

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

Department of the Treasury

Date: March 12, 2019

Employer Identification Number:

Number: 201923027  
Release Date: 6/7/2019

Person to Contact - ID#:

Contact Telephone Numbers:

LEGEND:  
B = foundation  
c dollars = amount

UIL:  
509.02-01

Dear :

We have considered your request, dated February 2018, for recognition of an unusual grant under Treasury Regulations Section 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 Treas. Reg. Section 1.170A-9(f)(6)(ii) and related provisions of the regulations. The basis for our conclusion is set forth below.

**Facts:**

As part of your activities you provide injured, special operations combat veterans with outdoor recreational programs in part to encourage and foster rehabilitation, recovery and transition. In learning of your programs, B agreed to allow you use of their property to further your exempt purposes. While doing so, B has also made the decision to dissolve, and as an organization exempt under Section 501(c)(3) of the Internal Revenue Code must distribute its assets to another qualified organization. B wishes to distribute its remaining assets to you as a step in its dissolution process.

The amount of B's distribution would total in the c dollars range and would substantially alter your public charity calculations. As a result, it would adversely affect your public charity status. While you have had the prior relationship of B allowing you use of its land it was not substantial enough to be considered part of your support; support to date has come primarily from the general public. Additionally, while you and B share board members, you have other independent members, allowing for decision making to be made without conflict.

The contribution itself would technically be inter vivos due to the nature of B dissolving. However, it is viewed more as a bequest due to the finality of B - there would be no concerns over future grants as B would cease to exist. Finally, as this is a contribution on the dissolution of B, no material restrictions or conditions would be placed on the grant.

**Law:**

Treas. Reg. 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) of the Code
  - d. directly or indirectly exercised control over the organization, or
  - e. was in a relationship described in Sections 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 Treas. Reg. Section

1.509(a)-3(a)(2) without the benefit of any exclusions of unusual grants pursuant to Treas. Reg. 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.

**Application of Law:**

Based on the information provided, the proposed grant meets the requirements of Treas. Reg. Section 1.170A-9(f)(6)(ii) because the grant is from a disinterested party, and:

- The grant was attracted by reason of your publicly supported nature
- The grant is unusual or unexpected with respect to the amount
- The grant will adversely affect your status as normally being publicly supported.

The grant meets the requirements of Treas. Reg. Section 1.509(a)-3(c)(4) based on the following facts and circumstances.

- The contribution is made by an individual with no ability to exercise control over you and has never been a substantial contributor. The contributor has never held a position of authority with respect to you nor have they ever directly or indirectly had control over the functions of you.
- The transfer of the assets will further your exempt purpose and be used to fund your programs in the future.
- You carry on a program to solicit funds to support your activities and reasonably expect to attract public support after this transfer.
- The contribution is viewed as a bequest.
- No material restrictions or conditions within the meaning of Treas. Reg. Section 1.507-2(a)(7) have been imposed by the donor.

For all the foregoing reasons, the grant should be characterized as an unusual grant within the meaning of Treas. Reg. Section 1.509(a)-3(c)(4).

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 listed in the heading of this letter.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements