



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **200935042**

Release Date: 8/28/2009

Date: June 03, 2009

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIC Code:

501.03-05

509.01-01

4942.03-03

Legend:

L =

M =

System =

Community =

Date x =

Year y =

a =

b =

Dear :

We have considered your ruling request dated April 1, 2008, relating to the proposed change in your activities.

Facts

You are a nonprofit corporation located in the Community and have been recognized as an organization described in section 501(c)(3) of the Internal Revenue Code ("Code"). You are currently classified as a supporting organization described in section 509(a)(3).

Your Articles of Incorporation state that your purpose is to promote the health and well-being of the residents of the Community by supporting the charitable, scientific and educational activities of two specifically named hospitals described in section 501(c)(3) of the Code, one of which is L. The Articles state that your support includes financial assistance and other services directly to these organizations and such other assistance, services and activities as may be authorized or requested by either of the supported organizations and agreed to by your Board of Trustees.

In Year y, for the purpose of creating an integrated healthcare delivery system for the Community, your predecessor entered into a joint venture arrangement with M, an unrelated hospital described in section 501(c)(3) of the Code. Under this arrangement, each party

contributed one or more section 501(c)(3) hospitals to a new section 501(c)(3) organization, System. As a result, your predecessor and now you own a a percent membership interest in System. M owns a b percent interest. System is the parent of various hospitals and healthcare facilities, including L. You have the right to nominate directors of System, subject to the approval of M. You have no control over the operations of the subordinate not-for-profit hospitals and related health care operations. Moreover, you and M are subject to capital calls by System, in proportion to each member's respective membership interest, over which neither you nor M have control. You have no right to withdraw or transfer your interest in System to a third party.

This joint venture arrangement was the subject of a letter ruling dated Date x, which resulted in your classification as a supporting organization under section 509(a)(3). Since the formation of System, it has made no distributions of income to either you or M. You state that it is not contemplated that any such distribution will be made in the foreseeable future.

L has directed that you provide financial assistance and other services in support of any healthcare related activity benefiting residents of the Community and determined by your Board of Directors to be worthy of receiving such support and assistance. As a result, you have been providing financial assistance directly to L and to various other nonprofit healthcare organizations located in the Community.

Your revenue consists entirely of passive income, including interest, dividends and capital gains derived from investments in securities and limited partnerships.

You propose to amend your Articles of Incorporation to eliminate as your purpose the support of the two specifically named hospitals. Instead, your amended Articles will state that your purpose includes "the promotion of the health and well-being of the residents of the [Community]." Following the adoption of this amendment, you will continue to provide financial support to L and to various other nonprofit healthcare organizations located in the Community.

#### Rulings Requested

1. The proposed amendment to your Articles of Incorporation will not adversely affect your current status as an organization described in section 501(c)(3) of the Code.
2. After you make the proposed amendment to your Articles of Incorporation, you will be classified as a private foundation within the meaning of section 509(a) of the Code.
3. After you adopt the proposed amendment to your Articles of Incorporation and file the amendment with the appropriate state agency, your membership interest in System will be excluded in determining your "minimum investment return" for purposes of section 4942(d) of the Code.

## Law

Section 170(c)(2)(B) of the Code describes the purposes for which a charitable deduction will be permitted, including religious, charitable, scientific, literary, and educational purposes.

Section 170(c)(2)(D) of the Code describes an organization that is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation; and participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for political office.

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of corporations organized and operated exclusively for charitable, scientific, or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations ("regulations") states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense.

Section 509(a) of the Code states that the term "private foundation" means a domestic or foreign organization that is described in section 501(c) other the organizations described in sections 509(a)(1) through 509(a)(4).

Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code include organizations that normally receive a substantial part of their support from a governmental unit or from public contributions.

Section 509(a)(2) of the Code describes organizations that normally receive more than one-third of their support each year from gifts, grants, contributions, or membership fees, and gross receipts from certain activities; and not more than one-third of their support each year from certain passive income.

Section 509(a)(3) of the Code describes the requirements for organizations that are not private foundations because they qualify as "supporting organizations." Section 509(a)(3)(A) states that one of these requirements is that the organization must be organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purpose of, one or more specified organizations that are public charities described in section 509(a)(1) or 509(a)(2).

Section 509(a)(4) of the Code describes an organization that is organized and operated exclusively for testing of public safety.

Section 4942(a) of the Code imposes an excise tax on the "undistributed income" of a private foundation for any taxable year.

Section 4942(c) of the Code defines the term "undistributed income" for any taxable year as the amount by which the "distributable amount" for the taxable year exceeds "qualifying distributions."

Section 4942(d) of the Code defines the term "distributable amount" for any taxable year as an amount equal to the sum of the "minimum investment return" plus certain modifications, less the taxes paid for the taxable year under section 4940.

Section 4942(e)(1) of the Code states that the "minimum investment return" for any taxable year is five percent of the excess of (A) the aggregate fair market value of all the private foundation's assets "other than those which are used (or held for use) directly in carrying out the foundation's exempt purpose," over (B) certain acquisition indebtedness.

Section 53.4942(a)-2(c)(2)(v) of the Foundation and Similar Excise Tax Regulations ("foundation regulations") states that the assets taken into account in determining minimum investment return do not include, among others, "any assets used (or held for use) directly in carrying out the foundation's exempt purpose."

Section 53.4942(a)-2(c)(3)(i) of the foundation regulations states that "an asset is 'used (or held for use) directly in carrying out the foundation's exempt purpose' only if the asset is actually used by the foundation in the carrying out of the charitable, educational, or other similar purpose which gives rise to the exempt status of the foundation, . . . . Whether an asset is held for the production of income or for investment rather than used (or held for use) directly by the foundation to carry out its exempt purpose is a question of fact."

Section 53.4942(a)-2(c)(3)(ii)(d) of the foundation regulations provides examples of assets that are "used (or held for use) directly in carrying out the foundation's exempt purpose," including any interest in a functionally related business "or in a program-related investment (as defined in section 4944(c)); . . . ."

Section 4944(c) of the Code states that: "investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property, shall not be considered as investments which jeopardize the carrying out of exempt purposes."

Section 53.4944-3(a)(1) of the foundation regulations states that a "program-related investment shall not be classified as an investment which jeopardizes the carrying out of exempt purposes of a private foundation. A 'program-related investment' is an investment which possesses the following characteristics:

- (i) The primary purpose of the investment is to accomplish one or more of the purposes described in section 170(c)(2)(B);

- (ii) No significant purpose of the investment is the production of income or the appreciation of property; and
- (iii) No purpose of the investment is to accomplish one or more of the purposes described in section 170(c)(2)(D)."

Section 53.4944-3(a)(2)(i) of the foundation regulations states that an investment is considered as made primarily to accomplish "one or more of the purposes described in section 170(c)(2)(B)" of the Code if it "significantly furthers the accomplishment of the private foundation's exempt activities and if the investment would not have been made but for such relationship between the investment and the accomplishment of the foundation's exempt activities."

Section 53.4944-3(a)(2)(iii) of the foundation regulations states that in determining whether a significant purpose of an investment is the production of income or the appreciation of property, it is relevant whether investors solely engaged in the investment for profit would be likely to make the investment on the same terms as the private foundation.

Section 53.4944-3(a)(2)(iv) of the foundation regulations provides that an investment shall not be considered to accomplish one or more of the purposes described in section 170(c)(2)(D) if the recipient of the investment appears before, or communicates to, any legislative body with respect to legislation or proposed legislation of direct interest to such recipient.

Rev. Rul. 67-149, 1967-1 C.B. 133 states that an organization formed for the purpose of providing financial assistance to several different types of organizations that are exempt under section 501(c)(3) of the Code, and which carries on no operations other than to receive contributions and incidental investment income and to make periodic distributions of income to these organizations qualifies for exemption under section 501(c)(3).

### Analysis

#### Ruling No. 1

Your current Articles of Incorporation state that your purpose is to promote the health and well-being of the residents of the Community by supporting the charitable, scientific and educational activities of two specifically named hospitals described in section 501(c)(3) of the Code, one of which is L. The Articles state that your support includes financial assistance and other services directly to these organizations and such other assistance, services and activities as may be authorized or requested by one of these supported organizations and agreed to by your Board of Trustees. L has directed that you provide financial assistance and other services in support of any healthcare related activity benefiting residents of the Community and determined by your Board to be worthy of receiving such support and assistance. As a result, you have been providing financial assistance directly to L and to various other nonprofit healthcare organizations located in the Community.

Under the proposed amendment to your Articles, your purpose will include "the promotion of the health and well-being of the residents of the Community." Consistent with this purpose, you will continue to provide financial support to L and to various other nonprofit healthcare organizations in the Community. An organization whose sole charitable activity is providing financial assistance to section 501(c)(3) organizations by distributing its income to these organizations qualifies for exemption under section 501(c)(3) of the Code. See Rev. Rul. 67-149, supra. Following the adoption of the proposed amendment to your Articles, you will continue to be organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3).

### Ruling No. 2

Under section 509(a) of the Code, an organization described in section 501(c)(3) is classified as a "private foundation" unless it meets one of the exceptions in sections 509(a)(1) through 509(a)(4). Your revenue consists entirely of passive income, including interest, dividends and capital gains derived from investments in securities and limited partnerships. Thus, you will not meet the public support tests in sections 509(a)(1) and 170(b)(1)(A)(vi) or section 509(a)(2).

You propose to amend your Articles of Incorporation to eliminate as your purpose the support of the two specifically named hospitals. Thus, you will no longer qualify as a supporting organization described in section 509(a)(3) of the Code. Nor will you qualify as an organization described in section 509(a)(4) because you are not engaged in testing for public safety.

As a result, because you will not meet any of the exceptions listed in sections 509(a)(1) through 509(a)(4) of the Code, after you adopt the proposed amendment to your Articles of Incorporation, and you file the amendment with the appropriate state agency, you will be classified as a "private foundation" within the meaning of section 509(a).

### Ruling No. 3

Your membership interest in System, as explained below, meets the requirements for constituting a "program related investment" and will be excluded from the computation of your minimum investment return.

To determine the amount of income a private foundation must distribute to avoid the excise tax under section 4942(a) of the Code, it is necessary for a private foundation to determine its minimum investment return. A private foundation's minimum investment return, generally, is five percent of the value of its assets, with the exception of assets it uses directly to carry out its exempt purpose. Whether a private foundation uses an asset for its exempt purpose is a question of fact. One example of an asset used for an exempt purpose is an interest in a "program-related investment." See sections 4942(c) and 4942(e)(1), and sections 53.4942(a)-2(c) and 53.4942(a)-2(c)(3) of the foundation regulations.

There are three specific characteristics set forth in the regulations that must be met in order to determine if an investment is a "program related investment." See section 53.4944-3(a)(1) of the foundation regulations. The first requirement is that the investment's primary purpose must

be to accomplish one or more exempt purposes described in section 170(c)(2)(B) of the Code. An investment is considered as made primarily to accomplish one or more of the purposes described in section 170(c)(2)(B) if it significantly furthers the accomplishment of the private foundation's exempt activities, and the investment would not have been made but for the relationship between the investment and the accomplishment of the foundation's exempt activities. See section 53.4944-3(a)(1)(i) of the foundation regulations.

Your a percent membership interest in System is a direct result of the implementation of your stated exempt purpose, which is the promotion of the health and well-being of the residents of the Community by supporting the tax-exempt activities of L and by providing financial assistance to various other nonprofit healthcare organizations in the Community. Therefore, your a percent membership interest in System significantly furthers the accomplishment of your exempt purposes. Further, you represent that such investment would not and, in fact, could not have been made but for the relationship between the investment and the accomplishment of your exempt purposes, which include supporting the activities of a Community hospital and the provision of medical services and health care for the well-being of the greater Community. Therefore, your membership interest in System meets the first requirement for a "program-related investment" in section 53.4944-3(a)(1)(i) of the foundation regulations.

The second requirement of a "program related investment" is that no significant purpose of the investment is the production of income or the appreciation of property. Section 53.4944-3(a)(2)(iii) of the foundation regulations states that a relevant factor is whether for-profit investors would likely make the investment on the same terms as the private foundation.

The only other member in System is M, an organization described in section 501(c)(3) of the Code, which owns a b percent interest. You have restrictions placed on your membership interest in System. For instance, although you have the right to nominate directors of System, such nominations are subject to the approval of M and you have no control over the operations of the affiliated not-for-profit hospitals and related health care operations. Moreover, you are subject to capital calls by System, over which you have no control. You have no right to withdraw or transfer your membership interest to a third party. Furthermore, since the formation of System, it has made no distributions to you or M, and you state that it is not contemplated that any such distribution will be made in the foreseeable future. As a result, it is unlikely that any for-profit investor would be willing to acquire an interest in System under the same terms. Therefore, because no significant purpose of your membership interest in System is the production of income or the appreciation of property, your membership interest in System meets the second requirement for a "program-related investment" in section 53.4944-3(a)(2)(iii) of the foundation regulations.

The third requirement of a "program related investment" is that no purpose of the investment may be to accomplish one or more of the prohibited purposes described in section 170(c)(2)(D) of the Code. Section 170(c)(2)(D) purposes include attempting to influence legislation, and not participating in, or intervening in, including the publishing or distributing of statements, any political campaign on behalf of, or in opposition to, any candidate for public office. Section 53.4944-3(a)(2)(iv) of the foundation regulations further provides that an investment is not considered as made to accomplish one or more of the purposes described in section 170(c)(2)(D) of the Code if the recipient of the investment appears before, or communicates to,

any legislative body with respect to legislation or proposed legislation of direct interest to such recipient.

You entered into the joint venture arrangement with M and acquired your membership interest in System for the purpose of creating an integrated healthcare delivery system for the Community. There is no evidence that you will attempt to influence legislation or to interfere in (including the publishing or distributing of statements) any political campaign on behalf of (or opposition to) any candidate for public office within the meaning of section 170(c)(2)(D) of the Code, a conclusion supported by your amended Articles. Therefore, your membership interest in System meets the third requirement for a "program-related investment" in section 53.4944-3(a)(1)(iii) of the foundation regulations.

Because your membership interest in System qualifies as a "program-related investment" within the meaning of section 53.4944-3(a)(1) of the foundation regulations, this interest will be excluded from the computation of your "minimum investment return" for purposes of section 4942(d) of the Code.

#### Rulings

1. The proposed amendment to your Articles of Incorporation will not adversely affect your current status as an organization described in section 501(c)(3) of the Code.
2. After you make the proposed amendment to your Articles of Incorporation, you will be classified as a private foundation within the meaning of section 509(a) of the Code.
3. After you adopt the proposed amendment to your Articles of Incorporation and file the amendment with the appropriate state agency, your membership interest in System will be excluded in determining your "minimum investment return" for purposes of section 4942(d) 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.

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,

Manager, Exempt Organizations  
Technical Group 1

Enclosure  
Notice 437