



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:
Identification Number:
Telephone Number:
Employer Identification Number:

LEGEND:

Supporting Fund =
B =
Area Z =
X =
Year 1 =
Year 2 =
Year 3 =

Dear

We have considered your ruling request dated June 5, 2009 and as amended on September 23, 2009 concerning the federal income and excise tax consequences under certain sections of the Internal Revenue Code ("Code").

FACTS

You have been recognized as an organization exempt from federal income tax under section 501(c)(3) of the Code and are classified as other than a private foundation pursuant to sections 509(a)(1) and 170(b)(1)(A)(vi). You were established to provide vital care to the residents of Area Z. Your charitable activities have included providing social work and related services to clients of all ages and backgrounds, job placement and career counseling, outpatient support for those struggling with substance abuse, geriatric care to the elderly and frail and other forms of community- building and sustaining assistance too many segments of the population.

The Supporting Fund was created in Year 1 and funded with assets previously held by you in a donor advised fund. The Supporting Fund is recognized as exempt from federal income tax under section 501(c)(3) of the Code and is classified as a section 509(a)(3) Type I supporting organization by virtue of its relationship with you. You are the sole public member of the Supporting Fund.

The Supporting Fund was formed as a means to continuously support the efforts of, and work together with you in providing humanitarian, educational, and cultural services and programs. Since that time, the Supporting Fund has provided significant financial support to you, and also engaged directly in funding local and international programs consistent with your overall goals.

You appoint a majority of the seven Supporting Fund directors serving at any given time. All actions and activities of the Supporting Fund are decided by at least a majority vote of the Supporting Fund's board of directors.

The Supporting Fund wishes to forgo its status as a public charity and supporting organization to become a private foundation as described in Section 509(a) of the Code. Following this proposed conversion from supporting organization status to private foundation status, the Supporting Fund will no longer be required to support you.

The conversion will be accomplished through a series of interrelated steps. You and the Supporting Fund entered into a written agreement ("Agreement") in Year 2, pursuant to which the Supporting Fund pledged to make the following payments:

- A \$ x payment to your Capital Campaign, payable by the end of calendar Year 2;
- A \$ x payment to the Capital Campaign, payable within thirty (30) days following the effective date of the conversion;
- A \$ x payment to the Capital Campaign, payable over a three year period following the effective date, to be completed on or before November 30 of Year 3; and
- Fifteen annual payments of \$ x each to your Annual Campaign, commencing with the first calendar year following the effective date.

Pursuant to the terms of the Agreement, the Supporting Fund is thus scheduled to make a series of payments to you that, in aggregate, exceed 25% of the Supporting Fund's total assets. The grants made by the Supporting Fund to you will not be designated or used for lobbying, influencing the outcome of elections, for grants to individuals, or for non-charitable purposes.

In consideration of these payments, you have agreed to relinquish your rights as the public member of the Supporting Fund. Under Amended Articles of Incorporation, the Supporting Fund will no longer be organized as a membership organization, and you will retain no rights to appoint any directors of the Supporting Fund. The Supporting Fund's corporate purposes will reflect an expanded charitable mission and contain no requirement that the Supporting Fund support you. All current Supporting Fund directors previously appointed by you will resign, and only members of the B will serve as directors of the Supporting Fund. The Supporting Fund will likewise adopt Amended and Restated Bylaws that will govern its operations consistent with its changed organizational structure. As a condition of the Agreement, in addition to this private letter ruling request, the Supporting Fund has also requested and obtained written approval of the conversion from the Attorney General of its state of incorporation. The Supporting Fund does not wish to terminate its private foundation status in tandem with its grants to you and has not indicated any contrary intent to the Secretary.

With the exception of the initial \$ x grant already paid, no additional payments by the Supporting Fund to you, as mandated in the Agreement, will occur prior to the effective date. The Agreement defines the effective date as the later to occur of (i) the date on which both the Attorney General of the state of incorporation and the Internal Revenue Service approve the conversion or (ii) the date upon which the Supporting Fund files the Amended Articles with appropriate state office. In this manner, the conversion will not become effective until all related steps have been completed.

You have represented that the conversion will benefit the Supporting Fund by allowing it to support a wider range of charitable causes, and may reduce certain regulatory burdens. The conversion will benefit you by providing \$ x in guaranteed payments, and by generating very large matching contribution commitments from an unrelated charity. Moreover, you will still be able to apply to the Supporting Fund for discretionary grants.

RULINGS REQUESTED

You have requested the following rulings:

1. The conversion and the transactions described herein do not negatively affect your exempt status under section 501(c)(3) of the Code, or your public charity status under sections 509(a)(1) and 170(b)(1)(A)(vi).
2. The conversion and the transactions described herein will not give rise to excise taxes under section 4958 of the Code to you or any of your directors, officers, or employees who were involved in the planning or the execution of the conversion of the Supporting Fund to a private foundation.

LAW

Section 170(c)(2)(B) of the Code provides that the term "charitable contribution" means contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations that are organized and operated exclusively for charitable and/or other exempt purposes described within the section.

Section 4958(a)(1) of the Code imposes on each excess benefit transaction a tax equal to 25 percent of the excess benefit (the "first tier tax"). This tax must be paid by any disqualified person with respect to such transaction.

Section 4958(a) (2) of the Code provides that if a tax is imposed by Section 4958(a)(1) of the Code, and there is knowing participation in the excess benefit transaction by an organization manager, there shall be imposed on such manager an excise tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause.

Section 4958(b) of the Code provides that where an initial tax is imposed, but the excess benefit involved in such transaction is not corrected within the taxable period, a tax equal to 200 percent of the excess benefit involved is imposed and must be paid by any disqualified person with respect to such transaction (the "second tier tax").

Section 4958(c) of the Code, in part, defines "excess benefit transaction" as any transaction in which an economic benefit is provided by an "applicable tax-exempt organization" directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.

Section 4958(e) of the Code defines "applicable tax-exempt organization" as an organization described in either section 501(c)(3) or section 501(c)(4) of the Code or an organization which was so described at any time during the five-year period ending on the date of the excess benefit transaction. Such term shall not include a private foundation as defined in section 509(a).

Section 4958(f)(1) of the Code defines "disqualified person" as (A) any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, (B) a member of the family of a disqualified person, and (C) a 35-percent controlled entity.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations ("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) 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 53.4958-1(e)(1) of the Foundation and Similar Excise Taxes Regulations ("foundation regulations") provides that except as otherwise provided, an excess benefit transaction occurs on the date on which the disqualified person receives the economic benefit for federal income tax purposes.

Section 53-4958-3(a)(1) of the foundation regulations defines a disqualified person as any person who was in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization at any time during the five-year period ending on the date of the transaction.

Section 53-4958-3(d)(1) of the foundation regulations provides that a person is deemed not to be in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization if the organization is described in section 501(c)(3) of the code and exempt form tax under section 501(a).

Section 53.4958-4(a)(1) of the foundation regulations provides that an excess benefit transaction is any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to any disqualified person ...to determine whether an excess benefit transaction has occurred, all consideration and benefits exchanged between a

disqualified person and the applicable tax-exempt organization and all entities it controls are taken into account.

ANALYSIS

The information you submitted indicates that following the conversion, you will continue pursuing your historic charitable mission of helping those in need and preserving and enhancing life in both in your local community and around the world. Therefore, you will continue to be organized and operated exclusively for charitable purposes within the meaning of section 1.501(c)(3)-1(a)(1) of the regulations.

In addition, the fact that you have chosen to accept \$ x in guaranteed payments from Supporting Fund, with a resulting increase in matching contributions, and an opportunity to receive discretionary contributions from Supporting Fund in the future, in return for giving up control of Supporting Fund, is a reasonable means of achieving your charitable purposes. The Agreement will not confer any impermissible economic benefit on any insiders or private individuals. Rather, you will be able to continue using your assets in furtherance of charitable purposes. After the conversion, you will continue to operate exclusively for charitable purposes within the meaning of section 1.501(c)(3)-1(c)(1) of the regulations. Any money conveyed by the Supporting Fund to you, pursuant to the terms of the Conversion, will be utilized exclusively for the charitable purposes underlying your tax-exempt status.

Under section 4958 of the Code and section 53.4958-4(a)(1) of the foundation regulations, an excess benefit transaction occurs when a charity provides an "economic benefit" directly or indirectly to or for the use of any disqualified person, if the value of the benefit exceeds the value of the consideration received by the charity. You have been recognized as an organization exempt from federal income tax under section 501(a) and described in section 501(c)(3), as such you are not a disqualified person within the meaning of sections 53.4958-3(a)(1) and (d)(1). The conversion does not involve the transfer of funds to a disqualified person. Therefore, the conversion will not give rise to any excise tax liability under section 4958.

RULINGS

Based on the information submitted, we rule as follows:

1. The conversion and the transactions described herein do not negatively affect your exempt status under section 501(c)(3) of the Code or your public charity status under sections 509(a)(1) or 170(b)(1)(A)(vi), provided that you continue to meet the public support requirement.
2. The conversion and the transactions described herein will not give rise to excise taxes under section 4958 of the Code to you or any of your directors, officers, or employees who were involved in the planning or the execution of the conversion of the Supporting Fund to a private foundation.

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 understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon your tax status should be reported to the Service. 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.

Because this letter could help resolve any future questions about tax consequences of your activities, you should keep a copy of this ruling 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.

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

Sincerely,

Ronald J. Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure:
Notice 437