

**Internal Revenue Service
P. O. Box 2508
Cincinnati, OH 45201**

Department of the Treasury

Number: **201711014**
Release Date: 3/17/2017

Employer Identification Number:

Person to Contact - ID#:

Date: December 19, 2016

Contact Telephone Numbers:

LEGEND:

C = Organization
d dollars = Amount

UIL
501.03-00
509.01-02
170.09-00

Dear

We have considered your July 6, 2016 request for recognition of an unusual grant under Treasury Regulations section 1.170A-9(f)(6)(ii) and related provisions.

Based on the information provided, we have concluded that the proposed grant constitutes an unusual grant under section 1.170A-9(f)(6)(ii) and related provisions of the regulations. The basis for our conclusion is set forth below.

Facts:

You are recognized as exempt from federal income taxation under section 501(c)(3) of the Code and as a public charity under sections 509(a)(1) and 170(b)(1)(A)(vi). You were formed primarily to preserve and maintain a historical church and prairie on land that is currently owned by C. C, a cemetery association exempt under section 501(c)(13) of the Code, owns several contiguous acres of land in the locality, including C's namesake cemetery, a historic campground, and the Church Site. The Church Site takes up about half of the acreage held by C and includes a historic church and several acres of virgin prairie. C intends to transfer the Church Site to you for historical preservation. The Site is estimated to be worth more than d dollars.

You have a close relationship with C. C caused your formation, and your bylaws require that a majority of your board of directors be made up of the board members of C. C's board currently consists of seven members who are representatives of the community it serves. You have represented that you will maintain separate books and records from C, and will have separate bank and other accounts. C's proposed transfer is part of C's efforts to reorganize itself and separate out charitable portions of its activities from its primary cemetery function as a section 501(c)(13) organization.

You conduct historic preservation and restoration of the Church Site. In addition, you provide educational activities about and around the Site, including holding lectures in the church about the area's history, hosting concerts in the church, hosting an annual candlelight service during Christmas, and conducting tours of the Site for schools and other groups. Outside of the

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church, the Site contains native prairie that is of interest to charitable groups, historians, and others - the Boy Scouts and a group of naturalists have assisted you with the restoration of the native plants and creek bed at the Site.

You have been in existence for less than five years and therefore do not yet have an established history of financial operations. However, you do and will actively seek funding from the public, by maintaining a website that accepts donations, establishing a fund at the area community foundation, and holding fundraising events. You also lease out the church for meetings and other events to individuals and groups, primarily for education of the general public about the historic preservation of the church and the surrounding native prairie. Additionally, you may request voluntary donations from participants in your public programs, such as the Site tours. Despite these efforts, you anticipate that, because of the value of the Church Site, you will have virtually no chance of meeting the public support test unless the transfer of the Site is treated as an unusual grant.

No restrictions are being placed on the transfer of the Church Site by C. You are free to conduct the historic preservation activities as you see fit.

Law:

Treasury Regulations sections 1.170A-9(f)(6)(ii) and 1.509(a)-3(c)(4) set forth the criteria for an unusual grant.

Treasury Regulations section 1.170A-9(f)(6)(ii) states that, for purposes of applying the 2-percent limitation to determine whether the 33 1/3 percent-of-support test is satisfied, one or more contributions may be excluded from both the numerator and the denominator of the applicable percent-of-support fraction. The exclusion is generally intended to apply to substantial contributions or bequests from disinterested parties which:

- are attracted by reason of the publicly supported nature of the organization;
- are unusual or unexpected with respect to the amount thereof; and
- would, by reason of their size, adversely affect the status of the organization as normally being publicly supported.

Treasury Regulations section 1.509(a)-3(c)(4) states that all pertinent facts and circumstances will be taken into consideration to determine whether a particular contribution may be excluded. No single factor will necessarily be determinative. Such factors may include:

- Whether the contribution was made by a person who
 - a. created the organization
 - b. previously contributed a substantial part of its support or endowment
 - c. stood in a position of authority with respect to the organization, such as a foundation manager within the meaning of section 4946(b)
 - d. directly or indirectly exercised control over the organization, or
 - e. was in a relationship described in Internal Revenue Code section 4946(a)(1)(C) through 4946(a)(1) (G) with someone listed in bullets a, b, c, or d above.

A contribution made by a person described in a. - e. is ordinarily given less favorable consideration than a contribution made by others not described above.

- Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer.
- Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum.
- Whether (except in the case of a new organization) prior to the receipt of the particular contribution, the organization (a) has carried on an actual program of public solicitation and exempt activities and (b) has been able to attract a significant amount of public support.
- Whether the organization may reasonably be expected to attract a significant amount of public support after the particular contribution. Continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future public support.
- Whether, prior to the year in which the particular contribution was received, the organization met the one-third support test described in section 1.509(a)-3(a)(2) without the benefit of any exclusions of unusual grants pursuant to section 1.509-3(c)(3);
- Whether the organization has a representative governing body as described in Treasury Regulations section 1.509(a)-3(d)(3)(i); and
- Whether material restrictions or conditions within the meaning of Treasury Regulations section 1.507-2(a)(7) have been imposed by the transferor upon the transferee in connection with such transfer.

Application of Law:

The proposed transfer of the Church Site meets the general criteria of Treasury Regulation section 1.170A-9(f)(6)(ii). It also satisfies the facts and circumstances test under section 1.170-9(f)(6)(iii), although not all the factors listed in section 1.509(a)-3(c)(4) are present.

Of particular importance in this case are the following considerations:

- Although the contribution is being made by C, it is made as part of C's efforts to reorganize itself and separate out charitable portions of its activities from its primary cemetery function as a section 501(c)(13) organization. The transfer, therefore, helps both you and C to better comply with your differing exempt purposes.
- The transfer is of assets which further your exempt purposes of historical preservation and public education. The assets are to be used directly in your exempt-purpose programs, similar to a gift of a painting to a museum.

- You carry on an actual program of public solicitation and exempt activities that have been able to attract significant public participation, and you can reasonably be expected to attract a significant amount of public support after this transfer.
- Although a majority of your board members are required to be made up of the board members of C, the individuals are representative of the community rather than of any selfish interest in C, and may be expected to act in your best interests and not be unduly influenced by their affiliation with C.
- No material restrictions or conditions within the meaning of Treasury Regulation section 1.507-2(a)(7) have been imposed by C in connection with this transfer.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person listed in the heading of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

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