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Date:
May 20, 2020

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Utility	=
City	=
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Bus	=
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Dear :

This letter responds to a request for rulings from your authorized representative dated May 1, 2019, as supplemented by information submitted in letters dated October 18,

2019, and March 18, 2020. The request involves rulings under §§ 501, 4941, 4942, and 4945 of the Internal Revenue Code[1] with respect to proposed grants to offset the cost difference between the purchase of traditional gasoline or diesel vehicles and the purchase of low- or no-emission electric vehicles.

Facts

Foundation, a non-profit non-stock corporation, was established on Date in State. Foundation is recognized as a tax-exempt organization described in § 501(c)(3) and is classified as a private foundation under § 509(a). Foundation's purpose is to make contributions for charitable, scientific, literary or educational purposes, or otherwise to promote such purposes either directly or by making grants or engaging in other activities in aid of other organizations, enterprises, or persons.

Utility formed Foundation and Foundation receives support only from Utility, making Utility a disqualified person with respect to Foundation. Utility is the primary provider of electricity services and natural gas services to customers in and around City, State.

Foundation supports organizations working to improve and preserve the health and vitality of the local City area. Traditionally, Foundation makes grants in the total amount of about $A to various charitable and governmental organizations annually. Foundation currently provides grants to numerous tax-exempt organizations in the City area that "support vulnerable populations, foster culture, the arts, and history, protect health and the environment, advance diversity and inclusion, and educate and nurture children."

In addition to the traditional grants that it has always made and will continue to make in about the same amount each year, Foundation is proposing also to make grants to Bus (a subdivision of City that operates the public bus system in and around City), other state and local governments and/or their political subdivisions, University (a tax-exempt educational institution and an instrumentality of State), other public educational institutions, and § 501(c)(3) exempt organizations within the local City, State area. Foundation represents that Bus is a § 170(c)(1) entity. Foundation represents that the purpose of the grants is to offset the cost difference between the purchase price of traditional gasoline or diesel buses or vehicles and the higher purchase price of low- or no-emission electric buses or other types of electric vehicles (hereinafter "Proposed Grants"). Foundation further represents that all Proposed Grants will be distributed only to § 170(c)(1) or § 170(c)(2) organizations. Finally, Foundation represents that any § 501(c)(3) recipients of the Proposed Grants from Foundation will not be controlled by Foundation or Utility, will not be private foundations, and will not be supporting organizations described in § 4942(g)(4)(A). Foundation states that, for the new Proposed Grants, it will not distribute more than $B over a five-year period and no more than $C in any one year.

[1] The Internal Revenue Code of 1986, as amended, to which all subsequent section or "§" references are made unless otherwise indicated.

Most of the towns and counties that Foundation serves have set goals to reduce their carbon outputs. Bus, which is not related to Foundation or Utility, has a goal to convert its entire fleet of buses to electric propulsion by Year. Foundation represents that the Proposed Grants would be provided to Bus to subsidize its purchases of electric buses. The cost of a gasoline or diesel bus is $D per bus. The cost of an electric bus is $E per bus (nearly twice the cost of a gasoline or diesel bus). Accordingly, the cost difference between a gasoline or diesel bus and an electric bus is $F per bus, which would be provided by Foundation. Based upon the amounts of the annual grants and the higher costs of electric buses, Foundation will be able to only provide grants to support the purchase of one to two electric buses per year, at the most.

Foundation has made the following representations regarding electric buses. One electric bus travels approximately 50,000 miles per year and uses 2 kilowatts of electricity every mile, so an electric bus would use about 100 megawatts of electricity every year. By comparison, the total amount of electricity produced by Utility is about 3.2 million megawatts per year. Accordingly, one electric bus would use approximately .003% of Utility's total electric usage per year. The total cost for the electric usage of one electric bus is about $G per year. By comparison, the cost for total electric usage billed annually by Utility is about $H. Accordingly, one electric bus would account for a minimal .001% of the total costs billed by Utility. Electric buses can run all day on one charge, and Foundation believes that Bus would likely charge the electric buses at night during off-peak hours when electricity usage is at its lowest levels. Thus, the amount of a grant for one electric bus far exceeds the total payments received for presumably decades of electric usage for one bus, assuming the regulated costs of electricity remain similar or the same.

Notwithstanding the minimal cost for the electricity usage of one electric bus per year, Foundation represents that the electricity usage of a bus does not necessarily increase Utility's profits due to the regulatory landscape of State utilities. Foundation explains that profits are decoupled from the sale of electricity in the following way. Foundation represents that Utility is a fully regulated monopoly in State. Utility is regulated by Agency, which must approve the rates charged to customers for electricity usage, the amount and types of major infrastructure investments made by Utility, and a reasonable return on investment. Statute 1 provides that any rate charged by a public utility for its service "shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful." Statute 2 provides that if Agency determines that any rate charged by a public utility for its service is unjust and unreasonable, Agency shall determine and order reasonable rates and charges. In order to determine electricity rates to customers, Utility must determine its revenue requirement, which is based on a number of factors including forecasted sales of electricity and electric load requirements, the value of Utility's assets (power plants, transformers, electrical lines, etc.), the cost of debt and equity financing, and operating and administrative expenses. Once the revenue requirement is approved by Agency, forecasted electricity sales are considered to determine the unit cost charged to customers through electricity rates. If the actual electricity sales are greater than the

forecasted sales, Foundation states that Agency would likely determine that the rates are not "reasonable and just," as required by statute, and reduce electricity rates for customers in subsequent years in order to match with the approved revenue requirement. Accordingly, because of the regulated monopoly rates approved by Agency, profits are decoupled from the sale of electricity. Utility would only be able to increase its profits if it was required to invest in a new infrastructure project to meet additional demands. As provided above, the addition of up to ten electric buses over a five-year period would produce a negligible increase in Utility's electric load and would likely not require the production of a new infrastructure. Additionally, any revenue from the buses' minimal use of electricity would likely result in a rate decrease for the following year if the minimal use resulted in the actual sales being greater than the projected rates determined by Agency.

Furthermore, the electric buses may not even be charged using Utility's electricity. Foundation represents that the Proposed Grants do not include any restrictions requiring grant recipients to operate the electric vehicles within Utility's service area or to charge the electric vehicles only within Utility's service area. A portion of Bus's bus routes are outside Utility's service area and Bus is currently installing solar panels at its service center, which would enable Bus to generate its own electricity, so it is possible that some or all of the buses would not be charged with electricity purchased from Utility.

Foundation represents that there are many public benefits from the use of electric buses and other low- or no-emission vehicles. Foundation states that gasoline or diesel engines release harmful emissions of particulate matter and other pollutants into the air. This particulate matter contains arsenic, selenium, and sulfates from sulfur dioxide, which directly contributes to respiratory and cardiovascular illnesses. Emissions from gasoline and diesel engines also contribute to the formation of ground level ozone, which can harm an individual's respiratory system, causing coughing, choking, and reduced lung capacity. Electric vehicles do not produce any direct emissions into the environment, thereby reducing carbon emissions and harmful byproducts produced by gasoline or diesel engines and improving the environment and public health. Foundation also states that electric vehicles cost less to operate and maintain than traditional gasoline or diesel vehicles. Foundation submitted several articles to support its representations regarding the environmental and public health benefits from the use of electric vehicles. One of these articles by the Environmental Protection Agency provides that the particle emissions from gasoline and diesel engines are a main cause of haze in parts of the United States and can cause lakes and streams to become acidic, change the nutrient balance in coastal waters and river basins, deplete nutrients in the soil, which can damage forests and farm crops, and affect the diversity of ecosystems. *Particulate Matter (PM) Pollution*, U.S. Environmental Protection Agency, https://www.epa.gov/pm-pollution/particulate-matter-pm-basics#effects.

Rulings Requested

Foundation requests the following rulings:

1. Foundation's Proposed Grants to offset the cost difference between the purchase of traditional gasoline and diesel vehicles and the purchase of low- or no-emission electric vehicles will be considered qualifying distributions under § 4942(g).

2. Foundation's Proposed Grants to offset the cost difference between the purchase of traditional gasoline and diesel vehicles and the purchase of low- or no-emission electric vehicles will not constitute taxable expenditures described in § 4945.

3. Foundation's Proposed Grants to offset the cost difference between the purchase of traditional gasoline and diesel vehicles and the purchase of low- or no-emission electric vehicles will not cause Foundation to serve a private interest as described in Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

4. Foundation's Proposed Grants to offset the cost difference between the purchase of traditional gasoline and diesel vehicles and the purchase of low- or no-emission electric vehicles will not constitute acts of self-dealing between Foundation and Utility, a disqualified person, because any benefit to be received by Utility will be incidental and tenuous within the meaning of Treas. Reg. § 53.4941(d)-2(f)(2).

Law and Analysis

Requested Ruling 1 and Requested Ruling 2

Law:

Section 4942(a) generally imposes a tax on the undistributed income of a private foundation.

Section 4942(c) defines undistributed income for any taxable year as the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made out of such distributable amount for such taxable year.

Section 4942(g)(1) defines a qualifying distribution as (A) any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in § 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in § 4946) with respect to the foundation, except as provided in § 4942(g)(3)[2], or (ii) a private foundation which is not an operating

[2] Section 4942(g)(3) provides that the term "qualifying distribution" includes a contribution to a § 501(c)(3) organization described in paragraph (1)(A)(i) or (ii) if—

foundation (as defined in § 4942(j)(3)), except as otherwise provided in § 4942(g)(3); or (B) any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in § 170(c)(2)(B).

Section 4942(g)(4)(A) provides that the term "qualifying distribution" shall not include any amount paid by a private foundation which is not an operating foundation to (i) any type III supporting organization (as defined in § 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in § 4943(f)(5)(B)), and (ii) any organization which is described in § 4942(g)(4)(B) or § 4942(g)(4)(C) if a disqualified person of the private foundation directly or indirectly controls such organization or a supported organization (as defined in § 509(f)(3)) of such organization, or the Secretary determines by regulations that a distribution to such organization otherwise is inappropriate.

Section 4945(a) imposes a tax on each "taxable expenditure" of a private foundation.

Section 4945(d)(4) provides that "a taxable expenditure" includes a grant to an organization unless (A) the organization is described in § 509(a)(1), § 509(a)(2), or § 509(a)(3) (other than a non-functionally-integrated type III supporting organization, or any other type of supporting organization if a disqualified person of the private foundation directly or indirectly controls such organization or controls a supported organization (as defined in § 509(f)(3)) of such supporting organization, or if the Secretary determines by regulations that a distribution to such supporting organization otherwise is inappropriate), or an exempt operating foundation as defined in § 4940(d)(2)), or (B) the private foundation exercises expenditure responsibility with respect to such grants in accordance with § 4945(h).

Section 4945(d)(5) provides that a "taxable expenditure" includes any amount paid or incurred by a private foundation for any purpose other than the ones specified in § 170(c)(2)(B). The purposes specified in § 170(c)(2)(B) include religious, charitable, scientific, literary, and educational purposes, and are purposes that are listed in § 501(c)(3).

Treas. Reg. § 53.4942(a)-3(a)(2) defines the term qualifying distribution, in relevant part, as any amount (including program related investments and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in § 170(c)(1) or § 170(c)(2)(B), other than any contribution to: (a) a private

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(A) not later than the close of the first taxable year after its taxable year in which such contribution is received, such organization makes a distribution equal to the amount of such contribution and such distribution is a qualifying distribution (within the meaning of paragraph (1) or (2), without regard to this paragraph) which is treated under subsection (h) as a distribution out of corpus (or would be so treated if such § 501(c)(3) organization were a private foundation which is not an operating foundation), and

(B) the private foundation making the contribution obtains adequate records or other sufficient evidence from such organization showing that the qualifying distribution described in subparagraph (A) has been made by such organization.

foundation which is not an operating foundation, (b) an organization controlled (directly or indirectly) by the contributing private foundation or one or more disqualified persons with respect to such foundation, or (c) a non-functionally integrated type III supporting organization described in § 4942(g)(4)(A)(i). Section 170(c)(1) provides that the term "charitable contribution" means a contribution or gift to or for the use of a state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes. Section 170(c)(2)(B) further defines a charitable contribution to include a contribution to a corporation, trust or community chest, fund, or foundation that is organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

Treas. Reg. § 53.4945-5(a)(1) provides, in part, that the term taxable expenditure includes any amount paid or incurred by a private foundation as a grant to an organization (other than an organization described in § 509(a)(1), (2), or (3) (other than one described in § 4942(g)(4)(A)), unless the private foundation exercises expenditure responsibility with respect to such grant.

Treas. Reg. § 53.4945-5(a)(4) provides that for purposes of § 4945, an organization will be treated as a § 509(a)(1) organization if it is an organization described in § 170(c)(1) or § 511(a)(2)(B), even if it is not described in § 501(c)(3)), if the grant is made exclusively for charitable purposes described in § 170(c)(2)(B).

Treas. Reg. § 53.4945-6(b)(1)(v) provides, in part, that any payment that constitutes a qualifying distribution under § 4942(g) ordinarily will not be treated as a taxable expenditure under § 4945(d)(5).

Dumaine Farms v. Commissioner, 73 T.C. 650 (1980), acq., 1980-2 C.B. 1, provides that testing and demonstrating the economic feasibility of practicing environmental conservation theories on a working farm is educational and scientific and qualifies for exemption under § 501(c)(3). The purpose of the farm was to demonstrate to local farmers and the general public the economic feasibility of experimental farming practices which would conserve the area's ecology and native wildlife. The court stated, "…petitioner is a model farm operated as a conservation project. Both its experimental projects and its demonstration function further its overriding purpose of conserving the ecology...Thus, one of [the farm's] goals is to demonstrate the economic feasibility of farming techniques which conserve and protect the environment." The court found that the term "scientific" includes scientific research if the research is carried on in the public interest; additionally, the research must also benefit the public. The court determined that there was broad public benefit because the farm's conservation work actively furthered the public policies expressed by Congress in the National Environmental Policy Act of 1969, 42 U.S.C. secs. 4321-4361 (1976), by emphasizing the restoration of depleted natural resources to productive use, rather than merely preventing ecological damage. Because the court found that the farm's activities qualified it for exemption as a scientific and educational organization, the court decided that it did not

need to reach the question of whether the farm was also operated for "charitable" purposes because the farm's activities benefited the community and the general public.

Rev. Rul. 72-560, 1972-2 C.B. 248, holds that an organization formed to educate the public regarding environmental deterioration due to solid waste pollution qualifies for exemption under § 501(c)(3). The organization sponsored workshops, conferences, and exhibits to inform the public of the environmental problems caused by solid waste materials and the advantages of recycling such materials. By providing information to the public concerning environmental problems caused by solid waste materials and the advantages of recycling such materials, the organization is instructing the public on subjects useful to the individual and beneficial to the community. The ruling further provided that the recycling of waste materials is an essential element in the organization's efforts to combat environmental deterioration, since it prevents the pollution of the environment caused by the usual disposition of these materials. The ruling concludes that this type of activity serves a charitable and educational purpose.

Rev. Rul. 76-204, 1976-1 C.B. 152, holds that an organization formed for the purpose of preserving the natural environment by acquiring, by gift or purchase, ecologically significant undeveloped land, and either maintaining the land itself with limited public access or transferring the land to a government conservation agency by outright gift or being reimbursed by the agency for its cost, qualifies for exemption under § 501(c)(3). The organization worked closely with Federal, state, and local government agencies, and private organizations concerned with environmental conservation. The ruling stated, "It is generally recognized that efforts to preserve and protect the natural environment for the benefit of the public serve a charitable purpose. *Restatement (Second) of Trusts* § 375 (1959)." The ruling also stated, "Furthermore, the promotion of conservation and protection of natural resources has been recognized by Congress as serving a broad public benefit." Additionally, the ruling stated, "The benefit to the public from environmental conservation derives not merely from the current educational, scientific, and recreational uses that are made of our natural resources, but from their preservation as well. Only through preservation will future generations be guaranteed the ability to enjoy the natural environment. A national policy of preserving unique aspects of the natural environment for future generations is clearly mandated in the Congressional declarations of purpose and policy in numerous Federal conservation laws…While the public benefits from environmental conservation are clearly recognized and measurable, an equally important public purpose is served by preserving natural resources for future generations."

Rev. Rul. 78-68, 1978-1 C.B. 149, holds that an organization formed as a Model Cities Demonstration project to provide bus transportation to isolated areas of the community unserved by the existing bus system is providing bus service under the authority of the Federal and local governments and qualifies for exemption under § 501(c)(3).

Rev. Rul. 80-278, 1980-2 C.B. 175, provides that it is generally recognized that efforts to preserve and protect the natural environment for the benefit of the public constitute a

charitable purpose within the meaning of Treas. Reg. § 1.501(c)(3)-1(d)(2) and that the promotion of conservation and protection of natural resources has been recognized by Congress as serving a broad public benefit with the enactment of the National Environmental Policy Act of 1969. The ruling states, "In determining whether an organization meets the operational test, the issue is whether the particular activity undertaken by the organization is appropriately in furtherance of the organization's exempt purpose…Two organizations having the same charitable purpose may both be recognized as exempt even though their viewpoints on the subject may differ, and they may be undertaking differing, even conflicting, means to accomplish that charitable objective. See *Restatement (Second) of Trusts,* section 374, comment 1 (1959). The law of charity provides no basis for weighing or evaluating the objective merits of specific activities carried on in furtherance of a charitable purpose, if those activities are reasonably related to the accomplishment of the charitable purpose, and are not illegal or contrary to public policy." Accordingly, the revenue ruling held that an organization that was formed to protect and restore environmental quality and whose principal activity consisted of instituting litigation as a party plaintiff to enforce environmental legislation was operated exclusively for charitable purposes.

Rev. Rul. 81-125, 1981-1 C.B. 515, provides that a grant, for exclusively charitable purposes, made by a private foundation to a wholly owned instrumentality of a political subdivision of a state does not constitute a taxable expenditure under § 4945(d)(4) even though the foundation does not exercise expenditure responsibility, with respect to the grant in accordance with § 4945(h).

Analysis:

Under § 4942 and the applicable regulations, a qualifying distribution includes any amount paid to accomplish one or more purposes described in § 170(c)(1) or § 170(c)(2)(B) other than any contribution to a non-operating private foundation, an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons with respect to the foundation, or a non-functionally integrated type III supporting organization. These purposes include exclusively public purposes or charitable purposes. See § 4942(g)(1) and § 53.4942(a)-3(a)(2).

The purpose of the Proposed Grants from Foundation to Bus is to help Bus accomplish its purpose of providing public bus service consistent with its goal to convert its entire fleet of buses to electric by Year in order to improve the environment and public health by lowering emissions and air pollutants. Foundation provided information indicating that electric vehicles do not produce any direct emissions into the environment, thereby reducing carbon emissions and harmful byproducts produced by gasoline or diesel engines, which can cause haze and smog, cause lakes and streams to become acidic, change the nutrient balance in coastal waters and river basins, deplete nutrients in the soil, damage forests and farm crops, and affect the diversity of ecosystems. Accordingly, the reduction of carbon emissions and harmful byproducts can improve the environment and public health. (Additionally, providing bus service under the authority

of local governments can be a charitable purpose. See Rev. Rul. 78-68.) Although Foundation's grants will not expand bus service, like the organization described in Rev. Rul. 78-68, the grants will nevertheless assist a local governmental entity in meeting its goals of converting its entire fleet of buses to electric in order to achieve carbon reduction goals in the community. Thus, by aiding Bus's goal of converting to its fleet to electric buses in order to improve the environment and public health, the Proposed Grants to Bus are for exclusively public purposes and charitable purposes as discussed in more detail below. Accordingly, the Proposed Grants to Bus meet the definition of a qualifying distribution under Treas. Reg. § 53.4942(a)-3(a)(2).

With respect to possible grants to organizations other than Bus, Foundation proposes to grant funds to tax-exempt and governmental organizations to enable them to purchase low- or no-emission electric vehicles rather than just gasoline or diesel vehicles. As noted above, Foundation represents that electric vehicles reduce carbon emissions and harmful byproducts produced by gas engines. Foundation plans to provide Proposed Grants to a governmental or charitable entity for environmental conservation purposes. Generally, preserving the environment can further a § 170(c)(2)(B) purpose. See Rev. Rul. 72-560 (preventing pollution of the environment serves a charitable and education purpose), Rev. Rul. 76-204 (efforts to preserve and protect the natural environment for the benefit of the public serve a charitable purpose), Rev. Rul. 80-278 (efforts to preserve and protect the natural environment for the benefit of the public constitute a charitable purpose), and Dumaine Farms v. Commissioner (testing and demonstrating the economic feasibility of practicing environmental conservation theories on a working farm is educational and scientific and benefits the community and the general public). Therefore, these Proposed Grants would further a § 170(c)(2)(B) purpose.

Foundation further represents that any § 501(c)(3) recipients of the Proposed Grants will not be controlled by Foundation or Utility, are not private foundations, and are not supporting organizations described in § 4942(g)(4)(A). Thus, because the Proposed Grants will further public and charitable purposes described under § 170(c)(1) and §170(c)(2)(B) and will not be to prohibited organizations described in § 4942(g)(4)(A), the Proposed Grants will constitute qualifying distributions under § 4942.

Regarding taxable expenditures under § 4945, Foundation represents that the Proposed Grants will be provided to § 170(c)(1) or (c)(2) organizations. As long as the Proposed Grants are "qualifying distributions" under § 4942(g), such expenditures ordinarily will not be "taxable expenditures" within the meaning of § 4945(d)(4). See Treas. Reg. § 53.4945-6(b)(1)(v). Moreover, if the grants are made exclusively for charitable purposes to certain public charities as described in § 4945(d)(4)(A) or to a wholly owned instrumentality of a political subdivision of a state as in Rev. Rul. 81-125, the payments are not taxable expenditures that are subject to tax under § 4945 without the Foundation having to exercise expenditure responsibility. See Treas. Reg. § 53.4945-5(a)(1) and Treas. Reg. § 53.4945-5(a)(4).

As noted in the discussion about qualifying distributions, preserving the environment can further a § 170(c)(2)(B) educational, scientific, or charitable purpose. See Rev. Rul. 72-560, Rev. Rul. 76-204, Rev. Rul. 80-278, Dumaine Farms v. Commissioner and § 4945(d)(5). Since Foundation is making grants only to § 170(c)(1) and (c)(2) organizations to purchase electric vehicles that will reduce carbon emissions and harmful byproducts produced by gasoline or diesel engines, and not to prohibited organizations described in § 4945(d)(4), Foundation is furthering a § 170(c)(2)(B) charitable purpose. Thus, the Proposed Grants will not be taxable expenditures within the meaning of § 4945(d)(5).

Requested Ruling 3

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

Treas. Reg. § 1.501(c)(3)-1(a)(1) provides that in order to be exempt as an organization described in § 501(c)(3), the organization must be both organized and operated exclusively for one or more of the purposes specified in that section.

Treas. Reg. § 1.501(c)(3)-1(c)(1) provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), provides that the presence of private benefit, if substantial in nature, will destroy the exemption regardless of an organization’s other charitable purposes or activities.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court held that an organization whose primary activity was to operate a school to train individuals for careers as political campaign professionals was not operated exclusively for an exempt purpose as described in § 501(c)(3) because the school’s activities conferred impermissible private benefit. The court defined private benefit as “non-incidental benefits conferred on disinterested persons that serve private interests.” The court provided that an organization may provide benefits to private individuals provided those benefits are incidental, both quantitatively and qualitatively. To be qualitatively incidental, the private benefit must be a necessary outcome of an activity that benefits the public at large. In other words, the benefit to the public cannot be achieved without necessarily benefiting certain private individuals. To be quantitatively

incidental, the private benefit must be insubstantial, measured in the context of the overall public benefit conferred by the activity.

Rev. Rul. 69-175, 1969-1 C.B. 149, provides that an organization formed by parents of pupils attending a private school that provides school bus transportation for its members' children serves a private rather than a public interest.

Rev. Rul. 70-186, 1970-1 C.B. 128, involves an organization that was formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake to enhance its recreational features. Although the organization clearly benefited the public at large, there necessarily was also significant benefit to the private individuals who owned lake front property. The ruling provided that the private benefit to the lake front property owners, however, was incidental in a qualitative sense, stating that the benefits to be derived from the organization's activities flow principally to the general public through the maintenance and improvement of public recreational facilities. Any private benefits derived by the lake front property owners did not lessen the public benefits flowing from the organization's operations and did not affect the organization's tax-exempt status.

Foundation represents that Utility is the primary provider of electricity to the local City area. Foundation's Proposed Grants to Bus and other § 170(c)(1) or (c)(2) organizations could appear to result in additional sales of electricity by Utility, which would serve a private interest. However, the stated purpose of the Proposed Grants is to provide environmental and public health benefits to the local City area, by reducing carbon emissions and harmful byproducts of gasoline and diesel engines, and by providing City with buses that are less costly to operate and maintain. Similar to Rev. Rul. 70-186, where the public recreational element outweighed the private benefit to certain property owners, the benefits to be received from Foundation's activities will flow principally to the general public through the improvements to the environment and the public bus system. See also Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). Unlike Rev. Rul. 69-175, any private benefit received by Utility will be merely incidental to the benefits received by the public and do not lessen those benefits received by the public.

Furthermore, the additional sales of electricity by Utility resulting from the addition of a maximum of ten electric buses total will be negligible in comparison with Utility's total electric sales, and due to the statutorily required regulation of the industry, is highly unlikely to result in an increase in profits. Additionally, unlike the situation in Rev. Rul. 69-175, where there was a direct and substantial benefit to the parents and children of a private school, because there is no requirement to use the vehicles within Utility's service area, or to charge them using electricity provided by Utility, there may be little or no direct benefit to Utility. Accordingly, any private benefit potentially received by Utility will be insubstantial when measured against the overall public benefit resulting from the activity. See Better Business Bureau of Washington D.C., Inc. v. United States and Treas. Reg. § 1.501(c)(3)-1(c)(1). Therefore, unlike American Campaign Academy v. Commissioner, where the organization's activities conferred impermissible private

benefit, any private benefit potentially received by Utility will be both qualitatively and quantitatively incidental to the public benefit received from the activity, and Foundation's activities will not serve a private interest.

Requested Ruling 4

Section 4941(a)(1) imposes a tax on each act of self-dealing between a disqualified person (as defined in § 4946(a)) and a private foundation.

Section 4941(d)(1)(E) provides that the term "self-dealing" includes any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4946(a)(1)(A) states that the term "disqualified person" includes a substantial contributor to a private foundation. Section 507(d)(2)(A) provides that the term "substantial contributor" means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person.

Treas. Reg. § 53.4941(d)-2(f)(2) provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Thus, the public recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous. For example, a grant by a private foundation to a § 509(a)(1), (2), or (3) organization will not be an act of self-dealing merely because such organization is located in the same area as a corporation which is a substantial contributor to the foundation, or merely because one of the § 509(a)(1), (2), or (3) organization's officers, directors, or trustees is also a manager of or a substantial contributor to the foundation.

Treas. Reg. § 53.4941(d)-2(f)(9), Example (1) illustrates that there is only incidental and tenuous benefit to a disqualified person when a private foundation makes a grant to a city for the purpose of alleviating the slum conditions which existed in a particular neighborhood when the disqualified person is located in the same neighborhood.

Revenue Ruling 85-162, 1985-2 C.B. 275, provides that there is no act of self-dealing under § 4941 if a private foundation, whose disqualified person is a bank, makes loans to publicly supported organizations for the charitable purpose of construction projects in disadvantaged areas where the contractors doing the construction may be ordinary customers of the bank. Any benefit to the bank from the fact that the loan proceeds are paid by the public charities to the contractors who are ordinary customers of the bank is incidental or tenuous under Treas. Reg. § 53.4941(d)-2(f)(2).

Foundation represents that Utility is the primary provider of electricity to the local City area. Foundation also represents that Utility is the sole contributor to Foundation and is a disqualified person of Foundation within the meaning of § 4946(a)(1)(A). Accordingly, Foundation's Proposed Grants to cover the cost difference between the purchase of traditional gasoline or diesel vehicles and the purchase of low- or no-emission electric buses or other types of electric vehicles could result in additional sales of electricity by Utility, which is a disqualified person to Foundation. However, the additional sales of electricity resulting from the addition of a maximum of ten electric buses total will be negligible in comparison with Utility's total electricity sales and minimal in relation to the Proposed Grants. Foundation represents that, because of the statutorily required regulated monopoly rates approved by Agency, profits are decoupled from the sale of electricity, and the public benefit of helping charitable and governmental organizations purchase low- or no-emission vehicles will far outweigh the benefit, if any, to Utility. Accordingly, Foundation's Proposed Grants to offset the cost difference between the purchase of traditional gasoline and diesel vehicles and low- or no-emission electric vehicles are for the public benefit of City. Similar to the benefit to a disqualified person in the example in Treas. Reg. § 53.4941(d)-2(f)(9), and to the bank in Rev. Rul. 85-162, any benefit to Utility from the Proposed Grants is incidental or tenuous within the meaning of Treas. Reg. § 53.4941(d)-2(f)(2) and does not constitute self-dealing under § 4941.

Rulings

Based solely on the facts and representations submitted by Foundation, we rule as follows:

1. Foundation's Proposed Grants to offset the cost difference between the purchase of traditional gasoline and diesel vehicles and the purchase of low- or no-emission electric vehicles will be considered qualifying distributions under § 4942(g).

2. Foundation's Proposed Grants to offset the cost difference between the purchase of traditional gasoline and diesel vehicles and the purchase of low- or no-emission electric vehicles will not constitute taxable expenditures described in § 4945.

3. Foundation's Proposed Grants to offset the cost difference between the purchase of traditional gasoline and diesel vehicles and the purchase of low- or no-emission electric vehicles will not cause Foundation to serve a private interest as described in Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

4. Foundation's Proposed Grants to offset the cost difference between the purchase of traditional gasoline and diesel vehicles and the purchase of low- or no-emission electric vehicles will not constitute acts of self-dealing between Foundation and Utility, a disqualified person, because any benefit to be received by Utility will be incidental and tenuous within the meaning of Treas. Reg. § 53.4941(d)-2(f)(2).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by an individual with authority to bind the taxpayer, and upon the understanding that there will be no material changes in the facts. While this office has not verified any of the material submitted in support of the request for rulings, such material is subject to verification on examination.

The Associate Office will revoke or modify a letter ruling and apply the revocation retroactively if: (1) there has been a misstatement or omission of controlling facts; (2) the facts at the time of the transaction are materially different from the controlling facts on which the ruling is based; or (3) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction. See Rev. Proc. 2020-1, § 11.05.

Except as specifically set forth above, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter and no ruling is granted as to whether Foundation qualifies as an organization described in § 501(c) or § 509(a).

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Because it could help resolve questions concerning federal income tax status, this letter should be kept in Foundation's 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.

Sincerely,

Virginia Richardson
Senior Tax Law Specialist
Exempt Organizations Branch 3
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: