



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200623068**
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235806

Date: March 15, 2006

Contact Person:

Identification Number:

Telephone Number:

UIL: 507.04-00
170.07-02

Employer Identification Number:

Legend:

A =

B =

M =

N =

X =

Date a =

Date b =

Dear _____ :

This is in response to X's request for a ruling under section 507(b)(1)(B)(i) of the Internal Revenue Code.

Facts

X is an organization described in section 501(c)(3) of the Code, and classified as a private operating foundation under section 4942(j)(3). X has given notice that it intends to terminate its private foundation status, effective Date a.

A established X in the State of M for the purpose of fostering programs of agriculture, and of agricultural and environmental education to be held in and around the historic farm barn and related structures in N, M, which are consistent with the barn's and related structures' character. The Internal Revenue Service recognized X as an organization described in section 501(c)(3) of the Code and X is currently classified as a private operating foundation under section 4942(j)(3).

A Board of Directors ("Board") governs X. X has ten members on its Board. Eight of these members are from the general public, and two from A's family. The Board members from the general public include persons with appropriate legal, financial and business expertise, and

persons with local and national reputations in fields relevant to X's mission. A is a Board member and chairperson of the Board. A's daughter, B, is also a Board member, and is vice chairperson of the Board. Some of X's Board members are advisors to members of A's family. However, neither X's Certificate of Incorporation nor its Bylaws restricts the Board's membership to certain persons, and the Board is legally free to elect any person to serve as a Trustee. It is not expected that X's Board of Directors will at any time in the future become dominated by persons who are descendants or relatives of A or B. X uses a calendar year for its operations.

X has a paid staff of full-time employees. It also has an active group of volunteer docents who provide tours to visitors. X is free to visitors, and open to the public during the week. X does charge a fee for formal education programs which it presents to schools.

X's current operations consist of operating and preserving the barns as an integral part of a working farm. Through its education center, X offers diverse, interactive programs that focus on the themes of community-based farming and year-round farm-to-table agriculture. The farm includes a greenhouse, pastures, crop fields, vegetable gardens, wetlands, and livestock, and serves as a teaching laboratory for educational programming for students attending kindergarten through high school. X offers additional educational programs to the general public focused on community based farming.

X received the bulk of its early funding from annual contributions from A. A donated the land on which the farm structures and land are located to X. In addition, gifts from A provided support for the renovation of the farm structures, and the establishment of X's programs and activities. Although A continues to provide financial support to X, X also presently depends substantially on two additional sources of annual support:

(a) Contributions from foundations and individual and corporate donors, including memberships. X's membership is comprised of individuals, families, farmers, and businesses.

(b) Income from its programs and activities. X generates income from its educational programs and activities.

During and after the 60-month period that begins on Date a and ends on Date b, X expects to derive a substantial portion of its total "support", within the meaning of section 509(d) of the Code and section 1.170A-9(e)(7) of the Income Tax Regulations, in the form of gifts, grants, and contributions from the "general public," as defined in section 1.170A-9(e)(6) so as to satisfy the "facts and circumstances" test under section 1.170-9(e)(3). X states that it anticipates that during and after the 60-month period, its main sources of support will be from contributions from individual, foundation, government, and corporate donors; and income from its programs and activities. X offers five paid membership categories. X has also hired fundraisers to assist it in reaching out to new donors and attracting new members. X states that during and after the 60-month period, it anticipates substantially more than 10% of its support will normally and continually be derived from governmental units, from contributions made by a representative number of persons from the general public, or from a combination of these.

Ruling Requested

X requests the following ruling:

As contemplated by section 1.507-2(e) of the regulations, X can be expected to satisfy the requirements of section 507(b)(1)(B)(i) of the Code during the 60-month period beginning Date a under the facts and circumstances test of section 1.170A-9(e)(3) of the regulations.

Law

Section 507(b)(1)(B) of the Code provides, generally, that the status as a private foundation of any organization shall be terminated if:

- (i) The organization meets the requirements of paragraph (1), (2) or (3) of section 509(a) for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969;
- (ii) The organization notifies the Secretary before the commencement of the 60-month period that it is terminating its private foundation status; and,
- (iii) The organization establishes to the satisfaction of the Secretary immediately after the expiration of the 60-month period that it has complied with section 507(b)(1)(B)(i) of the Code.

Section 509(a)(1) of the Code provides that the term "private foundation" includes a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Section 170(b)(1)(A)(vi) of the Code describes an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public.

Section 1.170A-9(e)(3)(i) of the regulations provides that the percentage of support "normally" received by an organization from governmental units and/or from contributions made directly or indirectly by the general public must be substantial. For this purpose, such support must equal at least 10 percent of the total support normally received by the organization.

Section 1.170A-9(e)(3)(ii) of the regulations provides that an organization must be so organized and operated as to attract new and additional public or governmental support on a continuous basis. An organization will be considered to meet this requirement if it maintains a

continuous and bona fide program for solicitation of funds from the general public, community, or membership group involved, or if it carries on activities designed to attract support from

governmental units or other organizations described in section 170 (b)(1)(A)(i) through (vi) of the Code.

In addition to the requirements in 1.170A-9(e)(3)(i) and (ii) of the regulations, all pertinent facts and circumstances, including the factors in section 1.170A-9(e)(3)(iii) through (vii), are taken into consideration to determine whether an organization is publicly supported. An organization is not generally required to satisfy all of these factors. The factors relevant to each case and the weight accorded to any one of them may differ depending upon the nature and purpose of the organization and the length of time it has been in existence.

Section 1.170A-9(e)(3)(iii) of the regulations provides that the percentage of support received by an organization from public or governmental sources will be taken into consideration in determining whether an organization is publicly supported. The higher the percentage of support above the 10 percent requirement from public or governmental sources, the lesser will be the burden on the organization of establishing the publicly supported nature of the organization through other factors described in this subparagraph, while the lower the percentage, the greater will be the burden.

Section 1.170A-9(e)(3)(iv) of the regulations provides that the fact that an organization meets the requirement of 1.170A-9(e)(3)(i) through support from governmental units or directly or indirectly from a representative number of persons, rather than receiving almost all of its support from the members of a single family, will be taken into consideration in determining whether an organization is publicly supported. In determining what is a representative number of persons, consideration will be given to the type of organization involved, the length of time it has been in existence, and whether it limits its activities to a particular community or region or to a special field which can be expected to appeal to a limited number of persons.

Section 1.170A-9(e)(3)(v) of the regulations provides that the fact that an organization has a governing body which represents the broad interests of the public, rather than the personal or private interests of a limited number of donors (or persons standing in a relationship to such donors which is described in section 4946(a)(1)(C) through (G) of the Code) will be taken into account in determining whether an organization is publicly supported.

Section 1.170A-9(e)(3)(vi) of the regulations provides that the fact that an organization provides facilities or services directly for the benefit of the general public on a continuing basis is evidence that such organization is publicly supported; and the fact that an organization is an educational or research institution which regularly publishes scholarly studies is also considered evidence that such organization is publicly supported.

Section 1.170A-9(e)(3)(vii) of the regulations provides that certain additional factors are considered in determining whether a membership organization is publicly supported.

Section 1.507-2(e)(1) of the regulations provides that an organization which files the notification required by section 507(b)(1)(B)(ii) of the Code that it is commencing a 60-month termination may obtain an advance ruling from the Commissioner that it can be expected to satisfy the requirements of section 507(b)(1)(B) during the 60-month period. Such an advance ruling may be issued if the organization can reasonably be expected to meet the requirements of section 507(b)(1)(B) during the 60-month period. The issuance of the ruling will be discretionary with the Commissioner.

Section 1.507-2(e)(2) of the regulations provides that in determining whether an organization can reasonably be expected to meet the requirements of section 507(b)(1)(B)(i) of the Code for the 60-month period, the basic consideration is whether its organizational structure (taking into account any revisions made prior to the beginning of the 60-month period), proposed programs or activities, intended method of operation, and projected sources of support are such as to indicate that the organization is likely to satisfy the requirements of section 509(a)(1), (2), or (3) and section 1.507-2(d) of the regulations during the 60-month period. In making such a determination, all pertinent facts and circumstances shall be considered.

Section 1.507-2(e)(4) of the regulations provides that an organization obtaining an advance ruling pursuant to this paragraph cannot rely on such a ruling. Therefore, if the organization does not pay the tax imposed by section 4940 of the Code for any taxable year or years during the 60-month period, and it is later determined that such tax is due for such year, the organization is liable for interest.

Section 4940(a) of the Code imposes a 2 percent tax on private foundations net investment income annually.

Analysis

Section 507(b)(1)(B) of the Code provides that one method by which a private foundation may terminate its status as a private foundation is by giving timely notice of termination to the Internal Revenue Service and operating as a public charity or supporting organization for a continuous period of 60 calendar months beginning on the first day of the taxable year of termination.

An organization operates as a public charity, for example, if it is described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

A private foundation that gives timely notice of termination to the Internal Revenue Service may request an advance ruling that it can be expected to operate as a public charity during the 60-month period. See section 1.507-2(e)(1) of the regulations.

However, even if the private foundation receives an advance ruling, after the 60-month period, it must establish that it actually operated as a public charity. See section 507(b)(1)(B)(iii) of the Code.

In determining whether a terminating private foundation can reasonably be expected to operate as a public charity during the 60-month period, the basic consideration is whether its organizational structure, proposed programs or activities, intended method of operation and projected sources of support are such as to indicate that it is likely to operate as a public charity.

See section 1.507-2(e)(2) of the regulations.

The bulk of X's early funding was from contributions made by A in the form of annual contributions and donated land and buildings. X expects A to continue to support X through contributions. In addition, X expects substantial support from contributions from foundations and individual and corporate donors, memberships, grants received under agreements with the Federal government, and income from its educational programs and activities. X anticipates that substantially more than 10% of its support normally and continually will be derived from governmental units and/or from the general public.

X expects to meet the requirements of the 10% Facts and Circumstances Test under section 1.170A-9(e)(3) of the regulations during and after the 60-month period. During the 60-month period, X anticipates that it will: (1) continue to maintain its facilities for public access and enjoyment; (2) continue to be operated, through its public, educational and development programs, in such a way as to attract membership from a broad range of potential members from the broader N and M communities, as well as from other areas; (3) expand its efforts to raise money by means of a hired fundraiser to assist it in reaching out to new donors for donations and attracting new members, solicit foundations and other funders, and membership solicitations; and, (4) continue to rely on its Board of Directors, whose members will continue to be drawn primarily from among nationally recognized experts and the N and M communities.

Therefore, under section 1.507-2(e)(2) of the regulations, taking into account X's organizational structure, proposed programs or activities, intended method of operation, and projected sources of support, during the 60-month period beginning Date a, X is likely to meet the requirements of the 10% Facts and Circumstances Test under section 1.170A-9(e)(3) of the regulations. Thus, during this period, X is likely to operate as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Consequently, we conclude that X can reasonably be expected to meet the requirements of section 507(b)(1)(b)(i) during the 60-month period beginning Date a.

However, following the end of the 60-month period, X must establish that it did, in fact, operate as an organization described in section 170(b)(1)(A)(vi) of the Code during such period. If X fails to satisfy the requirements of section 170(b)(1)(A)(vi) of the Code for the continuous 60-month period, but satisfies the requirements of section 170(b)(1)(A)(vi) for any taxable year or years during such 60-month period, it will be treated as a public charity only for such taxable year or years. Grants or contributions made during such taxable year or years shall be treated as made to a section 509(a)(1) organization as described in section 170(b)(1)(A)(vi). In addition, sections 507 through 509 and Chapter 42 shall not apply to X for any taxable year within such 60-month period for which X meets the requirements of section 170(b)(1)(A)(vi).

Pursuant to section 1.507-2(e)(4) of the regulations, X cannot rely on this advance ruling to avoid the imposition of tax under section 4940 of the Code. Consequently, if X does not pay the tax imposed by section 4940 for any taxable year or years during the 60-month period, and it is subsequently determined that such tax is due for such year or years (because X did not complete a successful termination pursuant to section 507(b)(1)(B) and was not treated as a

section 509(a)(1) organization as described in section 170(b)(1)(A)(vi) for such year or years), X will be liable for interest in accordance with section 6601 for any amount of tax under section 4940 which has not been paid on or before the last date prescribed for payment. However, since any failure to pay such tax during the 60-month period (or prior to the revocation of this ruling) would be due to reasonable cause, the penalty under section 6651 with respect to the tax imposed by section 4940 shall not apply.

Conclusion

Based on the information submitted, we rule as follows:

As contemplated by section 1.507-2(e) of the regulations, X can be expected to satisfy the requirements of section 507(b)(1)(B)(i) of the Code during the 60-month period beginning Date a under the facts and circumstances test of section 1.170A-9(e)(3) of the regulations.

Although X is considered to be a public charity for certain purposes, X is still considered a private foundation for purposes of the filing requirements under sections 6033 and 6056 of the Code. Accordingly, X must continue to file Form 990-PF for each year in the termination period. A copy of this letter should be attached to X's Form 990-PF.

Donors (including private foundations) may rely on this ruling that X is not a private foundation until 90 days after the end of its 60-month period. However, if notice that X will no longer be treated as the type of organization indicated above is published in the Internal Revenue Bulletin, donors may not rely upon this advance ruling after the date of such publication. Also, donors (other than private foundations) may not rely upon this classification indicated above if they were in part responsible for, or were aware of, the act that resulted in X's loss of classification, or if they acquired knowledge that the Internal Revenue Service had given notice that X would be removed from that classification. Private foundations may rely on the classification as long as X was not directly or indirectly controlled by them or by disqualified persons with respect to them. However, private foundations may not rely on the classification indicated above if they acquired knowledge that the Internal Revenue Service had given notice that X would be removed from that classification.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based.

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.

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

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.

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,

Steven B. Grodnitzky
Acting Manager
Exempt Organizations
Technical Group 1

Enclosure
Notice 437