



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Number: **200620036**

Release Date: 5/19/06

Date: February 24, 2006

SE:T:EO:RA:T:1

Contact Person:

Identification Number:

Telephone Number:

UIL: 507.04-00,

170.07-02

Employer Identification Number:

**Legend:**

A =

M =

N =

O =

X =

bb =

Dear \_\_\_\_\_ :

This is in response to X's request for a ruling under section 507(b)(1)(B)(i) of the Internal Revenue Code, submitted by X's legal representative.

**Facts**

X is an organization described in section 501(c)(3) of the Code, and classified as a private operating foundation under section 4942(j)(3). X has given notice to the Internal Revenue Service that it intends to terminate its private foundation status assuming it receives classification under section 509(a)(1) as a non-private foundation, and under section 170(b)(1)(A)(ii) as an educational organization.

X was established in the State of M by A as a charitable trust for the purpose of fostering alternative programs of education for children to be held in and around N, O, in the field of marine aquaculture. X partners with local schools to provide an alternative curriculum during the school year for students who have difficulty succeeding in the traditional school environment. X offers these classes to approximately 30 students on an ongoing basis. X also offers a variety of summer classes to local children on various topics relating to aquaculture and marine biology. X also provides hour-long educational outreach programs to regional schools,

libraries and nonprofit groups. X's instructional programs are taught by a staff of three full-time marine science educators. Its facilities include classroom space, laboratory facilities, and growing areas for fish. The facilities are periodically open to the public for guided tours, open houses and special events. During the course of the school year, each class runs its own simulated small business as part of the collaborative learning experience developed by X instructors in cooperation with the public school system of N, O. ("School System") X's enrollment is regular, consistent and held in the place where its educational activities are carried on. There are presently four classes of students from local secondary schools in regular attendance at X, making up a total enrollment of approximately 30 students.

A Board of Trustees ("Board") governs X. X has six members on its Board. Four of these members are from the general public, and two from A's family. The Board members from the general public include persons with appropriate legal, financial and business expertise, and persons with local and national reputations in fields relevant to X's mission. It is not expected that X's Board of Directors will at any time in the future become dominated by persons who are descendants or relatives of A. X uses a calendar year for its operations.

X seeks funding from government agencies and public charities to support its educational programs, and will continue to do so. It is also actively pursuing options for partnering with local schools to seek funding for joint programs. Its ongoing commitment to these efforts and to all the other fundraising activities described above demonstrates that X is operated to attract new and additional public and governmental support on a continuous basis.

X states that it anticipates that during and after the 60-month termination period its main sources of support will be from contributions from individual, foundation, government, and corporate donors; and income from its programs and activities. X states that it will continue providing educational activities during this time period to the general public.

X states that there have not been either willful repeated acts (or failures to pay) or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42 of the Code.

## **Ruling Requested**

X can be expected to meet the requirements of section 507(b)(1)(B)(i) of the Code during the 60-month period beginning bb by operating as an educational organization described in section 170(b)(1)(A)(ii).

## **Law**

Section 170(b)(1)(A)(ii) of the Code describes an organization as an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at a place where its educational activities are regularly carried on.

Section 1.170A-9(b)(1) of the Income Tax Regulations describes educational organizations and organizations for the benefit of certain State and municipal colleges and universities. It states that an educational organization is described in section 170(b)(1)(A)(ii) of the Code if its primary function is the presentation of formal instruction and it normally maintains a regular

faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities. It includes Federal, State, and other public-supported schools which otherwise come within the definition. It does not include organizations engaged in both educational and noneducational activities unless the latter are merely incidental to the educational activities.

Section 507(b)(1)(B) of the Code provides that the status as a private foundation of any organization with respect to which there have not been either willful repeated acts (or failures to pay) or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42 of the Code shall be terminated if:

- (i) The organization meets the requirements of paragraph (1), (2) or (3) of section 509(a) for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969;
- (ii) The organization notifies the Secretary (in such manner as the Secretary may by regulations prescribe) before the commencement of the 60-month period that it is terminating its private foundation status; and,
- (iii) The organization establishes to the satisfaction of the Secretary (in such manner as the Secretary may by regulations prescribe) immediately after the expiration of the 60-month period that it has complied with section 507(b)(1)(B)(i) of the Code.

Section 509(a) of the Code provides that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than (1) an organization described in section 170(b)(1)(A) (other than in sections (vii) and (viii) of that Code section); and (2) an organization which normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees.

Section 1.507-2(b)(1) of the regulations provides, generally, that under section 507(b)(1)(B) of the Code, an organization can terminate its private foundation status if the organization:

- (i) Meets the requirements of section 509(a)(1), (2), or (3) by the end of the 12-month period (as extended by paragraph (c)(3)(i) of this section) beginning with its first taxable year which begins after December 31, 1969, or for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969;
- (ii) Is in compliance with section 507(b)(1)(B)(ii) and subparagraph (3) of this paragraph, properly notifies the district director before the commencement of such 12-month or 60-month period or before March 29, 1973 that it is terminating its private foundation status; and

(iii) Properly establishes immediately after the expiration of such 12-month or 60-month period that such organization has complied with the requirements of section 509(a)(1), (2), or (3) by the end of the 12-month period or during the 60-month period, as the case may be, in the manner described in subparagraph (4) of this paragraph.

Section 1.507-2(d)(1) of the regulations provides that in order to meet the requirement of section 507(b)(1)(B) for the 60-month termination period as a section 509(a)(1) or (2) organization, an organization must meet the requirements of section 509(a)(1) or (2), as the case may be, for a continuous period of at least 60 calendar months.

Section 1.507-2(e)(1) of the regulations provides that an organization which provides notice that it is commencing a 60-month termination may obtain an advance ruling from the Commissioner that it can be expected to satisfy the requirements of section 507(b)(1)(B)(i) of the Code during the 60-month period. Such an advance ruling may be issued if the organization can reasonably be expected to meet the requirements of section 507(b)(1)(B)(i) during the 60-month period. The issuance of the ruling will be discretionary with the Commissioner.

Section 1.507-2(e)(2) of the regulations provides that in determining whether an organization can reasonably be expected to meet the requirements of section 507(b)(1)(B) (i) of the Code for the 60-month period, the basic consideration is whether its organizational structure proposed programs or activities, intended method of operation, and projected sources of support are such as to indicate that the organization is likely to satisfy the requirements of section 509(a)(1), (2), or (3), and section 1.507-2(d) of the regulations during the 60-month period. In making such a determination, all pertinent facts and circumstances shall be considered.

Rev. Rul. 72-430, 1972-2 C.B.105, states that an organization that provides an elementary education for children may meet the requirements for an "educational organization" even though it has no formal course program or formal classroom instruction, and, therefore, is not considered a private foundation under section 509(a)(1) of the Code.

Rev. Rul. 73-430, 1973-2 C.B. 362, states that a preschool children's day-care center operated as an activity of a community development corporation exempt from Federal income tax as an organization described in section 501(c)(3) of the Code and meeting the requirements relating to faculty, curriculum, and enrolled student body, qualifies as a "nonprofit educational organization" for purposes of the exemption from the retailers, manufacturers, and communications taxes.

Rev. Rul. 73-434, 1973-2 C.B. 71, states that an organization exempt from tax under section 501(c)(3) of the Code that has full-time instructors who regularly conduct a 26-day survival course, mostly out-of-doors, to teach young people how to survive in a natural environment, is an educational organization within the meaning of section 170(b)(1)(A)(ii) and, therefore, is not a private foundation by reason of section 509(a)(1).

## **Analysis**

X states that there have not been either willful repeated acts (or failures to pay) or a willful

and flagrant act (or failure to act) giving rise to liability for tax under chapter 42 of the Code.

X plans to operate as an educational organization under section 170(b)(1)(A)(ii) of the Code.

X's primary function is the formal instruction of students in the science and practice of aquaculture. This function has remained unchanged since X's inception and remains central to its mission for the future. X teaches practical science, and more particular, practical biology, to high school students. Also, X continually seeks to expand the attendance and scope of academic-year aquaculture program. Therefore, X satisfies the formal instruction component of an educational organization described under section 170(b)(1)(A)(ii) of the Code and Reg. Section 1.170A-9(b)(1).

X's educators possess both academic credentials in environmental sciences and practical experience in the aquaculture field. X's educators serve as the regular instructors to students in the academic-year aquaculture program. They develop the curriculum for each class, teach regular lessons and supervise all of the students' activities in the classroom, greenhouse and laboratory. Therefore, X's full-time staff of aquaculture teachers constitute a regular faculty, satisfying the regular faculty component of an educational organization under section 170(b)(1)(A)(ii) of the Code.

During the course of the school year, each class runs its own simulated small business as part of the collaborative learning experience developed by X instructors in cooperation with the School System. The curriculum for X's aquaculture program meets the requirement of a regular curriculum because it is operated in coordination with the local School System to integrate classroom-based instruction with rigorous practical training in the laboratories to educate students in the science, technology and business of sea farming. X's summer courses and community outreach programs are consistent with this classification as an educational organization because they complement the organization's primary activity of providing formal instruction in aquaculture. X's overall program of instruction throughout the school year, and its summer courses and outreach programs complement and promote the core aquaculture curriculum offered to alternative education students during the academic year. In Rev. Rul. 73-430, supra, "the "[d]aily planned subjects and group activities" of a children's daycare center were found to satisfy the formal curriculum requirement. In addition, in Rev. Rul. 72-430, supra, "since it develops an individualized course of study for each child based on his needs and aptitudes," an organization providing elementary education for children meets this requirement, even though it has no formal course program. Therefore, X's intensive alternative education program satisfies the regular curriculum component of an educational organization under section 170(b)(1)(A)(ii) of the Code.

X's enrollment is regular, consistent and held in the place where its educational activities are carried on. There are presently four classes of students from local secondary schools in regular attendance at X, making up a total enrollment of approximately 30 students. The Service construed the requirement that an educational organization normally maintains a regular faculty and curriculum under section 170(b)(1)(A)(ii) of the Code in Rev. Rul. 73-434, supra, to include an organization that conducted nature survival courses whose students attended class terms lasting only 26 days and were more often taught in outdoor facilities than in classrooms. Therefore, X meets the requirements of section 170(b)(1)(A)(ii) since it teaches a group of students an educational activity in one place on an ongoing basis. Therefore, the

numerous students enrolled in X's aquaculture program, which is taught in X facilities on a regular basis during the academic year satisfies the "...students normally attending class where a regular curriculum is carried on" component as required under section 170(b)(1)(A)(ii).

## **CONCLUSION**

Since X has operated and continues to operate as an educational organization, it can be expected to satisfy the requirements of section 507(b)(1)(B)(i) of the Code during its 60-month termination period by operating as an educational organization described in section 170(b)(1)(A)(ii).

## **Ruling**

Based on the information submitted, we rule as follows:

X can be expected to meet the requirements of section 507(b)(1)(B)(i) of the Code during the 60-month period beginning bb by operating as an educational organization described in section 170(b)(1)(A)(ii).

Although X is considered to be a public charity for certain purposes, X is still considered a private foundation for purposes of the filing requirements under section 6033 and 6056 of the Code. Accordingly, X must continue to file Form 990-PF for each year in the termination period. A copy of this letter should be attached to X's Form 990-PF.

Donors (including private foundations) may rely on this ruling that X is not a private foundation until 90 days after the end of its 60-month period. However, if notice that X will no longer be treated as the type of organization indicated above is published in the Internal Revenue Bulletin, donors may not rely upon this advance ruling after the date of such publication. Also, donors (other than private foundations) may not rely upon this classification indicated above if they were in part responsible for, or were aware of, the act that resulted in X's loss of classification, or if they acquired knowledge that the Internal Revenue Service had given notice that X would be removed from that classification. Private foundations may rely on the classification as long as X was not directly or indirectly controlled by them or by disqualified persons with respect to them. However, private foundations may not rely on the classification indicated above if they acquired knowledge that the Internal Revenue Service had given notice that X would be removed from that classification.

This ruling is based on the understanding 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 Code provides it may not be used or cited by others as precedent.

This ruling will be made available for public inspection under section 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.

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,

Steven B. Grodnitzky  
Acting Manager  
Exempt Organizations  
Technical Group 1

Enclosure  
Notice 437