



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Uniform Issue List

170-19-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Corporation =

Counties =

State =

Foundation =

Date =

Date1 =

Dear :

This letter supersedes our letter dated November 19, 2012, which was in reply to your letter of Date, requesting a ruling that you and Corporation may be treated as a single entity and that funds created within either Foundation or Corporation that otherwise meet the requirements of Treas. Reg. § 1.170A-9(f)(11) (2011) will be treated as component parts of a single entity community trust.

FACTS

You are a community trust created in Date1 to serve the charitable needs of the Counties. You have historically operated as a community trust. You have been recognized as an organization exempt under I.R.C. § 501(c)(3). You are organized pursuant to a Resolution and Declaration of Trust ("trust document").

According to the trust document, you are organized for the purpose of accepting gifts, grants, bequests or devises to be held in trust, the principal or income available for distribution for any charitable, religious, educational, literary, scientific or public welfare to any charitable organization. Your current trustees are certain banks located in Counties.

You have a distribution committee that is composed of representatives of the Counties. Your distribution committee is the board of directors of the Corporation. The distribution committee and the trustee have determined that reorganizing your organization into a joint corporate/trust structure will allow you to attract more contributions and advance your charitable mission.

Accordingly, your distribution committee and trustees formed Corporation, a State nonprofit corporation. The Corporation is operated exclusively for religious, charitable, scientific, literary and educational purposes and to support your charitable activities.

Corporation's original Articles of Incorporation and Bylaws stated that its purpose is to receive money and other property by gift, administer funds, and make distributions for charitable purposes for the benefit of the residents of the Counties. It has been described to the local community as your affiliate since its inception.

According to your trust document and the bylaws of the Corporation all gifts, devises and bequests of property are made subject to the terms and conditions of these documents.

Your trust document and organizing documents of the Corporation require that both organizations be subject to a common governing body. Specifically, the board of directors of the Corporation serves as the distribution committee of the trust, thus giving the distribution committee control over the Corporation.

Your trust document and Corporation's organizing documents state that all gifts, devises and bequests of property are made subject to the terms and conditions of the resolution. Your distribution committee and board of directors of the Corporation each have the responsibility to ensure that the application and distribution of funds are made exclusively for one or more of your charitable purposes.

Further, your trust document and Corporation's organizing documents each give their boards of directors the power to modify conditions or restrictions concerning the distributions of income and principal for charitable purposes and to remove any trustee that has breached its fiduciary duty or failed to produce a reasonable return of net income.

Ruling Requested

You and Corporation may be treated as a single entity; funds of either organization which otherwise meet the requirements of Treas. Reg. § 1.170A-9(f)(11)(ii) should be treated as component parts of a single community trust; that by virtue of the combination of you and Corporation as component parts of a single community trust, the Corporation is included under and takes on all the entitlements of your status as a tax exempt organization under I.R.C. § 501(c)(3); and that you and Corporation as a single community trust, may operate and file a single Form 990 Return of Organization Exempt From Income Tax Return under your E.I.N.

Law

I.R.C. § 6033 describes the general filing requirements for exempt organizations and in particular specifies certain information required by § 501(c)(3) organizations, in § 6033(b).

Treas. Reg. § 1.170A-9(f)(11)(i) states that any organization that meets the requirements in Treas. Reg. § 1.170A-9(f)(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 Treas. Reg. § 1.170A-9(f)(11)(ii), will be treated as component parts of such organization.

Treas. Reg. 1.170A-9(f)(11)(ii) provides that, to be treated as a component part of a community trust referred to in paragraph (f)(11)(i) of this section, 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 Treas. Reg. § 1.170A-9(f)(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.

Treas. Reg. § 1.170A-9(f)(11)(iii) 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 to support charitable activities in the community or area it serves.

Treas. Reg. § 1.170A-9(f)(11)(iv) 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. In addition, if a community trust adopts a new governing instrument (or creates a corporation) to put into effect new provisions (applying to future transfers to the community trust), the adoption of such new governing instrument (or creation of a corporation with a governing instrument) which contains common language with the existing governing instrument shall not preclude the community trust from meeting the requirements of this paragraph.

Treas. Reg. § 1.170A-9(f)(11)(v) provides: (A) 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: (B)(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; (B)(2) to replace any participating trustee, custodian, or agent for breach of fiduciary duty under state law; and (B)(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.

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

Treas. Reg. § 1.170A-9(f)(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.

Treas. Reg. § 1.170A-9(f)(11)(vi) 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.

Treas. Reg. § 1.170A-9(f)(12)(i) indicates, that those entities which fail to qualify as component parts of a community trust will be treated as a separate entity for purposes of Subchapter A of Chapter 61 of Subtitle F . . . I.R.C. § 6033 if the Form 990 filed annually by the community trust included financial information with respect to such fund and treated such fund in the same manner as other component parts. They will be treated as the entity's separate returns and the first such return filed by the community trust will be treated as the notification required of the separate entity for purposes of § 508(a).

Analysis

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

You have been established under the name Foundation for nearly a century. You and Corporation are both named for the community they serve and are commonly known in the community as endowment funds that support charitable activity in that community. Therefore, you meet the requirement of Treas. Reg. § 1.170A-9(f)(11)(iii) .

Your trust document and the Corporation's organizing documents state that all gifts, devises and bequests of property are made subject to the terms and conditions of these documents. Therefore, all the donor funds will be subject to a common governing instrument or a master trust or agency agreement, which may be embodied in several documents containing common language, within the meaning of Treas. Reg. § 1.170A-9(f)(11)(iv). Accordingly, you meet this requirement.

Your trust document and the organizing documents of the Corporation each state that your distribution committee and Board of Directors of the Corporation, which are required to be the same people, have the responsibility to ensure that the application and distribution of funds are made exclusively for one or more of your charitable purposes. Thus, you satisfy the requirement of Treas. Reg. § 1.170A-9(f)(11)(v) that a common governing body monitor the distribution of all funds for charitable purposes.

Your trust document and the organizing documents of the Corporation each give their boards of directors the power to modify conditions or restrictions concerning the distributions of income and principal for charitable purposes and to remove any trustee that has breached its fiduciary duty or for failure to produce a reasonable return of net income. Therefore, you meet the requirement of Treas. Reg. § 1.170A-9(f)(11)(v).

Your trust document and the organizing documents of the Corporation require that each organization prepare annual reports. You have continuously prepared such reports in which you treated your component funds as your funds. Similarly, you expect to report the funds and assets of Corporation as part of a single entity. Therefore, both you and Corporation meet this requirement of Treas. Reg. § 1.170A-9(f)(11)(vi).

Although you and Corporation will continue to be legally separate entities, you will be treated as a single entity rather than as an aggregation of separate funds for federal tax law purposes because you meet the requirements described in Treas. Reg. §§ 1.170A-9(f)(11)(iii) through (vi), as required by Treas. Reg. § 1.170A-9(f)(11)(i).

Once a single entity is identified, the component part provisions of the regulations determine whether a particular fund or trust may be considered part of the single entity. All funds associated with an organization (whether a trust, non-for-profit corporation, unincorporated association or a combination) that are treated as a single entity, and which meet the requirements of Treas. Reg. § 1.170A-9(f)(11)(ii), will be treated as component parts of such organization. Treas. Reg. § 1.170A-9(f)(11)(i).

RULING

Based on your facts and representations:

You and Corporation will be treated as a single entity under Treas. Reg. § 1.170A-9(f)(11)(i). In addition, funds of either such organization which otherwise meet the requirements under Treas. Reg. § 1.170A-9(f)(11)(ii), should be treated as a component parts of a single entity community trust; that by virtue of the combination of you and Corporation as component parts of a single entity community trust, Corporation is included under and takes on all the entitlements of your status as a tax exempt organization under I.R.C. § 501(c)(3); and that you and Corporation as a single entity community trust, operate and file returns under your E.I.N. listed in the heading of this letter.

This ruling will be made available for public inspection under I.R.C. § 6110 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. I.R.C. § 6110(k)(3) 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. 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,

Ronald Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437