

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

Department of the Treasury

Release Number: **201850023**
Release Date: 12/14/2018
Date: September 17, 2018

Person to Contact / ID Number:

Contact Telephone Numbers:

Employer Identification Number:

LEGEND
B = state
C = foundation
D = award
E = program
p = number
q = number
r dollars = amount

UIL
509.02-01

Dear :

This is in response to your request dated October 5, 2017 for advance approval that a potential grant or contribution constitutes an "unusual grant".

Based on information submitted, we've determined that you don't meet the requirements for approval of your request. The basis for our conclusion is set forth in Enclosure 1.

We'll make our proposed adverse determination letter available for public inspection under Internal Revenue 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 don't need to take any further action.

For important information about your responsibilities as a tax-exempt organization, go to www.irs.gov/charities. Enter "4221-PC" in the search bar to view Publication 4221-PC,

Compliance Guide for 501(c)(3) Public Charities, which describes your recordkeeping, reporting, and disclosure requirements.

You should keep a copy of this letter in your permanent records.

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 are shown in the heading of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Enclosure 1
Notice 437

Enclosure 1

Facts

You are a B corporation that qualifies as an organization under Sections 501(c)(3) and 170(b)(1)(A)(iv) of the Internal Revenue Code. You are primarily an educational and academic organization

On October 5, 2017, you requested a potential grant be classified as an unusual grant. C proposed a one-time inter vivos contribution of r dollars to you to provide permanent support for two core programs, D and E. C represents there will be no material restrictions or conditions regarding the grant; other than restrictions which are consistent with the establishment and maintenance of an endowment fund under B law, and the gift be administered as an endowment fund for certain named programs previously supported by C in furtherance of your charitable purposes and mission. C has previously contributed a substantial part of your support; approximately p% of your total FY revenue and q% of FY . You cite revenue ruling 76-440 as authority supporting your position for the grant being classified as unusual.

Law

Treasury Regulations Sections 1.170A-9(f)(6)(ii) and 1.509(a)-3(c)(4) set forth the criteria for an unusual grant.

Treas. Reg. Section 1.170A-9(f)(6)(ii) 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. Section 1.509(a)-3(c)(4) 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. 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 section 4946(b)

- d. directly or indirectly exercised control over the organization, or
- e. was in a relationship described in Internal Revenue Code section 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. - 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, prior to the year in which the particular contribution was received, the organization met the one-third support test described in section 1.509(a)-3(a)(2) without the benefit of any exclusions of unusual grants pursuant to section 1.509-3(c)(3);
- Whether the organization has a representative governing body as described in Treas. Reg. Section 1.509(a)-3(d)(3)(i); and
- Whether material restrictions or conditions within the meaning of Treas. Reg. Section 1.507-2(a)(7) have been imposed by the transferor upon the transferee in connection with such transfer.

Revenue Ruling 76-440 states in part that a large inter vivos gift of undeveloped land from a disinterested donor to a normally publicly supported organization exempt under Section 501(c)(3) of the Code, conditioned on the land's being used in perpetuity to further the exempt organization's purposes of preserving natural resources, constitutes an unusual grant and will not adversely affect the status of the organization as a publicly

supported organization. The gift in question was made by an otherwise disinterested party. Neither the donor nor any person whose relationship to the donor is described in Section 4946(a)(1)(C) through (G) of the Code created the organization, previously contributed a substantial part of the organization's support or endowment, or stands in a position of authority with respect to the organization.

Application of Law

We have concluded the proposed grant does not constitute an unusual grant under Treas. Reg. Section 1.170A-9(f)(6)(ii) based on the information provided. The donor, C, is not a disinterested party as they have previously and continually contributed to you substantial revenue.

We find you are distinguishable from Revenue Ruling 76-440. Due to the historic relationship between you and C the proposed grant is not unusual or unexpected. Subsequent grants from the same donor are logically more usual and more expected. While not determinative, the other factors weighing on whether the grant is considered unusual, as outlined in the Regulations as well as Revenue Ruling 76-440, are that the proposed cash transfer is inter vivos, not by bequest, and is not attracted by reason of the your publicly supported nature, but by your continual relationship with the donor.