



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **200846036**
Release Date: 11/14/08
Date: August 20, 2008
UIL Code: 501.03-05
501.03-30
501.30-02
501.32-00

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
1120
Tax Years:
All Years

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert S. Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: June 27, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND

A = Name of Organization

B = State

C = Name of Supported Organization

D = Name of Person

E = Name of Person

F = Name of Person

G = Name of Person

Z = Date

UIL Nos.

501.03-05

501-03-30

501.30-02

501.32-00

509.02-02

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3) and further that you are not a supporting organization as defined in section 509(a)(3) of the Code. The basis for our conclusion is set forth below.

ISSUES:

1. Does A, who is not operational and cannot identify any disqualified persons or non-marketable assets to be received, qualify for exemption under section 501(c)(3) of the Code?
2. If A is exempt, is it a supporting organization as described in IRC section 509(a)(3) of the Code?

Facts

Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, was submitted August 24, 2005. Information submitted with the application indicates that A was incorporated in the State of B on Z.

Letter 4036(CG) (11-2005)

Name of Organization
Employer Identification Number

A is requesting exemption as a public charity under section 509(a)(3) of the Code. Schedule D of Form 1023 states A will be "supervised, operated, and controlled by" one or more publicly supported organizations described in section 509(a)(1) or 509(a)(2). The supported organization is C.

Article Third of the articles of incorporation states, "the corporation is organized and shall be operated exclusively for charitable purposes by conducting or supporting activities exclusively for the benefit of, to perform the functions of, or to carry out the charitable purposes of C ... which include, without limitation, making grants and distributions to C or other "qualified organizations", as herein defined." The articles of incorporation go on to define "qualified organizations" as an organization described in Section 501(c)(3) and Section 509(a)(1) or (2) of the Code.

Article I, section 1 of the Code of Regulations states there shall be two classes of members known as the Public Member and the Donor Members. The Public Member shall be C. The initial Donor Member shall be F. Section 5 of Article 1 provides that for purposes of any vote or action of Members, the Public Director shall have one vote more than the number of Donor Members and each Donor Member shall have one vote.

Article II, Section 1 states the Public Director Class shall consist of two or more Directors, each of whom shall be a Director or officer of C, or persons whom C determines will be appropriate representatives (The "Public Directors"). The Donor Director Class shall consist of one or more Directors (the "Donor Directors"). The number of Directors shall be three, two of the Public Director Class and one of the Donor Director Class, unless fixed at a higher number. However, the number of Public Directors shall at all times be greater than the number of Donor Directors by at least one. The Public Member shall be entitled to elect the Public Directors, and the Donor Members, as a class, shall be entitled to elect the Donor Directors.

The Public Directors are D and E. The Donor Director is F. Additionally, G is identified as an officer, the Secretary/Treasurer. G also serves as the Executive Director of C. In addition to her role as Public Director, D is also identified as the President. The present Donor Director, F, is the treasurer of C. F will not make any contributions to the organization, but will appoint a successor Donor member who is likely to be a disqualified person with respect to the organization after the organization receives a substantial charitable contribution.

The application Form 1023 states that A will perform the functions of C by making grants which are consistent with, and which carry out, the purposes of C as expressed in C's Articles of Incorporation. Grants will be made to C and to other organizations that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code and described in Code Sections 509(a)(1) or (2) for charitable, scientific, educational or religious programs which benefit, perform the functions of, or carry out the purposes of C. C is a public charity described in Code Section 509(a)(1), and operates as a community foundation which seeks to serve a broad range of charitable needs in its local area.

Name of Organization
Employer Identification Number

The application Form 1023 states the organization currently has no assets, and that after the receipt of initial contributions, the organization will hold its assets primarily as an endowment fund, distributing only income from the assets. A will accept contributions of real property, conservation easements, closely held securities, intellectual property, works of music or art, licenses, royalties, automobiles, boats, planes or other vehicles, collectibles, and other types of gifts each in accordance with Internal Revenue Service rules and regulations regarding the acceptance of such gifts. The organization has not received any such contribution to date.

The financial data provided with Form 1023 shows that the organization did not expect to receive any revenue or incur any expenses during the tax year. The proposed budgets for years and indicated the organization expected to receive \$ in contributions each year, as well as \$ per year in gross investment income. The only expenses reflected were \$ in Contributions, gifts, grants etc paid each year.

The application also states that C may manage the fundraising and grant making activities of the organization.

Per additional information submitted in response to our correspondence, you indicate your organization will utilize the gift acceptance policies and procedures of C. You also indicate that you have submitted another application very similar to this organization, which the Service approved, and that you may submit more applications using this structure.

You indicate you anticipate that A will be funded by a substantial contribution of non-marketable assets from a single donor, who will become the Donor Director. You also indicate you do not anticipate multiple donors. A expects to begin soliciting for contributions, accepting contributions and thereafter making disbursements to C upon receiving a favorable determination letter from the Internal Revenue Service recognizing it as a supporting organization described in IRC 509(a)(3).

Issue 1 - IRC 501(c)(3)

Law

Section 501(a) of the Code provides, in part, that organizations described in section 501(c) are exempt from federal income tax. Section 501(c)(3) of the Code describes, in part, an organization which is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or

Name of Organization
Employer Identification Number

individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states the term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations states 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 such exempt purposes specified in section 501(c)(3) of the Code. 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(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earning inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 5.02 of Revenue Procedure 90-27, reads in part: exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities; the anticipated sources of receipts; and the nature of contemplated expenditures.

Section 4 of Revenue Procedure 2008-09 provides, in pertinent part:

.03 Exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed.

- (1) A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.
- (2) The organization must fully describe all of the activities in which it expects to engage,

Name of Organization
Employer Identification Number

including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

- (3) Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling. See also section 7.

.06 Even though an application is substantially complete, the Service may request additional information before issuing a determination letter or ruling.

- (1) If the application involves an issue where contrary authorities exist, an applicant's failure to disclose and distinguish contrary authorities may result in requests for additional information, which could delay final action on the application.

Application

Section 501(c) of the Code and Section 1.501(c)(3)-1(a) of the Regulations sets forth two requirements for qualification for exempt status. An organization must be organized and operated exclusively for purposes described in section 501(c)(3) of the Code. Because A's Articles of Incorporation state purposes described in section 501(c)(3) of the Code and upon dissolution all assets will go to organizations that are exempt under section 501(c)(3) of the Code, A passes the organizational test.

A must however satisfy the operational test. The key requirement is that an organization be operated exclusively for one or more purposes describe in section 501(c)(3) of the Code. A is not operational. As A conducts no activities and is not operating, it is not operated exclusively for exempt purposes. Therefore, A fails the operational test.

Reg. 1.501(c)(3)-1(c) (2) clarifies that an organization is not operated exclusively for exempt purposes if its net earnings inure to the benefit of private individuals. As you cannot identify the disqualified persons or non-marketable assets to be contributed to the organization, we cannot determine that A will be operated for exclusively exempt purposes and that the disqualified person will not inure or privately benefit through their relationship with the organization. Accordingly, you do not qualify for tax exemption under section 501(c)(3).

Applicant's Position

Your letter dated October 18, 2007 indicates your organization respectfully disagrees with our position, and that you believe the information already submitted is sufficient to recognize A as a supporting organization described in Section 509(a)(3) of the Internal Revenue Code of 1986.

You state that as a Type I supporting organization, A is controlled by C. Therefore, by definition, A cannot be operated for the benefit of any donor or other disqualified person. Moreover, because A has the required relationship with C, is controlled by C, and has submitted

Name of Organization
Employer Identification Number

information sufficient to describe its organization and operation; specific identification of donors and/or assets to be contributed to A is not required.

You point out that it is common for organizations to seek recognition of tax-exempt status in advance of receiving assets, knowing the source of such assets, commencing operations and determining disqualified persons, and state Section 5.02 of Revenue Procedure 90-27 contemplates receiving exemption applications from such organizations. Specifically, you cite Section 5.02 of Rev. Proc. 90-27 as providing:

“[e]xempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed... The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures (emphasis added).”

You state that A provided in its exemption application and subsequent correspondence sufficient detail to permit a conclusion that it will clearly meet the particular requirements of Code Section 509(a)(3) for a Type I supporting organization, and that the information shows that A is organized and will be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of C. Additionally, you state such information demonstrates that A cannot be controlled by or operated for the benefit of any disqualified person no matter what assets are contributed.

In addition to explaining why A meets the organizational test of IRC 501(c)(3), you also explain why you believe you meet the operational test. Specifically, you state the Articles of Incorporation of A and the exemption application submitted specify that A will engage solely in activities that support or benefit C, and that Rev. Proc. 90-27 indicates that notwithstanding such activities will take place in the future, A can still satisfy the operational test. In regards to our position that the inability to identify “the donor, donor directors, disqualified persons, the appropriateness of the assets contributed and any issues that may be related to the contribution, revenues and expenses etc.” precludes a favorable determination, you state that the organization and intended operations of A as a Type I supporting organization as summarized in your response do not require such specific identification, and that such specific identification is not required by Rev. Proc. 90-27.

You state that as a supporting organization, A cannot be controlled directly or indirectly by one or more disqualified persons (other than foundation managers and one or more publicly supported organizations), and that you meet this requirement because C elects a majority of the directors of A. Therefore, C has full control of the investment policy, grant making and other uses of the income or assets of A, and no donor or disqualified person can or will have such control.

Name of Organization
Employer Identification Number

You further state that satisfying the structural requirement of IRC 509(a)(3) means that A can only be operated for the benefit of C and that as long as A satisfies that requirement, specific identification of disqualified persons and/or assets is not required. Therefore, you maintain that specific identification of disqualified persons and/or assets to be contributed is not required for A to receive a favorable determination from the Service.

Service's Position

We hold that you do not meet the requirements for tax exemption under section 501(c)(3).

Rev. Proc. 2008-09, which superseded Rev. Proc. 90-27, Section 4.03 states that exempt status may be recognized in advance of the organization's operations if the information provided describes the proposed activities in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption under the section of the IRC which they claim. Included among the requirements is a full description of the anticipated sources of receipts. This section further states that where the organization cannot demonstrate to the satisfaction of the Service that it qualifies under the section of the IRC under which it claims exemption, the Service will generally issue a proposed adverse determination letter or ruling.

As you have stated in your correspondence, it is not known at this time who the Donor member of A will be (although you only expect a single donor), or what type(s) of nonmarketable assets will be contributed. In fact, you indicate that A doesn't expect to begin soliciting for contributions, accepting contributions and thereafter making disbursements to C until after you have received a favorable determination letter from the Service.

Your organization is not operational. In effect, you are attempting to create organizations that are exempt under section 501(c)(3), and then going out to hopefully find a donor to contribute substantial non-marketable assets to it. As such, there is no way to realistically determine when you would begin to meet the organizational test requirements of Section 501(c)(3). Therefore, you do not meet the requirements of Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations.

You have stated that the specific identification of "the donor, donor directors, disqualified persons, the appropriateness of the assets contributed and any issues that may be related to the contribution, revenues and expenses, etc" is not required by Rev. Proc. 90-27. You also state that sufficient information has been provided to make a determination. As stated in Rev. Proc. 2008-09, even though an application is substantially complete, the Service may request additional information before issuing a determination letter or ruling. Simply providing all of the basic materials required in the revenue procedure for a completed application is not a guarantee of a favorable determination. It is up to the Service to determine what specific information it will need during the determination process in order for it to make an informed and correct determination. The information you have provided primarily deals with the structure and operation of A. However, determinations are fact based and fact driven. Your failure to provide

Name of Organization
Employer Identification Number

the necessary specific information regarding disqualified persons and non-marketable contributions prevents the Service from making an informed determination. Additionally, the fact you have no idea what will be contributed means the financial data provided, i.e. proposed budgets, are totally worthless.

While you state that A cannot be controlled by or operated for the benefit of any disqualified person no matter what assets are contributed, we disagree with this position. The Service has found numerous instances of donors controlling assets after they have been contributed to charitable entities, particularly among organizations applying for exemption as supporting organizations. This issue has been identified particularly when the contributions are non-marketable assets, such as interests in partnerships, interests in closely held corporations or securities, intellectual property etc. There are many ways for the donors to retain control, including through owning the controlling interests in partnerships or closely held entities, through existing agreements or leases attached to the donated property. Please note, these are just examples and not meant to be all-inclusive. Often, these transactions have resulted in inurement or a private benefit to the donor or entities with which they are associated.

In effect, you seem to be trying to create a "prototype" application package in which you can receive favorable determinations for the entities prior to identifying or even finding the donor and determining the non-marketable assets. As you have stated, you submitted two substantially similar applications, and may establish similar organizations in the future. From the information provided, these individual applications could be virtually identical, with only a name change to differentiate the entities. This would enable these entities, and any others that adopted this or a similar prototype, to gain exemption without identifying disqualified persons and what assets they have contributed, as well as preventing the Service from asking appropriate questions to determine any issues relevant to the donors and their contributions. From the viewpoint of the Service, the issuance of a determination letter or ruling under these conditions is not in the interest of sound tax administration. Additionally, the application packages of approved charities are, by law, open for inspection by the general public. This is an important tool available to the public for informational and transparency purposes. Your application would fail to provide the information the public, in general, would consider relevant. Any review would fail to identify disqualified persons, assets received, and any proposed budgets of revenues and expenses provided would be useless, since you would not have any idea what was being contributed or the income that would be received from ownership of the assets.

Determination

Based on the information provided in your Form 1023 and supporting documentation, we conclude that you are not operated exclusively for purposes described in section 501(c)(3) of the Code. You have not met the operational test of Section 501(c)(3), as you are not operating. Additionally, you have not shown that your assets do not, or will not, inure to any private individuals. Therefore, your organization does not qualify for exemption under section 501(c)(3) of the Code because you are not operated exclusively for 501(c)(3) purposes.

Name of Organization
Employer Identification Number

Issue 2 - IRC 509(a)(3)

Introduction

We have also considered your application for supporting organization status (non-private foundation status) under section 509(a)(3) of the Code in the event that you would qualify for exemption under section 501(c)(3). Our conclusion regarding your private foundation classification under section 509(a)(3) of the Code is based on a number of factors discussed in the following material.

Section 509(a)(3) of the Code provides that the term "private foundation" does not include an organization which:

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a)(1) or (2),

(B) is operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a)(1) or (2), and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in section 509(a)(1) or (2).

Section 509(a)(3)(A), in effect, describes as a public charity, an organization which is organized and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or carry out the purposes of one or more specified organizations described in sections 509(a)(1) or 509(a)(2). In our discussion of these issues, we are cognizant of the fact that at all times you are asserting qualification under section 509(a)(3) under the "operated, supervised, or controlled by" relationship provided in section 1.509(a)-4(i)(1) of the Income Tax Regulations.

For an organization to qualify as a supporting organization it must pass the organizational and operational test (509(a)(3) (A)), relationship test (509(a)(3)(B)) and a control test (509(a)(3)(C)). Your organization does not pass the operational test, the relationship test, and control test.

Operational Test:

Section 509(a)(3)(A) of the Code provides that, in order to qualify under section 509(a)(3) an organization at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a)(1) or (2),

Name of Organization
Employer Identification Number

Reg. 1.509(a)-4(b)(1) provides that in order to qualify as a supporting organization, an organization must be both organized and operated exclusively "for the benefit of, to perform the functions of, or to carry out the purposes of" one or more specified publicly supported organizations. If it fails to meet either the organizational test or operational test, it cannot qualify as a supporting organization.

Reg. 1.509(a)-4(e)(1) provides that a supported organization will be regarded as "operated exclusively" to support one or more specified public supported organization only if it engages solely in activities which support or benefit the specified publicly supported organizations.

Reg. 1.509(a)-4(e)(2) provides that a supporting organization is not required to pay over its income to the publicly supported organization in order to meet the operational test. It may satisfy the test by using its income to carry on an independent activity or program which supports or benefits the specified publicly supported organization.

Application of Operational Test

You are not operated exclusively for the benefit of specified publicly supported organizations as required by section 509(3)(a)(A). This is due to the fact you are not operational at all. Additionally, you cannot demonstrate that you will not also operate in a manner that benefits disqualified persons, since you cannot identify the disqualified person(s) or the nonmarketable assets they will contribute. Since you have no assets, provide no support to C, and do not conduct any activities, you do not pass the operational test.

Conclusion

Even though your organization meets the organizational test, your organization fails the operational test. Reg. 1.509(a)-4(e)(2) lays out generally the permissible activities of a supporting organization. Your organization has not engaged in such activities, therefore, you are not organized and operated for the benefit of C.

Relationship Test

Section 509(a)(3)(B) of the Code provides that, in order to qualify under section 509(a)(3), an organization must be "operated, supervised, or controlled by," "supervised or controlled in connection with," or "operated in connection with" one or more publicly supported organizations.

Reg. 1.509(a)-4(f)(3)(i) provides that the supporting organization will be responsive to the needs or demands of one or more publicly supported organizations; and (ii) the supporting organization will constitute an integral part of, or maintain a significant involvement in, the operations of one or more publicly supported organizations.

Name of Organization
Employer Identification Number

Reg. 1.509(a)-4(g)(1) provides that each of the items “operated by”, “supervised by”, and “controlled by”, as used in section 509(a)(3)(B), presupposes a substantial degree of direction over the policies, programs, and activities of the supporting organization by one or more publicly supported organizations. The relationship required under any one of these terms is comparable to that of a parent and subsidiary, where the subsidiary is under the direction of, and accountable or responsible to, the parent organization. This relationship is established by the fact that a majority of the officers, directors, or trustees of the supporting organizations are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly support organization.

Application of Relationship Test

On schedule D of Form 1023, you indicated that you are a Type I Supporting Organization which is “operated, supervised, controlled by”. The relationship is comparable to a parent/subsidiary.

The Code of Regulations states there shall be two classes of members known as the Public Member and the Donor Members. The Public Member shall be C. The initial Donor Member shall be F. Section 5 of Article 1 provides that for purposes of any vote or action of Members, the Public Director shall have one vote more than the number of Donor Members and each Donor Member shall have one vote.

The Code of Regulations also state the Public Director Class shall consist of two or more Directors, each of whom shall be a Director or officer of C, or persons whom C determines will be appropriate representatives (The “Public Directors”). The Donor Director Class shall consist of one or more Directors (the “Donor Directors”). The number of Directors shall be three, two of the Public Director Class and one of the Donor Director Class, unless fixed at a higher number. However, the number of Public Directors shall at all times be greater than the number of Donor Directors by at least one. The Public Member shall be entitled to elect the Public Directors, and the Donor Members, as a class, shall be entitled to elect the Donor Directors.

Conclusion

Based on the facts you do meet the relationship test of Section 509(a)(3)(B).

Control Test

Section 509(a)(3)(C), in effect, provides that public charity status under section 509(a)(3) is precluded for an organization that is controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) and (2).

Section 4946(a) of the Code defines a disqualified person as a substantial contributor to the

Name of Organization
Employer Identification Number

foundation. Section 507(d)(2) includes in its definition of a substantial contributor the creator of the trust.

Section 1.509(a)-4(j)(1) of the Regulations provides that if a person who is a disqualified person with respect to a supporting organization, such as a substantial contributor to the supporting organization, is appointed or designated as a foundation manager of the supporting organization by a publicly supported beneficiary organization to serve as the representative of such publicly supported organization, then for purposes of this paragraph, such person will be regarded as a disqualified person rather than as a representative of the publicly supported organization.

An organization will be considered "controlled," for purposes of section 509(a)(3), if the disqualified persons, by aggregating their votes or positions of authority, may require such organization to perform any act which significantly affects its operations or may prevent such organization from performing such act. This includes, but is not limited to, the right of a substantial contributor or his spouse to designate annually the recipients, from among the publicly supported organizations of the income attributable to his contribution to the supporting organization.

Application of the Control Test

Section 509(a)(3)(C), in effect, provides that public charity status under section 509(a)(3) is precluded for an organization that is controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) and (2).

Even if the organization appears not to be controlled by disqualified persons, all pertinent facts and circumstances will be taken into consideration in determining whether a disqualified person does in fact control the supporting organization.

Since the potential disqualified person, the Donor member, is unknown, there is no way to determine any outside relationships this individual may have with other directors, or any direct or indirect influence they may have over these individuals. Additionally, there is no way for the Service to determine these relationships. Further, there is no way to determine if the disqualified person can control the organization through direct or indirect control of the asset(s), since the organization has not solicited or obtained any assets. Therefore, the organization has not met its burden to demonstrate it is not controlled, directly or indirectly, by disqualified persons.

Applicant's Position:

You state that as a Type I supporting organization, A is controlled by C. Therefore, by definition, A cannot be operated for the benefit of any donor or other disqualified person.

Name of Organization
Employer Identification Number

Moreover, because A has the required relationship with C, is controlled by C, and has submitted information sufficient to describe its organization and operation, specific identification of donors and/or assets to be contributed to A is not required.

You state that A provided in its exemption application and subsequent correspondence sufficient detail to permit a conclusion that it will clearly meet the particular requirements of Code Section 509(a)(3) for a Type I supporting organization, and that the information shows that A is organized and will be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of C. Additionally, you state such information demonstrates that A cannot be controlled by or operated for the benefit of any disqualified person no matter what assets are contributed.

In addition to explaining why A meets the organizational test of IRC 501(c)(3), you also explain why you believe you meet the operational test. Specifically, you state the Articles of Incorporation of A and the exemption application submitted specify that A will engage solely in activities that support or benefit C, and that Rev. Proc. 90-27 indicates that notwithstanding such activities will take place in the future, A can still satisfy the operational test. In regards to our position that the inability to identify "the donor, donor directors, disqualified persons, the appropriateness of the assets contributed and any issues that may be related to the contribution, revenues and expenses etc." precludes a favorable determination, you state that the organization and intended operations of A as a Type I supporting organization as summarized in your response do not require such specific identification, and that such specific identification is not required by Rev. Proc. 90-27.

You state that as a supporting organization, A cannot be controlled directly or indirectly by one or more disqualified persons (other than foundation managers and one or more publicly supported organizations), and that you meet this requirement because C elects a majority of the directors of A. Therefore, C has full control of the investment policy, grant making and other uses of the income or assets of A, and no donor or disqualified person can or will have such control.

You further state that satisfying the structural requirement of IRC 509(a)(3) means that A can only be operated for the benefit of C and that as long as A satisfies that requirement, specific identification of disqualified persons and/or assets is not required. Therefore, you maintain that specific identification of disqualified persons and/or assets to be contributed is not required for A to receive a favorable determination from the Service.

Service's Position

The applicant makes the argument that since they are structured in a manner that would meet the requirements of Section 509(a)(3), it is therefore impossible for them to operate for the benefit of any other individual or entity. Therefore, they take the position that the identification of disqualified persons and assets is unnecessary and not required. Simply correctly structuring

Name of Organization
Employer Identification Number

your organization to meet the relationship test of Section 509(a)(3) does not automatically qualify the organization for exemption under this section. Determinations are based on the unique facts of each application, and are fact driven. As stated in Rev. Proc. 2007-52, even though an application is substantially complete, the Service may request additional information before issuing a determination letter or ruling. This is due to the unique facts of each application. As previously stated in this letter, there are a variety of ways that disqualified persons can continue to control assets they have contributed to an organization, particularly when these are non-marketable assets.

As previously stated, your organization fails to satisfy the operational test, since it is not operational. Since you are not operating, you cannot be said to be operating exclusively for the benefit of your supported organization. You point out that Rev. Proc. 90-27 provides that exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed. As you have no donors or assets, you are not operational. Therefore, you have not met your burden to show that you are operated exclusively for the benefit of C. While you have structured the organization in a manner consistent with a Type I entity under Section 509(a)(3), your failure to identify disqualified persons and assets received prevents the Service from determining that your organization will not be controlled, directly or indirectly, by disqualified persons.

Conclusion

You have not shown that you are not operating under the direct or indirect control of, or for the benefit of, disqualified persons.

Determination – Issue 2

Under the totality of the fact and circumstances, you fail to satisfy the requirements of sections 509(a)(3)(A) and 509(a)(3)(C) of the Code. Based on the administrative record we have determined that you fail to qualify as a supporting organization under section 509(a)(3) of the Code.

Summary

Based on our analysis of your activities and, in light of the applicable law, we have determined you do not qualify for tax exemption as an organization described in section 501(c)(3) of the Code. Even if we determined that you were described in section 501(c)(3), you would be a private foundation and not a supporting organization under section 509(a)(3) of the Code. You must file federal income tax returns.

Name of Organization
Employer Identification Number

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Name of Organization
Employer Identification Number

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

We have sent a copy of this letter to your representative as indicated in your power of attorney

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements