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

Date:
APR 27 2000

Contact Person:

ID Number:

Telephone Number:

S.I.N. # 501.03-11

OP:E:EO:T

Employer Identification Number:

Legend:

M=
T=
N=
O=
V=
P=
R=

Dear Sir or Madam:

This is in response to your letter requesting rulings regarding the federal tax consequences associated with the transactions described below.

M is a T nonprofit corporation and is recognized as exempt from federal income tax under section 501(a) of the Internal Revenue Code (the Code) as an organization described in section 501(c)(3) of the Code. M is classified as other than a private foundation within the meaning of section 509(a) of the Code. The sole member of M is N, an entity which is also exempt under section 501(c)(3) of the Code.

O is a T nonprofit corporation and is recognized as exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code. O is classified as other than a private foundation within the meaning of section 509(a) of the Code. N is also the sole member of O . Prior to V , M and O were parts of distinct healthcare systems. O was one of several health care related entities, including an acute care hospital and a corporate parent of several nursing homes in T , which shared N as a common corporate member. M was part of a separate system which included P , an acute care hospital, which shared R as a common corporate member. In V , N became the sole corporate member of M and P .

R has recently been dissolved. It is proposed that M will merge with and into O , with O being the surviving corporate entity. N will be the sole member of O . You indicate that M and O have determined that a merger of their two organizations would enhance efficiency and reduce costs in the fund raising

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efforts of the organizations to support health care services in their respective communities. Following the proposed merger, O will continue the charitable activities of each of the merging organizations with, it is believed, the same broad based public financial support.

You represent that the merger will be accomplished pursuant to state law. The Plan of Merger has been approved and adopted by the Boards of Directors of M and O . You have submitted a copy of your Plan of Merger and indicate that it will be effective upon the filing with and approval of the appropriate state agencies and the state court after a hearing upon notice to the state Attorney General. On the filing of the Certificate of Merger, the individual corporate existence of M will cease and O will survive. The proposed Certificate of Merger does not change the charitable purposes of M . You state that once the merger is accomplished, O will carry on all of the fund raising and health care support services and related activities currently conducted by M and O .

Based on the foregoing facts, you have requested the following rulings:

1. The proposed merger of M into O will not adversely affect the tax exempt status of O under section 501(c)(3) and subsequent to the proposed merger O will continue to be tax exempt under section 501(c)(3) of the Code.

2. Subsequent to the proposed merger of M into O, O will retain its classification as a public charity pursuant to the provisions of sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

3. To the extent the liabilities, funds, assets, services or personnel are transferred to O by M pursuant to the merger, such transfers will not generate unrelated business taxable income or result in the recognition of any gain or loss under sections 511 through 514 of the Code.

Section 501(a) of the Code provides an exemption from federal income tax for organizations described in section 501(c)(3), including organizations that are organized and operated exclusively for charitable, educational or scientific purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations (Regulations) provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense.

In the general law of charity, the promotion of health is considered to be a charitable purpose. Restatement (2nd), Trusts, Sections 368 and 372, IV Scott on Trusts (3rd ed. 1967), Sections 368 and 372.

Section 511(a) of the Code imposes a tax on the unrelated business income tax of organizations described in section 501(c).

Section 512(a)(1) of the Code defines unrelated business taxable income as the gross income derived by an organization from any unrelated trade or business regularly carried on by it, less the allowable deductions which are directly connected with the carrying on of the trade or business, with certain modifications.

Section 512(b)(5) of the Code defines the term "unrelated business taxable income" as the gross income derived from any unrelated trade or business regularly carried on by the organization, less allowable business expenses directly connected with the carrying on of such trade or business. This section excludes all gains and losses from the sale, exchange, or other disposition of property other than

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(1) stock in trade or other property which would be property includable in inventory if on hand at the end of the year, and (2) property held primarily for sale to customers in the ordinary course of the organization's trade or business.

Section 513(a) of the Code defines unrelated trade or business as any trade or business the conduct of which is not substantially related (aside from the need of the organization for funds or the use it makes of the profits derived) to the exercise of the organization's exempt purposes or functions.

Section 1.513-1(d)(2) of the Regulations provides, in part, that a trade or business is related to exempt purposes only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes; and it is substantially related for purposes of section 513 only if the causal relationship is a substantial one. Thus, for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of exempt purposes.

Section 514(a) of the Code provides for income from unrelated debt-financed property to be included in the computation of unrelated business taxable income.

Sections 514(b)(1)(A)(i) and (ii) of the Code in defining debt-financed property exclude any property substantially all the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance of such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501, or (ii) any purpose to which clause (i) does not apply, to the extent that its use is so substantially related.

M and O have determined that a merger of their two organizations would enhance efficiency and reduce costs in the fund raising efforts of the organizations to support health care in their respective communities. You represent that when M and O merge, they will function as one entity with one staff. O will carry out all of the fund raising and health care support services and related activities currently conducted by M and O . You further state that O 's Articles of Incorporation indicate, among other things, that the objects and purposes of O shall be exclusively within such purposes enumerated in section 501(c)(3) of the Code with the ultimate goal of fostering and facilitating the delivery of health care services to the community by developing financial programs and soliciting contributions for and on behalf of the exempt entities in your health care system.

Accordingly, based on the facts and representations set forth, we rule as follows:

1. The proposed merger of M into O will not adversely affect the tax exempt status of O under section 501(c)(3) of the Code and subsequent to the proposed merger O will continue to be tax exempt under section 501(c)(3) of the Code.

2. Subsequent to the proposed merger of M into O , O will retain its classification as a public charity pursuant to the provisions of sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

3. To the extent the liabilities, funds, assets, services or personnel are transferred to O by M pursuant to the merger, such transfer will not generate unrelated business taxable income or result in the recognition of any gain or loss under sections 511 through 514 of the Code.

These ruling are based on the understanding that there will be no material changes in the facts upon which they are based.

These rulings do not address the applicability of any section of the Code or Regulations to the facts submitted other than with respect to the sections described.

These rulings are directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that they may not be used or cited as precedent.

We are informing your key District Director of this action. Please keep a copy of this ruling in your permanent records.

Sincerely,

(signed) Marvin Friedlander

Manager, Exempt organizations
Technical Group 1