Rev. Proc. 81-7, 1981-1 C.B. 621

SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth guidelines as to the grants or contributions that will be considered "unusual grants" under sections 1.170A-9(e)(6)(ii) and 1.509(a)-3(c)(3) and related provisions of the Income Tax Regulations without benefit of an advance ruling from the Internal Revenue Service. These guidelines are intended to provide advance assurance to grantors and contributors that they will not be considered to be responsible for "substantial and material" changes in sources of financial support for purposes of sections 1.170A-9(e)(4)(v)(b) and 1.509(a)-3(c)(1)(iii).

SEC. 2. BACKGROUND

.01 Sections 1.170A-9(e)(4)(v)(b) and 1.509(a)-3(c)(1)(iii) of the regulations state that once an organization has been classified as a publicly supported organization described in section 170(b)(1)(A)(vi) or 509(a)(2) of the Internal Revenue Code, the treatment of grants and contributions and the status of grantors and contributors to the organization under sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522 will not be affected by a subsequent loss of classification as a publicly supported organization until notice of loss of classification is published. However, a grantor or contributor may not rely on such an organization's classification if the grantor or contributor is responsible for or aware of a "substantial and material" change in the organization's sources of support that subsequently results in the organization's loss of classification as a publicly supported organization. For example, a "substantial and material" change in sources of support may result from the receipt of an unusually large contribution that does not qualify as an unusual grant under section 1.170A-9(e)(6)(ii) or 1.509(a)-3(c)(3). The contributor, even though he or she relied on a letter classifying the organization as a section 170(b)(1)(A)(vi) or 509(a)(2) organization, may not receive the benefit of the deduction limits under sections 170(b)(1)(A)(vi) and 170(b)(1)(A)(viii) if as a result of his or her contribution the organization loses its classification as a public charity. Similarly, a grant-making private foundation might find itself subject to the section 4945(a) tax on taxable expenditures because it may not have followed expenditure responsibility requirements of section 4945(d)(4) of the Code for grants to non-public organizations if its grant is not an unusual grant and the grantee organization loses its classification as a public charity.

.02 The receipt of an "unusual grant" as defined in sections 1.170A-9(e)(6)(ii) and 1.509(a)-3(c)(3) of the regulations will not cause a "substantial and material" change within the meaning of sections 1.170A-9(e)(4)(v)(b) and 1.509(a)-3(c)(1)(iii). Thus, a grantor or contributor who makes a grant or contribution which is an "unusual grant" to a section 170(b)(1)(A)(vi) or 509(a)(2) organization will not be responsible for a "substantial and material" change in that organization's sources of support.

SEC. 3. GUIDELINES

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.01 A grant or contribution with all of the following characteristics, derived from the factors contained in section 1.509(a)-3(c)(4) regarding whether a particular contribution is an unusual grant will be considered an unusual grant if by reason of its size it adversely affects the status of an organization under section 170(b)(1)(A)(vi) or 509(a)(2) of the Code within the meaning of sections 1.170A-9(e)(6)(ii) and 1.509(a)-3(c)(3):

1 The grant or contribution is made by a person other than a person (or persons standing in relationship described in section 4946(a)(1)(C) through (G) to that person) who created the organization or was a substantial contributor to the organization within the meaning of section 507(d)(2) prior to the grant or contribution.

2 The grant or contribution is not made by a person (or persons standing in a relationship described in section 4946(a)(1)(C) through (G) to that person) who is in a position of authority such as a foundation manager (within the meaning of section 4946(b)) with respect to the organization or who otherwise has the ability to exercise control over the organization. Similarly, the grant or contribution is not made by a person (or persons standing in a relationship described in section 4946(a)(1)(C) through (G) to that person) who, as a consequence of a grant or contribution, obtains a position of authority or the ability to otherwise exercise control over the organization.

3 The grant or contribution is in the form of cash, readily marketable securities, or assets that directly further the exempt purposes of the organization, such as a gift of a painting to a museum.

4 The donee-organization has received either an advance or final ruling or determination letter classifying it as an organization described in section 170(b)(1)(A)(vi) or 509(a)(2) and, except in the case of an organization operating under an advance ruling or determination letter, the organization is actively engaged in a program of activities in furtherance of its exempt purpose.

5 No material restrictions or conditions (within the meaning of section 1.507-2(a)(8)) have been imposed by the grantor or contributor upon the organization in connection with the grant or contribution.

6 If the grant or contribution is intended to underwrite operating expenses, as opposed to financing capital items, the terms and amount of the grant or contribution are expressly limited to underwriting no more than one year's operating expenses.

.02 A grant or contribution will adversely affect the status of an organization under section 170(b)(1)(A)(vi) or 509(a)(2) within the meaning of Sec. 3.01 only if the organization otherwise meets the support test described in section 170(b)(1)(A)(vi) or 509(a)(2) in the year being tested without benefit of the grant or contribution.

.03 Notwithstanding Sec. 3.01, a potential grantee organization may request a ruling under Rev. Proc. 80-24, 1980-1 C.B. 658, on whether a proposed grant or contribution with or without the above characteristics will constitute an unusual grant, as

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provided for in sections 1.509(a)-3(c)(5)(ii) and 1.170A-9(e)(6)(iv)(b).

SEC. 4. EXAMPLES

The following examples illustrate the guidelines in Sec. 3.

.01 During the years 1975-1978, A, a section 509(a)(2) organization, received aggregate support of $350,000. Of this amount $105,000 was received from grants, contributions and receipts from admissions that are described in sections 509(a)(2)(A)(i) and (ii). An additional $150,000 was received from grants and contributions from substantial contributors described in section 507(d)(2) of the Code (disqualified persons under section 4946(a)(1)(A)). The remaining $95,000 was gross investment income as defined in section 509(e) of the Code. Included in the contributions from disqualified persons was a contribution of $50,000 from X. X was not a substantial contributor to the organization prior to the making of this contribution. In addition, all of the other requirements of Sec. 3.01 were met with respect to X's contribution. If X's contribution is excluded from A's support by reason of the fact that it is an unusual grant, A will have received, for the years 1975-1978, $10,000 from sources described in sections 509(a)(2)(A)(i) and (ii), $100,000 in grants and contributions from disqualified persons, and $95,000 in gross investment income. Therefore, if X's contribution is excluded from A's support, A meets the requirements of the section 509(a)(2) support test for the year 1979 because more than one-third of its support is from sources described in sections 509(a)(2)(A)(i) and (ii) and no more than one-third of its support is gross investment income. Thus, X's contribution adversely affects the status of A within the meaning of Sec. 3.02 and since the guidelines of Sec. 3.01 are met, the contribution is excludable as an unusual grant. X will not be considered responsible for a "substantial and material" change in A's support.

The computations to show the effect of excluding X's contribution from A's support are as follows:

Aggregate support received by A during the tax years from 1975 through 1978	$350,000
Less: Contribution from X	50,000
Aggregate support of A less contribution from X	$300,000
Gross investment income received by A as a percentage of A's total contribution of $50,000 from X)	($95,000/$-300,000) = 31.67%
Grants, contributions, and receipts from admissions described in sections 509(a)(2)(i) and (ii) received by A as a percentage of A's aggregate support (less the contribution of $50,000 from X)	$105,000/$-00,000 = 35%

.02 Under the same facts, except that for the years 1975-1978, A received $100,000 from grants or contributions from disqualified persons instead of $150,000, the result would be different. In this case, if X's contribution is excluded as an unusual grant, A will have received $105,000 from sources that are described in sections 509(a)(2)(A)(i) and (ii), $50,000 in grants and contributions from disqualified persons, and $95,000

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in gross investment income. If X's contribution is excluded from A's support, A will have received more than one-third of its support from gross investment income and A would not meet the requirements of the section 509(a)(2) support test for the year 1979. Thus, even though all the requirements of Sec. 3.01 are met with respect to X's contribution, it is not excludable as an unusual grant because it does not adversely affect the status of A within the meaning of Sec. 3.02.

The computations to show the effect of excluding X's contribution from A's support are as follows:

Aggregate support received by A during the tax years 1975 through 1978	$300,000
Less: Contribution from X	50,000
Aggregate support of A less contribution from X	$250,000
Gross investment income received by A as a percentage of A's total support (less the contribution of $50,000 from X)	$95,000/$250,000 = 38%

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