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Department of the Treasury
Washington, DC 20224

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PLR-134894-18

Date:
October 31, 2019

LEGEND

Taxpayer =
Subsidiary =
X =

Dear :

This letter responds to Taxpayer's submission dated November 27, 2018, and subsequent correspondence requesting rulings that the operation of a political action committee by Subsidiary, and the resource-sharing arrangement between Taxpayer and Subsidiary, will not constitute participation or intervention in a political campaign by Taxpayer, and the resource-sharing arrangement will not cause Taxpayer to be operated for purposes of private benefit or result in private inurement within the meaning of section 501(c)(3).

FACTS

Taxpayer is a nonprofit corporation that is exempt from tax under section 501(a) and described in section 501(c)(3) pursuant to a group exemption letter issued to a central organization. Taxpayer represents that it is not a private foundation within the meaning of section 509(a).

Taxpayer is the parent of a healthcare system. It provides management, consulting, and other services to its related healthcare facilities and educational institutions. Taxpayer is the sole or partial direct or indirect member of approximately X section 501(c)(3) organizations that own and operate hospitals, nursing homes, and provide other healthcare services ("System Section 501(c)(3) Subsidiaries"). Taxpayer is also the sole shareholder of Subsidiary, a for-profit corporation which holds limited liability company ("LLC") interests in two joint ventures and is the single member of an LLC that provides

real estate rental management services primarily for affiliated section 501(c)(3) hospital organizations.

Taxpayer, as Subsidiary's sole shareholder, elects all of Subsidiary's directors and may remove any director with or without cause. Taxpayer also may elect or appoint Subsidiary's officers and assistant officers or permit the directors of Subsidiary to do so. Subsidiary does not have any employees who are not also employees of Taxpayer. Taxpayer's bylaws reserve certain powers with respect to entities for which Taxpayer is the sole member or controlling stockholder, such as Subsidiary. The enumerated powers include to approve or disapprove the executive and/or administrative leadership, to establish general guiding policies, to approve or disapprove the annual operating and capital budgets, to direct the placement of funds and capital, and to approve and disapprove salary rates for administrative and department head personnel.

Subsidiary will establish and operate a political action committee within the meaning of section 527 ("PAC"). Subsidiary will select PAC's board of directors, which in turn will select PAC's officers. Directors and officers of PAC may serve concurrently as directors or officers of Subsidiary and as directors, officers, or employees of Taxpayer. PAC will not have any of its own employees.

Subsidiary and PAC will solicit voluntary contributions to PAC from employees of Subsidiary, Taxpayer, and System Section 501(c)(3) Subsidiaries. PAC will make expenditures to support or oppose candidates for public office. Taxpayer's employees will engage in fundraising activities on behalf of Subsidiary in their capacities as service providers to Subsidiary pursuant to the resource-sharing arrangement, described below; nevertheless, Taxpayer states that it "will not coordinate with" Subsidiary or PAC with respect to fundraising efforts or distribution of informational materials or other activities. Taxpayer also states that it will charge Subsidiary and PAC fair market value for use of the mailing lists of its employees and the employees of System Section 501(c)(3) Subsidiaries.

Pursuant to federal campaign finance laws, PAC will be a connected separate segregated fund of Subsidiary, and Subsidiary and PAC will be limited to soliciting voluntary contributions from a restricted class that includes Subsidiary's stockholders and executive or administrative personnel, and their families, and the executive and administrative personnel of Taxpayer, its subsidiaries, branches, divisions, and departments, and their families. Subsidiary will also be permitted under the federal campaign finance laws to make up to two written solicitations per calendar year for contributions to its PAC from employees of Taxpayer and its affiliates who are outside of the restricted class.

Taxpayer states that, because of these restrictions, it intends to provide Subsidiary with information about the management and personnel of Taxpayer and its affiliates solely to enable Subsidiary and PAC to comply with federal campaign finance law on soliciting contributions from the directors, officers, and employees of Taxpayer and of the System

Section 501(c)(3) Subsidiaries. To the extent that Subsidiary establishes one or more state political action committees, Taxpayer will provide Subsidiary with information about the personnel of Taxpayer and of the System Section 501(c)(3) Subsidiaries to enable Subsidiary to comply with applicable state campaign finance law.

Taxpayer represents that PAC and Subsidiary will maintain separate bank accounts, books, and records and prepare separate financial statements, reports, and tax returns. Both entities will have separate letterheads, Internet addresses, and other materials. Taxpayer states that notwithstanding its authority and rights as Subsidiary's sole shareholder, including those rights retained in its bylaws with respect to Subsidiary and other entities of which it is the sole member or controlling stockholder, Taxpayer's board of directors will adopt a resolution prohibiting the board from any involvement in PAC. Taxpayer represents that the board resolution will also prohibit any director, officer, or employee of Taxpayer from any involvement in PAC on behalf of Taxpayer or in an official Taxpayer capacity.

Taxpayer and Subsidiary have entered into a resource-sharing agreement, titled a Management and Administrative Services Agreement ("Agreement"). Under the Agreement, Taxpayer agrees to provide management, administrative, and corporate services and make available facilities and equipment to Subsidiary and Subsidiary's subsidiaries identified on a schedule to the Agreement ("group members"), which will be expanded to include PAC after it is formed. Taxpayer represents that to the extent that a director, officer, or employee of Taxpayer also serves as a director or officer of Subsidiary or PAC, that individual will not take any action with respect to Subsidiary or PAC on behalf of Taxpayer or in an official Taxpayer capacity. Taxpayer's directors, officers, and employees will also track all time spent providing services to Subsidiary or PAC so that the time is appropriately allocated to Subsidiary.

The facilities Taxpayer agrees to provide under the Agreement include but are not limited to office space, telephones, information technology, furniture, office equipment (e.g., copiers and scanners), building maintenance, and cleaning services. The services Taxpayer will provide include secretarial services, such as keeping statutory books and records and convening and documenting meetings of the boards of directors; safekeeping and filing all original corporate documents; establishing and managing financial accounts; collecting accounts payable and arranging for related dispute resolution; settling inter-company accounts within the health system operated by Taxpayer; securing financing; procuring insurance; supervising the sale and purchase of assets; and tax and legal compliance services, which includes the preparation of tax returns and compliance with regulatory requirements to which Subsidiary or a group member might be subject.

The Agreement was amended to state that "[Subsidiary] shall have dominion and control over the Services and Facilities while being used by [Subsidiary], and employees of [Taxpayer] who provide Services or Facilities to [Subsidiary] shall be considered employees of [Subsidiary] while providing Services or Facilities to

[Subsidiary].” The ruling request also states that Subsidiary will “control and direct” the employees of Taxpayer, “not only as to the result to be accomplished…but also as to the details and means by which that result is accomplished.”

Under the Agreement, Subsidiary and each group member agrees to bear and pay to Taxpayer its share of ”Net Costs,” which is the sum of “Direct Costs” and “Indirect Costs.” “Direct Costs” means the sum of all external and all internal direct costs incurred by Taxpayer directly attributable to a particular service and/or facility provided to Subsidiary or a group member. “Indirect Costs” means all external and internal costs incurred by Taxpayer which cannot be directly attributed to a particular service and/or facility provided to Subsidiary or a group member, which is charged at a rate of 20% of all Direct Costs. Taxpayer represents that 20% represents the percentage of management and general expenses generally incurred by Taxpayer as a percentage of its total costs and will be evaluated periodically “to ensure that it remains an arm’s-length charge.”

Subsidiary, in addition to the Agreement with Taxpayer, intends to contract with a third party administrator to assist in fundraising for PAC, sending solicitations permitted under federal and state election law, maintaining accounting and other records of contributions and expenditures, and preparing federal and state regulatory filings. Taxpayer states that this will “limit the extent to which [Taxpayer] employees provide services to [PAC]” under the Agreement. The ruling request also states that only directors, officers, or common law employees of Subsidiary will make oral or written solicitations for contributions to PAC, and that they will make clear that they are not acting on behalf of Taxpayer in making the solicitations.

RULINGS REQUESTED

Taxpayer requests the following rulings:

1. Subsidiary’s operation of PAC will not constitute participation or intervention in a political campaign by Taxpayer within the meaning of section 501(c)(3).

2. Taxpayer’s provision of services and other resources to Subsidiary and PAC pursuant to the Agreement, in which Subsidiary reimburses Taxpayer for the costs incurred by Taxpayer in providing such services and resources, will not constitute participation or intervention in a political campaign by Taxpayer within the meaning of section 501(c)(3).

3. The Agreement between Taxpayer and Subsidiary, in which Taxpayer provides services and other resources to Subsidiary, and Subsidiary reimburses Taxpayer for the costs incurred by Taxpayer in providing such services and resources, will not cause Taxpayer to be operated for private benefit or will not result in private inurement within the meaning of section 501(c)(3).

LAW

Section 501(c)(3) describes organizations organized and operated exclusively for religious, charitable, or educational purposes, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in section 501(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.

Treas. Reg. § 1.501(c)(3)-1(c)(1) 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).

Treas. Reg. § 1.501(c)(3)-1(c)(3)(i) provides that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization.

Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) provides that an "action" organization includes an organization that participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirement to be organized and operated exclusively for one or more exempt purposes, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 2007-41, 2007-1 C.B. 1421, provides 21 examples illustrating the applicable facts and circumstances to be considered in determining whether a section 501(c)(3) organization has participated or intervened in any political campaign.

Situation 4 of Rev. Rul. 2007-41 describes a president of a section 501(c)(3) organization who endorses a candidate for public office using the organization's newsletter, although the president reimburses the organization from his personal funds for the cost of the newsletter attributable to his endorsement. Because the endorsement appeared in an official publication of the organization, the organization has intervened in a political campaign.

Rev. Rul. 2007-41 provides that in determining whether an organization has engaged in political campaign intervention in the context of a business activity, such as selling or renting mailing lists, some of the factors to be considered include whether the good, service, or facility is available to candidates in the same election on an equal basis, whether the good, service, or facility is available only to candidates and not to the general public, and whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.

Situation 17 of Rev. Rul. 2007-41 describes a section 501(c)(3) museum that rents to the public on a first come, first served basis a large hall suitable for hosting dinners and receptions. The museum charges standard fees based on the number of people in attendance. The museum has rented the hall to a number of different organizations, and also rents the hall to a candidate for a campaign fundraising dinner for the same standard fee. The organization has not intervened in a political campaign.

Situation 18 of Rev. Rul. 2007-41 describes a section 501(c)(3) theater organization that maintains a mailing list of all of its subscribers and contributors. The organization has never rented its mailing list to a third party, but after being approached by the campaign committee of a candidate for public office who supports increased funding for the arts, the organization agrees to rent its mailing list to the campaign committee for a fee that is comparable to fees charged by other similar organizations. The organization declines similar requests from campaign committees of other candidates. The organization has intervened indirectly in a political campaign.

In American Campaign Academy v. Commissioner of Internal Revenue, 92 T.C. 1053 (1989), the tax court affirmed the IRS' denial of an application for recognition of exemption as described in section 501(c)(3) of an organization that operated a school to train individuals for careers as political campaign professionals. The organization's training program was an outgrowth of one previously run by a national congressional committee of a political party, its activities were funded exclusively by a trust affiliated with that national congressional committee, and substantially all of its graduates from the program were placed in campaigns of the same political party. Therefore, the Tax Court concluded that the organization was not operated exclusively for exempt purposes within the meaning of section 501(c)(3) because more than an insubstantial part of its activities furthered a nonexempt purpose. The organization was operated substantially for the benefit of private interests, entities and candidates of a single political party, and failed to show that those private interests were members of a charitable class.

ANALYSIS

Rulings 1 and 2.

Taxpayer has stated it will provide to Subsidiary and PAC a mailing list of employees to be used to solicit contributions for PAC, and Taxpayer will charge fair market value for

the use of this list. Taxpayer's provision of its mailing list of employees to Subsidiary and PAC, for the purpose of soliciting funds for PAC constitutes political campaign intervention by Taxpayer. The facts and circumstances in this case, like those in Situation 18 of Rev. Rul. 2007-41, demonstrate that Taxpayer is engaging in political campaign intervention. Rev. Rul. 2007-41 provides that one of the factors that will be considered in determining whether an organization has engaged in political campaign intervention in the context of a business activity, such as selling or renting mailing lists, is whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.

Taxpayer's mailing list of its employees would be a specifically tailored compilation of information about its employees that Subsidiary and PAC require to comply with federal campaign finance law for connected PACs to solicit political campaign contributions from Taxpayer's employees. Taxpayer would provide and continuously update this specialized list of names and addresses of its employees and of the employees of the System Section 501(c)(3) Subsidiaries, and identify which of the employees are within the definition of executive or administrative personnel, whom Subsidiary and PAC would be permitted to solicit contributions from under federal election laws more frequently than twice per year. This is distinguishable from the museum's ongoing rental of its hall in Situation 17 of Rev. Rul. 2007-41. Taxpayer's assembly and provision of a mailing list for the Subsidiary and the PAC has as its sole purpose to assist Subsidiary and PAC in soliciting political campaign contributions from Taxpayer's employees so that PAC may then make expenditures to support or oppose candidates for public office. See Section 501(c)(3), Treas. Reg. § 1.501(c)(3)-1(c)(3)(i), (c)(3)(iii). This is similar to the mailing list in Situation 18 and in contrast with provision of the hall in Situation 17.

Taxpayer agrees to provide Subsidiary and the group members (to include PAC) certain management, administrative, and corporate services, as well as facilities and equipment. The Agreement was amended and restated to provide that Subsidiary "shall have dominion and control" over the services and facilities while being used by Subsidiary, and that Taxpayer employees providing services or facilities to Subsidiary "shall be considered employees of" Subsidiary while providing those services and facilities. Nevertheless, the language of the Agreement clearly states that Taxpayer is providing services and equipment to Subsidiary. Specifically, Taxpayer reserves the right under the Agreement to subcontract any of the services which it is required to provide to Subsidiary or a group member, and remains "in all respects responsible for the due and proper performance" of those services. The Agreement provides no guardrails or limitations with respect to services that might be inconsistent with Taxpayer's exempt purpose under section 501(c)(3). Nor does the Agreement demonstrate how the employees of Taxpayer providing services to Subsidiary and the group members under the Agreement will in fact be providing such services as employees of Subsidiary under the direction and control of Subsidiary, when the majority of Subsidiary's board of directors and all the employees of Subsidiary are employees of Taxpayer and there is no identified separation of roles in connection with directing and controlling their performance of services. Accordingly, services provided

under the Agreement to carry out the activities of the PAC are provided by Taxpayer's employees under an agreement for the Taxpayer to provide such services.

Even if Subsidiary and PAC fully reimburse Taxpayer for its Direct Costs and Indirect Costs in preparing the specialized mailing list and performing all other services provided to PAC, Taxpayer still would be engaging in an activity that does not further an exempt purpose. As noted earlier, the activity of preparing and maintaining the employee list furthers only the political campaign activities of PAC. In Situation 4 of Rev. Rul. 2007-41, the organization is deemed to have violated the prohibition against political campaign intervention, even though the organization was fully reimbursed the cost of the publication of the endorsement from its president's personal funds.

Taxpayer states in the request that Subsidiary will contract with a third party administrator to assist in fundraising, yet the request also states that directors, officers, or common law employees of Subsidiary will make oral and/or written solicitations for contributions to PAC, although they will make clear that they are not acting on behalf of Taxpayer in any such solicitation. As noted earlier, neither Subsidiary nor PAC has its own employees, office space, or equipment separate from Taxpayer. Contrary to, or at least inconsistent with, Taxpayer's representation that it will not coordinate with Subsidiary with respect to fundraising efforts, it is Taxpayer's employees who, pursuant to the Agreement, would solicit contributions to PAC from other employees of Taxpayer. The direct performance of these activities by Taxpayer's employees, at Taxpayer's offices during regular business hours, makes these activities inseparable from Taxpayer's own operations. These activities further the political campaign purposes of Subsidiary and PAC.

Accordingly, we conclude that the operation of PAC, including Taxpayer's provision of services and other resources to Subsidiary and PAC pursuant to the Agreement and the creation and provision of a specialized mailing list, will constitute participation or intervention in a political campaign by Taxpayer within the meaning of section 501(c)(3).

Ruling 3.

Taxpayer provides specific services, including management and administrative services, under the Agreement to Subsidiary and PAC. These services are performed by employees of Taxpayer, but they further the operations of Subsidiary and PAC. The operations of Subsidiary and PAC do not further an exempt purpose under section 501(c)(3). In particular, the provision of information by Taxpayer about its employees and the employees of the System Section 501(c)(3) Subsidiaries enables the solicitation of these employees for contributions to PAC in compliance with federal election laws. Soliciting PAC contributions and complying with federal election laws do not further an exempt purpose under section 501(c)(3). Taxpayer would not otherwise assemble and distribute this information about its employees except to aid Subsidiary and PAC in their solicitation efforts. These activities provide a direct benefit to Subsidiary and PAC, a benefit that is not incidental to the performance of any exempt purpose. Therefore,

Taxpayer is providing specialized services for the benefit of Subsidiary and PAC, which serve private rather than public interests. See Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) and American Campaign Academy.

RULINGS

Based solely on the facts and representations submitted by Taxpayer, we rule as follows:

1. The operation of PAC by Subsidiary will constitute participation or intervention in a political campaign by Taxpayer within the meaning of section 501(c)(3).

2. Taxpayer's provision of services and other resources to Subsidiary and PAC pursuant to the Agreement will constitute participation or intervention in a political campaign by Taxpayer within the meaning of section 501(c)(3).

3. The Agreement between Taxpayer and Subsidiary, in which Taxpayer provides services and other resources to Subsidiary, and Subsidiary reimburses Taxpayer for the costs incurred by Taxpayer in providing such services and resources, will cause Taxpayer to be operated for the benefit of private interests and will not further an exempt purpose, within the meaning of section 501(c)(3).

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2019-1, 2019-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the proposed transaction under any other provision of the Code or regulations, including but not limited to whether the private benefit provided by Taxpayer to Subsidiary and/or PAC causes Taxpayer to be operated for a substantial nonexempt purpose or whether the payments received by Taxpayer under the agreement do or do not constitute unrelated business taxable income.

This letter is directed only to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representatives.

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.

Sincerely,

Don Spellmann
Senior Counsel
Exempt Organizations Branch 3
(Employee Benefits, Exempt Organizations, and Employment Taxes)