

Internal Revenue Service
P. O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

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Release Date: 5/20/2016
Date: February 26, 2016

Employer Identification Number:

Person to Contact - ID#:

Contact Telephone Numbers:

LEGEND:

UIL: 170.07-06

D =
E =
F =
G =
H =
J =
K =
x dollars =
y =
z =

Dear :

We have considered your request, dated K, for recognition of an unusual grant under Treasury Regulations § 1.170A-9(f)(6)(ii) and related provisions.

Based on the information provided, we have concluded that the proposed grant constitutes an unusual grant under §1.170A-9(f)(6)(ii) and related provisions of the regulations. The basis for our conclusion is set forth below.

Facts:

Funds from D will be used by you to expand and enhance two existing programs for low-income working and military families (E and F), and establish a new afterschool and summer J program for adolescents and teens.

You are a public charity under §§ 509(a)(1) and 170(b)(1)(A)(vi) of the Code. The mission of the organization is to provide high impact educational programs and opportunities to children, youths, and their families particularly at-risk and low-income, working families — to help them achieve, in measurably effective ways, their full intellectual, economic, and social potential. You currently operate three preschools and a college program for teens and adults.

D was attracted to your organization since you have carried on an actual program of public solicitation and exempt activities. Led by a staff of full-time professionals, including your president, you have raised well over x dollars annually in public support through a combination of special events, direct mail appeals, and grants. This public support has come from over y individual, foundation, and corporate donors.

Through the unusual grant, you will expand enrollment in the preschool in location G and open a fourth preschool, this one in location H; increase enrollment in Institute F; and, establish a new afterschool and summer J program for adolescents and teens.

D does not exercise any control or influence over you, its management, or its trustees, or within your organization.

Except for the following documents, D has not set any conditions that you must meet prior to receipt of the grant:

1. Submission of a proposal detailing prospective uses of grant
2. Submission of a budget detailing prospective uses of grant
3. Submission of proof of nonprofit status (i.e. IRS determination letter)
4. Submission of evidence of community support (i.e. letters of support)
5. Submission of most recently audited financial statements

B has not previously received a grant or funds from D.

You state your grant will meet the following set of facts and circumstances:

1. The grant will not be made by any person or persons standing in a relationship to you or such person which is described in section Code §§ 4946(a)(1)(C) through (G)); and, D has not previously contributed to any part of your support or endowment, or stood in a position of authority (within the meaning of Code § 4946(b)).

2. The grant will neither be a bequest nor an inter vivos transfer.

3. The grant will be in the form of cash and readily marketable securities.

4. Since your organization was founded, and prior to the receipt of this grant, you have carried on an actual and robust program of public solicitation and exempt activities.

Led by a staff of full-time professionals, including your president, you have raised well over x dollars annually in public support through a combination of special events, direct mail appeals, and grants.

This public support has come from over 20 individual, foundation, and corporate donors.

Your total support is generated from activities related directly to the mission of the organization, excluding revenue from fee for services (i.e. program tuition and fees) and investment income.

5. You depend heavily on public support — which provides nearly 25% of your annual operating budget. This public support ensures that your programs remain affordable to low-income working and military families, through financial aid for the adolescents and teens enrolled in the organization's F program and scholarships for the children enrolled in your preschools. While focused on low-income working and military families, your programs are open to the public, without regard to income, race or ethnicity, gender, sexual orientation, or disability.

The unusual grant will be used to expand the organization's current programs and establish a new one. The grant is not ongoing and, therefore, you will need to continue to attract and secure

a significant amount of public support subsequent to this particular grant. Ongoing support to you will be generated through your current fundraising activities, which existed prior to receipt of this unusual grant. Funding of your current and future operating expenses will be independent of and not reliant on unusual grants.

6. You have, since your inception and prior to receipt of this unusual grant, met the one-third support test described in Treas. Reg. § 1.170A-9(f)(2) without the benefit of any exclusions of unusual grants pursuant to paragraph (f)(6)(ii) of this section. One hundred percent of its total support has come from public support, exclusive of program fees for services and other excluded income.

7. Neither D nor any person standing in a relationship to D, which is described in Code §§ 4946(a)(1)(C) through (G), directly or indirectly exercises control over you, your management, or governing body.

8. Your board of trustees is a representative governing body as described in Treas. Reg. § 1.509(a)-3(d)(3)(i). Its purpose is to represent the interests of the public through exercise of its governance authority, oversight of the president and executive staff, and promulgation of policies designed to achieve your mission.

Elected annually at a public meeting of volunteers, community members, staff, program service recipients, and donors, your board of trustees consists of z individuals who reflect the socio-economic makeup of the communities served by the organization. These trustees include current and former business executives, government officials and functionaries, and educators.

9. No material restrictions or conditions (within the meaning of Treas. Reg. § 1.507-2(a)(7)) have been imposed by the transferor upon the transferee in connection with such transfer.

Law:

Treas. Regs. §1.170A-9(f)(6)(ii) sets forth the criteria for an unusual grant.

This section states that, for purposes of applying the 2-percent limitation to determine whether the 33 1/3 percent-of-support test is satisfied, one or more contributions may be excluded from both the numerator and the denominator of the applicable percent-of-support fraction. The exclusion is generally intended to apply to substantial contributions or bequests from disinterested parties which:

- are attracted by reason of the publicly supported nature of the organization;
- are unusual or unexpected with respect to the amount thereof; and
- would, by reason of their size, adversely affect the status of the organization as normally being publicly supported.

Treas. Reg. § 170A-9(f)(6)(iii) states that all pertinent facts and circumstances will be taken into consideration to determine whether a particular contribution may be excluded. No single factor will necessarily be determinative. This section references Treas. Reg. § 1.509(a)-3(c)(4) and states such factors may include:

- Whether the contribution was made by a person who
 - a. created the organization
 - b. previously contributed a substantial part of its support or endowment
 - c. stood in a position of authority with respect to the organization, such as a foundation manager within the meaning of Code § 4946(b)
 - d. directly or indirectly exercised control over the organization, or
 - e. was in a relationship described in Code §§ 4946(a)(1)(C) through 4946(a)(1)(G) with someone listed in bullets a, b, c, or d above.

A contribution made by a person described in a. through e. is ordinarily given less favorable consideration than a contribution made by others not described above.

- Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer.
- Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum.
- Whether (except in the case of a new organization) prior to the receipt of the particular contribution, the organization (a) has carried on an actual program of public solicitation and exempt activities and (b) has been able to attract a significant amount of public support.
- Whether the organization may reasonably be expected to attract a significant amount of public support after the particular contribution. Continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future public support.
- Whether the organization has a representative governing body as described in Treas. Reg. § 1.509(a)-3(d)(3)(i); and
- Whether material restrictions or conditions within the meaning of Treas. Reg. § 1.507-2(a)(7) have been imposed by the transferor upon the transferee in connection with such transfer.

Application of Law:

Treas. Regs. § 1.170A-9(f)(6)(ii) sets forth the criteria for an unusual grant.

The grant meets the criteria for exclusion under this section since the contribution was attracted by the reason of the publicly supported nature of your organization, is unusual or unexpected with respect to the amount, and would by reason of the size adversely affect the status of your organization as normally being publicly supported.

The grant meets the criteria for exclusion under Treas. Reg. §§ 1.170A-9(f)(6)(ii) and 1.509(a)-3(c)(4) based on the facts and circumstances since the grant was not made by a disqualified person, was neither a bequest nor an inter vivos transfer, and was in the form of cash and readily marketable securities. Also, prior to the receipt of the grant, you have carried on an actual program of public solicitation and exempt activities and have been able to attract a significant amount of public support. You expect to attract a significant amount of public support after the particular contribution. Prior to the year in which the grant will be received, you met the one-third support test described in Treas. Reg. § 1.170A-9(f)(2) without the benefit of any exclusions of unusual grants pursuant to Treas. Reg. § 1.170A-9(f)(6)(ii). You have a representative governing body as described in Treas. Reg. § 1.509(a)-3(d)(3)(i) and no material restrictions or conditions within the meaning of § 1.507-2(a)(7) have been imposed by the transferor upon the transferee in connection with such transfer.

If you have any questions, please contact the person listed in the heading of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements