



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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Contact Person:

Telephone Number:

UIL Index

501.03-30

4941.04-00

Legend:

B =

C =

D =

E =

F =

G =

H =

J =

K =

L =

M =

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Date b:

Date c:

Date d:

Dear

This responds to a letter from C's authorized representatives in which rulings under sections 501(c)(3) and 4941 of the Internal Revenue Code are requested on C's behalf.

Facts:

B is organized as a nonprofit corporation under state law. B is recognized by the Internal Revenue Service (the "Service") as an organization exempt from federal income taxation under section 501(a) of the Code because it is described in section 501(c)(3). Furthermore, B is considered a private foundation within the meaning of section 509(a).

B is supported by contributions from its founder, C. C is a disqualified person (as defined in section 4946(a)(1) of the Code) with respect to B. One half of B's directors are officers or employees of C.

C is a for-profit corporation. C was created by D to Its purposes include providing ongoing assistance to the E and

C's mission is to provide products and services that increase the availability of Q for low- and moderate-income Americans.

B's mission is to create R and Q opportunities and revitalize neighborhoods across the United States. In furtherance of this mission, B conducts a number of programs and activities that are focused on expanding Q opportunities, particularly for low- and moderate-income, minority, and other underrepresented populations.

B has its own staff, most of them located at B's headquarters in M. B's offices in M are housed in space that is physically separate and distinct from C's space and is not leased from C. C also donates space in its regional offices to house some B employees. C's employees have access to B's office space only to the same extent as other members of the public. B is currently licensed to use the K icon that is used by C.

B's activities fall into four principal categories: (1) educational outreach; (2) knowledge access and community outreach; (3) research and innovation; and (4) grantmaking.

Under the category of educational outreach, B conducts an N. The N is designed to provide educational information about a variety of issues relating to R and is directed to a broad public audience of S, with a particular focus on low- and moderate-income individuals, minorities, new immigrants, and other groups underrepresented in R.

As a part of the N, B in a manner likely to reach its targeted audiences. B also seeks to reach S through direct mail and print media. In each of these communications, B invites the viewers or recipients to obtain educational information by calling an 800 number that is staffed by an unrelated fulfillment organization whose services are contracted for by B. Information packages may also be requested or downloaded from B's web site.

A Z list is included with every information package sent by mail. Using the requester's zip code, a Z list is generated for the entire state in which the requester lives. Such list includes all of the Z on B's master list who self-report that they do business in that state.

To qualify for inclusion on B's Z list, a Z must offer F products directly to consumers and provide a consumer contact number. In general, Z wishing to be included on B's Z list must

submit a request for inclusion. B has never conducted an inquiry about how Z become aware of the Z list.

The initial Z list was . Since that time, B has compiled and maintained the Z list, although C volunteers actually enter the data for B. Since the ruling request was submitted, however, B has represented that it no longer provides Z lists to consumers and has no intention of resuming the practice.

Since the , C has limited its . However, C has determined that it needs to engage in advertising targeted to consumers concerning C, its products, and its Q initiatives. C believes that such advertising should be reinforced through direct marketing materials and direct-contact events offered by C for potential buyers. C contemplates that some such advertising, materials, and events will be offered cooperatively with its Z partners to increase their share of the market.

Accordingly, C now intends to engage in direct consumer and product-specific advertising, in many instances conducted in conjunction with its Z partners. The advertising will highlight C's Q initiatives and specific F products that have features and pricing attractive to S.

C consumer advertising may be conducted with specific Z or groups of Z, who may be named in the ads. Other ads may mention particular types of T and may include information about how to contact C to get the names of Z who offer these T in the caller's area. C may also provide the names of Z partners to those contacting C.

C maintains its own list of Z

In connection with its educational outreach activities, B sponsored L as another method of disseminating R information to minority and underserved groups.

After several years' experience operating L, B determined that they were no longer an effective tool for delivering B's educational message to the intended audiences. Accordingly, B began to cut back on the number of L it conducted each year. B represents that, from and after the effective date of this ruling letter, it will no longer conduct, participate in, or be a named sponsor of an L. However, B may continue to make grants to organizations that conduct, participate in, or sponsor L and similar activities.

As a part of its proposed direct consumer advertising and marketing activities, C anticipates that it may wish to sponsor or conduct activities similar to L that are intended to interest potential S in F products offered by C's partner institutions. In the event that C chooses to sponsor or conduct activities similar to such L, it will do so with its own resources. There will be no transfer of property of any kind from B to C in connection with B's cessation of L activities.

B makes the following representations in connection with this ruling request:

1. B will cease using the K icon. If B uses a logo in the future, it will develop and use a logo and icon different from C's. C will retain all of its rights to the current K icon and logo.

2. When B uses its name in any medium where a special font will be used, the name will be shown in a font different from the special font C generally uses for its name in connection with C's logo. When B's name is used in ordinary text, the name may be shown in the same font as the surrounding text.

3. Subject to the foregoing, B will not use registered marks or other service marks or trademarks owned by C in B educational outreach announcements.

4. B will not authorize C to use registered marks or other service marks or trademarks owned by B in C advertising. C will, however, be free to continue to publicize its role as founder of, and donor to, B.

5. B's announcements will continue to be educational in nature, providing information on subjects such as      and how to become a U.

6. B's educational outreach announcements      will run only in the United States. B educational outreach announcements that are broadcast or published in general circulation newspapers, magazines, or similar print media will not refer to, or contain content about:

- C;
- C T products;
- C technology products and other business products;
- Zs by name;
- The E;
- The W, X, and Y; and
- J, other F

7. B's main office will continue to be housed in space that is physically separate and discrete from C's space and that is not leased from C. B will independently control access to its space, and C employees will have access to B's space only to the same extent as other members of the public. In C regional offices, C may continue to donate space within C space to B.

8. B will continue to acknowledge C's role as founder of and donor to B. Any such acknowledgments will not mention the products or services of C.

Rulings Requested:

The following rulings,      are requested:

1. B's conduct of the N: (a) will not jeopardize B's exempt status under section 501(c)(3) of the Code; and (b) will not constitute self-dealing under section 4941 of the Code.

2. B's cessation of the conduct of L and C's conduct of similar activities after the effective date of this ruling: (a) will not jeopardize B's exempt status under section 501(c)(3) of the Code; and (b) will not constitute self-dealing under section 4941 of the Code.

Law:

Section 501(a) of the Code exempts from federal income taxation organizations described in section 501(c).

Section 501(c)(3) of the Code describes corporations, trusts, and associations organized and operated exclusively for charitable, educational, and other exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d) of the Code defines the term "self-dealing" as any direct or indirect (a) sale or exchange, or leasing, of property between a private foundation and a disqualified person; (b) lending of money or other extension of credit between a private foundation and a disqualified person; (c) furnishing of goods, services or facilities between a private foundation and a disqualified person; (d) payment of compensation by a private foundation to a disqualified person; (e) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and (f) agreement by a private foundation to make any payment of money or other property to a government official.

Analysis:

1. Whether the conduct of N by B would jeopardize B's exempt status under section 501(c)(3) of the Code or constitute self-dealing under section 4941 of the Code.

The Service may refuse to issue a letter ruling due to the factual nature of the issue involved. Because a determination of whether B's earnings inure to the benefit of C, whether B provides impermissible private benefit to C, or whether B and C engage in self-dealing when B conducts the N simultaneously with C's conduct of direct consumer advertising and marketing activities depends upon the facts and circumstances that exist at the time of the activities, it is inappropriate for the Service to rule on the issue hypothetically.

2. Whether it would constitute self-dealing under section 4941 of the Code, or jeopardize B's exempt under section 501(c)(3), were B to stop, and C to start, conducting L.

B intends to stop sponsoring and conducting L. In so doing, B represents that it will not transfer any property to C or others. Therefore, none of B's assets will inure to the benefit of C, nor will B provide an impermissible private benefit to C, nor will B and C engage in self-dealing as a result of B's discontinuance of L.

Conclusion:

Accordingly—

1. We decline to rule on whether B's conduct of the N would jeopardize B's exempt status under section 501(c)(3) of the Code or constitute self-dealing under section 4941 of the Code.

2. Provided that B does not transfer any property to C as a result of B's cessation of L activities, we rule that B's cessation of L activities and C's conduct of similar activities: (a) will not jeopardize B's exempt status under section 501(c)(3) of the Code; and (b) will not constitute self-dealing under section 4941 of the Code.

This ruling is made on the understanding that there will be no material changes in the facts upon which it is based.

Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the transactions described above under any other provision of the Code.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to C's authorized representative. A copy of this letter should be kept in C's permanent records.

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

This letter supersedes our letter dated December 7, 2006.

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,

David L. Fish  
Manager, Exempt Organizations  
Technical Guidance & QA