



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **201314044**
Release Date: 4/5/2013
Date: January 10, 2013

Contact Person:
Identification Number:
Telephone Number:
Employer Identification Number:

Legends:

UIL: 509.02-02

Parent =
ASO =
Hospital B =
Foundation =

Dear :

We have considered your ruling request in regard to your continued exemption as an organization described in § 501(c)(3) of the Internal Revenue Code and your continued status as an organization classified under §§ 509(a)(1) and 170 (b)(1)(A)(iii).

Facts

You operate an acute-care hospital with emergency room services that provides uncompensated care for indigent persons as part of a healthcare system. You provide hospital and medical care to the community on a nondiscriminatory basis and without regard to a patient's ability to pay. You have been recognized as tax exempt for over fifty years. You operate as part of a healthcare system. Parent performs administrative and management functions for the system of exempt hospitals and exempt and for-profit affiliated entities. Your wholly owned subsidiary is Foundation. Foundation is exempt under § 501(c)(3) and classified as a non-private foundation under § 509(a)(3).

In response to a request for a private letter ruling, we approved your prior hospital system structure. At that time, bylaws required Parent to have 17 directors on its board. The board was self-perpetuating, with staggered four year terms. The board was, and is, a community-based board with members selected based on community standing, civic participation and leadership, interest in health care services and issues, and knowledge of or experience in corporate management and governance. No board member could serve more than two successive four year terms, and had to wait one year to be eligible once again to be a member of the board. New board members were elected at the regular meeting of the board each year. Your bylaws required you to have the identical 17 directors as your Parent. You also have the requirement

that no board member could serve more than two successive four year terms, without waiting one year to be eligible again to serve on the board.

Subsequent to the issuance of the above mentioned private letter ruling your healthcare system has added to its structure. Parent is now also the sole member of Hospital B. Hospital B is an organization described in § 501(c)(3) seeking classification as a non private foundation under §§ 509(a)(1) and 170(b)(1)(A)(iii). Parent is also the sole member of ASO which is an administrative services organization. ASO is an organization described in § 501(c)(3) seeking classification as a non private foundation classified in § 509(a)(3). ASO supports you and Hospital B. Foundation is seeking classification as a non private foundation under 509(a)(1) and 170(b)(1)(A)(vi).

In order to more efficiently manage the expanded system, certain changes have been made to the relationships among the entities. The boards of directors of you and Parent will be reorganized by removing the requirement that the boards of directors be identical. Parent's bylaws have been changed so that one member of Parent's board shall be elected by your board of directors and the remaining members of Parent's board shall be elected by Parent's board. Your board will continue to be a community-based board selected as described above. Among the changes described in your ruling request, the bylaws of Parent have been amended to provide a reduction in the number of board members from the current 17 members to no fewer than seven (including your President/CEO) nor more than nine members. Your bylaws have been amended to provide that your board is comprised of not less than 13 nor more than 15 members, including your President/CEO, and all members shall be elected by the board, subject to the approval of your Parent's board of directors. No person, except your President/CEO may serve for more than two consecutive four year terms. However, after waiting one year, a director will again be eligible to be serve as a member of the board. The Chairman of your Parent's board will serve on your board as an ex-officio member.

You anticipate that these changes will improve the decision-making efficiency for both entities by allowing your board to focus on managing a hospital and allowing Parent's board to focus on the broader issues facing the entire system.

Rulings Requested

You have requested the following rulings:

1. That following the described change in relationship between you and Parent, you will continue to be an exempt non-private foundation described in §§ 501(c)(3), 509(a)(1), and 170(b)(1)(A)(iii).
2. Following the change in Foundation's corporate member, it will be an exempt non-private foundation described in §§ 501(c)(3), 509(a)(1) and 170(b)(1)(A)(vi).
3. Hospital B will continue to be a public charity recognized in §§501(c)(3), 509(a)(1) and 170(b)(1)(A)(iii).
4. ASO will continue to be an organization described in §§509(a)(3).

Law

Section 170(b)(1)(A)(iii) describes an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research.

Section 501(c)(3) exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual.

Section 509(a)(1) excludes from private foundation status organizations that are listed in section 170(b)(1)(A), other than clauses (vii) and (viii), generally those having broad public support. Section 170(b)(1)(A)(iii) specifically identifies organizations that have a principal purpose of providing medical or hospital care.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities are not in furtherance of an exempt purpose.

Section 1.501(c)(3) – 1(d)(2) provides that the term "charitable" is used in § 501(c)(3) in its generally accepted legal sense. The promotion of health has long been recognized as a charitable purpose. See Restatement (Second) of Trusts, sections 368, 372; IV Scott on Trusts, sections 368, 372 (3rd ed. 1967); and Revenue Ruling 69-545, 1969-2 C.B. 117.

Rev. Rul. 69-545, 1969-2 C.B. 117, sets forth standards under which a nonprofit hospital may qualify for recognition of exemption under § 501(c)(3). This revenue ruling gave consideration to two separate hospitals, only one of which was determined to qualify for exempt status under § 501(c)(3). By weighing all the relevant facts and circumstances, the revenue ruling analyzed whether both the control and use of the hospitals were for the benefit of the public or for the benefit of private interests. The hospital that qualified for exemption was found to be organized and operated to further the charitable purpose of promoting health by satisfying a community benefit standard that included, among other factors, a board of directors that broadly represented the interests of the community. The hospital that did not qualify for recognition of exemption was found to be operating for the private benefit of those who controlled it rather than for the benefit of the public.

Rev. Proc. 2012-4, 2012-1 C.B. 125 explains how the Internal Revenue Service gives guidance to taxpayers on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. Except when the issue is presented in an initial application for recognition of exemption, EO Determinations rather than EO Technical issues determination letters regarding classification and reclassification of private foundation status under the procedures set forth in Rev Proc 2012-10.

Rev. Proc. 2012-10, 2012-1 C.B. 273 sets forth updated procedures with respect to rulings and determination letters on organizations exempt from Federal income tax under § 501(c)(3). It

directs an organization seeking to change its foundation status to submit a Form 8940 to EO Determinations.

Analysis

Ruling 1: That following the described change in relationship between you and Parent, you will continue to be an exempt non-private foundation described in §§ 501(c)(3), 509(a)(1), and 170(b)(1)(A)(iii).

After the proposed reorganization you will continue to provide health care services to the community in the manner described in Rev. Rul. 69-545, supra. See also Restatement (Second), Trusts, sec. 368 and sec. 372; IV Scott on Trusts (3rd ed. 1967), section 368 and sec. 372. The only significant structural change resulting from the reorganization affecting you is the change in the relationship between your board of directors and that of Parent. That change does not alter your purpose of providing health care services to the community and will not alter the purpose of your Parent in supporting you and operating a health care delivery system. You will continue to provide hospital and medical care of the community on a nondiscriminatory basis and without regard to a patient's ability to pay. Therefore, you continue to meet the criteria of organizations primarily engaged in the charitable purpose of promoting health as described in § 1.501(c)(3)-1(d)(2). The above described reorganization of the boards will not affect your exempt or foundation status. Your status as an exempt public charity recognized under §§ 501(c)(3), 509(a)(1), and 170(b)(1)(A)(iii) is based upon your exempt purpose and activities as a functioning hospital rather than your relationship to the Parent of your healthcare system.

Rulings 2, 3 and 4: Regarding respectively whether following the change in Foundation's corporate member, it will be an exempt non-private foundation described in §§ 501(c)(3), 509(a)(1) and 170(b)(1)(A)(vi); Hospital B will continue to be a public charity recognized in §§ 501(c)(3), 509(a)(1) and 170(b)(1)(A)(iii); and ASO will continue to be an organization described in §§ 509(a)(3).

Pursuant to Rev. Procs. 2012-4 and 2012-10, the EO Determinations Office issues determination letters on reclassification of public charity status; thus Foundation, Hospital B and ASO should request determination letters regarding their current public charity status from EO Determinations. Therefore, we decline to rule on these issues.

Ruling

Based on the information submitted, you will continue to be exempt from federal income tax under the provisions of § 501(a) as an organization described in § 501(c)(3) and will continue to be an organization classified under §§ 509(a)(1), and 170(b)(1)(A)(iii).

This ruling will be made available for public inspection under § 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. 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 based upon current regulations, and may only be relied upon until final regulations are published. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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

Sincerely,

Mary Jo Salins
Manager, Exempt Organizations
Technical Group 4

Enclosure
Notice 437