



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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U.I.L. Number:
507.00-00
507.04-00

Employer Identification Number:

LEGEND:

A =
B =

M =
N =
O =

X =

x =

Dear _____ :

This is in response to X's request for a ruling under section 507(b)(1)(B)(i) of the Internal Revenue Code, submitted by X's legal representative on December 30, 2003.

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) of the Code. X has given notice that it intends to terminate its private foundation status assuming it receives classification under section 509(a)(1) of the Internal Revenue Code as an organization described in section 170(b)(1)(A)(vi) of the Code.

X was established in the State of M by A and his wife, B, to preserve and to enhance the physical, cultural, and spiritual environment of the people of the State of M and of the United States of America, and primarily of N and the area comprising O. X has been recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Code and is

currently classified as a private operating foundation under section 4942(j)(3) of the Code.

A Board of Trustees governs X. While A was a Trustee in the past, neither A nor any of A's relatives serve on the Board. (B is deceased). 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 Trustees will at any time in the future become dominated by persons who are descendants or relatives of A or B.

X's Bylaws also establish an Advisory Board of Directors which makes recommendations to the Board of Trustees on matters referred by the Trustees, including X's grantmaking program. In addition to the members of the Board of Trustees, there are x individuals currently serving on the Advisory Board. Five residents of N or its immediate neighboring communities sit on the Advisory Board with one additional individual from elsewhere in M. Other members of the Advisory Board are individuals having nationally recognized expertise in fields of importance to X.

In the years immediately following its formation, X's primary activity was to direct a program of grantmaking to public charities based in N. Later, X initiated a project that was aimed at documenting the cultural and agricultural history of M. X leased a barn from A, without consideration, which was maintained exclusively as a center for the collection and assembly of materials related to the project. Later, X opened a _____ and the adjacent farm to the public as a _____. Materials that had been collected were used as permanent _____ to _____ and furnish the _____.

Within the exhibit _____ and _____, X offers diverse, interactive programs that focus on the themes of rural life, work, and land stewardship. There is also an _____. Both the _____ and the _____ serve as teaching laboratories for programs that X organizes and facilitates for students. X offers additional educational programs open to the general public. X also participates in symposia on historic preservation and _____ issues, M rural history and sustainable agricultural practices. In addition, X serves as an "operating partner" to a national park and manages an endowment dedicated to the historic preservation and conservation maintenance of the park. And, X continues to make grants to nonprofit organizations that support the quality of life of N and its immediate surrounding communities.

X received the bulk of its early funding from annual contributions from A and B. A donated the land on which the museum and X's headquarters are located to X. In addition, gifts from A provided operating subsidies for many years and thereafter created an endowment, which X invests under the guidance of the Board of Trustees. Although income generated by the endowment provides X's largest single source of annual support, X also presently depends substantially on three additional sources of annual support:

- (a) Contributions from foundations and individual and corporate donors, including memberships. X's membership is comprised of individuals, families and businesses.
- (b) Grants from the Federal government under annual cooperative agreements.
- (c) Income from its programs and activities. X generates income from admissions to the _____ and _____ and shop sales.

X represents that although it was classified as a private operating foundation over the four years ending in 2001, it “normally”, within the meaning of the term under Treasury Regulations section 1.170A-9(e)(4), received more than 10 percent of its support from the general public and met the facts and circumstances subset of the test for public support for a public charity under section 509(a)(1) of the Code during that period.

X states that it anticipates that during the 60-month termination period that will begin January 1, 2004 and end December 31, 2008, it may reasonably expect to derive a substantial portion of its total “support”, as defined in section 509(d) of the Code and Treasury Regulations section 1.170A-9(e)(7), in the form of gifts, grants and contributions from governmental units and the “general public”, as defined in section 1.170A-9(e)(6) of the regulations so as to satisfy the “facts and circumstances” test under section 1.170A-9(e)(3). X states that it anticipates that during and after the 60-month termination period its main sources of support will be income from the endowment; contributions from governmental units and individual, foundation and corporate donors; and, income from its programs and activities. X states that it anticipates, as in past years, 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, within the meaning of Treasury Regulations section 1.170A-9(e)(3), during and after the 60-month termination period.

X is requesting the following ruling:

As contemplated by Treasury Regulation section 1.507-2(e), X can be expected to satisfy the requirements of section 507(b)(1)(B)(i) of the Code during the 60-month period beginning January 1, 2004 under the facts and circumstances test of Treasury Regulation section 1.170A-9(e)(3).

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 (in such manner as the Secretary may by regulations prescribe) 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 (in such manner as the Secretary may by regulations prescribe) immediately after the expiration of the 60-month period that it has complied with clause (i).

Section 170(b)(1)(A)(vi) 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 509(a) of the Code provides that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than (1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)); (2) an organization which normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees.

Section 509(a)(1)(A) of the Code excludes from the definition of a private foundation an organization is described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Section 1.170A-9(e)(1)(ii) of the regulations provides for the definition of a section 170(b)(1)(A)(vi) organization. In general, an organization is publicly supported if it normally receives a substantial part of its support from a governmental unit referred to in section 170(c)(1) or from direct or indirect contributions from the general public.

Section 1.170A-9(e)(2) of the regulations provides that an organization will be treated as a publicly supported organization if the total amount of support which the organization normally receives from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources, equals at least 33-1/3 percent of the total support normally received by the organization.

Section 1.170A-9(e)(3) of the regulations provides that even if an organization fails to meet the 33-1/3 percent-of-support test described in subparagraph (2) of this paragraph, it will be treated as a publicly supported organization if it normally receives a substantial part of its support from governmental units, from direct or indirect contributions from the general public, or from a combination of these sources, and meets the other requirements of this subparagraph. In order to satisfy this subparagraph, an organization must meet the requirements of subdivisions (i) and (ii) of this subparagraph in order to establish, under all the facts and circumstances, that it normally receives a substantial part of its support from governmental units or from direct or indirect contributions from the general public, and it must be in the nature of a publicly supported organization, taking into account the factors described in subdivisions (iii) through (vii) of this subparagraph. The requirements and factors referred to in the preceding sentence with respect to a publicly supported organization are:

- (i) The percentage of support "normally" received by an organization from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources, must equal at least 10 percent of the total support "normally" received by the organization.
- (ii) 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).

In addition to the requirements set forth in subdivisions (i) and (ii) of this subparagraph which must be satisfied, all pertinent facts and circumstances, including the following factors, will be taken into consideration in determining whether an organization is publicly supported.

- (iii) 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 of subdivision (i) of this subparagraph from public or governmental sources, the less will be the burden 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. If the percentage of the organization's support from public or governmental sources is low because it receives a high percentage of its total support from investment income on its endowment funds, such fact will be treated as evidence of compliance with this subdivision if such endowment funds were originally contributed by a governmental unit or by the general public. However, if such endowment funds were originally contributed by a few individuals or members of their families, such fact will increase the burden on the organization of establishing compliance with the other factors described in this subparagraph.
- (iv) Sources of support. The fact that an organization meets the requirement of subdivision (i) of this subparagraph 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.
- (v) Representative governing body. 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)) will be taken into account in determining whether an organization is publicly supported. An organization will be treated as meeting this requirement if it has a governing body which is comprised of public officials acting in their capacities as such; of individuals selected by public officials acting in their capacities as such of persons having special knowledge or expertise in the particular field or discipline in which the organization is operating; of community leaders, such as elected or appointed officials, clergymen, educators, civic leaders, or other such persons representing a broad cross-section of the views and interests of the community; or, in the case of a membership organization, of individuals elected pursuant to the organization's governing instrument or bylaws by a broadly based membership.
- (vi) Availability of public facilities or services; public participation in programs or policies.
 - (a) The fact that an organization is of the type which generally provides facilities

or services directly for the benefit of the general public on a continuing basis will be considered evidence that such organization is publicly supported.

- (b) The fact that an organization is an educational or research institution which regularly publishes scholarly studies that are widely used by colleges

and universities or by members of the general public will also be considered evidence that such organization is publicly supported. (c) Similarly, the following factors will also be considered evidence that an organization is publicly supported:

- (1) The participation in, or sponsorship of, the programs of the organization by members of the public having special knowledge or expertise, public officials, or civic or community leaders;
 - (2) The maintenance of a definitive program by an organization to accomplish its charitable work in the community, such as slum clearance or developing employment opportunities; and
 - (3) The receipt of a significant part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant, contract, or contribution.
- (vii) Additional factors pertinent to membership organizations. The following are additional factors to be considered in determining whether a membership organization is publicly supported:
- (a) Whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community or area, or in a particular profession or field of special interest (taking into account the size of the area and the nature of the organization's activities);
 - (b) Whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross section of the interested public, rather than to restrict membership to a limited number of persons; and
 - (c) Whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations.

Section 1.507-2(b)(1) of the regulations provides, generally, that under section 507(b)(1)(B) of the Code, an organization can terminate its private foundation status if the organization:

- (i) Meets the requirements of section 509(a)(1), (2), or (3) by the end of the 12-month period (as extended by paragraph (c)(3)(i) of this section) beginning with its first taxable year which begins after December 31, 1969, or for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969;
- (ii) Is in compliance with section 507(b)(1)(B)(ii) and subparagraph (3) of this paragraph, properly notifies the district director before the commencement of such 12-month or 60-month period or before March 29, 1973 that it is terminating its private foundation status; and
- (iii) Properly establishes immediately after the expiration of such 12-month or 60-month period that such organization has complied with the requirements of section 509(a)(1),

(2), or (3) by the end of the 12-month period or during the 60-month period, as the case may be, in the manner described in subparagraph (4) of this paragraph.

Section 1.507-2(d)(1)(i) of the regulations provides that in order to meet the requirements of section 507(b)(1)(B) for the 60-month termination period as a section 509(a)(1) or (2) organization, an organization must meet the requirements of section 509(a)(1) or (2), as the case may be, for a continuous period of at least 60 calendar months. In determining whether an organization seeking status under section 509(a)(1) as an organization described in section 170(b)(1)(A)(iv) or (vi) or under section 509(a)(2) "normally" meets the requirements set forth under such sections, support received in taxable years prior to the commencement of the 60-month period shall not be taken into consideration, except as otherwise provided in this section. Therefore, in such cases rules similar to the rules applicable to new organizations would apply.

Section 1.507-2(d)(1)(ii) of the regulations provides that for purposes of section 507(b)(1)(B), an organization will be considered to be a section 509(a)(1) organization described in section 170(b)(1)(A)(vi) for a continuous period of 60 calendar months only if the organization satisfies the provisions of section 1.170A-9(e) based upon aggregate data for such entire period, rather than for any shorter period set forth in section 1.170A-9(e). Except for the substitution of such 60-month period for the periods described in section 1.170A-9(e), all other provisions of such regulations pertinent to determining an organization's normal sources of support shall remain applicable.

Section 1.507-2(e)(1) of the regulations provides that an organization which provides notice 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 (within the meaning of subparagraph (1) of this paragraph) to meet the requirements of section 507(b)(1)(B) (i) 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 paragraph (d) of this section during the 60-month period. In making such a determination, all pertinent facts and circumstances shall be considered.

An organization will satisfy the requirements for classification as a section 509(a)(1) organization as described in section 170(b)(1)(A)(vi) of the Code if the organization normally receives a substantial part of its support (exclusive of income received in the exercise or performance of its exempt purposes) from a governmental unit or from direct or indirect contributions from the general public. In cases where an organization fails to meet the 33 1/3 percent-of-support test, it will be treated as a publicly supported organization if it meets certain requirements set forth in section 1.170A-9(e)(3) of the regulations.

The bulk of X's early funding was from contributions made by A and B in the form of annual contributions and donated land, and gifts from A provided operating subsidies which created an endowment which X invests. The income from the endowment is X's largest single source of

annual support. In addition, X depends substantially on annual support from contributions from foundations and individual and corporate donors, memberships, grants received under cooperative agreements with the Federal government, and income from admissions to its museum and farm and shop sales. X states that over the four years ending in 2001, it normally received more than 10 percent of its support from the general public. 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 states that it has also met the facts and circumstances subtest for establishing that it received public support for a public charity during the four-year period, and X expects to continue to do so during the 60-month termination period and thereafter. 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 community, as well as from other areas; (3) expand its efforts to raise money by means of an annual appeal for contributions, solicitations to foundations and other funders, and membership solicitations; and, (5) continue to rely on its Trustees and Board of Directors, whose members will continue to be drawn primarily from among nationally recognized experts and the N community.

We conclude that X can be expected to satisfy the requirements of section 507(b)(1)(B)(i) of the Code during the 60-month period beginning January 1, 2004 under the facts and circumstances test of Treasury Regulation section 1.170Z-9(e)(3). However, section 1.507-2(d)(1) of the regulations provides that in order to meet the requirements of section 507(b)(1)(B) for the 60-month termination period as a section 509(a)(1) organization described in section 170(b)(1)(A)(vi) of the Code, X must satisfy the requirements of that section for a continuous period of at least 60 months.

In order to comply with the requirements of section 507(b)(1)(B) of the Code, within 90 days after the end of X's 60-month termination X must furnish the Internal Revenue Service with information establishing that it did, in fact, operate as an organization described in section 170(b)(1)(A)(vi) during such period. If X establishes that fact, it will be classified as a section 509(a)(1) organization described in section 170(b)(1)(A)(vi) as long as it continues to meet the requirements of that section.

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 exempt under that section 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) of the Code. 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 a section 509(a)(1) organization as described in section 170(b)(1)(A)(vi) of the Code 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.

Based on the information submitted, we rule as follows:

As contemplated by Treasury Regulation section 1.507-2(e), X can be expected to satisfy the requirements of section 507(b)(1)(B)(i) of the Code during the 60-month period beginning January 1, 2004 under the facts and circumstances test of Treasury Regulation section 1.170A-9(e)(3).

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 section 6033 and 6056. 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 that there will be no material changes in the facts upon which they are based. Any changes that may have a bearing upon X's tax status should be reported to the Service.

Except as we have ruled above, we express no opinion as to the tax consequences of X's transaction under the cited provisions of the Code or under any other provisions of the Code.

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

Because this letter could help resolve any future questions about tax consequences of your activities, you should keep a copy of this ruling in your permanent records.

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.

Sincerely,

Joseph Chasin
Manager, Exempt Organizations
Technical Group 2

Enclosure: Form 872-B