



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201438032**  
Release Date: 9/19/2014

Date: June 24, 2014

Legend:

M =

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 170.09-02; 501.03-15

Dear \_\_\_\_\_ :

We have considered your ruling request dated March 19, 2013, in which you requested certain rulings with respect to a wholly owned foreign subsidiary.

**Background:**

You are a nonprofit public benefit corporation recognized as a tax-exempt public charity under §§ 501(c)(3) and 509(a)(1)/170(b)(1)(A)(vi). Three members make up the entirety of your board of directors and serve as your officers. Your purpose stated in your Articles of Incorporation is to support foreign-born orphan children with food, clothing, housing, education, medical treatment, psychological treatment, and other similar support. Your plan is to operate programs in the United States and internationally. Your initial international objective is to build an orphanage in foreign country M. Toward that end, you have formed a subsidiary entity in M (Subsidiary). Subsidiary is a nonprofit foundation and has no operations in the United States.

Subsidiary's governing statutes provide you with total control over all aspects of Subsidiary and its activities. The statutes state that the entity is a subsidiary of you, which will be directed and controlled by you. The stated objective of Subsidiary is to accomplish your purposes and directives. Furthermore, to achieve this objective, Subsidiary is granted the power to act as proxy for you, and under your direction.

In addition to these general provisions, the statutes provide you with control of Subsidiary's most important governing bodies and governing offices, including the General Assembly, the Board of Directors, the Executive Director, and the Fiscal Auditor. The General Assembly is the highest governing body within Subsidiary, and is tasked with providing instruction regarding Subsidiary's programs and the use of Subsidiary's funds. The General Assembly is controlled by the Founding Members. The Founding Members must consist entirely of members of you.

The General Assembly elects Subsidiary's board. However, at least three of the five members of Subsidiary's board must also be members of your board. Subsidiary's board updates you on

the expenditures of Subsidiary on no less than a quarterly basis. Subsidiary's board has several internal executive positions, including a president, who is tasked with ensuring your directives are followed by Subsidiary.

The General Assembly appoints the Executive Director with your consent. The Executive Director executes on the directives of the General Assembly, oversees all programs of Subsidiary on a day to day basis, and communicates with you on the functioning of Subsidiary. The General Assembly also appoints the Fiscal Auditor. The Fiscal Auditor is an independent professional accountant, unrelated to the members of Subsidiary, who will audit the finances and accounting of Subsidiary and report to you. The Fiscal Auditor has the obligation to immediately report to you if any fiscal irregularities or issues arise.

Apart from this structure of governance, Subsidiary's statutes include additional provisions that establish your control and oversight of Subsidiary and ensure any funds contributed to Subsidiary by you are used for charitable purposes. Subsidiary is not allowed to substantially engage in political propaganda, or otherwise attempt to influence legislation, or participate or intervene in any political campaign on behalf of any candidate for public office. Subsidiary is also prohibited from allowing any of its funds to inure to the benefit of any of its directors, trustees, officers, private shareholders or members, or to individuals.

You also have the unilateral power to expel a member of Subsidiary. You are entitled to receive minutes of each meeting of the General Assembly and entitled to a copy of the entire minute book of Subsidiary upon request. You can decide at any time to dissolve and liquidate Subsidiary and proceeds from the liquidation (after payment of all liabilities) will be paid over to you.

Furthermore, all of Subsidiary's funds are irrevocably dedicated to your charitable purposes. Subsidiary will require funding from you from time to time as it seeks to accomplish your charitable purposes in M. Towards that end, you intend to transfer portions of donations you receive to Subsidiary (the Proposed Transaction). Decision-making regarding the Proposed Transaction is handled by your board under the general corporate authority granted to the board by your bylaws. To help formalize and assist in the decision-making process, your board passed certain resolutions regarding the Proposed Transaction. These resolutions establish an advisory committee of the board, which provides initial review and assessment of Subsidiary's funding needs. After review, the committee provides a recommendation to your board regarding the request. If the request is approved, your president oversees transfer of the funds to Subsidiary.

Apart from a request for funds made by Subsidiary, your board may independently decide that funds are needed to further Applicant's projects in M and can approve funding for those needs. Regardless, the transfer of funds will not be approved by your board if any of the conditions in the resolutions are not met. Those conditions include that: (1) funds must be kept by Subsidiary in a separate account; (2) Subsidiary must keep separate financial records regarding use of the funds; (3) your board maintains control over the use of the funds; (4) Subsidiary may only use the funds for your charitable purposes and as directed by your board; (5) Subsidiary may not use the funds for any political campaign, propaganda, advocacy for legislation, or private inurement; (6) Subsidiary must be current in providing accounting and audit information to you;

(7) Subsidiary remains controlled by you and its members; and (8) Subsidiary is in compliance with its governing documents.

You also represent that you do not adhere to any earmarks or restrictions placed on donations by donors. Funds are solicited for general use by you in your various projects. You are not required in your charter, governing documents, or by any other source, to transfer contributed funds to Subsidiary. Your board maintains independent control of the management of all donations under its general corporate authority, and each transfer of funds to Subsidiary is vetted.

**Rulings Requested:**

1. The Proposed Transaction will not adversely affect your IRC § 501(c)(3) tax-exempt status.
2. Donations made to you that are used in the Proposed Transaction will be deductible by donors under IRC § 170(a).

**Law:**

Section 170 provides, subject to certain limitations, a deduction for charitable contributions as defined in § 170(c), payment of which is made in the taxable year.

Section 170(c)(2) defines the term "charitable contribution" to include a contribution or gift to or for the use of a corporation, trust, community chest, fund, or foundation (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States; (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals; (C) no part of the net earnings of which inures to the benefit of any shareholder or individual; and (D) which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 501(c)(3) provides for the exemption from federal income tax of an organization organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, 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)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Revenue Ruling 63-252, 1963-2 C.B. 101, held that contributions to a charity organized in the United States that transfers some or all of its funds to a foreign charitable organization are deductible only if the contribution was to or for the use of the domestic organization, and that the

domestic organization was not serving as an agent for, or conduit of, a foreign charitable organization. In order to satisfy the requirements of § 170(c)(2)(A), a qualifying organization may not be a mere conduit to a foreign charitable organization. The revenue ruling states that the requirements of § 170(c)(2)(A) would be nullified if contributions inevitably committed to go to a foreign organization were deductible solely because, in the course of transmittal to the foreign organization, they came to rest momentarily in a qualifying domestic organization. In such cases, the domestic organization would be only nominally the donee; the real donee would be the ultimate foreign recipient. The revenue ruling further provides examples of domestic organizations that transferred donations to foreign organizations. Example (5) concerns a domestic organization that formed a subsidiary in a foreign country to facilitate its charitable operations there and intended to transfer donations to it. The foreign organization was formed for purposes of administrative convenience, and the domestic organization controlled every facet of its operations. The revenue ruling concluded that the domestic organization described in Example (5) was the real beneficiary of the contributions it received because the foreign organization was merely an administrative arm of the domestic organization. Accordingly, contributions to the domestic organization described in Example (5) were deductible.

Revenue Ruling 66-79, 1966-1 C.B. 48, amplifying Rev. Rul. 63-252, held that contributions to a domestic charity that were solicited for a specific project of a foreign charitable organization were deductible under § 170 if the domestic charity had reviewed and approved the project as being in furtherance of its own exempt purposes and it had control and discretion as to the use of the contributions. The ruling concluded that the contributions received by the domestic charity were for the use of the domestic organization and not the foreign organization.

Rev. Rul. 63-252, (holding amounts paid to a charitable organization were not deductible where the contributions were earmarked for the benefit of a particular ward of the organization). However, special earmarking of the use or destination of funds paid to a qualifying charitable organization may deprive the donor of a deduction. If the gift is earmarked for a particular individual or organization, it is appropriate to look beyond the fact that the immediate recipient is a qualifying organization to determine whether the payment constitutes a deductible contribution. In order for donations to be deductible, the organization receiving the donations must have control and discretion over the donation, unfettered by a commitment or understanding that the contribution would benefit a designated individual. See Rev. Rul. 62-113, 1962-2 C.B. 10. The donor's intent must be to benefit the organization and not the individual recipient. See Rev. Rul. 68-484, 1968-2 C.B. 105. Similarly, the domestic organization must have full discretion over whether to transfer the contributions to the foreign organization. See Rev. Rul. 66-79.

Rev. Rul. 68-117, 1968-1 C.B. 251, describes an organization formed to help poor rural inhabitants of developing countries, in part by conducting a guided self-help program for social and economic development in the rural areas of these countries. This program includes furnishing expert guidance to subsistence-level farmer groups on modern agricultural methods, livestock and poultry care, and up-to-date marketing practices in an effort to raise their standard of living. The organization was held to be exempt under section 501(c)(3) as relieving the poor and distressed.

Rev. Rul. 68-165, 1968-1 C.B. 253, described a similar self-help program, which was held to be charitable as relieving the poor and as promoting social welfare. The organization joined with similar organization in Latin America to promote student and cultural exchanges as well as provided technical and material assistance for self-help projects designed to improve the living conditions of the underprivileged people in Latin America.

Rev. Rul. 68-489, 1968-2 C.B. 210 held that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to organizations that are not exempt under section 501(c)(3), provided that it limits distributions to specific projects in furtherance of its own exempt purposes, retains control and discretion over use of the funds, and maintains records establishing that the funds were used for section 501(c)(3) purposes.

**Analysis:**

Tax exempt corporations may conduct charitable operations overseas and retain tax exempt status. Rev. Rul. 71-460. A tax exempt organization may distribute funds to a nonexempt organization and retain tax exempt status provided that the exempt organization retains control and discretion as to the use of the funds, that records establish that the funds were used for IRC § 501(c)(3) purposes, and that the distributions are limited to specific projects that are in furtherance of its own exempt purposes.

Your Proposed Transaction is consistent with the requirements delineated in Rev. Rul. 68-489. You formed Subsidiary in a foreign country to facilitate its operations in that location. Subsidiary was formed to accomplish your purposes and for your administrative convenience. You have complete control over all aspects of Subsidiary and its activities. Your corporate structure requires and gives you rights in ensuring that you maintain control and discretion of the use of funds that you distribute to your subsidiary. You have a process of requiring accounting to determine that the funds you distribute are dedicated in furtherance of your exempt purposes and have controls for accounting that ensure that there are no co-mingling of funds.

In order for contributions to you to be deductible, § 170(a) requires you to be an organization described in § 170(c). You represent you qualify as an organization described in § 170(c).

Your Proposed Transaction is consistent with the requirements delineated in Rev. Rul. 63-252 and Rev. Rul. 66-79. As in Example (5) of Rev. Rul. 63-252, you formed Subsidiary in a foreign country to facilitate its operations in that location. Subsidiary was formed to accomplish your purposes and for your administrative convenience. You have complete control over all aspects of Subsidiary and its activities.

You represent that you do not adhere to any earmarks or restrictions placed on donations by donors. Funds are solicited for your general use in your various projects. You are not required in your charter, governing documents, or by any other source, to transfer contributed funds to Subsidiary. Your board maintains independent control of the management of all donations under your general corporate authority, and each transfer of funds to Subsidiary is vetted.

The use of funds transferred in the Proposed Transaction is under your sole control and discretion. You review, assess, and approve Subsidiary's funding needs. You require periodic

accountings and audit information from Subsidiary, and you have the discretion to refuse to make contributions to Subsidiary. The funds that are transferred by you to Subsidiary are used in furtherance of your charitable purposes.

**Conclusion:**

Based upon the information submitted and the representations you made, you are not acting as a mere conduit but instead are considered the true recipient of the funds because you exercise full control and discretion over the use of contributions, including those transferred to Subsidiary in order to further your charitable purposes. Accordingly, we conclude that the deductibility under § 170 of donations made to you will not be affected if the donations are used in the Proposed Transaction and transferred to your international subsidiary.

**Rulings:**

1. The Proposed Transaction will not adversely affect your IRC § 501(c)(3) tax-exempt status.
2. Donations made to you that are used in the Proposed Transaction will be deductible by donors under IRC § 170(a).

Except as specifically ruled upon above, no opinion is expressed as to the federal income tax consequences of the transaction described above under any other provision of the Code.

This ruling will be made available for public inspection under § 6110 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) 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. 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. Specifically, this ruling does not reach any conclusion as to the qualifying distribution status of your proposed transfer under § 4942(g)(3). 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.

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

Sincerely,

Michael Seto  
Manager, EO Technical

Enclosure  
Notice 437