



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

Release Number: 200818027

Release Date: 5/2/08

UIL Code:  
509.02-01

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Date: February 4, 2008

Legend:

Foundation =

Corporation =

L =

Date x =

Dear

This letter responds to your request for a ruling that Foundation and Corporation may be treated as a single entity and that funds created within either Foundation or Corporation that otherwise meet the requirements of section 1.170A-9(e)(11)(ii) of the Income Tax Regulations will be treated as component parts of a single community trust that is not a private foundation under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code.

Facts

Foundation was organized as a trust under state law pursuant to a Declaration of Trust to serve the charitable needs of the L metropolitan area. The Internal Revenue Service recognized Foundation as an organization described in section 501(c)(3) of the Code and classified it as a public charity described in section 170(b)(1)(A)(vi). Foundation's Amended and Restated Declaration of Trust states that its purpose is to receive gifts, administer funds and make distributions for charitable purposes for the benefit and improvement of residents of the L metropolitan area in such a way that the quality of life in this area will be enhanced.

On Date x, the Internal Revenue Service issued a letter ruling that Foundation's Amended and Restated Declaration of Trust did not adversely affect its current status as an organization described in section 501(c)(3) of the Code and its current status as a public charity described in section 170(b)(1)(A)(vi). This letter included the ruling that Foundation qualified as a single entity community trust described in sections 1.170A-9(e)(11)(i) and (ii) of the regulations.

To facilitate the administration of Foundation's numerous separate charitable funds, to provide additional flexibility in grant making and investments, and for other reasons, Foundation's board of directors determined it would be beneficial to create a separate corporate entity. Accordingly, Foundation created Corporation as a nonprofit non-stock corporation under state law. The Internal Revenue Service recognized Corporation as an organization described in section 501(c)(3) of the Code and classified it as a public charity described in section 170(b)(1)(A)(vi).

Corporation's articles of incorporation and bylaws state that its purpose is to receive gifts, administer funds and make distributions for charitable purposes for the benefit and improvement of residents of the L metropolitan area in such a way that the quality of life in this area will be enhanced.

Corporation's bylaws provide that Foundation appoints Corporation's directors and, unless Foundation determines otherwise, the directors of Corporation must be identical to the directors of Foundation and their respective terms also must be the same. Corporation's bylaws also require that its chairman and president must be the same person who serves as chairman of the Foundation; that its vice chairman and vice president must be the same person who serves as vice chairman of Foundation; that its secretary must be the same person who serves as secretary of Foundation; and that its treasurer must be the same person who serves as the chairman of the Investment and Finance Committee of Foundation.

Corporation's bylaws and Foundation's Trust Agreement each give their respective boards of directors powers to modify grant restrictions and to replace participating directors or trustees.

Foundation's board of directors approved a resolution to comply with the National Standards for U.S. Community Foundations established by the Council on Foundations, and the Corporation's board of directors approved a similar resolution. These standards relate to mission, structure and governance, resource development, stewardship and accountability, grantmaking and community leadership, donor relations and communications.

Most of the substantive provisions in Corporation's articles of incorporation and bylaws, relating to its purposes and operation of the donor trust funds, are identical to the corresponding provisions in Foundation's Amended and Restated Declaration of Trust. The principal provisions in each document that are not substantially the same are those that involve the organizational, structural and operational differences that are inherent in the differences between a trust and a corporation.

Initially, Corporation will operate principally to administer the receipt and expenditure of Foundation's funds by holding, managing and investing Foundation's administrative accounts, maintaining operating accounts for the receipt and disbursement of Foundation's charitable distributions, and administering short-term funds previously administered by Foundation. In addition, it is anticipated that donors to Foundation, who would prefer to have funds administered by entities other than Foundation's Trustee, will establish various charitable funds within Corporation. Neither Corporation's articles nor bylaws permit any donor to Corporation to impose any material restriction or condition with respect to the donated assets.

Foundation's Trust Agreement and Corporation's bylaws require that each prepare annual reports. Foundation has continuously prepared such reports in which it has followed the practice of reporting its component funds as funds of Foundation. Similarly, Foundation expects to report the funds and assets of Corporation as part of a single entity.

### Rulings Requested

1. Foundation and Corporation together will be treated as a single entity under section 1.170A-9(e)(11)(i) of the regulations.
2. The funds created within Foundation and Corporation, if they otherwise meet the requirements of section 1.170A-9(e)(11)(i) of the regulations, will be treated as component parts of a single community trust under section 1.170A-9(e)(11).

### Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax for organizations organized and operated exclusively for charitable, educational and religious purposes, provided that no part of the organization's net earnings inure to the benefit of any private shareholder or individual.

Section 509(a)(1) of the Code provides that the term "private foundation" means an organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Section 1.509(a)-2(a) of the regulations refers to section 1.170A-9(a) through (e) for the requirements to be met by organizations described in section 170(b)(1)(A)(i) through (vi) of the Code.

Section 1.170A-9(e)(1) of the regulations provides that an organization is described in section 170(b)(1)(A)(vi) of the Code if it is, for example, a corporation referred to in section 170(c)(2) of the Code and if it is a "publicly supported" organization.

Section 1.170A-9(e)(1)(ii) of the regulations provides that a "publicly supported" organization is one that normally receives a substantial part of its support from a governmental unit referred to in section 170(c)(1) of the Code or from direct or indirect contributions from the general public.

Section 1.170A-9(e)(2) of the regulations provides that under one test for determining whether an organization will be treated as "publicly supported," the total amount of support that the organization "normally" receives from governmental units referred to in section 170(c)(1) of the Code, from contributions made directly or indirectly by the general public, or from a combination of these sources, must equal at least 33-1/3 percent of the total support "normally" received by the organization.

Section 1.170A-9(e)(10) of the regulations provides that, for a community trust to qualify as a "publicly supported" organization, one test it must meet is the test in section 1.170A-9(e)(2).

Section 1.170A-9(e)(11)(i) of the regulations states that any organization that meets the requirements in section 1.170A-9(e)(11)(iii) through (vi) will be treated as a single entity, rather than as an aggregation of separate funds. In addition, all funds associated with such organization (whether a trust, not-for-profit corporation, unincorporated association, or a

combination thereof), which meet the requirements of section 1.170A-9(e)(11)(ii), will be treated as component parts of such organization.

Section 1.170A-9(e)(11)(ii) of the regulations provides that, to be treated as a component part of a community trust, a trust or fund: (A) must be created by gift, bequest, legacy, devise, or other transfer to a community trust which is treated as a single entity under section 1.170A-9(e)(11); and (B) may not be directly or indirectly subjected by the transferor to any material restriction or condition with respect to the transferred assets.

Section 1.170A-9(e)(11)(iii) of the regulations provides that the organization must be commonly known as a community trust, fund, foundation or other similar name conveying the concept of a capital or endowment fund support charitable activities in the community or area it serves.

Section 1.170A-9(e)(11)(iv) of the regulations provides that all funds of the organization must be subject to a common governing instrument or a master trust or agency agreement, which may be embodied in a single document or several documents containing common language.

Section 1.170A-9(e)(11)(v) of the regulations provides that the organization must have a common governing body or distribution committee, which either directs or monitors the distribution of all the funds exclusively for charitable purposes. In addition, the governing body must have the power in the governing instrument, or other applicable document: (1) to modify any restriction or condition on the distributions of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body, such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served; (2) to replace any participating trustee, custodian, or agent for breach of fiduciary duty under state law; and (3) to replace any participating trustee, custodian, or agent for failure to produce a reasonable return of net income over a reasonable period of time.

Section 1.170A-9(e)(11)(v)(E) provides that the governing body must commit itself to exercise these powers in the best interests of the community trust.

Section 1.170A-9(e)(11)(v)(F) provides that the governing body must commit itself to obtain information and take other appropriate steps with the view to seeing that each participating trustee, custodian or agent, with respect to each restricted trust or fund that is, and with respect to the aggregate of the unrestricted trusts or funds that are, a component part of the community trust, administers such trust or fund in accordance with the terms of its governing instrument and accepted standards of fiduciary conduct to produce a reasonable return of net income, with due regard to safety of principal, in furtherance of the exempt purposes of the community trust.

Section 1.170A-9(e)(11)(vi) of the regulations provides that the organization must prepare periodic financial reports treating all of the funds held by the community trust, either directly or in component parts, as funds of the organization.

## Analysis

### Ruling No. 1

Section 1.170A-9(e)(11)(i) of the regulations states, in part, that any organization that meets the four requirements described in section 1.170A-9(e)(11)(iii) through (vi) will be treated as a single entity, rather than as an aggregation of separate funds.

Foundation is an organization described in section 501(c)(3) of the Code and is a public charity described in section 170(b)(1)(A)(vi). It is a single entity community trust described in sections 1.170A-9(e)(11)(i) and (ii) of the regulations.

Corporation is an organization described in section 501(c)(3) of the Code and is a public charity described in section 170(b)(1)(A)(vi). Corporation's purpose is to receive contributions from the public, administer funds and make distributions for charitable purposes and coordinate its activities with Foundation. The members of the board of directors of Corporation are the same as the members of the board of directors of Foundation.

Section 1.170A-9(e)(11)(iii) of the regulations provides that the organization must be commonly known as a community trust, fund, foundation or other similar name conveying the concept of a capital or endowment fund support charitable activities in the community or area it serves. The names of Foundation and Corporation are very similar and both include the term "community foundation." Therefore, Corporation meets this requirement.

Section 1.170A-9(e)(11)(iv) of the regulations provides that all of the funds of the organization must be subject to a common governing instrument or a master trust or agency agreement, which may be embodied in a single document or several documents containing common language. Most of the substantive provisions in Corporation's articles of incorporation and bylaws, relating to its purposes and operation of the donor trust funds, are identical to the corresponding provisions in Foundation's Amended and Restated Declaration of Trust. The principal provisions in each document that are not substantially the same are those that involve the organizational, structural and operational differences that are inherent in the differences between a trust and a corporation. Therefore, in substance, all the donor funds will be subject to a common governing instrument or a master trust or agency agreement, which may be embodied in a single document or several documents containing common language, within the meaning of section 1.170A-9(e)(11)(iv). Accordingly, Corporation meets this requirement also.

Section 1.170A-9(e)(11)(v) of the regulations provides that the organization must have a common governing body or distribution committee, which either directs or monitors the distribution of all the funds exclusively for charitable purposes. In addition, the governing body must have certain powers in its governing instrument or other applicable document. Further, the governing body must commit itself to exercise these powers in the best interests of the community trust.

Corporation's bylaws provide that Foundation appoints Corporation's directors and, unless Foundation determines otherwise, the directors of Corporation must be identical to the directors



of Foundation and their respective terms also must be the same. Corporation's bylaws also requires that its chairman and president must be the same person who serves as chairman of Foundation; that its vice chairman and vice president must be the same person who serves as vice chairman of Foundation; that its secretary must be the same person who serves as secretary of Foundation; and that its treasurer must be the same person who serves as the chairman of the Investment and Finance Committee of Foundation. Corporation's articles of incorporation state that its purpose is to operate for the benefit of the residents of the L metropolitan area. Additionally, Corporation's board of directors approved a resolution to comply with the National Standards for U.S. Community Foundations. Therefore, Corporation meets the requirement of section 1.170A-9(e)(11)(v) of the regulations.

Section 1.170A-9(e)(11)(vi) of the regulations provides that the organization must prepare periodic financial reports treating all of the funds held by the community trust, either directly or in component parts, as funds of the organization. Foundation's Amended and Restated Declaration of Trust and Corporation's bylaws require that each prepare annual reports. Foundation has continuously prepared such reports in which it has followed the practice of reporting its component funds as funds of Foundation. Similarly, Foundation expects to report the funds and assets of Corporation as part of a single entity. Therefore, Corporation meets this further requirement.

Thus, because Corporation meets the four conditions described in section 1.170A-9(e)(11)(iii) through (vi) of the regulations, as required by section 1.170A-9(e)(11)(i), it will be treated as a single entity with Foundation, rather than as an aggregation of separate funds.

#### Ruling No. 2

Section 1.170A-9(e)(11)(i) of the regulations states, in part, that all funds associated with an organization that is treated as a single entity, and which meets the requirements of section 1.170A-9(e)(11)(ii), will be treated as component parts of such organization.

Section 1.170A-9(e)(11)(ii) of the regulations provides that, to be treated as a component part of a community trust, a trust or fund: (A) must be created by gift, bequest, legacy, devise, or other transfer to a community trust which is treated as a single entity under section 1.170A-9(e)(11); and (B) may not be directly or indirectly subjected by the transferor to any material restriction or condition with respect to the transferred assets.

Foundation maintains numerous separate charitable funds. The letter ruling previously issued to Foundation on Date x included the ruling that Foundation qualified as a single entity community trust described in sections 1.170A-9(e)(11)(i) and (ii) of the regulations.

It is anticipated that donors to Corporation will establish various charitable funds within Corporation. In Ruling No. 1, we concluded that Corporation will be treated as a single entity with Foundation, rather than as an aggregation of separate funds. In addition, neither Corporation's articles nor bylaws permit any donor to Corporation to impose any material restriction or condition with respect to the donated assets.

Therefore, because Corporation meets the two requirements of section 1.170A-9(e)(11)(ii) of the regulations, all funds associated with Corporation will be treated as component parts of Corporation. In addition, in view of the letter ruling previously issued to Foundation and Ruling No. 1 above, all funds associated with Foundation and with Corporation will be treated as component parts of single entity.

#### Rulings

1. Foundation and Corporation together will be treated as a single entity under section 1.170A-9(e)(11)(i) of the regulations.
2. The funds created within Foundation and Corporation, if they otherwise meet the requirements of section 1.170A-9(e)(11)(i) of the regulations, will be treated as component parts of a single community trust under section 1.170A-9(e)(11).

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

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 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.

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.

In accordance with the Powers of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Steven Grodnitzky  
Manager,  
Exempt Organizations  
Technical Group 1