



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 501.03-19 No Third Party Contacts

Release Number: **200708087**
Release Date: 2/23/07
Date: November 30, 2006

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

The Fund =
The Cemetery =
Donor =
=
x =
y =
Date 1 =
Date 2 =
The State Court =

Dear _____ :

This is in response to rulings request dated January 20, 2006, and supplemented by a letter dated August 31, 2006, that certain proposed transactions of the Fund will not adversely affect its exempt status under section 501(c)(3) of the Internal Revenue Code.

The Fund is exempt under section 501(c)(3) of the Code and is a publicly supported exempt organization described in sections 509(a)(1) and 170(b)(1)(A)(vi). The purpose of the Fund is to preserve and restore the history and architecture of the Cemetery, with emphasis on buildings, land, gravesites and other properties of historical and architectural significance of the Cemetery. The Fund activities include conducting walking tours of the Cemetery with biographical information and discussion of the monuments and landscape. The tours are open to the general public and conducted by an experienced docent/archivist. A nominal admission fee of \$5.00 per person is charged for each tour.

The Cemetery is exempt from federal income tax as an organization described in section 501(c)(13) of the Code. The Cemetery is of historical importance to the area and has been the

focus of historical and architectural study reflecting American funeral architecture trends from the late 19th to the early 20th century.

The Cemetery is open to the public every day of the year and is regularly visited by a significant number of individuals, including those who come to pay their respects to loved ones, those who come to study and appreciate the significance of the structures within the Cemetery, and those who enjoy the scenic views and for recreation.

The Fund owns a triangular-shaped parcel of real estate within the boundaries of the Cemetery which it maintains as a park (the Park). The Fund purchased the Park from funds donated by Donor for the purpose of creating and maintaining a park. The Park is beautifully landscaped with a pond, situated in a central location within the Cemetery and easily accessible by the public.

The Park surrounds a rectangular-shaped group of # burial lots owned by the Donor (the Original Burial Lots). On Date 1, the Donor purchased the Original Burial Lots from the Cemetery for \$x as his family burial area. A month and a half later, the Donor, through a limited partnership in which he is the managing general partner, made a charitable gift to the Fund of certain publicly-traded securities with an approximate value of \$75.0x. The Fund was required under the gift agreement to use the proceeds from the sales of the securities to purchase the Park and to establish a maintenance trust fund with an initial value of not less than \$12.5x to be used solely to provide for the landscaping, maintenance and care of the Park for public park purposes. Five days after receiving the gift, the Fund purchased the Park from Cemetery at a price approximately \$62.5x.

The Donor proposes to exchange the Original Burial Lots for the same size replacement burial lots (the Replacement Burial Lots) situated at another location within the Park (the Proposed Transaction).

The Fund makes the following representations in connection with the Proposed Transactions:

1. To ensure that the Proposed Transaction is carried out at fair market value, and that the public interest is protected, the Fund will not proceed with the Proposed Transaction unless the state Attorney General indicates that it has no objection to the Proposed Transaction. The Fund will also seek approval from the State Court.
2. The Donor will not be entitled to a charitable contribution deduction for the conveyance of the Original Burial Lots to the Fund.
3. The Donor will pay all legal fees, recording fees, and other fees of the Fund and the Cemetery associated with the exchange of the Original Burial Lots for the Replacement Burial Lots.
4. If the value of the Replacement Burial Lots, as determined by an independent appraiser, exceeds the value of the Original Burial Lots, the Donor will compensate the Fund for any excess amount.

On Date 2, the state Attorney General issued a letter of no objection to the Proposed Transaction. Subsequently, the State Court issued an order approving the Proposed Transaction.

In an agreement between the Donor, the Fund, and the Cemetery, the Proposed Transaction will be carried out as follows: (1) The Cemetery and the Fund will exchange the site of the Original Burial Lots for the site of the Replacement Burial Lots; (2) As additional consideration for the above exchange, the Donor will pay \$y to the Fund; and (3) The Donor and the Cemetery will exchange the interment rights to the Original Burial Lots for the interment rights to the Replacement Burial Lots.

The Donor's additional payment of \$y is based on an independent appraisal that determined the value of the Replacement Burial Lots exceeds the value of the Original Burial Lot by that amount.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations 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. An organization that serves a private interest other than incidentally is not entitled to exemption as an organization described in section 501(c)(3).

Rev. Rul. 66- 358, 1966-2 C.B. 218, describes a corporation that contributed funds and realty adjacent to its plant reception area to an organization exempt under section 501(c)(3) of the Code. The exempt organization used the funds and realty to establish a park for the use of the general public. Prior to the transfer, the corporation had developed the land as a park to attract visitors to its industrial site. The corporation had adopted as its brand symbol a picture of a certain scenic view in the park and retained the right to the continued use of this identifying symbol in its advertising and public relations programs. The ruling held that the exempt organization's acceptance of the gift of land for use in the manner described did not adversely affect the organization's exemption under section 501(c)(3).

Rev. Rul. 70-186, described a nonprofit organization formed and operated in preserving and improving a lake for public recreation. The organization was financed by contributions from lake front property owners, from members of the community adjacent to the lake, and from municipalities bordering the lake. The ruling held that because the organization insured the continued use of the lake for public recreational purposes, it was performing a charitable activity and exempt under section 501(c)(3) of the Code. The benefits derived from the organization's activities flowed principally to the general public through the maintenance and improvement of public recreational facilities, and that any private benefits derived by the lake front property owners did not lessen the public benefits flowing from the organization's operations. Thus, the Service ruled that the organization was exempt under section 501(c)(3).

This situation involves the exchange of parcels of land similar in size and value within the property donated by the Donor to the Fund for use as a park for public recreation. The exchange of property will be used as a replacement burial lot for the Donor and his family.

The exchange will not cause any significant change in the Fund's charitable activity of maintaining the Park in which the general public continues to be principally benefited. See Rev. Rul. 66-358. Also, similar to Rev. Rul. 70-186, any benefit to the Donor in connection with the exchange will not lessen the public benefits flowing from the Fund's operations.

Based on foregoing, we rule as follows:

1. The Proposed Transaction will not violate the private benefit prohibition applicable to organizations described in section 501(c)(3) of the Code.
2. The Proposed Transaction will not jeopardize the Fund's exempt status under section 501(c)(3) of the Code.

This ruling is conditioned on the understanding that there will be no material change in the facts upon which it is based. We express no opinion as to the tax consequences of the transactions under other provisions of the Code.

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.

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.

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,

Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437