INTERNAL REVENUE SERVICE

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November 14, 2002

Legend:

X (Taxpayer) =

M (Fund) =

x =

y =

z =

A (State) =

B (State) =

Dear Taxpayer:

This is in response to your authorized representative's letter of December 31, 2001, and other correspondence and submissions, in which rulings under various sections of the Internal Revenue Code of 1986 were requested on your behalf regarding the proper federal income tax treatment of certain transactions between you, X, your employees, and M, as more fully described below. We are pleased to address your concerns.

The information submitted indicates that you, the taxpayer (hereinafter sometimes X), are a corporation organized under the laws of State A, with a principal place of business located in State B. X is engaged in retail sales worldwide, with over

y United States employees, and approximately z employees worldwide.

M was organized under the laws of State B, is an organization recognized as exempt from federal income tax under section 501(c)(3) of the Code, and has received an advance ruling as to its non-private foundation status as a public charity described in sections 509(a)(1) and 170(b)(1)(A)(vi). The principal activity of M is to make grants or loans to employees (and their dependents) of X (and any of its subsidiaries) who are in demonstrated need. The class of eligible recipients of M's activities is sufficiently broad to constitute a charitable class. Grants are awarded in cases of unexpected temporary extreme financial hardship.

Selection of aid recipients by M is based on objective criteria and determination of need, by an independent selection committee or adequate substitute procedures. M is expected to be principally funded by X's employees. Of the approximately z employees of X eligible for M's assistance, only about 5 percent (approximately x of X's United States employees) hold salaried management-level positions. X intends to establish a "Payroll Plan" through which voluntary charitable contributions may be collected principally from these managerial employees (or any other participating X employee) for the benefit of M, via an automatic payroll deduction system. X will not reimburse or otherwise compensate its employees for contributions made to M, nor in any way require the making of donations or participation in the Payroll Plan a condition of employment.

X will provide each of its employees who make contributions to M through the Payroll Plan a year-end statement detailing total contributions by such employee during the year. All functions performed by X for M pursuant to the Payroll Plan are performed free of charge to M.

M's charitable distributions will not relieve X from any financial responsibilities or burdens with respect to its employees. Further, X has no legal obligation to provide the benefits or assistance to its employees that M will provide.

M has outstanding a letter ruling recognizing it as exempt from federal income taxation as a charitable organization described in section 501(c)(3), and treating it as a public charity described in section 170(b)(1)(A)(vi). Donors and contributors may rely upon this determination, as provided in the conditions of the exemption ruling. That charitable donations collected from employees in the form of payroll deductions are deductible under section 170 is recognized in Rev. Rul. 54-549, 1954-2 C.B. 94.

Section 102(a) provides that gross income does not include the value of property acquired by gift. Congress amended section 102 by adding subsection 102(c), which became effective on January 1, 1987. Code section 102(c) provides that section 102(a) will not exclude from gross income any amount transferred by or for an employer to, or for the benefit of, an employee. Thus, pursuant to section 102(c), amounts transferred by or for employers to or for the benefit of employees are presumed not to be gifts.

In the present case, although the payments at issue are made to employees, such payments are not made directly by or for the employer. Instead, the payments are made by the Fund, M, which qualifies as a tax exempt public charity under section 501(c)(3). Under certain conditions, payments provided to employees through a public charity will be deemed not to have been made "by or for the employer," thus rendering section 102(c) inoperative, and allowing section 102(a) to serve as a means to exclude an otherwise includible fringe benefit in gross income.

Generally, an organization exempt under section 501(c)(3) is established and operates in such a way that payments to members of a charitable class from the organization are not made by or for an employer. Where, as here, payments are made to eligible recipients through a publicly funded charity that is not controlled by the employer, selection of the recipients is based on an objective determination of need, and the recipients are selected by an independent committee or adequate substitute procedures, it is our view that the charitable purpose is primarily being accomplished, and the employer is receiving a benefit that is not more than insubstantial.

In this case, we have concluded that the payments made to eligible recipients by M, consistent with that Fund's exempt status under section 501(c)(3), are gifts to the recipients under section 102(a), and, therefore, are not includible in gross income and are not subject to employment taxes. Accordingly, based on the information and representations furnished by the taxpayer and M, the following rulings are provided:

(1) Contributions made to M, the Fund, by X employees via the Payroll Plan described will qualify as "charitable contributions" made by the contributing employees within the meaning of section 170 of the Code;

(2) X's involvement in the Payroll Plan will not cause X to have taxable income in respect of its receipt and temporary custody of any contributions made to M by X's employees;

(3) The recipient of a grant or loan from M under the described program will not have taxable income in respect of such grant or loan; and

(4) Grants or loans made by M to X employees are not subject to information reporting, withholding, or other employment -related taxes under sections 3101 through 3510 of the Code.

This letter ruling is based on the facts and representations provided by X and M, and is limited to the matters specifically addressed. No opinion is expressed as to the tax treatment of the transactions considered herein under the provisions of any other sections of the Code or regulations which may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from, such transactions which are not specifically addressed herein.

Temporary or Final Regulations pertaining to one or more of the issues

addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by adoption of final regulations, to the extent the regulations are inconsistent with any conclusions in this ruling. See section 12.04 of Rev. Proc. 2002-1, 2001-1 I.R.B. 7, at 49. However, when the criteria in section 12.05 of Rev. Proc. 2002-1, are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

Because it could help resolve possible federal tax issues, a copy of this letter ruling should be maintained with X's permanent records.

Pursuant to a power of attorney currently on file with this office, copies of this letter are being sent to X's designated authorized representatives. Copies are also being furnished to the taxpayer's appropriate IRS Industry Director.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely yours,

Associate Chief Counsel
(Income Tax & Accounting)

/s/ William A. Jackson

By_____
WILLIAM A. JACKSON
Chief, Branch 5

Enclosures:
Copy of this letter
Copy for section 6110 purposes