



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
WASHINGTON, D.C. 20224

Number: **200943042**  
Release Date: 10/23/2009

Date: July 29, 2009

UIL: 501.38-00  
501.38-02  
4911.00-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Dear :

This is in reply to your ruling request regarding the proper treatment under of the Internal Revenue Code of certain transactions you wish to conduct.

**FACTS**

You are a nonprofit corporation exempt from taxation under section 501(c)(3) of the Code. You are classified as a public charity under sections 509(a)(1) and 170(b)(1)(A)(vi). You have elected to follow the expenditure test of section 501(h) to measure your permissible lobbying activities. As part of your charitable activities, you make grants to other nonprofit organizations.

You have engaged in these grantmaking activities for several years as part of your other programs. Your programs often provide training, organizing, technical assistance, and resources to help organizations build their capacity to support youth advocacy for social change. Grantmaking is a central component of these programs.

You do not impose limitations on lobbying by grantees that are section 501(c)(3) public charities, except to require that the organization not engage in lobbying in excess of the amounts permitted under section 501(c)(3) of the Code, and if applicable, section 501(h) and 4911 of the Code. You make general support grants to these organizations and treat these grants as non-lobbying expenditures.

In addition, you desire to make grants to public charities for specific projects, which may include lobbying.

Based on the above facts, you requested the following rulings:

1. You may treat general support grants to an organization described in section 501(c)(3) and section 509(a)(1), 509(a)(2), or 509(a)(3) (a "public charity") as non-lobbying expenditures so long as the grant is not earmarked for influencing legislation as defined in section 4911(d) of the Code and the associated regulations ("lobbying").
2. A grant restricted for use within a specific project of a public charity is not solely, by

virtue of that restriction, earmarked for lobbying.

3. You may treat a project grant as not earmarked for lobbying if the grant amount does not exceed the non-lobbying portion of the budget of the funded project.
4. If a project grant from you exceeds the non-lobbying portion of the project budget, then you must treat as a lobbying expenditure only the amount by which the grant exceeds the non-lobbying amount of the budget.
5. You may treat a grant to a public charity as a non-lobbying expenditure if you make the grant pursuant to an agreement that expressly states it is a general support grant, and the grantee retains complete discretion and control of all grant funds so long as their use is consistent with its exempt purpose, even if you express a desire, request, or suggestion (in the grant letter or in prior or subsequent communications) that the funds be used to support a specific project, provided that there exists no other oral or written agreement or understanding with regard to the use of the funds.

### LAW

Section 501(a) of the Code provides that an organization described in section 501(c) of the Code is exempt from federal income tax.

Section 501(c)(3) of the Code describes an organization "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h))."

Section 501(h) of the Code permits qualified organizations to elect to have their lobbying activities governed by an expenditure test.

Section 1.501(h)-1(a)(3) of the Income Tax Regulations ("regulations") provides that a public charity electing to be governed by section 501(h) of the Code may make lobbying expenditures within specified dollar limits, and that it will not owe tax nor lose its tax-exempt status if its lobbying expenditures are within the dollar limits determined under section 4911(c) of the Code.

Section 4911(c)(2) of the Code defines "lobbying nontaxable amount" as a percentage of the organization's "exempt purpose expenditures" for the taxable year not to exceed \$1,000,000, and "grass roots nontaxable amount" as 25 percent of the lobbying nontaxable amount for the year.

Section 4911(c)(1) of the Code defines lobbying expenditures as expenditures for the purpose of influencing legislation. Section 56.4911-2(a)(1) defines lobbying expenditures as the sum of expenditures for direct lobbying communications plus expenditures for grass roots lobbying communications.

Section 56.4911-4(f)(4) of the regulations states that a transfer, including a grant, is "earmarked" for a specific purpose if the transferor directs that the amount shall be added to a fund established to accomplish the purpose, or if there exists an agreement, written or oral, whereby

the transferor may cause the transferee to expend amounts to accomplish the purpose or whereby the transferee agrees to expend an amount to accomplish the purpose.

Section 56.4911-4(b)(1) of the regulations defines "exempt purpose expenditures" as amounts paid or incurred by an organization "including (but not limited to) the amount of any transfer made by the organization . . . to another organization to accomplish the transferor's exempt purpose."

Section 4945(d)(1) of the Code and section 53.4945-2 of the regulations define a "taxable expenditure" by a private foundation to include "any amount paid or incurred by a private foundation to carry on propaganda, or otherwise to attempt, to influence legislation."

Section 53.4945-2(a)(6)(i) of the regulations provides that general support grants made by a private foundation to a public charity that lobbies are not a taxable expenditure by the foundation, to the extent that the grant is not earmarked to be used in an attempt to influence legislation.

Section 53.4945-2(a)(6)(ii) of the regulations provides that a grant by a private foundation to a public charity for a specific project is not a taxable expenditure by the foundation to the extent that the grant is not earmarked to be used in an attempt to influence legislation, and the amount of the grant, together with other grants by the same private foundation for the same project for the same year, does not exceed the amount budgeted for the year of the grant by the grantee organization for activities of the project that are not attempts to influence legislation.

Section 53.4945-2(a)(6)(iii) of the regulations allows a grantor foundation to rely on budget documents or other sufficient evidence supplied by the grantee organization for purposes of determining the amount budgeted for attempts to influence legislation, unless the foundation doubts or, in light of all the facts and circumstances, reasonably should doubt the accuracy or reliability of the documents.

Section 53.4945-2(a)(7)(ii), Example 5, of the regulations describes a \$200,000 grant from a private foundation to a public charity for a project with a \$200,000 budget that includes \$20,000 for lobbying. Of the \$200,000 grant, \$20,000 is treated as a taxable expenditure.

Section 8.01 of Rev. Proc. 2009-4 provides that the Service ordinarily will not issue a letter ruling or determination letter in certain areas because of the factual nature of the problem involved or because of other reasons. The Service may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case.

### **ANALYSIS**

The regulations defining lobbying expenditures do not directly address general support grants by public charities to public charities that are not earmarked for lobbying. However, section 56.4911-4(b)(1) of the regulations classifies as exempt purpose expenditures grants (captured by the broader term "transfers") "to another organization to accomplish the transferor's exempt purposes."

The regulations applicable to private foundations do address general support grants to public charities. Under section 53.4945-2(a)(6)(i) of the regulations, general support grants by private foundations to public charities are not treated as expenditures for lobbying (taxable expenditures) so long as the grant is not earmarked for lobbying. No comparable provision expressly addresses the treatment of a grant from one public charity to another public charity. However, the standard for public charities should be no more stringent than that which applies to private foundations, as such an approach is consistent with the extensive legislative history and Code provisions that indicate a Congressional intent to encourage grantmaking and advocacy by public charities while penalizing private foundations that earmark grants to support lobbying.

Consequently, general support grants from you to another public charity may be treated as non-lobbying expenditures so long as they are not earmarked for lobbying, even if some or all of the funds are ultimately expended by the recipient charity for lobbying.

Private foundations are also permitted to make grants to public charities that are earmarked for use in a specific project, even if that project includes some lobbying, without treating the grant as earmarked for lobbying. To qualify for this treatment under section 53.4945-2(a)(6)(ii) of the regulations, the grant must not be earmarked for lobbying and the amount of the grant, combined with other grants from the same organization for the same project during the year, may not exceed the amount budgeted by the grantee for non-lobbying activities of the project. In addition, section 53.4945-2(a)(6)(iii) of the regulations provides that the grantor may rely on the budget information provided by the grantee unless it doubts, or has reason to doubt, the accuracy of that information.

When a private foundation's grant exceeds the non-lobbying portion of a grantee's budget for a project, the grantor has made a taxable expenditure, but only to the extent that the grant exceeds the non-lobbying portion of the project's budget. See, e.g. Example 5 of section 53.4945-2(a)(7)(ii) of the regulations.

For the reasons stated previously, the standard for public charities should be no more stringent than that which applies to private foundations. Therefore, as a public charity, your grants restricted for use within a specific project of a grantee public charity will not, solely by virtue of that restriction, be considered earmarked for lobbying. Your grants to a public charity for a specific program will not be considered earmarked for lobbying so long as the grant, combined with all other grants by you for that program during the year, do not exceed the amounts budgeted for non-lobbying activities. If your grants do exceed the amount budgeted for non-lobbying activities, the amount in excess of the non-lobbying activities will be considered a lobbying expenditure.

Under section 56.4911-4(f)(4) of the regulations, a transfer or grant is earmarked for a particular purpose if the transferor may cause the transferee to expend the amounts to accomplish that purpose. Whether a transferor may cause the transferee to use the funds for a particular purpose depends on an analysis of all of the facts and circumstances. As stated in Rev. Proc. 2009-4, 8.01, supra, the Service may decline to issue a letter ruling in areas requiring a high degree of factual analysis or because of other reasons. Accordingly, we decline to rule on

whether you may treat a grant as a non-lobbying expenditure if you express a desire, request, or suggestion (in the grant letter or in prior or subsequent communications) that the funds be used to support a specific project, even if there is no other oral or written agreement or understanding with regard to the use of the funds.

### **RULINGS**

1. You may treat general support grants to an organization described in section 501(c)(3) and section 509(a)(1), 509(a)(2), or 509(a)(3) (a "public charity) as non-lobbying expenditures so long as the grant is not earmarked for influencing legislation as defined in section 4911(d) of the Code and the associated regulations.
2. A grant restricted for use within a specific project of a public charity is not solely, by virtue of that restriction, earmarked for lobbying.
3. You may treat a project grant to a public charity as not earmarked for lobbying if the grant amount, combined with your other grants for that project during the year, do not exceed the non-lobbying portion of the budget of the funded project and you do not doubt, or have reason to doubt, the budget information provided by the public charity.
4. If a project grant from you to a public charity exceeds the non-lobbying portion of the project budget, then you must treat as a lobbying expenditure the amount by which the grant exceeds the non-lobbying amount of the budget.
5. We decline to rule on whether you may treat a grant to a public charity as a non-lobbying expenditure if you express a desire, request, or suggestion (in the grant letter or in prior or subsequent communications) that the funds be used to support a specific project, even if there is no other oral or written agreement or understanding with regard to the use of the funds.

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.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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,

Manager, Exempt Organizations  
Technical Group 1

Enclosure  
Notice 437