DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE 200150039
WASHINGTON, D.C. 20224

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

UIL # 509.01-02; 507.00-00

Date: 9/21/2001

Contact Person:

Identification Number:

Telephone Number:

T:EO:B3

Employer Identification Number:

X =
Y =
Z =

Dear Sir or Madam:

This letter is in response to X's request, and subsequent correspondence, requesting rulings relating to X's public charity status.

FACTUAL REPRESENTATIONS

X is a corporation organized and existing under state law. It was incorporated on November 4, 1999. X has received a letter from the Internal Revenue Service determining that it is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. X has been classified as a public charity under section 509(a)(1) and 170(b)(1)(A)(vi).

While X more generally describes its exempt purposes as operating exclusively for charitable, scientific, religious, literary, and/or scientific purposes; both its promotional materials and its document titled "Procedures For Donor Advised Funds" (hereafter "Procedures") indicate that X's primary exempt focus is on Y organizations exempt under section 501(c)(3) of the Code. Articles 2.1 of its Procedures identifies its exempt purposes as including providing grants to exempt Y organizations and specifically identifying the type of Y grantees it would support. Further, its Procedures define the term "Y." X's promotional materials will restrict X's grants to section 501(c)(3) public charities and section 170(c)(1) government entities. The eligible exempt organizations are not geographically restricted.

Under its Procedures, X is establishing Donor Advised Funds (hereafter DAFs). X has established three types of funds; an Endowment Fund, a Regular DAF, and a General Fund (collectively "Funds" hereafter).

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The Endowment Fund allows donors to make gifts and contributions to X for two purposes. The first is where the donor specifies at the time of the gift the recipient exempt organizations that will receive fund principal and recommend (but not specify) the amounts and the times of distribution to those designated organizations. The second allows the donor to recommend, either in the year of the contribution or after such year, recipients that are exempt organizations to receive all or stated portions of the fund's income and principal each year that makes-up the donor's sub account in the fund.

The Regular DAF allows donors to make gifts and contributions to X for the purpose of setting up separate accounts under X's ownership and control. Thereafter, the procedures allow a donor to such fund to recommend, but not require, distribution from the DAF to one or more specific beneficiaries in furtherance of X's exempt purpose. The donor recommended beneficiaries must be exempt organizations with goals and purposes compatible with the stated goals and purposes of X.

X has also established a General Fund which may receive gifts and contributions from donors without providing for any endowment specification or donor recommendation by the transferor donors.

For purposes of determining X's ownership, dominion and control over Funds, X asserts that it will be governed by section 1.507-2(a)(8) of the Income Tax Regulations. Article III of X's procedures states generally as follows:

1. X shall be the owner in fee of all assets it receives;
2. All assets shall be held and administered by X in a manner consistent with one or more of its exempt purposes;
3. The Board of Trustees of X shall have the ultimate authority and control over all assets and income therefrom; and
4. The Board of Trustees of X shall, at all times, be organized to operate independently from all donors to X.

Article III then continues to recite nearly every factor listed in section 1.507-2(a)(8) of the regulations that would support the conclusion that X exercises full ownership, dominion and control over the assets and funds it receives from its donors.

Article 6.1 of the Procedures of X provides that because the Funds are the property of X, the property and interest therefrom may be commingled with other Funds established by X or Donors and may be invested in a common investment fund that is established or used by X. X will maintain separate accounting records for each of the Funds until that Fund is closed. Article 6.1 further provides that because the Funds are the property of X, it has full authority for investments of the principal and interest therefrom of each Fund and is not bound by investment restrictions applicable to fiduciaries.

Article 4.1 of the Procedures provides that X expects that its grant distributions for the year will equal or exceed 5 percent of its average net assets on a fiscal year rolling basis. If this level of grant activity is not attained, X will identify the named accounts from which grants over

the same period totaled less than 5 percent of each account's average assets. X will then contact the donors of these accounts to request that they recommend grants of at least this amount. If a donor does not provide the qualified grant recommendations, X is authorized to transfer up to 5 percent of assets from the donor's named account to the charity selected by X.

Article 4.2 *a.* of the Procedures provides that all of X's solicitations (written or oral) for funds shall state that X will investigate allegations of improper use of grant funds for the private benefit of donors. Such private benefit is prohibited. Such statement will also be included in X's promotional materials.

Article 4.2 *b.* of the Procedures provides that all grantee letters shall state that grants shall be used by grantees exclusively in furtherance of charitable purposes, and cannot be used for the private benefit of the donors or the grantees.

With respect to the DAFs, Article 5.2 *a.* (2) provides that the privilege of making recommendations by donors may be exercised for a period of ten years from the date of establishment of the fund, and X may extend in writing the privilege of making recommendations beyond said ten year period if X determines in its sole discretion that substantial additional contributions have been made and the donor has maintained a continuing charitable involvement with X.

Article 5.3 of the Procedures provides that X shall be the owner in fee of the earnings from investments of donor gifts and shall retain ultimate and full authority and control over such earnings. Ordinarily, attributable earnings shall accrue to the endowment funds, but X retains the right to grant up to 25 percent of the earnings attributable to endowment funds to X's general fund.

Article 5.3 of the Procedures also provides that Regular DAFs shall accrue no earnings and X will only be accountable for principal amounts and distribution of said principal amounts.

Under Article 5.5 of the Procedures, X shall establish and maintain a priority guideline list of specific charitable needs and particular causes that further its exempt purposes, and such guideline list shall be made available to donors. X shall consult this priority guideline list and the advice from the donor in approving distributions from the fund created from donor contributions.

Article 5.6 *a.* of the Procedures provides that X's staff shall independently investigate all recommendations and prepare a report of its determination whether the recommendation furthers the exempt purposes of X and otherwise meets charitable needs most deserving of support by X, both as to beneficiary and amount and timing. X's promotional materials make it clear that it will not be bound by the advice of donors.

The Procedures also provide for minimum amounts for contributions to the Funds as well as minimum amount for distributions. An amount for the minimum Fund balance is suggested. The Procedures provide for the prorating of administrative costs to each Fund. Regular DAFs shall be charged no administrative costs provided the number of distributions from an account do not exceed 24 per year. There is a z fee for investigating recommendations.

X's submission includes sample promotional material as well as a sample donor advised fund gift form.

LAW AND ANALYSIS

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable and other exempt purposes.

Section 507 of the Code deals with the termination of private foundations

Section 1.507-2(a)(8) of the Income Tax Regulations provides factors, including adverse factors, for determining whether a private foundation has made a valid transfer of "all of its right, title, and interest in and to all of its net assets" to a transferee organization.

Section 509(a) of the Code defines a private foundation as something other than an organization qualifying as a public charity.

A DAF must have appropriate control and ownership over the donated assets. The Service applies the material restriction or condition provisions (relating to the termination of private foundation status) in section 1.507-2(a)(8) of the Income Tax Regulations to measure the level of control. Thus, by analogy, the regulation is used to determine whether the DAF has sufficient dominion and control over the funds contributed to it to be treated, for tax purposes, as the owner of the assets.

The information represented indicates that X will, indeed, exercise dominion and control over the assets and income in the DAFs. The factors in section 1.507-2(a)(8)(iv)(A) of the regulations support the conclusion there is no inappropriate reservation of a material restriction or condition by a donor who makes a gift to X. For example, X will make an independent investigation of whether the donor's recommendation is consistent with its charitable purpose. X has promulgated guidelines enumerating specific charitable needs and has made donor's aware of such guidelines. X's solicitation materials specifically state X will not be bound by the advice offered by the donor.

Further, X's solicitations of funds does not create an expectation by donors that the donors advice will necessarily be followed by X. Further, X represents that it will not follow the advice of all donors with respect to their funds substantially all the time.

Other factors support the conclusion that X exercises dominion and control over the DAFs and that the donors do not reserve a material restriction or condition with respect to their separate accounts. X has also imposed a 5 percent distribution requirement. X has a statement in the solicitation materials regarding investigation of improper use of grant funds, and has included a statement in the grantee letters regarding proper use of charitable grants. Additional factors favoring X is (1) it is responsible for all investment of donor funds; and (2) income is not accrued to a donor's account, except for the endowment accounts, and even with endowment accounts X has the right to distribute 25 percent of earnings.

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RULINGS

Based on X's representations and information submitted, X will exercise ownership, dominion and control over the DAFs and no donor material restrictions or conditions exist. We conclude that the donor advised funds are to be treated as commingled accounts of X's overall fund and not as separate and individual legal or trust accounts of each donor advisor in the nature of mini private foundations. Accordingly, based on the facts and representations submitted, we hold as follows:

1. Donor transfers of assets or funds to X, with respect to the DAFs, represent transfers of all of the right, title and interest of donors in and to the transferred properties. The transfers are not subject to any material restrictions or conditions, within the meaning of section 1.507-2(a)(8) of the regulations.

2. Contributions by donors of assets or funds to X, with respect to the DAFs, may be treated by X as contributions of support, within the meaning of section 509(a) of the Code, that may cause X to be treated as other than a private foundation, as provided in sections 509(a) and 170(b)(1)(A)(vi) of the Code, provided the levels of public support meet the criteria set out in the regulations under those stated code provisions.

Since the matters in this ruling are very factual in nature, the ruling is valid only to the extent that X's actual operation and conduct is as represented herein.

A copy of this letter is being sent to your authorized representative listed on the power of attorney on file with this office.

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

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,

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3