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October 20, 1999

Legend

College =
W =
X =
Y =
Z =
$a =
$b =
$c =

Dear :

This is in reply to your ruling request, dated June 14, 1999, on behalf of College. This request was supplemented with additional information dated August 10, 1999, September 28, 1999, and October 19, 1999.

ISSUE

Whether contributions to College are deductible under § 170 of the Internal Revenue Code where College plans, but is not obligated, to use the contributions to build new fraternity houses as part of its policy of providing adequate student housing.

CONCLUSION

Contributions to College under the represented facts are deductible under § 170 where College plans, but is not obligated, to use the contributions to build new fraternity houses as part of its policy of providing adequate student housing, subject to the usual rules of § 170 including percentage limitations and substantiation requirements for any contribution of $250 or more.

FACTS

College is a non-profit corporation organized and operated exclusively for educational purposes. College is exempt from Federal income taxation under § 501(c)(3) and is not a private foundation within the meaning of § 509(a). College is an organization described in § 170(c)(2). College has an enrollment of approximately W full-time students. Approximately X of those students live in student housing furnished by College, Y live in fraternity houses, and the remainder live in private residences in the surrounding area.

There are several fraternities chartered at College with a total membership of approximately Z students. Each of the fraternities is based in a separate fraternity house, all of which are located on real property owned by College. Each fraternity leases the land on which its fraternity house is located pursuant to a land lease agreement with College. The fraternity houses themselves are owned by the separate fraternities.

Over the past several years, the physical condition of the fraternity houses has declined to such an extent that College has concluded that the present structures do not measure up to the standards established by College for safe and proper student housing. In order to modernize and provide additional housing for its students, College's Board of Trustees has decided that College should undertake a fund-raising drive to help defray the costs of constructing new housing for College students who are fraternity members.

College plans to undertake a program under which it will construct new housing for each fraternity that elects to participate in the program. College estimates that the cost to construct each of the new fraternity houses will be approximately $a. College will pay to participating fraternities the appraised fair market value of their existing fraternity houses in consideration for the early termination of their respective land lease agreements. College estimates that each fraternity's equity (fair market value less mortgage) in its existing fraternity house ranges from approximately $b - $c. College then will construct new housing for each participating fraternity at a new site on College's campus. Participating fraternities are required to contribute the amount received for termination of their respective land leases, after satisfying any mortgage, to the cost of the construction of their new houses.

College will conduct the fund-raising drive to reduce the costs of building the new fraternity houses. None of the contributions to College made pursuant to the fund-raising drive will be used by College to pay to participating fraternities the appraised fair market value of their existing fraternity houses. In the event the fund-raising drive does not generate the support necessary to defray all of the costs of the new fraternity houses, College will commit separate assets from its general fund to defray such costs based on its belief that it will be able to replenish such assets from sources such as other unrestricted contributions or gifts to College and room rentals with respect to the houses of the participating fraternities.

Each participating fraternity ultimately will be provided comparable accommodations. College will control and determine the amounts spent on the house of a participating fraternity, as well as the size, character, and architecture of the accommodations. College will be responsible for hiring architects, engineers, consultants, and contractors for any renovations and will be responsible for all interim financing. The program will be consistent with College's policy with respect to student housing other than fraternity housing.

Contributors will have the opportunity to express a preference that their contributions be used to construct the house of a specific participating fraternity. College will keep records permitting it to account separately for funds contributed that are the subject of contributor preferences. Contributors will be informed that College will attempt to honor their preferences. Contributors also will be informed that College will not be obligated to honor those preferences, that such a preference will not restrict or limit College's full ownership rights in the contributions, and that College will be able to use the contributions for any purpose. The contributions will be expended only by College.

College and the participating fraternities will enter into written lease agreements under which College will lease the fraternity houses to the participating fraternities for an initial term of five years. Those leases shall be automatically renewed for not more than six successive five-year terms, unless notice is given by either party. Either party may terminate the lease upon eighteen months prior written notice to the other party, provided that the party wishing to terminate the lease is not otherwise in default under any terms of the lease agreement. Upon such termination, neither party will have any further obligations other than those already accrued. In addition, College will have the right to terminate a lease if a participating fraternity is in default of its obligations under the lease agreement.

Under the terms of the lease, the rental rate for the fraternity houses will be adjusted annually and will be based on a rate per occupant that will be the same as the rental rate that College charges other students for comparable student housing (the "prevailing rate"). The lease will set forth the number of students that each fraternity house will accommodate (the "occupancy number"). Rental amounts will be a function of each participating fraternity's occupancy number and the prevailing rate.

The occupants of the fraternity houses will be subject to all College rules and regulations regarding student housing. Members of each participating fraternity, however, will have the exclusive right to occupy and use their respective fraternity houses.

Upon termination of the participating fraternity's lease, College will pay to the participating fraternity their equity amount existing at such time. The equity amount will be calculated by dividing the amount contributed by the fraternity to the cost of the new fraternity house, by the final cost of the new fraternity house, then multiplying the quotient by the fair market value of the fraternity house at the time of the termination of the lease.

LAW

Section 170(a)(1) allows as a deduction, subject to certain limitations and exceptions, any charitable contribution, as defined in subsection (c), payment of which is made within the taxable year.

Section 170(c) defines a charitable contribution as a contribution or gift to or for the use of certain organizations meeting specific criteria, including an educational organization.

Section 170(f)(8) disallows a deduction for a charitable contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of § 170(f)(8)(B). Section 170(f)(8)(B) requires that the acknowledgment include the following information: the amount of cash and a description (but not the value) of any property other than cash contributed, whether the donee organization provided any goods or services in consideration, in whole or in apart, for any property contributed, and a description and good faith estimate of the value of any goods or services provided or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

Revenue Ruling 69-573, 1969-2 C.B. 125, holds that a college fraternity that maintains a chapter house for active student members is exempt from federal income taxation under § 501(c)(7), rather than § 501(c)(3). Therefore, contributions to the fraternity are not deductible under § 170.

Revenue Ruling 60-367, 1960-2 C.B. 73, holds that contributions made to a college through a fund raising program for the purpose of acquiring or constructing a housing facility for use by a designated fraternity are deductible under § 170. The college owns the houses and rents the dwellings to fraternity groups on short-term leases at rates closely comparable to the rentals charged by the college for similar housing facilities. Although donors are permitted to designate a particular fraternity, the only practical benefit of the designation is that a specific chapter house might be finished ahead of the others. The funds are not used for improvements on structures owned by anyone other than the college.

Rev. Rul. 60-367 further states that in order for the gift to be deductible, it must be in reality a gift to the college and not a gift to the fraternity by using the college as a conduit. The college must have the attributes of ownership in respect of the donated property, and its rights as an owner must not, as a condition of the gift, be limited by conditions or restrictions which in effect make a private group the beneficiary of the donated property. In addition, the revenue ruling states that the college should, as an owner, be free to use the property acquired with the gift as its future policy suggests or requires.

ANALYSIS

In the present case, College has determined that, as part of its policy of providing safe and proper housing for its students, College should conduct a fund-raising drive to fund a program to build new housing for College students who are fraternity members. To the extent the fund-raising drive does not generate the support necessary to defray all the costs of the program, College will commit separate assets from its general fund to defray such costs. Thus, College has committed itself to providing appropriate housing for all fraternity members.

College will own the new fraternity houses and lease them to the participating fraternities pursuant to five-year renewable leases. The rental rate for the fraternity houses will be adjusted annually during the term of the lease, and will be based on a rate per occupant that will be the same as the rental rate that College charges other students for comparable student housing. Thus, the rental rates charged by College for the fraternity housing will be closely comparable to rates charged by College for similar housing facilities.

College’s right to terminate the lease at any time upon giving eighteen months notice causes the leases to be substantially similar to the short-term leases considered in Rev. Rul. 60-367. If it exercises its right to terminate the lease upon giving eighteen months notice, College shall have no further obligations with respect to the fraternity house, except for obligations already accrued under the lease. Thus, College will be able to use the fraternity houses as its future policy suggests or requires.

College will control and determine the amounts spent on each fraternity house, as well as the size, character, and architecture of the accommodations. College will accept contributions designated for the benefit of a particular fraternity only with the understanding that such designation will not restrict or limit College's full ownership rights in either the donated property or property acquired by use of the donated property. In addition, none of the funds raised will be expended or used by any entity other than College. The contributions will be used only for property owned by College; any equity that the participating fraternities have in the new fraternity houses will be relatively small. Therefore, as in Rev. Rul. 60-367, the contributions are in reality gifts to College.

Accordingly, we conclude that contributions made to College for the purpose of building new fraternity houses will qualify for a charitable contribution deduction under § 170, subject to the limitations provided by that section. For gifts of $250 or more, the donor will have to substantiate the contribution by a contemporaneous written acknowledgment by the College that meets the requirements of § 170(f)(8)(B).

No opinion is expressed concerning the Federal income tax consequences of these contributions under any other provision of the Internal Revenue Code. A copy of this ruling should be attached to taxpayer's Federal income tax returns for the tax years affected.

This ruling is directed only to the taxpayer requesting it. Section 6110(j)(3) provides that this ruling may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Income Tax & Accounting)

By: ______________________________
Michael D. Finley
Chief, Branch 3

Enclosure:
Copy for § 6110 purposes

cc: