200309027

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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

UIL 4941.04-00

Date: DEC 2 2002

Contact Person:

Identification Number:

Telephone Number:

T:EO:B3

Employer Identification Number:

LEGEND:

A =
M =
N =
O =
P =
R =
X =
Z =
b =
c =
d =
e =
f =
g =
s =
t =
v =
w =
y =

Dear Sir or Madam:

We have considered your ruling request, as supplemented, for rulings under section 4941 of the Code and Section 501(c)(3) of the Code.

X was incorporated in w. In a determination letter dated August 2, w, the Service recognized X as an exempt organization under section 501(c)(3), and a private foundation within the meaning of section 509(a) of the Code.

X is dedicated to improving the health and well-being of Americans by: (i) supporting consumer and physician education and awareness programs; (ii) generating objective information that will contribute to improving the delivery of health care services; and (iii) sponsoring activities that improve the quality life of all Americans. X seeks to achieve these goals by making grants to a broad range of established, publicly supported charitable organizations. Recently, X has expanded its activities by directly conducting programs that disseminate various information related to health care matters to the general public. Also, recently, X recently changed its name to delete the word t. This change in name makes X's name distinguished from the name of its sponsor, Z, described in the next paragraph.

Z, a corporation, is a diversified health care company that provides a broad spectrum of health care plans, resources and services to help people to manage and improve their health. Z's business consists of four primary segments.

The first segment is health care services under the names of M and N. M coordinates network-based health care services on behalf of local employers and consumers nationwide. N delivers health care services to Americans over the age of 50, and administers Medicare Supplement benefits on behalf of A.

O, another segment, provides network-based health and well-being services and other services for large employers and health plans. P is a portfolio of health and well-being companies, each serving a specialized need with a unique blend of benefits, physicians, and other health care provider networks, services, and resources. Finally, R is engaged in the field of health care data and information, research analysis, and application, and serves pharmaceutical companies, health insurers and other payers, physicians and other health care providers, large employers, and government agencies.

X's educational programs consist of: (i) a public educational outreach program; (ii) the publication and distribution of a booklet called s; and (iii) the distribution of a physicians or medical reference book called v.

Under the public educational outreach program, X disseminates health-related educational messages to the general public through nationally distributed magazines and over the Internet. The educational messages aim at the promotion of improved health by presenting the general public with certain basic facts and cautions regarding health care decisions. For example, one educational message offers information on how to prevent medical errors in dealing with doctors, pharmacies, and hospitals, by educating patients on the kind of information they should discuss with their physicians. X has issued a number of such educational promotional ads covering various medical topics. The messages do not mention, promote, or solicit the sale or purchase of any branded health care services or products, including particularly, Z's services or products. X anticipates it will continue to issue similar messages in the future. However, it may decide to discontinue printed messages in magazines due to the cost. X's name and logo appears in the right corner of educational messages distributed in the various magazines and over the internet.

X's s was originally published by Z since d, and is one of the most comprehensive annual analyses of the United States' health statistics. Each state is ranked by five categories of individual components based on statistical information compiled from other sources. Each state is ranked overall based on a formula that weighs the various components.

For the y edition, Z transferred its entire interest in s to X. Starting with the y edition, X publishes and distributes printed copies of s free of charge to approximately b health care professionals, government officials, and other organizations. X also intends to make printed copies available to members of the general public upon request and without charge. X will make the contents of s and an executive summary available to the general public without charge through X's website. X has contracted with third party vendors to produce the publication. Z will not claim a charitable deduction under section 170 of the Code for the contribution of s to X. It is represented that valuation of s would be difficult and, in any event, that value would be modest.

The publication, s, does not mention, promote, or solicit the sale or purchase of any branded health care services or products, including particularly Z's services or products. Prior to X's ownership of s, it had been distributed free by Z to anyone who requests it including the general public, health care professionals, government officials, and other organizations. Prior to y, the contents of s had historically been available to the general public through Z's website.

Z will not purchase or otherwise receive printed copies of s from X other than by downloading from the website. Any other party would have the same access to X's website.

In y, Z downloaded the Executive Summary of s and made copies of the material. Z made these copies available to Z's sales representatives for distribution where they saw fit and as available. Z estimates that in y, approximately c copies were distributed by M's sales force via mail, without a cover letter, to prospective customers and current customers who expressed an interest in the publication. In w and c, s was managed by Z. Z deducted the mailing and printing expenses related to the distribution of s for those two years.

X's name is found in the title of s in large print at the top of the cover page. Additionally, X's name and logo are also found in the right corner of the cover page. The inside of the cover page has a statement by X regarding its publication of s with a signature by two of X's officers.

In a supplementary letter, X has made the following representations which bare primarily but not exclusively on X's s publication:

1. In essence, X's name will be removed from the title of s.
2. The names of the three organizations that sponsor s will appear at the bottom of the front cover of s.
3. X will remove a letter signed by two of its officers from the inside cover of X.
4. In place of the letter identified in the preceding item 3, X will place a statement on the inside cover of s for the e edition to the effect that the publication is a successor to X's publication. This statement will not be repeated in the f and subsequent editions of s.

5. X will change its name going forward in a manner that makes X's name more distinguishable from the name of Z than was the case previously.
6. X will place the following statement on the title page (first page following the cover) of s: This publication is funded by (the new name for) s, an organization recognized as a Section 501(c)(3) organization.
7. Z's sales force will no longer distribute copies of s at the time of publication. Instead, such distributions of s will be handled directly by X.

X has begun distributing copies of v twice a year free of charge to more than g of the Nation's physicians, physicians in training, and other health care professionals, regardless of their relationship (or lack thereof) with Z. Copies are made available without charge to other persons with an interest in medical research developments.

A foreign publishing company publishes v among other products. The publication, v, provides objective information from systematic reviews of medical research and helps its readers keep up-to-date with medical research and literature. It does not aim to make recommendations as to prevention or treatment options, but merely summarizes the evidence which the readers can use to improve the delivery of health care services. X has the right to "Americanize" the copies it will distribute in the United States, subject to the publisher's review and approval. In practice, the publisher makes the changes to "Americanize" v before providing the copies to X.

While it may discuss medical procedures and products in their generic names, v does not mention, promote, or solicit the sale or purchase of any branded health services or products, including especially Z's services or products. X inserts an introductory page in the distributed edition and places its name on the cover identifying itself as the distributor of the publication.

All the officers of X serve as principal officers of Z. The chairman of X's board of directors is also the chairman of the board of directors of Z. The other two members of X's board of directors have no relationship to Z.

The public information educational messages distributed by X constitute nearly 50 percent of X's total direct expenses for the year and represent a significant amount of money. The publication, v, constitutes nearly 25 percent of X's total direct expenses for the year. In contrast, expenses related to s are less than one percent of X's total direct expenses for the year.

X has requested the following rulings:

1. X's conduct of the public educational outreach program will be treated as furthering X's exempt purposes and will not adversely affect X's exempt status under section 501(c)(3) of the Code. Also, X's conduct of the public educational outreach program will not constitute an act of self-dealing section 4941 of the Code.

2. Z's transfer of all its rights to s to X and X's publication and distribution of s will be treated as furthering X's exempt purposes and will not adversely affect X's exempt

status under section 501(c)(3) of the Code and will not constitute and act of self-dealing under section 4941.

3. Z's downloading and distribution of the contents of s will neither adversely affect X's exempt status under section 501(c)(3) nor constitute an act of self-dealing under section 4941 of the Code.

4. X's distribution of v will be treated as furthering X's exempt purposes and will not adversely affect X's exempt status under section 501(c)(3) and will not constitute an act of self-dealing under section 4941 of the Code.

LAW AND ANALYSIS:

Section 501(c)(3) of the Code provides for exemption from federal income taxes for organizations operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes.

Section 4941 of the Code imposes a tax on acts of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(C) defines an act of self-dealing as furnishing of goods, services, or facilities between a private foundation and a disqualified person.

Section 4946(a)(1)(A) defines a disqualified person to include a substantial contributor to the foundation.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations (Regulations) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Section 53.4941(d)-2(f)(2) of the Excise Tax Regulations provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Thus, the public recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a disqualified person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous.

In example (1) of section 53.4941(d)-2(f)(9) of the regulations M, a private foundation, makes a grant of $50,000 to the governing body of N City for the purpose of alleviating the slum conditions which exist in a particular neighborhood of N. Corporation P, a substantial contributor to M, is located in the same area in which the grant is to be used. Although the general improvement of the area may constitute an incidental and tenuous benefit to P, such benefit by itself will not constitute an act of self-dealing.

In example (4) of section 53.4941(d)-2(f)(9) of the regulations, A, a disqualified person with respect to private foundation S, contributes certain real estate to S for the purpose of building a neighborhood recreation center in a particular underprivileged area. As a condition of the gift, S agrees to name the recreation center after A. Since the benefit to A is only incidental and tenuous, the naming of the recreation center, by itself, will not be an act of self-dealing.

In Rev. Rul. 76-206, 1976-1 C.B. 154, a nonprofit organization was held not to be exempt under section 501(c)(3) of the Code. The organization was formed to generate interest in retention of classical music programs by a local for profit radio station. The nonprofit organization aided the for profit radio station by seeking program sponsors, encouraging continuing support from existing sponsors, and by various other means to aid the radio station. Such activities tended to increase the revenues of the radio station. The organization's board did not include any representatives of the radio station. The Service held that where an education organization is serving both public and private interests, the private benefit must be clearly incidental to the overriding public interest.

X's public education outreach program by which X seeks to disseminate health related educational messages is charitable and educational in nature. The fact that X's name appears inconspicuously on the educational messages and that its name is similar to (but distinguishable from) that of its substantial contributor, Z, does not diminish the exempt nature of its activity. Even if one were to view the use of X's name on the educational message as similar to Z's name, the use of the name is an incidental and tenuous benefit within the meaning of section 53.4941(d)-2(f)(2) of the regulations and example (4) of section 53.4941(d)-2(f)(9) of the regulations. Furthermore, the holding in Rev. Rul. 76-206 is clearly distinguished from this endeavor of X because the private benefit to Z, if any, is clearly incidental to the overriding public interest. Since the educational message is addressed to the public at large, there is little reason to believe that the public would either take notice of X's name inconspicuously displayed on the message or that any public notice of the name would translate into increased revenues on behalf of Z.

X's distribution of v is a significant educational endeavor. The book itself is substantial both in size and in content. The book is a comprehensive work on medical topics of interest to physicians, physicians in training, and others with an interest in the medical arena. The distribution of the book, twice yearly, of g copies is a significant cost to X. Further, v is distributed almost exclusively in the United States through X and the content of the book is educational and scientific in nature. X's distribution of v carries out an exempt purpose within the meaning of section 501(c)(3) of the Code.

X's name appears prominently on the cover of v as the distributor. X inserts an introductory page in the distributed edition. The distribution of the book is targeted to physicians and those in the medical profession. Since Z is directly involved in providing medical services, there is a concern that if one were to view the use of X's name on the book as indistinguishable from the use of Z's name, some benefit may accrue to Z. However, v is distributed at random to physicians and others. It does not mention, promote, or solicit the sale or purchase of any of Z's products or services. Unlike the facts described in Rev. Rul. 76-206, the distribution of the book

is not directly related to Z's products or services. Unlike the holding in Rev. Rul. 76-206, there is no information to suggest that the distribution of v has any meaningful impact on Z's revenues. Like example (1) and (4) of section 53.4941(d)-2(f)(9) of the regulations, any benefit in terms of name recognition in the distribution of v to physicians or others who may have some association with Z, or wish to, may constitute an incidental and tenuous benefit to Z. However, such benefit by itself will not constitute an act of self-dealing.

Pursuant to X's recent representations regarding X's publication and distribution of s, we consider the distribution of s as an educational endeavor and will not constitute self-dealing. Z will utilize copies of s or data downloaded from X's website as any other entity or person with access to the internet. It has been represented that X will handle directly the distribution of s. Further, the association of X with s has been considerably diminished in future years by the changes made to the front cover and inside cover of the publication. Further, X has agreed to a change in its name to further distinguish its name from that of Z. The name change will also occur on the website relating to s. In summary, those factors that created a close connection between the distribution of s with Z in prior years have now been eliminated or significantly diminished. Accordingly, we rule as follows:

1. X's conduct of the public educational outreach program will be treated as furthering X's exempt purposes and will not adversely affect X's exempt status under Section 501(c)(3) of the Code. Further, X's conduct of such Program will not constitute an act of self-dealing under section 4941 of the Code.
2. Based on the representations set forth above, Z's transfer of all its rights to s to X and X's publication and distribution of s will be treated as furthering X's exempt purposes and will not adversely affect X's exempt status under section 501(c)(3) of the Code. Further, X's publication and distribution of s will not constitute an act of self-dealing under section 4941 of the Code.
3. Based on the representations set forth above, Z's downloading and utilization of the contents of s will neither adversely affect X's exempt status under section 501(c)(3) nor constitute an act of self-dealing under section 4941.
4. X's distribution of v to physicians, physicians in training, and other health care professionals, and others interested in developments in research will be treated as furthering X's exempt purposes and will not adversely affect X's exempt status under section 501(c)(3) of the Code. Further, X's distribution of v will not constitute an act of self-dealing under section 4941.

This ruling is directed only to organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. This ruling does not purport to rule on any issue under any Code section not specifically addressed herein.

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.

Pursuant to a power of attorney on file with this office, we are sending a copy of this ruling letter to your attorney.

Sincerely,

(signed) Robert C. Harper, Jr.

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