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Date:  
March 31, 2006

Legend

Corporation

Vendor

Product 1

Product 2

Product 3

Product 4

State

Dear :

This letter responds to Corporation's request for rulings dated January 18, 2005, with respect to its eligibility to receive charitable contributions of specific property described below. Corporation provided additional information by letters dated May 3, 2005; July 20, 2005; August 31, 2005; November 30, 2005; December 1, 2005; January 6, 2006; January 23, 2006; and January 24, 2006.

This letter does not constitute a ruling with respect to the deductibility by Vendor or any other donor of an amount under § 170 of the Internal Revenue Code for a charitable contribution of property to Corporation.

### Facts

Corporation is an organization described in §§ 501(c)(3) and 170(b)(1)(A)(vi), is exempt from tax under § 501(a), and is not a private foundation as defined in § 509(a).

Corporation, in its Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (Form 1023), stated that its mission is to serve as a catalyst for improving health care efficiencies through the application of technology and shaping public debate on the impact of government funding on health care. Its first two projects are:

- (1) To collaborate with technology vendors, such as manufacturers and developers of computers, computer software and handheld electronic devices, to bring connectivity to health care providers who serve medically-underserved populations; and
- (2) To provide nonpartisan analysis, research and study of the impact that government funding has on the health care delivery system.

To further this purpose, Corporation expects that it will receive donations of Products 1, 2, 3 and 4 (collectively, Products) from Vendor. Corporation then will transfer the donated Products to State community clinics and hospitals (end users) that serve medically-underserved populations, which the Service has recognized as organizations described in § 501(c)(3) and that meet the requirements of § 1.170A-4A(b)(1)(ii) of the Income Tax Regulations. End users will use the Products in connection with providing medical services for the care of the ill. Corporation represents that providing technology to health care providers can significantly improve the quality of the care those medically-underserved populations receive while reducing administrative costs and medical errors. Corporation represents it will not use the donated Products for any other purpose.

Corporation will not require or receive money, property, or services for the transfer or use of Products. However, Corporation plans to solicit the participation of end users in voluntary surveys and other studies so that Corporation can obtain information that it can use to assess the effectiveness of electronic health records in improving quality and access to care, and reductions in error rates.

Products are components of computer software. Product 1 is a core component that is necessary to support all of the other components. Products 2 and 3 are components that work together to allow doctors and their staffs to transfer laboratory orders to and

receive test results from laboratories electronically. The patient's electronic health record is noted when a laboratory order is requested and a test result is received. Corporation represents that the use of Products 2 and 3 reduces repetitive testing and improves the accuracy of test orders and transmission of test results, which improves patient safety.

Product 4 permits doctors and their staffs to send orders for drug prescriptions to pharmacies electronically or as a fax, or to print out a prescription for the patient onsite. The patient's electronic health record is noted when a prescription is ordered. Corporation represents that the use of Product 4 improves prescription accuracy, which improves patient safety. As part of the prescription process, Product 4 checks for prior adverse reactions to drugs, potential drug interactions, and duplicative therapies.

Corporation represents that many of the end users of Products will have the hardware necessary to operate Products. In the event that an end user does not have the hardware necessary to operate Products, Corporation will transfer hardware and Products to the end user. Corporation also represents that laboratories and pharmacies in State utilize programs compatible with Products so that end users would be able to use Products upon receipt from Corporation. In all cases, all end users receiving Products will be able to use Products upon receipt in furtherance of the care of the ill.

Corporation represents that it will provide a written statement to Vendor that meets the requirements of § 1.170A-4A(b)(4) of the regulations. Likewise, Corporation represents that it will require end users to provide to Corporation a written statement meeting the requirements of § 1.170A-4A(b)(4) of the regulations.

Corporation represents that the use of Products by end users as outlined above is in compliance with relevant laws and regulations addressing the electronic transmission of medical records.

### Ruling Requests

- (1) The use of the donated Products by Corporation is related to the purpose or function constituting the basis for its exemption under § 501(c)(3), within the meaning of § 170(e)(3)(A)(i), and the donated Products will not be used by Corporation in connection with any activity that gives rise to unrelated trade or business income, as defined in §§ 512 and 513.
- (2) Corporation will be using Products for the care of the ill within the meaning of § 170(e)(3).
- (3) For purposes of calculating Corporation's public support under §§ 509(a)(1) and 170(b)(1)(A)(vi), Corporation may include in both the numerator and denominator of its support fractions the full fair market value of Products it receives, subject to the limitations of § 1.170A-9(e) of the regulations, notwithstanding that a donor's charitable contribution deduction is limited by § 170(e)(3).

## Conclusions

- (1) The use of the donated Products by Corporation is related to the purpose or function constituting the basis for its exemption under § 501(c)(3), within the meaning of § 170(e)(3)(A)(i), and the donated Products will not be used by Corporation in connection with any activity that gives rise to unrelated trade or business income, as defined in §§ 512 and 513.
- (2) Corporation will be using Products for the care of the ill within the meaning of § 170(e)(3).
- (3) For purposes of calculating Corporation's public support under §§ 509(a)(1) and 170(b)(1)(A)(vi), Corporation may include in both the numerator and denominator of its support fractions the full fair market value of Products it receives, subject to the limitations of § 1.170A-9(e) of the regulations, notwithstanding that a donor's charitable contribution deduction is limited by § 170(e)(3).

## Law

Section 170(a)(1) allows a deduction for charitable contributions made within the taxable year.

### A. Qualified contribution under § 170(e)(3)

If a charitable contribution is made in property other than money, the amount of the contribution generally is the fair market value of the property at the time of the contribution, reduced as provided in § 170(e)(1) and § 1.170A-4(a) of the regulations, or § 170(e)(3) and § 1.170A-4A(c) of the regulations. Section 1.170A-1(c)(1) of the regulations.

There are special rules for a deduction for the contribution of ordinary income property such as inventory. Section 170(e)(1) generally limits the deduction for a charitable contribution of inventory to the donor's basis in the property. Section 170(e)(3) provides a special rule allowing an enhanced deduction in the case of qualified contributions of inventory. If the requirements of § 170(e)(3) and the regulations are met, a donor making a qualified contribution generally may take a deduction for the sum of basis and one-half of its unrealized appreciation in the donated property, but not more than twice the donor's basis in the property. There are specific requirements pertaining to a donee that must be met in order for a contribution to be a "qualified contribution" under § 170(e)(3)(A):

- (i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under § 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

- (ii) the property is not transferred by the donee in exchange for money, other property, or services; and
- (iii) the donor receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of (i) and (ii), above.

Section 170(e)(3)(A) and § 1.170A-4A(b)(1)(ii) of the regulations provide that a contribution of property qualifies under § 170(e)(3) only if it is a charitable contribution to an organization described in § 501(c)(3) and exempt from tax under § 501(a), other than a private foundation, as defined in § 509(a), which is not an operating foundation, as defined in § 4942(j)(3).

Section 1.170A-4A(a) of the regulations states that to be treated as a “qualified contribution,” a contribution must meet the restrictions and requirements of § 170(e)(3)(A) and § 170A-4A(b) of the regulations.

Corporation represents that it will not require or receive money, property, or services for the transfer or use of Products. Corporation represents that it will provide to Vendor the written statement described in § 1.170A-4A(b)(4)(i) of the regulations and that it will require all transferee organizations (end users) to provide to Corporation the written statement described in § 1.170A-4A(b)(4)(i) as required by §§ 1.170A-4A(b)(2)(ii) and (b)(4)(ii). In addition, Corporation represents that it is an organization described in § 170(e)(3)(A) and § 1.170A-4A(b)(1)(ii) of the regulations. We address below whether Corporation meets the requirements of § 170(e)(3)(A)(i) and § 1.170A-4A(b)(2) of the regulations regarding the use of Products.

#### (1) Use of Products is related to Corporation’s charitable purpose

Section 1.170A-4A(b)(2)(i) of the regulations provides that the use of the donated property by a donee organization must be related to the purpose or function constituting the ground for exemption under § 501(c)(3). In addition, the property may not be used in connection with any activity which gives rise to unrelated trade or business income as defined in §§ 512 and 513 and corresponding regulations.

Section 501(c)(3) provides, in part, for the exemption from federal income tax for organizations organized and operated exclusively for charitable, educational, and religious purposes, provided that no part of the organization’s net earnings inure to the benefit of any private shareholder or individual.

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

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" as used in § 501(c)(3) includes its generally accepted legal sense. The promotion of health is a recognized charitable purpose. Rev. Rul. 56-185, 1956-1 C.B. 202, as modified by Rev. Rul. 69-545, 1969-2 C.B. 117; Rev. Rul. 80-114, 1980-1 C.B. 115; and Rev. Rul. 83-157, 1983-2 C.B. 94.

Under § 512(a)(1), the term "unrelated business taxable income" means the gross income derived by any organization from any "unrelated trade or business regularly carried on," less the applicable deductions and modifications.

Under § 513(a), the term "unrelated trade or business" means "any trade or business the conduct of which is not substantially related . . . to 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."

Corporation stated in its Form 1023 that its mission is to serve as a catalyst for improving health care efficiencies through the application of technology and shaping public debate on the impact of government funding on health care. One of its first two projects is to collaborate with technology vendors, such as manufacturers and developers of computers, computer software, and handheld electronic devices, to bring connectivity to health care providers who serve medically-underserved populations.

Corporation expects that it will receive donations of Products from Vendor. Corporation then will transfer the donated Products to State community clinics and hospitals that serve medically-underserved populations, which the Service has recognized as organizations described in § 501(c)(3) and that meet the requirements of § 1.170A-4A(b)(1)(ii) of the regulations. Corporation will not use the donated Products for any other purpose.

Corporation will use donated Products in furtherance of the purpose or function constituting the ground for its exemption under § 501(c)(3) by transferring Products to end users, which will use Products in connection with providing medical services for the care of the ill.

Corporation will not use Products in any activity that will not be substantially related to the purpose or function constituting the basis for its exemption under § 501(c)(3). Thus, Corporation will not use Products in any activity that would give rise to income from an unrelated trade or business within the meaning of § 513(a).

Corporation meets the requirement of § 170(e)(3)(A)(i) and § 1.170A-4A(b)(2)(i) of the regulations that the Corporation's use of Products is related to the purpose or function constituting the basis for its exemption under § 501(c)(3). Corporation also meets the requirement in § 1.170A-4A(b)(2)(i) of the regulations that Products will not be used in

connection with any activity that gives rise to unrelated trade or business income under § 513(a).

## (2) Products used for care of the ill

The enhanced deduction of § 170(e)(3) only applies to donated property that is actually used to care for the ill, the needy, or infants. Sections 1.170A-4A(a) and (b)(2)(ii)(A) of the Income Tax Regulations. Section 1.170A-4A(b)(2)(ii)(A) of the regulations provides that the donated property must ultimately either be transferred to (or for the use of) the ill, needy, or infants for their care or be retained for their care. Further, no other person may use the contributed property except as incidental to primary use in the care of the ill, needy, or infants. The donee organization may satisfy this requirement by transferring the property to a relative, custodian, parent, or guardian of the ill or needy individual or infant, or to any other individual if it makes a reasonable effort to ascertain that the property will ultimately be used primarily for the care of the ill or needy individual, or infant, and not for the primary benefit of any other person. Thus, any portion of the donated property that is not used for the care of the ill, the needy, or infants is not a qualified contribution under § 170(e)(3).

Section 1.170A-4A(b)(2)(ii)(A) of the regulations states that the donee organization may transfer the donated property to another exempt organization within the jurisdiction of the United States, provided the transferee organization meets the requirements of § 1.170A-4A(b)(1)(ii), above. If an organization transfers the donated property to another organization, the transferring organization must obtain a written statement from the transferee organization as described in § 1.170A-4A(b)(4) of the regulations.

Section 1.170A-4A(b)(2)(ii)(B) of the regulations defines an ill person as a person who requires medical care within the meaning of § 1.213-1(e) of the regulations.

Section 1.170A-4A(b)(2)(ii)(C) of the regulations defines care of the ill as alleviation or cure of an existing illness and includes care of the physical, mental, or emotional needs of the ill.

On the facts presented, the use to which Corporation proposes to put Products is a use “solely for the care of the ill” within the meaning of § 170(e)(3)(A)(i). Corporation will transfer Products to end users who will use Products as a tool in the alleviation or cure of illness. Corporation will transfer Products only to end users that meet the requirements of § 1.170A-4A(b)(1)(ii). Corporation will provide to end users all necessary hardware to ensure that Products can be used by end users upon receipt. Further, Corporation represents that Products are compatible with programs currently used by pharmacies and laboratories in State such that Products can be used by end users upon receipt.

B. Corporation's public support under § 170(b)(1)(A)(vi)

Section 509(a)(1) provides that an organization described in § 501(c)(3) is not classified as a private foundation if it meets certain requirements. One such requirement is that the organization is a "publicly supported organization" described in § 170(b)(1)(A)(vi).

An organization is described in § 170(b)(1)(A)(vi) if it normally receives a substantial part of its support from a governmental unit or from direct or indirect contributions from the general public.

Section 1.170A-9(e)(6)(i) of the regulations provides that in determining whether an organization normally receives a substantial part of its support from contributions from the general public, contributions by a donor are taken into account only to the extent that the total contributions by the donor do not exceed two percent of the organization's total support.

Section 1.170A-9(e)(7) of the regulations provides that the term "support" is defined in § 509(d), without regard to § 509(d)(2).

Section 509(d)(1) provides that for purposes of §§ 507 through 509 and chapter 42 of the Code, the term "support" includes gifts, grants, contributions, or membership fees.

Section 1.509(a)-3(f)(2) of the regulations provides that "[f]or purposes of section 509(a)(2), the amount includible in computing support with respect to gifts, grants or contributions of property or use of such property shall be the fair market or rental value of such property at the date of such gift or contribution."

By analogy to the regulations under § 509(a)(2), in determining public support under §§ 509(a)(1) and 170(b)(1)(A)(vi), a donee organization may use the fair market value of the property on the date of the donation. We are not aware of any authority for imposing a limitation on a donee organization's use of the fair market value of donated property in determining public support under either § 509(a)(2) or §§ 509(a)(1) and 170(b)(1)(A)(vi) because the donor's charitable contribution deduction is limited by § 170(e)(3), as outlined above.

Therefore, it is appropriate that for purposes of determining its public support under §§ 509(a)(1) and 170(b)(1)(A)(vi), Corporation value Products it receives at fair market value, subject to the limitations of § 1.170A-9(e) of the regulations, notwithstanding that a donor's charitable contribution deduction is limited by § 170(e)(3).

The rulings contained in this letter are based upon information and representations submitted by Corporation and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Christopher F. Kane  
Branch Chief, Branch 3  
(Income Tax & Accounting)