

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

Department of the Treasury

Number: **201909015**
Release Date: 3/1/2019

Employer Identification Number:

Date: December 4, 2018

Person to Contact - ID#:

Contact Telephone Number:

LEGEND:

UIL: 509.02-01

B = State
C = Year
D = Organization
x dollars = Amount

Dear :

We have considered your May 11, 2018 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 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 were formed in the State of B in C. You are classified as a public charity under Sections 509(a)(1) and 170(b)(1)(A)(vi). You support programs in the areas of aging, child and family development, education, health, etc. Your staff operates your direct charitable programming and your grant-making to other non-profit organizations. You have a continuous program to solicit contributions from the general public. You assert that you have consistently met the public support test. Your board of trustees are leaders of the community and are from the general public.

You are asking for advance approval of an unusual grant in the amount of x dollars. The grant will come from D in the form of cash, marketable securities, venture capital, and private equity investments. The transfer is the result of A merger between you and D. You will be the surviving organization. The grant is unusual because D will cease to exist after the merger. As part of the merger, D will not impose any restrictions or conditions on you or on the use of the funds being transferred.

Until the merger, you were a supported organization of D. You were not controlled by D, but you exercised control over D as their sole member. As a supporting organization, D made

contributions to you over the years. The past contributions were much smaller compared to this one-time transfer as a result of the merger.

Law:

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

Treasury Regulation 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 Regulation 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 Regulation Section 1.509(a)-3(d)(3)(i); and
- Whether material restrictions or conditions within the meaning of Treasury Regulation 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 Regulation Section 1.170A-9(f)(6)(ii). The size and method of contribution is unusual compared to your typical level of support. The grant will adversely affect your status as normally being publicly supported.

The grant meets the requirements of Treasury Regulation Section 1.509(a)-3(c)(4) based on the following facts and circumstances:

- The grantor does not stand in a position of authority with respect to you and does not exercise control over you
- Prior contributions from D as a supporting organization were not a substantial part of your support and you have previously been able to meet the public support test including the contributions from D
- The transfer from D is a terminating distribution because of their merger with you and is a one-time occurrence
- You have carried on an actual program of public solicitation, have exempt activities, and have attracted a significant amount of public support over the years
- The transfer of assets consists of cash and other investments
- You have met the public support test in past years
- Because you have relied on public support in the past, it can be assumed that you will be able to maintain that level of public support in the future, and

- You have a large representative governing body.

In addition, no material restrictions or conditions within the meaning of Treasury Regulation Section 1.507-2(a)(7) have been imposed by the transferor upon the transferee in connection with such transfer.

For all of the forgoing reasons, the grant should be characterized as an unusual grant within the meaning of Treasury Regulation 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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements