



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Contact Person:

Identification Number:

Telephone Number:

Fax Number:

Employer Identification Number:

Legend:

A =

B =

Date 1 =

Date 2 =

Date 3 =

X =

Dear :

We have considered your letter dated July 31, 2008, in which you request a ruling as to whether the disposition of certain property owned by A would affect A's status as an organization described in section 501(c)(3) of the Internal Revenue Code (the "Code").

Facts

A is organized as a nonprofit corporation under state law. A's Articles of Incorporation, filed on Date 1, provide that A is organized exclusively for charitable and educational purposes, and that, upon the dissolution of A, its assets will be distributed for exempt purposes within the meaning of section 501(c)(3) of the Code, or to the federal government, or to a state or local government, for a public purpose.

On or about Date 2, A filed an Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (Form 1023) with the Internal Revenue Service (the "Service"). The activities and operational information submitted with the Form 1023 featured prominently that, in addition to making scholarship grants for higher education, A would construct a baseball stadium (the "Property"), enter into lease arrangements with B, the owner of a minor league professional baseball team, and use a portion of the rent collected to provide "educational college scholarships to qualified recipients who live in the surrounding area." It was further noted that A intended to use the Property to conduct baseball and softball instructional seminars for local children, and that the stadium would also be used by a local public college, local high

schools, and youth baseball and softball teams, and be made available for use by the public for local community events.

On Date 3, the Service determined that A is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3). The determination was made after A agreed to alter the composition of its Board of Directors so that the Board would be controlled by government officials. It is your understanding that the Service's determination was based, in part, on finding A's activities charitable in the sense of "lessening the burdens of government" within the meaning of section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations (the "regulations").

The baseball stadium has been constructed and has been operated by A for a number of years. You state that the Property has been used consistent with A's intentions and representations to the Service.

A and B have negotiated a set of agreements granting B an option to purchase the Property. You represented that the purchase price to be paid by B in consideration for the Property is to constitute the fair market value of the Property as determined by a "qualified appraisal." The agreements were negotiated at arm's-length between A and B, each of which was represented by independent counsel during the negotiation and documentation process.

A's Board of Directors has determined that if the transactions contemplated by the agreements with B are consummated and the net proceeds from the sale of the Property together with A's other assets are sufficient, A will be in the position to focus its operations and activities exclusively on the funding and administration of its scholarship grant-making activities. Alternatively, if the net proceeds from the contemplated sale of the Property, when added to A's other assets, are insufficient to conduct a meaningful scholarship grant-making program, it would be the intention of the Board of Directors to liquidate and dissolve A in a manner consistent with A's articles of incorporation and state law.

A's scholarship grant-making program is open to all high school seniors residing in A's local three-county area. Applicants must have a 3.0 or better cumulative grade point average on a 4.0 scale and must be planning to continue education beyond high school in an accredited institution of higher education or trade/technical school. The scholarship awards committee considers academic achievement, financial need, community service, leadership, special talents and accomplishments and the student's essay explaining "how [I] would benefit from a[n] A scholarship" as criteria for purposes of awarding scholarships. A panel of three judges, each of whom is a well-known and respected member and leader of the community selects the recipients from the pool of eligible candidates based on the number of scholarships then available. Each scholarship award recipient receives \$x. Scholarships may be used for tuition, books, and other academic costs, or for room and board, but only if the student's housing is under the control of the institution. Since the inception of the scholarship program, A has awarded over \$80x in scholarships.

The agreement to sell the Property to B is expressly conditioned upon A's receipt from the Service of a ruling favorable to the ruling requested below.

Ruling Requested

You have requested the following ruling:

The disposition of the Property and A's discontinuance of its activities relating to the operation of the Property will not cause A to fail to satisfy the requirements for qualification as an organization described in section 501(c)(3) of the Internal Revenue Code, because A's continued conduct of its scholarship grant-making program will permit A to continue to qualify as an organization that is organized and operated exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Code.

Law

Section 501(a) of the Code provides that organizations described in subsection (c) shall be exempt from federal income taxation.

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable, religious, educational, and other specified exempt purposes.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that to be exempt as an organization described in section 501(c)(3) of the Code an organization must be both organized and operated exclusively for purposes specified in said section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations 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) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1) of the regulations provides that an organization may be exempt as an organization described in section 501(c)(3) of the Code if it is organized and operated exclusively for charitable or educational purposes, among others.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in its generally accepted legal sense and, therefore, includes the advancement of education.

Rev. Rul. 69-257, 1969-1 C.B. 151, concerns an organization formed and operated to award scholarships to students for educational studies in institutions of higher learning. The recipients are selected from a broad class of applicants on the basis of scholastic standing only. The organization is supported by grants and contributions. The ruling states that a trust for educational purposes is charitable although the persons to be educated are not limited to the poor. Therefore, the fact that recipients of the scholarships are selected on the basis of scholastic ability without regard to financial need does not preclude exemption under section 501(c)(3) of the Code. Accordingly, the ruling holds that the organization is exempt from federal income tax under section 501(c)(3).

Analysis

A is organized exclusively for charitable and educational purposes, i.e., for purposes specified in section 501(c)(3) of the Code.

On Date 3, the Service recognized A as an organization described in section 501(c)(3) of the Code based on A's representations that its activities would include (i) the making of scholarship grants for higher education; and (ii) the construction, operation, and lease of a baseball stadium, the rents from which would be used, in part, to fund the scholarship grants. A now proposes to sell the stadium and use the proceeds to continue to fund scholarship grants.

The law of charity has long recognized that organizations advancing education further charitable purposes. See Restatement (Third) of Trusts, sec. 28 cmt. h (2010) ("A trust for the advancement of knowledge or education is charitable"). According to section 1.501(c)(3)-1(d)(2) of the regulations, the term "charitable" includes the advancement of education. Providing scholarships to students for higher education is one means by which an organization may engage in the advancement of education. See Restatement (Third) of Trusts, sec. 28 cmt. h (2010) ("Trusts for the promotion of education include trusts ... to establish scholarships...."). Rev. Rul. 69-257, 1969-1 C.B. 151, states that an organization providing scholarships to students for educational studies in institutions of higher learning is charitable, and qualifies for exemption under section 501(c)(3) of the Code, if recipients are selected from a broad class of applicants on the basis of scholastic standing.

After A disposes of the Property, it will continue to provide scholarships in a manner similar to that of the organization described in Rev. Rul. 69-257. Scholarship recipients will be selected from a broad class of applicants open to all high school seniors residing in A's tri-county area. Selection will be based on numerous factors including scholastic achievement, financial need, community service, leadership, and special accomplishments. Consequently, like the organization described in Rev. Rul. 69-257, A, in conducting a meaningful scholarship grant-making program as its sole activity, would be advancing education within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations and would, therefore, be engaged primarily in activities which accomplish a charitable purpose, i.e., a purpose specified in section 501(c)(3). Therefore, under section 1.501(c)(3)-1(c)(1), A would be regarded as "operated exclusively" for exempt purposes. Consequently, since A would continue to be organized and operated exclusively for charitable purposes after disposing of the Property, section 1.501(c)(3)-1(d)(1) tells us that A would continue to qualify for exemption as an organization described in section 501(c)(3) of the Code.

Conclusion

Accordingly, based on the information submitted we rule as follows:

The disposition of the Property by A, and A's discontinuance of its activities relating to the operation of the Property, will not cause A to fail to satisfy the requirements for qualification as an organization described in section 501(c)(3) of the Code because A's continued conduct of its scholarship grant-making program will permit A to continue to qualify as an organization that is organized and operated exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Laurice A. Ghougasian
Acting Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437