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

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Date:

JAN 17 2001

Contact Person:

Identification Number:

Telephone Number:

T:EO:B1

No Third Party Contact
SIN#:
507.03-00
509.02-02

Employer Identification Number:

Legend:

Y

Dear Sir or Madam:

We are responding to a request for a ruling concerning whether an amendment made to your organizing document will adversely affect your status as an organization described in section 501(c)(3) of the Internal Revenue Code. In addition, you are requesting a ruling that you can reasonably be expected to satisfy the requirements of section 507(b)(1)(B) of the Code during the 60-month period beginning on January 1, 2001.

FACTS:

You are an organization described in section 501(c)(3) of the Internal Revenue Code and classified as a private foundation under section 509(a) of the Code. Prior to January 1, 2001, you operated as a grant-making private foundation that provided funding to schools for the health professions and to colleges and universities for studies relating to health care. Your Board of Trustees has decided to change your activities to provide more direct activities that will facilitate the use of community partnerships throughout Y to assist local tax exempt hospitals in pursuing a variety of community health initiatives.

You have amended your organizing documents to expand your purposes. Your expanded purposes provide that you will be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more of the tax-exempt hospitals described in section 501(c)(3) of the Code and sections 509(a)(1) and 170(b)(1)(A)(iii) located in Y.

You are governed by a Board of Directors that will consist of a minimum of eleven directors and a maximum of 21 directors. Your Bylaws now provide that not less than a majority of directors holding office shall be individuals who are at the same time officers, directors, trustees of, or representatives appointed by members of senior management of one or more tax-exempt hospitals located in Y.

You are requesting the following rulings:

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1. You will continue to qualify as an organization described in section 501(c)(3) of the Code.

2. You will satisfy the requirements of section 507(b)(1)(B) of the Code during the 60-month period beginning on January 1, 2001.

LAW:

In general, section 507(b)(1)(B) of the Code provides 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 1.507-2(d)(2) of the Income Tax Regulations provides that an organization will satisfy the requirements of section 507(b)(1)(B) of the Code if it is described in section 509(a)(3) of the Code and operates as a section 509(a)(3) organization for a continuous period of at least 60 months. The organization needs to satisfy the requirements of section 509(a)(3) at the commencement of the 60-month period and continuously thereafter.

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)(I) 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 will satisfy 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 methods of operation, and projected methods 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 determination, all facts and circumstances shall be considered.

Section 509(a) of the Code provides that all organizations described in section 501(c)(3) are private foundations except those described in paragraphs (1) through (4) of section 509(a).

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Section 509(a)(3) of the Code excludes from the definition of a private foundation an organization which is operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a)(1) or 509(a)(2).

Section 1.509(a)-4(b)(1) of the regulations provides, in pertinent part, that for an organization to qualify under section 509(a)(3)(A) of the Code as a supporting organization, "it must be both organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified publicly supported organizations."

Section 1.509(a)-4(c)(1) of the regulations provides that an organization will be deemed to be "organized exclusively" for one or more of the purposes specified in section 509(a)(3)(A) of the Code only if its articles of organization (i) limit the purposes of such organization to one or more purposes set forth in section 509(a)(3)(A); (ii) do not expressly empower the organization to engage in activities which are not in furtherance of such purposes; (iii) state the specified publicly supported organizations on whose behalf such organization is to be operated; and (iv) do not expressly empower the organization to operate in support of or to benefit any organization other than the specified publicly supported organizations referred to in (iii) above.

Section 1.509(a)-4(c)(2) of the regulations indicates that in satisfying the "organizational test," the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes set forth in section 509(a)(3)(A) of the Code. An organization which is "operated, supervised, or controlled by" or "supervised or controlled in connection with" one or more section 509(a)(1) or (2) organizations to carry out the purposes of such organizations, will be considered as satisfying the organizational test if the purposes set forth in its articles are similar to, but no broader than, the purposes set forth in the articles of its controlling section 509(a)(1) or (2) organizations.

Section 1.509(a)-4(d)(1) of the regulations provides that in order to meet the requirements of section 509(a)(3)(A), an organization must be organized and operated exclusively to support or benefit one or more "specified" publicly supported organizations. The manner in which the publicly supported organizations must be specified in the articles will depend upon whether the supporting organization is "operated, supervised or controlled by" or "supervised or controlled in connection with" such organizations or whether it is "operated in connection with" such organizations.

Section 1.509(a)-4(d)(2) of the regulations provides that an organization having either the "operated, supervised, or controlled by", or the "supervised or controlled in connection with" relationship satisfies this requirement even if it designates the supported organizations by class or purpose rather than by name.

Section 1.509(a)-4(d)(3) of the regulations provides that it is permissible for the supporting organization's governing instrument to permit: (1) the substitution of one publicly supported organization within the same class or a different class designated in the articles; (2) the supporting organization to operate for the benefit of new or additional publicly supported organizations of the same class designated in the articles; or (3) the supporting organization to

vary the amount of its support among different publicly supported organization within the same class or classes of organizations designated in the articles.

Section 1.509(a)-4(e)(1) of the regulations sets forth the operational test of section 509(a)(3)(A) of the Code. The operational test can only be met if an organization actually engages solely in activities, which support or benefit the specified publicly supported organizations. Such activities may include making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefited by the specified publicly supported organization. Similarly, an organization will be regarded as "operated exclusively" to support or benefit one or more specified publicly supported organizations even if it supports or benefits an organization, other than a private foundation, which is described in section 501(c)(3) and is operated, supervised or controlled by or in connection with such publicly supported organizations, or which is described in section 511(a)(2)(B) of the Code.

Section 1.509(a)-4(e)(2) of the regulations states, in pertinent part, that a supporting organization may satisfy the operational test by using its income to carry on an independent activity or program which supports or benefits the supporting organizations.

Section 1.509(a)-4(g)(1)(i) of the regulations provides that the terms "operated by," "supervised by," and "controlled by," as used in section 509(a)(3)(B), presupposes a substantial degree of direction over the policies, programs, and activities of a supporting organization by one or more publicly supported organizations. The relationship required under any one of these terms is comparable to that of a parent and subsidiary, where the subsidiary is under the direction of, and accountable or responsible to, the parent organization. This relationship is established by the fact that a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, or members of the governing body.

Section 1.509(a)-4(g)(2) of the regulations provides that an organization may establish the "operated, supervised, or controlled by" relationship even if it is controlled by one or more publicly supported organizations, provided the purposes of the controlling publicly supported organizations are carried out by benefiting the other publicly supported organizations.

RATIONALE:

An organization will satisfy the requirements of section 509(a)(3) of the Code if the organization satisfies the relationship test set forth in section 509(a)(3)(A), it is operated to further the purposes of the organization that it supports, and it is not controlled by a disqualified person.

Your Articles limit your purposes to supporting one or more organizations described in section 509(a)(1) and 170(b)(1)(A)(iii), do not expressly empower you to engage in activities which are not in furtherance of purposes described in section 509(a)(3)(A), identify the class of publicly supported organizations on whose behalf that you are operated, and do not expressly empower you to support or benefit any organizations other than the specified publicly supported organizations. Thus, you meet the requirements set forth at section 1.509(a)-4(c)(1) of the

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regulations.

You provide services to all not for profit hospitals located in Y, such as educating hospitals about being more efficient in their operations. These activities are in furtherance of your exempt purpose.

You are "operated, supervised or controlled by" because you are supporting all not-for profit hospitals described in section 501(c)(3) and described in section 170(b)(1)(A)(iii) located in Y. At least half of your directors shall also be individuals who are at the same time officers, directors, trustees of, or representatives appointed by members of senior management of one or more not for profit hospitals described in section 501(c)(3) and classified as an organization described in section 170(b)(1)(A)(iii) located in Y.

You are not controlled directly or indirectly by one or more disqualified persons or by an organization that is not described in section 509(a)(1) or 509(a)(2).

Furthermore, section 1.507-2(d) of the regulations provides that in order to meet the requirements of section 507(b)(1)(B) of the Code for the 60 month termination period as an organization described in section 509(a)(3), you 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 your 60-month termination you must furnish the Internal Revenue Service with information establishing that you did, in fact, operate as an organization described in section 509(a)(3) during such period. If you establish that fact, you will be classified as an organization described in section 509(a)(3) as long as you continue to meet the requirements of that section.

If you fail to satisfy the requirements of section 509(a)(3) of the Code for the continuous 60 month period, but you satisfy the requirements of section 509(a)(3) for any taxable year or years during such 60 month period, you will be treated as a public charity exempt under that section for such taxable year or years. Grants or contributions made during such taxable year or years shall be treated as made to an organization described in section 509(a)(3) of the Code. In addition, sections 507 through 509 and Chapter 42 shall not apply to you for any taxable year within such 60-month period for which you meet the requirements of section 509(a)(3).

Pursuant to section 1.507-2(a)(4) of the regulations, you cannot rely on this advance ruling to avoid the imposition of tax under section 4940 of the Code. Consequently, if you do 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 you did not complete a successful termination pursuant to section 507(b)(1)(B) and were not treated as an organization described in section 509(a)(3) for such year or years), you 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:

1) Your articles of incorporation, as amended and restated effective January 1, 2001, your Bylaws amended effective January 1, 2001 and the changes in your method of operation and activities do not adversely affect your status as an organization described in section 501(c)(3) of the Code.

2) You can reasonably be expected to be an organization of the type described in section 509(a)(3) of the Code. You have filed the notification required by section 507(b)(1)(B)(ii) of the Code indicating your intent to commence a sixty-month termination of your private foundation status. You have submitted a properly executed Form 872. Accordingly, you will be treated as an organization that is not a private foundation for an advance ruling period, which commences on January 1, 2001.

Although you are considered to be a public charity for certain purposes, you are still considered a private foundation for purposes of the filing requirements under section 6033 and 6056. Accordingly, you must continue to file Form 990-PF for each year in the termination period. A copy of this letter should be attached to your Form 990-PF.

Donors (including private foundations) may rely on this ruling that you are not a private foundation until 90 days after the end of your 60-month period. However, if notice that you 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 your loss of classification, or if they acquired knowledge that the Internal Revenue Service had given notice that you would be removed from that classification. Private foundations may rely on the classification as long as you were 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 you would be removed from that classification.

These rulings are 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 your tax status should be reported to the Service.

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

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. You should keep a copy of this with your permanent records to resolve any questions about your exempt status.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent.

Sincerely,

Marvin Friedlander

Marvin Friedlander
Manager, EO Technical
Group 1