

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

AUG 13 2013

Number: 201344009
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Internal Revenue Service
Attn: EO Mandatory Review
MC 4920 DAL
1100 Commerce Street
Dallas, TX 75242

Taxpayer's Name:

Taxpayer's Address:

UIL: 9999.98-00

Taxpayer's Identification Number:

Year(s) Involved:

Date of Conference:

LEGEND:

M =
State =
County =
City =
N =
O =
P =
Date =
Year 1 =
Year 2 =
Year 3 =

This memorandum responds to a request dated March 9, 2007, from TEGE Exempt Organizations Examinations for technical advice on the issues as presented below. Our findings are set forth below.

ISSUE:

Whether M is a charitable organization as described in § 501(c)(3) of the Internal Revenue Code.

FACTS:

M is a not-for-profit organization formed under the laws of State in Year 1. In Year 2, M was recognized as exempt from federal income tax under § 501(c)(3), as a public charity described in §§ 509(a)(1) and 170(b)(1)(A)(vi).

M's Articles of Incorporation state that M's purposes, in part, are to provide County with cultural and educational programs throughout the year, and to provide winter instruction in ice hockey, skating and other related sports, and provide ice hockey and skating facilities for City High School, a State college, and the general public in the County region.

M's bylaws, in effect during the years under examination, state that M's purposes are to provide the region with cultural and educational programs throughout the year. The bylaws also state that M will provide instruction in ice hockey and other related sports, including ice hockey facilities for City High School, a State college, and the general public in the County region.

M states that it was organized after a privately owned ice hockey facility closed in the City area, leaving the area with no ice hockey facilities. M was formed by volunteers supportive of youth and adult ice hockey and other recreational ice hockey leagues in the City area. M states that during its existence, it has worked closely with County to provide recreational ice hockey in the region. M initially operated a "bubble" ice rink on land owned by County, but that rink was eventually destroyed.

County then partnered with M to build a new ice hockey facility, N, on the same County-owned land in Year 3. M paid for the construction of N mostly by a bond issuance, but also used contributions and a surplus that M accumulated from operating the previous ice hockey facility on the same property. N was owned by County, but operated by M under a 15-year lease. The lease provided that M operate and manage N for 6 months each year, and pay rent for the facility, a portion of which would go toward paying off the bonds. M states that it and County shared the operating costs of and revenues from N. M was obligated by the lease to maintain certain specifically named facilities that were part of N, and shared with County the cost of maintaining certain machinery necessary for operating the ice rink facility.

Due to insufficient capacity at N, County began to examine whether a new ice hockey facility was needed to meet the increased demand for ice hockey and skating in the area. County hired a private consulting firm for this purpose. After County determined a new ice hockey facility was needed, M began construction of its own ice hockey facility, P, in a nearby County township, O, located on property donated by two local individuals. The Economic Development Corporation of County issued bonds, and loaned the proceeds of the bond to M to help finance the facility. M also contributed funds for construction of the facility which came from contributions and surplus operations from N.

P was constructed under a zoning classification with the only permitted use being ice hockey and skating-related recreational activity. P is an ice hockey and skating facility with two professional sized ice rinks, and also includes other related amenities, such as lockers, changing rooms, and a storage area. N has one ice rink. The workers at M's facilities include both volunteers and paid employees. The closest ice rink facilities that are similar to N and P are located in other counties of State, and include facilities owned and operated by tax-exempt organizations and local municipal governments.

Both N and P are used by three youth and adult ice hockey associations and figure skating clubs, all of which are open to anyone in the community to join. Two of these groups are recognized by the IRS as tax-exempt and have provided financial assistance for low-income individuals and families in a hardship situation when needed in the past. The third group, which is the adult ice hockey association, is not a tax-exempt organization, but is a non-profit entity. While M itself does not directly educate the children and adults in the skating activities done on

the facilities, it does support the groups using the facilities to enable the instruction by providing and maintaining the ice rinks.

P is also available to the public for open public skate on an average of four hours every day. The cost to skate during these open skate sessions for the years under exam is approximately \$ to \$ per person. The cost for the drop-in hockey sessions is \$ per person.

M's hourly rates and open skate fees for its facilities are at or below the average hourly rates and fees for similar ice rink facilities in its region, including the facilities run by other counties, and the fees are all used to cover the cost of operating the facility. M does not sell membership privileges to the rink. Instead, the most significant sources of income for M were from hourly fees to rent the ice rink, primarily from the three youth and adult hockey and skating groups that use the facility. M states that City high schools, both public and private, use its facilities for their hockey programs. Various junior high schools and elementary schools in the area also conduct physical education classes at P. M charges an admission fee of \$ per student for each physical education class at P, but waives the fee if a student is unable to pay. M does not charge the schools any additional fees to use the rink for physical education classes.

Furthermore, during the years under exam, M donated significant ice time to various tax-exempt organizations in the community for their use of the facilities.

LAW:

Section 501(c)(3) provides for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable, educational, or other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax 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 exempt purposes under § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of any exempt purposes.

Section 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in § 501(c)(3) in its generally accepted legal sense and includes the promotion of social welfare through the relief of the poor and distressed or of the underprivileged, advancement of education, erection or maintenance of public buildings, monuments, or works, lessening the burdens of government, and the promotion of social welfare by organizations designed to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(d)(3) defines "educational" as including the instruction or training of the individual for the purpose of improving or developing his capabilities.

Rev. Rul. 59-310, 1959-2 C.B. 146, describes an organization organized for the purpose of establishing, maintaining, and operating a public swimming pool, playground, and other recreation facilities for the children and other residents of a particular community, which included low income groups. The funds of the association are raised by public subscription with the exception of small amounts derived from nominal charges made for admission to the swimming pool. Funds are used to pay for the cost of construction of facilities and for operating expenses. The revenue ruling concludes that since the property and its uses are dedicated to

members of the general public in the community and are charitable in that they serve a generally recognized public purpose, the organization is exclusively charitable within the meaning of § 501(c)(3) and is entitled to exemption from Federal income tax under § 501(c)(3). This ruling is the acquiescence by the Service in the holding in Isabel Peters v. Commissioner, 21 T.C. 55 (described below), which action replaced a previous nonacquiescence, C.B. 1955-1, 8.

Rev. Rul. 65-2, 1965-1 C.B. 227, holds that an organization that teaches children a particular sport by holding clinics in schools, playgrounds, and parks and provides free instruction, equipment, and facilities, qualifies for exemption under § 501(c)(3). The revenue procedure further states that in addition to furnishing its instruction, equipment, and facilities free of charge to children of the community, the organization is serving a recognized public purpose in combatting juvenile delinquency.

Rev. Rul. 67-325, 1967-2 C.B. 113, provides that a community recreational facility open to the community as a whole by an organization, under certain circumstances, is within the general category of activities recognized as charitable under § 501(c)(3).

Rev. Rul. 69-545, 1969-2 C.B. 117, acknowledges that the promotion of health is a charitable purpose and that promoting the health of a general community constitutes a sufficient basis for tax-exemption. It also provides that a tax-exempt hospital is not required to care for patients without charge or at rates below cost, so long as it is promoting the health of the community.

Rev. Rul. 79-360, 1979-2 C.B. 237, describes the operation of health club facilities by an organization exempt under § 501(c)(3). The purpose of the organization and basis for its exemption as a charitable organization is to provide for the welfare of young people by the conduct of charitable activities and maintenance of services and facilities that will contribute to their physical, social, mental, and spiritual health, at a minimum cost to them or, where appropriate, at no cost to them. Membership in, and the services and facilities of, the organization are available upon payment of nominal annual dues. The organization has recreational facilities that are used in its general physical fitness program, including a track, gymnasium, swimming pool, and courts for racquet ball, handball, and squash. Members use these facilities as often as they wish. The organization also organized a health club program that its members may join for an advance annual fee that is sufficiently high to restrict participation in the program to a limited number of the members of the community. The annual fee is comparable to fees charged by similar local commercial health clubs. The advance annual fee is in addition to the nominal annual dues for membership in the organization. Health club facilities include an exercise room, whirlpool, steam room, sauna, massage facilities, and a sun room. Those who are not health club members pay admission fees comparable to fees charged by similar local commercial establishments for each time they use any of the health club facilities. Because the commercially comparable annual dues or daily fees charged under the facts of these circumstances are sufficiently high to restrict the health club's use to a limited number of the members of the community, the operation of the health club does not benefit the community in general and does not contribute to the accomplishment of the organization's exempt purpose. For this reason, the ruling holds that the operation of the health club facilities portion of the organization, under the circumstances described, is an unrelated trade or business within the meaning of § 513.

In the case of Isabel Peters v. Commissioner, 21 T.C. 55 (1953), the Tax Court held that providing convenient swimming and recreational facilities for all persons residing in a particular school district was "charitable" within the meaning of § 101(6) of the Internal Revenue Code of

1939 (which corresponds to § 501(c)(3) of the 1954 Code). The stated purpose of the foundation is to "establish, equip, maintain and operate a public beach, playground and bathing facilities for the children and other residents of Cold Spring Harbor School District Number 8."

ANALYSIS:

The operation of a community recreational facility may be considered "charitable" within the meaning of § 1.501(c)(3)-1(d)(2) of the regulations if the facilities are available to the general community. Rev. Rul. 67-325, 1967-2 C.B. 113. Where the fees are sufficiently high enough, however, to restrict the use of the facilities to a limited number of the members of the community, the operation of the facility does not accomplish its exempt purpose and is not considered charitable. Rev. Rul. 79-360, 1979-2 C.B. 236.

M's primary activity is to provide recreational ice rinks that are available to the general community. M makes these rinks available to the community in several different aspects.

- The rink at P has an open public skate period for an average of 4 hours each day, during which time it is open to the entire community. The cost for this open skate is approximately \$ to \$ per person.
- M makes the rinks available to several local junior high schools and elementary schools to conduct their physical education classes, and to several local high schools for their hockey programs. M charges \$ per student for each physical education class at P. If a student is unable to pay the admission fee, the student is still allowed to attend the class.
- The ice rinks at N and P are open to three different youth and adult hockey associations and figure skating clubs. Two of these groups are tax-exempt organizations, and all of the groups are open to all members of the community to join. M rents the rinks to these groups on an hourly group rate. The hourly rate for the facilities is at or below the average hourly rate for similar facilities that are operated in other counties in M's region.
- Finally, M donated free of charge significant ice time to various other tax-exempt organizations in the local community for their activities.

M's use of the ice rink facilities is similar to those activities conducted in Rev. Rul. 59-310, in which an organization operated and maintained a public swimming pool, playground, and other recreational facilities. The organization in that revenue ruling charged a nominal admission charge for the use of the swimming facilities. The revenue ruling concluded that the facility and its uses were dedicated to members of the general public in the community and were exclusively charitable within the meaning of § 501(c)(3). Similarly, Rev. Rul. 69-545 provided that a hospital was operating in furtherance of its charitable purpose of promoting health, even though it charged fees for its services and did not care for patients without charge or at rates below cost.

The Tax Court held in Isabel Peters v. Commissioner, 21 T.C. 55 (1953), that contributions to the foundation in that case were tax deductible. The purpose of the foundation was charitable because it provided convenient swimming and recreation facilities for all persons living in that community. M likewise makes its rink facilities available to the general community. Anyone in the community is allowed to attend the open skate sessions, and the physical education classes at the rink facilities are provided to all the junior high and elementary school children enrolled in

those classes. The hockey and skating groups that use the facilities are also open to all members of the general community to join.

Furthermore, M charges nominal rates for public use of the rink facilities, with rates as low as \$ to \$ per individual for skating activities. These fees, as well as the hourly rates for community groups, cover the expenses of operating the rinks and are all at or below the fees charged by other rinks in the region, including rinks that are run by public entities. Unlike the excessive annual or daily fees that were charged to the members of the health club facility in Rev. Rul. 79-360, the nominal fees charged at N and P to use the rink facilities are significantly small enough to ensure that any member of the community would be able to use the facilities. M's provision of the facilities to the public through open skate periods, physical education classes, youth ice hockey and figure skating groups, and M's donation of ice time to various charities, establishes that M's facilities and programs are available to, and affordable by, a significant segment of the general population or community. Accordingly, M's activities are "charitable" as defined in § 1.501(c)(3)-1(d)(2).

M's dedication of its rink facilities to use by and education of youth is similar to the activity in Rev. Rul. 65-2, in which an organization teaches children to play a particular sport. The revenue ruling concluded that not only was the organization educational, but it also served a recognized public purpose in combatting juvenile delinquency. The facilities provided by M also service a wide range of children in the area through youth ice hockey associations and figure skating clubs, physical education classes, and open skate periods. While M does not directly educate children in hockey or figure skating, as was done by the organization in Rev. Rul. 65-2, M does provide and maintain the rink and facilities necessary to give the children the opportunity to learn and participate in those sports. Without M, the children would not have a location in their community to learn and participate in hockey and skating. Accordingly, the fact that M provides ice rink facilities in the community combats community deterioration and juvenile delinquency.

CONCLUSION:

M continues to be an organization described in § 501(c)(3).

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 resolved questions concerning your federal income tax status, this ruling should be kept in your permanent records.

A copy of this memorandum is to be given to M. Section 6110(k)(3) provides that it may not be used or cited as precedent.

- END -