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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: October 25, 2002

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend

M =
A =
B =
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Dear Sir or Madam:

This is in response to a letter from M's authorized representativ
certain rulings on M's behalf. These rulings concern the unrelated bus
treatment of certain activities of M under sections 511 through 513 of th
Code of 1986, and the proper classification of income generated from t
of calculating M's public support under sections 509(a)(1) and 170(b)(1
requested rulings with respect to income it receives from two limited lia
which it is a **% member.

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the activities for purposes
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bility companies, of

Facts

M is a scientific research organization, which is exempt from fe
section 501(a) of the Code as an organization described in section 501
exclusively for charitable, educational, and scientific purposes, includin
science, the scientific method, and research for the benefit and educati

deral income tax under
(c)(3). M is organized
g the utilization of
on of mankind.

M and its affiliates operate for the federal government. M carries out scientific research programs for federal, state and other government agencies and conducts a relatively small amount of research and development for commercial sponsors. M also assists the federal government in programs that promote national security and national defense. M and its scientists have received many patents, copyrights, and awards for scientific achievement. In summary, the vast majority of M's activities further one or more exempt purposes under section 501(c)(3) of the Code, including, but not limited to, scientific research in the public interest, the advancement of science, the promotion of national security, and education.

M's activities include a number of projects. Project 1 concerns A, which is owned and operated by an agency of the federal government. Because of a number of problems with the previous A, the government contracted with M to design a new system and to fabricate one unit. The unit was to be used as the prototype for testing and evaluation, and, if successful, would also be installed as the permanent replacement. M's scientists and engineers faced a number of design issues and devised novel solutions. In carrying out this project, M employed numerous research scientists and engineers, such as those with mechanical and electrical engineering expertise. Scientific and engineering personnel ranged from junior mechanical engineers to research scientists, senior research scientists, and a principal research scientist. In addition, highly skilled machine shop personnel and other technicians fabricated key components. M drew on its extensive experience in specialized areas, and M's scientists and engineers were able to design and construct a novel system for a unique application. A is the only entity of its type, and its design imposes extreme restrictions on its size and configuration. Moreover, A must be able to operate under extreme conditions, and the power supply is limited.

In Project 2, through a contract with a department of the federal government, M operates B, a specialized, highly technical library used principally by scientists and engineers involved in a certain area. B serves as the focal point for specialized science and technology information. Technical areas covered by B include, among others, chemical and physical properties, medical effects and treatment, and One of the primary tasks of B is to identify and acquire relevant information, which is processed into large, searchable electronic databases and storage/retrieval systems. Also, B identifies, develops, and applies analytical tools and techniques to help researchers interpret and apply stored information. B's technical staff conducts research on science and technology issues based on user needs, or at the request of B's users. B's bibliographic database is independently searchable by approved scientists and engineers. Full-text documents are available to users through B's staff, who can also provide users with search services on many external databases. B produces a number of publications distributed to users free of charge or at a nominal cost. In addition to databases, B also produces critical reviews, technical assessments, handbooks and data books, state-of-the-art reports, proceedings of symposia, and training aids. For example, B prepares and distributes an in a searchable CD-ROM format. Lastly, B is required to support users who need assistance with special projects. Such technical assistance projects are separately funded and may or may not be carried out by B personnel themselves.

Because of its sensitivity, a substantial part of the information and services provided by B is available only to approved individuals. In some cases, access is limited to those with appropriate security clearances. However, B also provides a substantial amount of information to the general public. For example, through its website B provides free search capabilities for a

variety of publicly available information sources such as The website also provides an Internet directory to related topical areas, while a free search service is provided for related patents and inventions. Some of B's publications are available to the public, including its newsletter. In carrying out its mission, B employs individuals with a wide variety of backgrounds and educational credentials (up to and including the Ph.D. level). B personnel include, among others, technical staff members, library and administrative assistants, and a management group. Most technical and management group members have substantial backgrounds in chemistry, biology, biochemistry, engineering, medical research, and defense matters.

C is a highly diversified multi-program laboratory with a broad range of scientific and technical expertise ranging from phenomena to . M manages and operates C and is the employer of all of C's scientific, administrative, and other personnel. C's contract does not itself provide funding for overall laboratory operations. Rather, laboratory operations are funded on a project-by-project and program-by-program basis, principally by various offices within an agency of the federal government. M has entered into a permit, pursuant to which it may use C's facilities for its own research activities, including research sponsored by other government agencies and by commercial organizations. The permit is intended to coincide with the term of the contract between M and the government agency. The federal government charges M for use of its facilities, and pursuant to the permit, work performed for other sponsors may not interfere with M's work for the government.

Project 3 encompasses the D program, which is a major undertaking of the federal government that is conducted as part of a research program. The fundamental purpose of D is to significantly improve scientists' ability to understand and predict the Very complex mathematical algorithms of are used to estimate and its The immediate objective of D is to provide an experimental test bed for the study of processes, and to test the results of those processes. To improve the empirical understanding of the impact of D operates major field research stations. These stations are equipped with very sophisticated and expensive scientific equipment to make intensive measurements of, among other things, , physical conditions that control , and the D also supports a system and an measurement facility. The achievement of D's objectives will lead to an improved understanding of , explicitly recognizing the crucial role of effects. D is a major research program led by C. D's chief scientists are employees of M and are located at C. Both scientists also serve as members of the D executive committee. Under the proposal for this project provided to the federal government for FY D will consume approximately worker-years of effort of which 75%, or worker-years, is for personnel classified as scientific.

Project 4 concerns E, which was established pursuant to an agreement with another country. The major goals of E are to engage certain and from the foreign country in and to that those will i to a E will accomplish these objectives by assisting in the creation of sustainable jobs for The E program is striving to ensure that these ~~are~~ able to transition their skills into other activities that promote

economic development. M is primarily working to develop an infrastructure to nurture and sustain businesses in certain cities in the foreign country. Among other tasks, M is currently helping to create centers and provide other support in certain cities. The centers have been established to carry out economic development tasks such as assisting the cities in identifying the types of businesses to be developed, planning how to do it, and carrying out initial steps. An example is M's effort to help moderni

ize a plant, which is one of the highest priority items for the city's governmen

t. Under the F project proposal to a federal agency, approximately 75% of the worker-h

ours consumed by E consist of M employees classified as scientific. M's activities serve U.S. na

tional security objectives. This project is funded entirely by the government.

M and F established F is a state corporate agency and a not-for-profit

as awarded a contract to G, a limited liability company having not-for-profit purposes. G w

he mission is to manage and operate a for a year period. Th

and technical solutions in key conduct basic and applied research, create scientific knowledge

, restore and protect the areas of science, increase the availability of

hosts a number of environment, and contribute to national security. Each year, the

Among its other guest researchers who spend two weeks or longer at the

ore competencies, including responsibilities, G must maintain and enhance the co

and science and technology. science and advanced

sciences and technology, advanced

, instrumentation, controls and measurement scie

technologies. G also operates ve

ence and technology, and unique experimental facilities that serve not only scientists assoc

ery sophisticated and often but also scientific researchers from around the world. In most ca

iated with the host institution, research projects that are evaluated and prioritized by the user fa

ses, scientists must propose This operation advances scientific research by making unique an

acility's research review board. available to a wide range of scientists. G is also authorized by its

d sophisticated facilities engage in scientific research, technology development, and educ

s organizing documents to as a partnership for federal income tax purposes, and, as such,

ational activities. G is treated each of G's various activities is allocated to M.

of the income from

onducts a substantial scientific Project 5 is connected to the federal government, which c

source. A strategy was research program intended to develop as a viable s

understanding of developed that emphasizes basic research in developing a better

gies for creating The and developing and evaluating competing concepts and technolo

conditions likely to be program is intended to research materials that can withstand the

studies, materials program encountered in a . In connection with

materials systems that have scientists and engineers at the identified

These the potential to meet the safety and environmental goals of

ditions intended to simulate materials are being tested over an extended period of time in con

explore the materials' those expected in a . Experiments are carried out to

dimensional stability, mechanical properties, and corrosion resist

and Based on the results of those studies, G's scientists develop new

re experiments. G's expected to improve the materials' behavior in futu

roject is not to develop a scientists also study related issues. M states the purpose of this pr

science, and Rather, its mission is to advance science,

technology - the knowledge base needed for an economically and environmentally attractive source. Thus, this Project is consistent with the general U.S. governmental purpose of developing the science and technology needed for . The proposed budget for this project is approximately worker-years of effort, of which is to be conducted by scientific ( ) staff, by R&D technicians, and by hourly technicians and administrative staff.

Project 6 involves an agency of the federal government, which is funding the construction of a new, source. research is used to understand the of a of When completed, this project will provide the most in the world, allowing scientists to obtain much more detailed . The will be responsible for operating the facility. Development and construction is occurring through a collaboration of . Scientists and engineers are responsible for the design and construction of the . The will be available to scientists and engineers from universities, laboratories, and industry. Approximately 75% of is expected to be available through a proposal process, with many scientists using the facility annually. Approximately 25% of will be available to G's scientific staff, for and testing, and for other purposes. Experimental areas will accommodate thousands of projects per year. Because not all users will be experts in , G's scientists and engineers will maintain and operate the facility, and work closely with the user community to ensure its effective and proper use.

H is a nonprofit corporation that has been recognized as exempt from federal income tax under section 501(c)(3) of the Code and classified as other than a private foundation under section 509. I is a not-for-profit Limited Liability Company established by M and H, which holds the membership interest in I on behalf of a . I was formed for the purpose of operating and managing J and is treated as a partnership for federal tax purposes. Each member has a interest in I, which was awarded the contract to manage and operate J for a year period. I's Limited Liability Company Agreement states it is "organized exclusively for ...charitable, scientific, testing for public safety, literary, or educational purposes...,to engage in scientific research and educational activities and any other related activities for which not-for-profit limited liability companies may be organized under the Act and which are in furtherance of scientific research and educational activities."

As a J's mission is to conceive, design, construct and operate complex, leading-edge, user-oriented facilities in a safe and environmentally benign manner that is responsive not only to the government, but also to the needs of the users; carry out basic and applied research in long-term programs at the frontier of science that supports governmental missions and the needs of the user community; develop advanced technologies that address national needs and initiate their transfer to other organizations and to the commercial sector; disseminate technical knowledge to educate new generations of scientists and engineers; to maintain technical currency in the nation's workforce; and to encourage scientific awareness in the general public. In carrying out J's mission, and pursuant to its contract to manage and operate the I focuses on three major research areas: first, the basic science programs that emphasize science, science, and For example, I is required to conduct research into the fundamental

properties of [redacted] and the chemistry and physics of [redacted] and [redacted] The second important research area requires I to conduct [redacted] research including applied [redacted] sciences, [redacted] sciences, and [redacted] sciences. The contract emphasizes the importance of broad collaborations between and among J and outside researchers. There is also an emphasis in this area on collaborations with industry, including personnel exchanges. Such industry collaborations will emphasize excellence in basic research as well as relevance to industry needs. Lastly, I is required to conduct research into the fundamental properties of [redacted] and [redacted] and the [redacted]. I is also required to conduct research in [redacted], the structure of [redacted] and [redacted] In operating J, I employs scientists, engineers, and other professionals, many of whom hold Ph.D. degrees.

Project 7 concerns J, which recently completed the construction of a [redacted] that creates [redacted] and [redacted] of [redacted] This [redacted] is intended to answer some of the most basic questions about the [redacted], from the [redacted] to the [redacted] The [redacted] is intended to serve as an experimental facility for all qualified scientists. Proposals for experiments are submitted to J's Associate Laboratory Director. Proposals that pass an initial screening are distributed to the program advisory committee for consideration. The committee is composed of [redacted] scientists, only [redacted] is an I employee resident at J. A subcommittee for scientific merit and technical feasibility considers each proposal. Proposals are accepted, deferred, or rejected. The operating budget (as distinct from funding for specific projects) covers the personnel, material, and electric power costs necessary for the basic operation, repair, maintenance, and improvement of the [redacted] and its associated equipment. Highly trained scientific and technical staff accomplishes these tasks. The budget funds supporting staff, who conduct a variety of ancillary activities, including budget and finance, environmental safety and health, and waste management. The budget also includes a capital equipment component to cover items such as new control system equipment and software and service building upgrades. The federal government funds the [redacted] operating budget.

Project 8 focuses on I, which employs a large number of experimental physicists and theoretical physicists at J to advance the [redacted] The goal of this project carried out at J is to advance the [redacted] for a [redacted] understanding of [redacted] on the [redacted]. The present level of understanding is composed of [redacted] As there are known limitations and inconsistencies of [redacted] this project is intended to make progress toward a [redacted] by answering both [redacted] questions. The experimental physics component of this project focuses on the design, construction, operation, and analysis of experiments with a specific emphasis on the behavior of certain [redacted] The theoretical physics component focuses on J's strong group of physicists involved in [redacted], and often involves the use of large, high-speed computers to model processes and analyze data. The theoretical and experimental physicists collaborate closely and publish numerous papers annually.

Law and Analysis - Unrelated Business Income Tax

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides, in part, that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes advancement of education or science, and lessening the burdens of government

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "educational," as used in section 501(c)(3) of the Code, to mean the instruction or training of the individual for the purpose of improving or developing his or her capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(5)(i) of the regulations provides that a "scientific" organization must be organized and operated in the public interest. Therefore, the term "scientific," as used in section 501(c)(3) of the Code, includes the carrying on of scientific research in the public interest. The regulation provides that research is not synonymous with scientific, and for research to be "scientific" within the meaning of section 501(c)(3), it must be carried on in furtherance of a "scientific" purpose.

Section 1.501(c)(3)-1(d)(5)(ii) of the regulations further provides that scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

Section 1.501(c)(3)-1(d)(5)(iii) of the regulations provides that scientific research will be regarded as carried on in the public interest: (a) if the results of such research are made available to the public on a nondiscriminatory basis; (b) if such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or (c) if such research is directed toward benefiting the public. Examples of scientific research which is directed toward benefiting the public, and, therefore, carried on in the public interest include scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public, and scientific research carried on for the purpose of discovering a cure for a disease.

Section 511 of the Code imposes a tax on the unrelated business taxable income of exempt organizations described in section 501(c), including those described in section 501(c)(3).

Section 512(a)(1) of the Code defines the term "unrelated business taxable income" as the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less certain allowable deductions, both computed with the modifications provided in section 512(b).

Section 512(c)(1) of the Code provides that if a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with

respect to such organization, such organization in computing its unrelated business taxable income shall include its share of the gross income of the partnership from such unrelated trade or business and its share of the partnership's deductions directly connected with such gross income.

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

Section 513(c) of the Code and section 1.513-1(b) of the regulations define the term "trade or business" as any activity that is carried on for the production of income from the sale of goods or the performance of services.

Section 1.513-1(a) of the regulations provides that unless one of the specific exceptions of section 512 or 513 of the Code is applicable, gross income of an exempt organization subject to the tax imposed by section 511 is includible in the computation of unrelated business taxable income if: (1) it is income from trade or business; (2) such trade or business is regularly carried on by the organization; and (3) the conduct of such trade or business is not substantially related (other than through the production of funds) to the organization's performance of its exempt functions,

Section 1.513-1(c) of the regulations provides that specific activities of an exempt organization will ordinarily be "regularly carried on" if they manifest a frequency and continuity, and are pursued in a manner generally similar to comparable commercial activities of non-exempt organizations.

Section 1.513-1(d)(2) of the regulations provides that a trade or business is "related" to exempt purposes, in the relevant sense, only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than the production of income); and it is "substantially related" only if the causal relationship is a substantial one. The regulation states that 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 the goods or performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Whether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved.

Midwest Research Institute v. United States, 554 F. Supp. 1379 (W.D. Mo. 1983), *aff'd* 744 F.2d 635 (8th Cir. 1984) concerned a nonprofit organization that was recognized as tax-exempt because it conducted scientific research within the meaning of section 501(c)(3) of the Code. The Service asserted that the organization's income from a number of privately sponsored research projects generated unrelated business income. Although [illegible] percent of the organization's research projects were performed for various governmental entities, the court noted the projects at issue appeared to represent nearly all of the projects done for non-governmental sponsors during the period in question. In evaluating whether the

projects were substantially related to the organization's exempt purposes, the court stated that the application of the unrelated business income provisions depended on whether the activities were "scientific" within the meaning of section 501(c)(3) of the Code. The court ruled that the organization's activities with minor exceptions were scientific research.

In IIT Research Institute v. United States, 9 Cl. Ct. 13 (1985), an organization ("IITRI") was recognized as exempt under section 501(c)(3) of the Code on the basis it performed scientific research. Approximately 85 percent of IITRI's research was conducted pursuant to contracts with federal and state governmental agencies. The remainder was performed for industry. After conducting an examination of IITRI, the Service stated 24 contracts out of a sample of 58 generated unrelated business taxable income. Eleven of the contracts were seen as unrelated to IITRI's exempt purpose because they were not "scientific" in nature. However, the Claims Court concluded that all eleven of these projects did qualify as scientific research within the meaning of section 501(c)(3). In concluding the eleven contracts were substantially related to IITRI's exempt scientific purpose, the Claims Court outlined five factors it used to identify contracts as "scientific" in nature. The court stated any of the contracts in question could be deemed to be scientific research because it either -

(1) Involved the use of observation or experimentation to formulate or verify facts or natural laws;

(2) Could only have been performed by an individual with advanced scientific or technical expertise;

(3) Added to knowledge within a particular scientific field;

(4) Involved the application of mathematical reasoning; and/or

(5) Was an attempt to systematize or classify a body of scientific knowledge by collecting information and presenting it in a useful form.

Three requirements must be met in order for an income-producing activity of an exempt organization to constitute an unrelated trade or business under section 513(a) of the Code: there must be a trade or business; the trade or business must be regularly carried on; and the trade or business must not be substantially related to the organization's exempt purpose or function. See section 1.513-1(a) of the regulations. It is necessary for an activity to meet each of these requirements in order to conclude that it constitutes an unrelated trade or business.

Here, amounts derived by M from the Projects described above constitute income from a trade or business under section 513(c) of the Code, because the term "trade or business" includes any activity carried on for the production of income from selling goods or performing services. M's Projects are also "regularly carried on" under section 1.513-1(c) of the regulations, because the term "regularly carried on" refers to the frequency and continuity with which the activities productive of the income are conducted and the manner in which they are pursued.

At the heart of this issue is whether the Projects are "substantially related" to M's exempt purposes. A trade or business is "related" to an organization's exempt purposes only where the conduct of the business activities has causal relationship to the achievement of exempt

purposes. It is "substantially related" for purposes of section 513 of the Code, 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 exempt purposes, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. See section 1.513-1(d) of the regulations. In making this determination, all the facts and circumstances must be considered.

M's stated purposes are charitable, scientific, and educational. M's purposes also encompass advancing science and education. In considering all of the available information attendant to the eight Projects described above, we believe each one is substantially related to the accomplishment of one or more of M's exempt purposes.

Specifically, most of the Projects have a substantial, causal relationship to the accomplishment of M's scientific purposes within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(5) of the regulations. Whether carried on directly by M or through M's membership interest in the LLC's described above, these Projects are carried on in the public interest because the research is performed for the United States and is directed toward benefiting the public. See Midwest Research Institute v. United States and IIT Research Institute v. United States, supra. Some of the Projects further charitable purposes by lessening the burdens of government and by advancing science and education in accordance with section 1.501(c)(3)-1(d)(2). Other Projects are substantially related to M's educational purpose within the meaning of section 1.501(c)(3)-1(d)(3). In fact, many of the Projects contribute to more than one of M's exempt purposes under section 501(c)(3). See section 1.513-1(d)(2).

Law and Analysis - Publicly Supported Test

Section 509(a)(1) of the Code provides, in part, that the term "private foundation" means 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 referred to in section 170(c)(2) 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 section 170(c)(1) or from direct or indirect contributions from the general public.

Section 1.170A-9(e)(2) of the regulations states 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 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)(6)(i) of the regulations provides that 100% of the contributions by an individual, trust, or corporation are to be included in the denominator of the one-third test as total support. However, such contributions from any one party are limited in the numerator of

the fraction to an amount equal to 2% of the organization's total support for the relevant period. The limitation does not apply to support received from governmental units referred to in section 170(c)(1) of the Code or to contributions from organizations described in section 170(b)(1)(A)(vi).

Section 1.170A-9(e)(7)(i)(a) of the regulations provides that support is defined in section 509(d) of the Code, but excludes amounts described in section 509(d)(2). The regulation also provides that support does not include amounts received from the exercise or performance of an organization's exempt functions, including amounts received from an activity that is substantially related to the organization's exempt purposes.

Section 1.170A-9(e)(8)(i) of the regulations provides that support from a governmental unit includes any amounts received from a governmental unit, including donations, contributions, payments under service contracts, and research grants. Such amounts will not constitute support from a governmental unit, however, if they represent amounts received from the exercise or performance of the organization's exempt functions.

Section 1.170A-9(e)(8)(ii) of the regulations provides that a payment will be treated as support from a governmental unit when the purpose of the payment is primarily to enable the organization to provide a service to, or maintain a facility for, the direct benefit of the public rather than primarily to serve the direct and immediate needs of the payor.

Section 1.170A-9(e)(9) of the regulations, Example 1, shows that the numerator of the one-third of support fraction includes 100% of support from governmental units and certain other public charities, plus contributions from the general public subject to certain limitations. The denominator of the fraction includes the organization's total support.

M is an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. In determining how to treat amounts derived by M either directly from the eight Projects, or through its membership in an LLC, it is necessary to apply the standards contained in section 1.170A-9(e) of the regulations. As noted previously, 100% of amounts received from governmental units described in section 170(c)(1) are included in the numerator and denominator in calculating the one-third public support test. However, such amounts do not constitute support from a governmental unit, if they represent amounts received from the exercise or performance of the organization's exempt functions. See section 1.170A-9(e)(8)(i). Nevertheless, a payment will be treated as support from a governmental unit when the purpose of the payment is primarily to enable the organization to provide a service to, or maintain a facility for, the direct benefit of the public rather than primarily to serve the direct and immediate needs of the payor. See section 1.170A-9(e)(8(ii).

Here, all the available information establishes that the federal government's payments to M in connection with each of the eight Projects described above are intended primarily to enable M to provide services to, and maintain facilities for the direct benefit of, the public. Such payments are not intended primarily to serve the direct and immediate needs of the payor. Whether the amounts in question are received directly by M from the federal government, or pursuant to M's membership interest in the LLC's, as described above, 100% of such amounts should be included in the numerator and denominator in calculating the one-third of public

support test in section 170(b)(1)(A)(vi). These amounts are treated as support from a governmental unit described in section 170(c)(1).

Conclusions

Based on the above facts, we rule as follows:

1. Each of the eight Projects discussed above is substantially related to M's exempt purpose under section 501(c)(3) of the Code and does not constitute unrelated trade or business under section 513(a). Thus, amounts derived by M from these Projects do not constitute unrelated business taxable income under section 512(a)(1).

2. In determining M's status as other than a private foundation under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code, funding derived by M from each of the eight Projects discussed above constitutes support from a governmental unit described in section 170(c)(1), and 100% of such amounts will be included in the numerator and denominator of the one-third public support test.

3. The conclusions stated above are also applicable in the case of amounts received by M through its membership in the LLC's that were described previously. Thus, such amounts do not constitute unrelated business taxable income under section 512(a)(1) of the Code and will be treated as support from a governmental unit for purposes of the one-third of public support test under section 170(b)(1)(A)(vi).

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

Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the transactions described above under any other provision of the Code.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to M's authorized representatives. A copy of this letter should be kept in M's permanent records

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

If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Marvin Friedlander

Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1