shall be excluded, for the purposes of applying the support tests described in section 509(a) to A.

6. Following the merger of B into the A, the surviving A will continue to qualify as an organization described in sections 501(c)(3) and 509(a), to which contributions are deductible as provided in section 170.

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

Please keep a copy of this ruling in your organization's permanent records.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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

Sincerely,

Debra J. Kawecki
Manager, Exempt Organizations
Technical Group 2

Enclosure:
Notice 437