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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: AUG 29 2002

Contact Person:

ID Number:

Telephone Number:

4958.00-00

In reply refer to:
T:EO:RA:T:1

E.I.N.

LEGEND

F=
G=
H=
I=
J=

Dear Sir/Madam:

You requested a ruling that the operation by F of the bus service described below will not adversely affect F's status as an organization described in section 501(c)(3) of the Code and that the receipt of benefits from the transportation services by disqualified persons with respect to F will not be treated as excess benefits for purposes of section 4958 of the Code.

FACTS

F is a nonprofit organized under the laws of the State of J. F is exempt under section 501(c)(3) of the Internal Revenue Code and is not a private foundation within the meaning of section 509(a)(3). F operates a short-term acute care hospital in a joint township hospital district made up municipalities of G and H, and Townships of G and I, located in State J.

F's service area covers those mentioned communities and several neighboring rural and small communities. There is no taxi service or general public transportation available within the service areas. There is a shuttle bus service in one county but its use requires advance notice of 48 hours.

F is purchasing a 10-passenger/2-wheelchair bus that is equipped for wheelchair access. The bus will be used in F's Inpatient Rehabilitation program to enable patients to begin their transition back to the community. Patients will be accompanied by Rehabilitation staff and will be taken to the grocery store and for other routine activities, as the program aims to enable patients to cope with the barriers they will encounter in the community.

When the Rehabilitation program is not using the bus, F will utilize the bus to provide free transportation from any adult patient's home to the hospital, any of its outpatient services, or to a physician office within the service area's communities, regardless of whether the physician is a member of F's medical staff. The bus driver will be licensed to transport individuals, but will not provide health care service. Riders needing any assistance must be accompanied by a caregiver. The service will not be publicized but will be listed in F's services directory, and F will inform staff members of the services. Individuals must make their own arrangements, must indicate an inability to obtain transportation, and show a need for the service.

The service will be available on a first-come, first-served basis, subject to available seating, without regard to financial condition or to the individual's service provider. Except for the Rehabilitation Transportation Unit, all other transportation will be available to individuals based on scheduling, availability and eligibility. Eligibility will be determined on a case-by-case basis by the hospital staff according to established procedures and guidelines.

As indicated, transportation will be made available within the F's service areas. The following criteria will be used to determine availability and eligibility:

1. patients who are medically stable and capable of getting to and from their residence without relying on assistance from the driver;
2. patients who are scheduled for treatment or a procedure that could affect their transportation needs;
3. patients who are treated at F, although the service will not be publicized or mentioned so that it will not induce the patient or provider to obtain health services at F;
4. patients who are referred for a course of treatment;
5. patients must meet concerns regarding safety, treatment compliance, or availability of regular or reliable transportation.

The bus service will be limited in scope. Because there is insufficient availability of time/space to attempt to cover all medical service providers, the bus attempts to provide transportation for those patients subject to risks if treatment is not provided. Physicians and health care providers ("groups") are not included or excluded based on

geographic location within F's service area. The excluded groups are those that do not render primary healthcare services or are outside of F's service area. The bus will not provide transportation for any of the following: emergency transport, transport of nursing home residents, transport to or from free-standing ambulatory surgery or urgent care center, dentist, podiatrist, optician/optometrist, physical therapy, speech/language therapy, drug/alcohol or psychological counseling, chiropractic, pharmacy, or other alternative or allied health services.

There are a maximum of three physicians who may serve on the Board of Trustees. None of the physicians benefiting from this transportation system have a direct business relationship with F. None of the physicians will have a financial interest in the transportation system.

F does not expect this arrangement to increase the utilization or cost of healthcare services. The expected annual expenses for operating the transportation system will account for .16% of its total annual expenses. The cost of this transportation service will be included with other non-reimbursed community benefit program expenses. No patients or third party payors will be billed for the service.

Rulings Requested

1. The operation by F of the transportation system will not adversely affect F's status as an organization described in section 501(c)(3) of the Code.

2. The receipt of incidental benefits of the transportation services by disqualified persons with respect to F will not be treated as excess benefits for purposes of section 4958 of the Code.

Law

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

Section 1.501(a)-1(c) of the Income Tax Regulations states that the term "private shareholder or individual" refers to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(2) of the regulations states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such term includes relief of the distressed.

Section 4958 of the Code imposes a tax in cases where organizations exempt under section 501(c)(3) of the Code engage in excess benefit transactions. An excess benefit transaction is one in which a tax-exempt organization provides an economic benefit to one or more of the organization's insiders, called "disqualified persons," without receiving a commensurate economic benefit in return.

Section 4958(f)(1) of the Code defines the term "disqualified person" to mean, with respect to any transaction, any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, a member of the family of such an individual, or a 35-percent controlled entity. This would include, for example, voting members of the governing body, and persons holding powers of:

(1) presidents, chief executive officers, or chief operating officers,
(2) treasurers and chief financial officers
(3) persons with a material financial interest in a provider-sponsored organization.

Section 53.4958-4(a)(4)(v) of the regulations states that an economic benefit provided to a person solely because the person is a member of a charitable class that the applicable tax-exempt organization intends to benefit as part of the accomplishment of the organization's exempt purposes will be disregarded for purposes of section 4958 of the Code.

Rev. Rul. 77-246, 1977-2 C.B. 190, states that providing transportation is a charitable activity under section 501(c)(3) of the Code where the persons assisted are in special need due to their physical condition. The applicant organization owned and operated a bus which made daily trips to transport senior citizens and handicapped persons to downtown shopping areas and medical facilities. Most riders telephoned in requests for service. Public transportation was otherwise unavailable or inadequate for these members of the community.

Rev. Rul. 76-244, 1976-1 C.B. 155, holds that a nonprofit organization that provides home delivery of meals to elderly and handicapped people by volunteers, for a fee insufficient to cover the cost of operations but approximating the cost of the meals provided, or for a reduced fee or no fee depending on the recipient's ability to pay, is providing relief to the distressed and therefore qualifies for exemption under section 501(c)(3) of the Code because such activities serve to relieve many of the forms of distress that justify considering these groups of individuals as charitable classes. Accordingly, the organization qualifies for exemption from federal income tax under section 501(c)(3) of the Code as an organization organized and operated exclusively for charitable purposes.

Rationale

The information submitted states F's transportation services will be available to rehabilitation patients, F's patients, and patients receiving treatment in the surrounding medical service area. A patient may use the transportation regardless of the patient's financial condition, the patient's service provider or whether the physician is a member of F's medical staff.

Like the organization in Rev. Rul. 77-246, F is providing a service for individuals who need assistance due to their physical condition. F owns and operates a bus which makes weekly trips to the grocery store and other areas so that rehabilitation patients can transition back into the community. Additionally, the hospital will provide transportation for eligible patients to and from the hospital and other facilities in F's service area, as transportation is otherwise unavailable or inadequate for these patients.

Like the organization in Rev. Rul. 76-244, F is providing a free service to individuals. That is, F is providing transportation service to patients substantially below its cost to cover the operations. This free transportation service is open to the public, is meeting a need for patients who are living in remote areas and in need of transportation to the hospital or to other facilities in the service area, and is not restricting the eligibility requirements to certain classes of individuals. The transportation system is, therefore, providing relief for the distressed and qualifies as a charitable activity.

Even though F will exclude certain patients from utilizing the transportation system, these exclusions are reasonable. F is excluding certain patients because there is insufficient time and space on its one bus to attempt to cover patients of all health care providers in the area. Therefore, F limits its services to patients of F and primary care providers who are physicians because it believes that those patients are most likely to be at risk if treatment is not provided.

F has 3 board members who are physicians and their patients will be eligible to use the bus service. However, the bus service will be equally available to all patients of all physicians in F's service area. Similarly, board members or others in a position of authority in relation to F can use the bus service on the same basis as any other member of the public. In these circumstances, the fact that disqualified persons may derive a benefit from the operation of the bus service to the same extent as similarly situated members of the general public is insufficient to support a conclusion that the operation of the bus service will confer an excess benefit on disqualified persons.

Conclusion

1. The operation by F of the bus service will not adversely affect F's status as on organization described in section 501(c)(3) of the Code.

2. The receipt of incidental benefits of the transportation services by disqualified persons with respect to F will not be treated as excess benefits for purposes of section 4958 of the Code.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

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

This ruling is based on the understanding that there will be no material change in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Service. Please keep this ruling letter in your permanent records.

Sincerely yours,

(signed) Marvin Friedlander

Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1