



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO BOX 2508
CINCINNATI, OH 45201

Date:
09/13/2023
Employer ID number:

Person to contact:
Name:

Release Number: 202349019
Release Date: 12/8/2023

LEGEND

UIL: 509.02-01

B = Name
C = year
D = year
r dollars = Greater than
s dollars = \$
u percent = percent

Dear :

We have considered your request for recognition of an unusual grant under Treasury Regulation Section 1.170A-9(f)(6)(ii) and related provisions.

Based on the information provided, we 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 discussed below.

Facts:

You are tax exempt under Internal Revenue Code (IRC) Section 501(c)(3). You're currently classified as a public charity described in Sections 509(a)(1) and 170(b)(1)(A)(vi). You will receive a grant and a potential gift from B, which is an unrelated private operating foundation exempt under IRC Section 501(c)(3), for r dollars. B has agreed to pay you r dollars upon the endorsement of the grant agreement. However, upon receipt of the grant and potential gift from B, your status as a publicly supported organization will be jeopardized.

There is no prior connection between you and B because B has never provided funds that would constitute any significant portion of your annual public support, or stood in a position of authority with regard to you, or any person related to such person within the meaning of Internal Revenue Code section 4946(a)(1)(C) through 4946(a)(1)(G). After the completion of the gifts, no one affiliated with B will directly or indirectly exercise control over your organization. You will have ultimate responsibility for the proper management and administration of the funds from the grant and plan to use the funds to: (i) to build a new wing on your museum to house and exhibit two-dimensional art and small sculptures, (ii) to make improvements to the existing museum, (iii) as capital funds to renovate your -acre campus to prepare for the appropriate display of large outdoor sculptures, and (iv) as capital funds to retire your long-term debt.

You have averaged in the range of s dollars in annual revenues for the years C through D. Your public support has been in the range of u percent for the past five years. You have 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). In addition, you are actively soliciting contributions from the general public and reasonably expect to attract a significant amount of public support after the particular grant is received.

Law:

Two sections of the Treasury Regulations set forth the criteria for an unusual grant. They are:

Treasury Regulation Section 1.170A-9(f)(6)(ii)

This section states that, for purposes of applying the 2% limitation to determine whether the 33 1/3% of-support test is satisfied or the 10 % support limitation is met, 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.

Treasury Regulation Section 1.509(a)-3(c)(4)

This section 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 Internal Revenue Code (IRC) Section 4946(b);
 - d. directly or indirectly exercised control over the organization, or;
 - e. was in a relationship described in IRC 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 bullets 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, 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 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 the publicly supported nature of your organization.
- The grant is unusual or unexpected with respect to the amount.
- The grants would by reason of their size adversely affect your organization 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 grant is not being made by a person who created you.
- B has not previously contributed a substantial part or endowment to you. B has not stood in a position of authority such as a foundation manager within the meaning of IRC Section 4946(b).
- B does not directly or indirectly exercise control over you nor was is in a relationship described in IRC Section 4946(a)(1)(C) through 4946(a)(1)(G)
- The transfer of 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
- No material restrictions or conditions within the meaning of Treas. Reg. Section 1.507-2(a)(7) have been imposed by the donor

We'll make this determination letter available for public inspection after deleting personally identifiable information, as required by IRC Section 6110. We've enclosed Letter 437, Notice of Intention to Disclose - Rulings, and a copy of the letter that shows our proposed deletions.

- If you disagree with our proposed deletions, follow the instructions in the Letter 437 on how to notify us.
- If you agree with our deletions, you don't need to take any further action.

If you have questions, please contact the person listed at the top of this letter.

Sincerely,

Stephan A. Martin
 Director, Exempt Organizations
 Rulings and Agreements