Internal Revenue Service
P. O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Number: **201620016**
Release Date: 5/13/2016

Employer Identification Number:

Person to Contact - ID#:

Contact Telephone Numbers:

Date: February 17, 2016

LEGEND:

UIL: 509.02-01

B = Grantor
C = Grantor
D = Grantor
E = Corporation
x dollars = Amount
y dollars = Amount
z dollars = Amount

Dear :

We have considered your October 8, 2015, request for recognition of an unusual grant under Treasury Regulations section 1.170A-9(f)(6)(ii) and related provisions.

Based on the information provided, we have concluded that the proposed grant constitutes an unusual grant under section 1.170A-9(f)(6)(ii) and related provisions of the regulations. The basis for our conclusion is set forth below.

Facts:

You are a nonprofit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 and classified as a public charity under Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. You have carried on a program of public solicitation and exempt activities for 30 years and you expect to attract a significant amount of public support in the future. You fully anticipate that you will meet the one-third support test in the year preceding the year that the grant will be made without the benefit of exclusions of any unusual grants. You are entirely funded by contributions from E employees and you donate the contributions charities that are exempt under section 501(c)(3) of the Code. Your board of directors is made up of a group of diverse individuals with an array of expertise in their respective career fields.

The Co-Trustees of grantors B, C, and D, desire to engage in a bargain sale with you where you will receive shares of non-voting stock of E that will represent approximately thirty percent (30%) of the total value of all issued and outstanding shares of E stock. The shares of stock have an estimated value of y dollars. These shares will be sold to you in exchange for a promissory note in the principal amount of z dollars having a 20 year term and bearing interest at a rate greater than or equal to the long term applicable federal rate in effect for the month in which the promissory note is issued. The promissory note will require interest payments to be made at least annually but will not require any principal payments until the maturity date of the note. This sale will result in a charitable gift to you of approximately x dollars. The grant will assist you in furthering your tax-exempt purposes and enable you to expand your charitable initiatives. The grant will be made to you as an inter vivos transfer in the sense that the grantors' existence will not terminate after the grant is made. However, you compare the grant to a bequest because it is a one-time transfer of funds to you and no other grants are expected to be made.

The only conditions prior to receipt of the grant are that the grant is classified as an unusual grant, that you continue to be exempt under section 501(c)(3) of the Code and classified as a public charity under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code, and written approval of the grant be provided by the beneficiaries. Additionally, the grantors will have previously entered into a shareholders agreement in which provides E and the non-selling shareholders a right of first refusal upon any sale of stock. However, the grantors will not have any input with respect to whether the right is exercised since the grantors nor any other disqualified person with respect to the grantors will have control over E or you.

Due to its size, the grant will adversely affect your status as normally being publicly supported under section 170(b)(1)(A)(vi) for the applicable period. You state the grant is unusual and unexpected as the grantors have made no previous grants to you and have no intention of making future grants. The grantors did not create you and are not in a position of authority as a foundation manager or otherwise with respect to you or at any point during your existence. Neither the grantors nor any disqualified person with respect to the grantors have exercised, do exercise, or will exercise direct or indirect control over you. Additionally, the grant is not being made by anyone standing in a relationship to the grantors which is described in sections 4946(a)(1)(C) through 4946(a)(1)(G) of the Code.

Law:

Treasury Regulations sections 1.170A-9(f)(6)(ii) and 1.509(a)-3(c)(4) set forth the criteria for an unusual grant.

Treasury Regulations section 1.170A-9(f)(6)(ii) states that, for purposes of applying the 2-percent limitation to determine whether the 33 1/3 percent-of-support test is satisfied, 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 Regulations section 1.509(a)-3(c)(4) 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 section 4946(b)
d. directly or indirectly exercised control over the organization, or
e. was in a relationship described in Internal Revenue Code 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 a. - 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 section 1.509(a)-3(a)(2) without the benefit of any exclusions of unusual grants pursuant to section 1.509-3(c)(3);

- Whether the organization has a representative governing body as described in Treasury Regulations section 1.509(a)-3(d)(3)(i); and

- Whether material restrictions or conditions within the meaning of Treasury Regulations section 1.507-2(a)(7) have been imposed by the transferor upon the transferee in connection with such transfer.

Application of Law:

The grant meets the requirements of Treasury Regulations section 1.170A-9(f)(6)(ii) because the grant is from a disinterested party, and:

- The grant was attracted by reason of your publicly supported nature
- The grant is unusual or unexpected with respect to the amount

- The grant will adversely affect your status as normally being publicly supported

The grant meets the requirements of Treasury Regulations section 1.509(a)-3(c)(4) based on the following facts and circumstances.

- The grantors are a disinterested party in that:
    a. B, C and D did not create you
    b. B, C and D have not previously contributed a substantial part of your support or endowment
    c. B, C and D do not stand in a position of authority with respect to you
    d. B, C and D do not directly or indirectly exercise control over you
    e. B, C and D were not in a relationship described in Internal Revenue Code section 4946(a)(1)(c) through 4946(a)(1)(G) with someone listed in items a, b, c or d above

- The grant is similar to an inter vivos transfer resulting from a bargain sale of marketable securities. This notice cannot rule on the bargain sale transaction. However, the transfer via bargain sale is a one-time transaction to you before which and after which no additional grants are expected to be made by the grantors to you.

- The grant will consist of non-voting shares of E and will enable you to expand your charitable activities.

- You have carried on an actual program of public solicitation and exempt activities for many years and you have been able to attract a significant amount of public support.

- You expect to attract a significant amount of public support after the grant.

- Prior to the year in which the contribution will be received, you expect to meet the one-third support test described in section 1.509(a)-3(a)(2) without the benefit of any exclusions of unusual grants pursuant to section 1.509-3(c)(3).

- You have a representative governing body as described in Treasury Regulations section 1.509(a)-3(d)(3)(i). Your board of directors is comprised of individuals with an array of expertise in their respective career fields that ensure the board has sufficient diversity and is well governed.

- No material restrictions or conditions within the meaning of Treasury Regulations section 1.507-2(a)(7) have been imposed by the transferor upon the transferee in connection with such transfer.

For all the forgoing reasons, the grant should be characterized as an unusual grant within the meaning of Treasury Regulations section 1.509(a)-3(c)(4).

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person listed in the heading of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements