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Department of the Treasury

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Person To Contact:

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PLR-107166-18

Date:

June 03, 2019

LEGEND:

Foundation =

Corporation =

State =

Dear _____ :

This letter responds to your request for rulings that Foundation will be treated as a single entity and Corporation will be treated as a component part of Foundation under Treas. Reg. § 1.170A-9(f)(11).

FACTS

Foundation, a community organization formed by four banks, is established as a trust under state law. Foundation makes distributions for charitable, educational and scientific purposes primarily in a six-county region in the state. Foundation is exempt under § 501(c)(3) of the Internal Revenue Code (Code) and is a publicly supported organization described in § 170(b)(1)(A)(vi).

Foundation is the sole member of Corporation. Corporation is exempt under § 501(c)(3) and is an organization described in § 509(a)(3). Foundation states that it initially funded Corporation by transferring assets to Corporation and continued funding Corporation with assets donated to the community foundation. Corporation's articles of

incorporation and its bylaws provide that Corporation is organized and operated exclusively for charitable, educational and scientific purposes for the benefit of Foundation. Corporation's governing documents also provide that Corporation's purpose is to receive gifts, devise, bequests and contributions and use, invest, reinvest or distribute funds to support Foundation's exempt purposes. Corporation represents that it has been described to the local community as a supporting organization of the Foundation since its inception.

The Foundation's Declaration of Trust provides that all gifts, grants, devise or bequests to the Foundation shall be subject to the provisions contained in the Declaration of Trust and all agreements to establish funds in trust form have been made subject to the terms of the Declaration of Trust.

Corporation's articles and bylaws provide that Corporation is organized and operated for the benefit of Foundation. Corporation and Foundation will amend Corporation's articles and bylaws to provide that any and all gifts, devise and bequests to Corporation are subject to the terms and conditions of the organizing documents and common governing documents of the Foundation. Foundation and Corporation represent that they use a single distribution committee to evaluate grant requests and make recommendations to the Foundation's board. Foundation selects the recommendations to be funded and identifies funds from both the Foundation and Corporation to fund the requests.

The organizing documents of the Foundation and Corporation make both organizations subject to a common governing body. Specifically, Corporation will amend its articles and bylaws to provide that Corporation's board shall consist of all the current members of Foundation's board of trustees, so that all such individuals are concurrently serving as members of both the board of directors of the Corporation and the board of trustees of the Foundation.

Further, the organizing documents of Foundation and the amended governing documents of Corporation provide that the boards of directors have the power to modify conditions or restrictions concerning the distributions of income and principal for charitable purposes and to remove any trustee that has breached its fiduciary duty or failed to produce a reasonable return on net income.

Foundation and Corporation's organizing documents require that each prepare annual reports. Foundation and Corporation represent that they have filed separate Form 990s each year, although the Foundation has included the net value of funds held by Corporation on its Form 990 balance sheet as other assets of Foundation.

Foundation will operate Corporation as one of its component parts and not as a supporting organization separately recognized as exempt under § 501(c)(3). Corporation will cease filing a separate Form 990, file a final Form 990 and label it as a final return. Thereafter, Foundation will fully report the funds and assets of Corporation on Foundation's Form 990.

Foundation and Corporation represent that Corporation has been presented to the community and is perceived to be a single entity with Foundation. All donations in recent years have been made to Corporation. Foundation and Corporation state that in light of a trend by the general public to donate to organizations in corporate form rather than trust form and in recognition of the reduced administrative fees when foundation assets are held in corporate/custodial form rather than in trust form (which frees up more funds for charitable purposes), Foundation and Corporation will seek court and Attorney General approval to transfer Foundation assets held in trust form to custodial assets held in corporate form by Corporation.

Rulings Requested

1. Foundation will be treated as a single entity under Treas. Reg. § 1.170A-9(f)(11).
2. Corporation will be treated as a component part of Foundation under Treas. Reg. § 1.170A-9(f)(11)(ii). In addition, any other funds associated with foundation that meet the requirements of Treas. Reg. § 1.170A-9(f)(11)(i) also will be treated as component parts of Foundation under Treas. Reg. § 1.170A-9(f)(11)(ii).
3. Because Foundation is treated as a single entity and Corporation is treated as a component part of Foundation, Foundation and Corporation will file an annual return (Form 990) as a single entity.

LAW

In general, § 6033 provides that every organization exempt from taxation under section 501(a) shall file an annual return. Section 6033(b) generally provides the information to be furnished annually by organizations described in § 501(c)(3).

Treas. Reg. § 1.170A-9(f)(11)(i) provides that, for purposes of §§ 170, 501, 507, 508, 509 and Chapter 42, any organization that meets the requirements in § 1.170A-9(f)(11)(iii) through (vi) will be treated as a single entity, rather than as an aggregation of separate funds. In addition, all funds associated with such organization (whether a trust, not-for-profit corporation, unincorporated association, or a combination thereof), which meet the requirements of § 1.170-9(f)(11)(ii), will be treated as component parts of such organization.

Treas. Reg. § 1.170A-9(f)(11)(ii) provides that, to be treated as a component part of a community trust referred to in paragraph (f)(11)(i) of this section, a trust or fund: (A) must be created by gift, bequest, legacy, devise, or other transfer to a community trust which is treated as a single entity under Treas. Reg. § 1.170A-9(f)(11); and (B) may not be directly or indirectly subjected by the transferor to any material restriction or condition with respect to the transferred assets.

Treas. Reg. § 1.170A-9(f)(11)(iii) provides that the organization must be commonly known as a community trust, fund, foundation or other similar name conveying the concept of a capital or endowment fund to support charitable activities in the community or area it serves.

Treas. Reg. § 1.170A-9(f)(11)(iv) requires that all funds of the organization be subject to a common governing instrument or a master trust or agency agreement, which may be embodied in a single document or several documents containing common language.

Treas. Reg. § 1.170A-9(f)(11)(v)(A) requires that the organization must have a common governing body which directs or, in the case of a fund designated for specified beneficiaries, monitors the distribution of all funds exclusively for charitable purposes.

Treas. Reg. § 1.170A-9(f)(11)(v)(B) requires that the governing body of a community trust have the power to:

- (1) Modify any restriction or condition on the distributions of funds for any specified charitable purpose or to specified organizations if in the sole judgment of the governing body (without the necessity of approval by any participating trustee, custodian or agent) such restriction becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served;
- (2) Replace any participating trustee, custodian or agent for breach of fiduciary duty under state law; and
- (3) Replace any participating trustee, custodian or agent for failure to produce a reasonable rate of return.

Treas. Reg. § 1.170A-9(f)(11)(v)(E) provides that the governing body of the community trust must commit itself to exercise certain specified powers in the best interests of the community trust.

Treas. Reg. § 1.170A-9(f)(11)(v)(F) provides that the governing body shall (by resolution or otherwise) commit itself to obtain information and take other appropriate steps with the view to seeing that each participating trustee, custodian or agent, with respect to

each restricted trust or fund that is, and with respect to the aggregate of the unrestricted trusts or funds that are, a component part of the community trust, administers such trust or fund in accordance with the terms of its governing instrument and accepted standards of fiduciary conduct to produce a reasonable return of net income, with due regard to safety of principal, in furtherance of the exempt purposes of the community trust.

Treas. Reg. § 1.170A-9(f)(11)(vi) requires the organization to prepare periodic financial reports treating all of the funds which are held by the community trust, either directly or in component parts, as funds of the organization.

Treas. Reg. § 1.170A-9(f)(12)(i) states: “In the case of a fund that is ultimately treated as not being a component part of a community trust pursuant to this paragraph (f)(12), if the Forms 990 filed annually by the community trust included financial information with respect to such fund and treated such fund in the same manner as other component parts thereof, such returns filed by the community trust prior to the taxable year in which the Commissioner notifies such fund that it will not be treated as a component part will be treated as a separate return for purposes of subchapter A of Chapter 61 of Subtitle F.

ANALYSIS

Ruling No. 1

Treas. Reg. § 1.170A-9(f)(11)(i) provides that, for purposes of §§ 170, 501, 507, 508, 509 and Chapter 42, any organization that meets the requirements described in § 1.170A-9(f)(11)(iii) through (vi) will be treated as a single entity, rather than as an aggregation of separate funds.

Foundation established Corporation as a supporting organization. Foundation and Corporation have similar names. Both are named for the community they serve and are commonly known in the community as funds that support charitable activity in that community. Therefore, Foundation and Corporation will meet the requirement of Treas. Reg. § 1.170A-9(f)(11)(iii).

Treas. Reg. § 1.170A-9(f)(11)(iv) provides that all of the funds of the organization must be subject to a common governing instrument or a master trust or agency agreement which may be embodied in a single document or several documents containing common language. The organizing documents of the Foundation and the amendments to the organizing documents of Corporation state that all gifts, devises and bequests are made subject to a common governing instrument. Therefore, all the donor funds will be

subject to a common governing instrument or a master trust or agency agreement, which may be embodied in a single document or several documents containing common language within the meaning of Treas. Reg. § 1.170A-9(f)(11)(iv). Accordingly, Foundation and Corporation will meet this requirement of Treas. Reg. § 1.170A-9(f)(11)(iv).

Corporation will amend its organizational documents to provide that the board of directors of Corporation will be the same as the members of the Foundation. Foundation and Corporation represent that they use a single distribution committee to evaluate grant requests and make recommendations to the Foundation's board of trustees. Thus, the same people have the responsibility to ensure that the application and distribution of funds are made exclusively for one or more of the Foundation's charitable purposes. Accordingly, they will meet the requirement of Treas. Reg. § 1.170A-9(f)(11)(v)(A).

The organizing documents of Foundation and the amendments to Corporation's organizational documents each give their boards of directors the power to modify conditions or restrictions concerning the distributions of income and principal for charitable purposes and to remove any trustee that has breached its fiduciary duty or for failure to produce a reasonable return of net income. Therefore, both Foundation and Corporation will meet this requirement of Treas. Reg. § 1.170A-9(f)(11)(v)(B).

Foundation and Corporation's organizing documents require that each organization prepare annual reports. Foundation will operate Corporation as one of its component parts and not as a supporting organization separately recognized as a tax-exempt entity. As such, Foundation will report the funds and assets of Corporation as part of a single entity. Treas. Reg. § 1.170A-9(f)(11)(vi).

Because Foundation meets all the requirements in Treas. Reg. § 1.170A-9(f)(11)(i), Foundation will be treated as a single entity rather than as an aggregation of separate funds for purposes of §§ 170, 501, 507, 508, 509 and Chapter 42.

Ruling No. 2

Treas. Reg. § 1.170A-9(f)(11)(ii) provides that, for purposes of §§ 170, 501, 507, 508, 509 and Chapter 42, all funds associated with an organization treated as a single entity (whether a trust, not-for-profit corporation, unincorporated association or a combination thereof) will be treated as component parts of such organization if they meet the requirements of Treas. Reg. § 1.170A-9(f)(11)(ii).

To be treated as a component part of Foundation, Corporation: (A) must be created by gift, bequest, legacy, devise, or other transfer to a community trust which is treated as a single entity under Treas. Reg. § 1.170A-9(f)(11); and (B) may not be directly or indirectly subjected by the transferor to any material restriction or condition with respect to the transferred assets. Treas. Reg. § 1.170A-9(f)(11)(ii).

Ruling No. 1 above holds Foundation will be treated as a single entity under Treas. Reg. § 1.170A-9(f)(11)(i). Corporation was created by a transfer from Foundation and has been operating to support Foundation's charitable purposes. In addition, the amendments to Corporation's articles of incorporation and bylaws will not permit any of Corporation's donors to impose any material restrictions or conditions with respect to the donated assets. Therefore, because Corporation will meet the requirements of Treas. Reg. § 1.170A-9(f)(11)(ii), Corporation will be treated as a component part of Foundation. Moreover, all funds associated with Foundation or Corporation that meet the requirements of Treas. Reg. § 1.170A-9(f)(11)(ii) also will be treated as component parts of Foundation under Treas. Reg. § 1.170A-9(f)(11)(ii).

Ruling No. 3

Section 6033 generally provides that every organization exempt from taxation under section 501(a) shall file an annual return. For purposes of §§ 170, 501, 507, 508, 509 and Chapter 42, Ruling No. 1 above holds Foundation will be treated as a single entity, and Ruling No. 2 holds Corporation will be treated as a component part of Foundation. Therefore, because Foundation and Corporation are treated as a single entity for purposes of §§ 170, 501, 507, 508, 509 and Chapter 42, Foundation and Corporation will file an annual return (Form 990) as a single entity. See, *generally*, Treas. Reg. § 1.170A-9(f)(12)(i) (separate return when not treated as component part).

RULINGS

Based upon the facts and representations submitted:

1. For purposes of §§ 170, 501, 507, 508, 509 and Chapter 42, Foundation will be treated as a single entity under Treas. Reg. § 1.170A-9(f)(11)(i).
2. For purposes of §§ 170, 501, 507, 508, 509 and Chapter 42, Corporation will be treated as a component part of Foundation under Treas. Reg. 1.170A-9(f)(11)(ii). In addition, all other funds associated with Foundation or Corporation that otherwise meet the requirements of Treas. Reg. § 1.170A-9(f)(11)(ii) also will be treated as component parts of Foundation under Treas. Reg. § 1.170A-9(f)(11)(ii).

3. Because Foundation will be treated as a single entity and Corporation will be treated as a component part of Foundation for purposes of §§ 170, 501, 507, 508, 509 and Chapter 42, Foundation and Corporation will file an annual return (Form 990) as a single entity.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an individual with authority to bind the taxpayer and upon the understanding that there will be no material changes in the facts. This office has not verified any of the material submitted in support of the request for rulings, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2018-1, § 11.05.

No ruling is granted as to whether Foundation qualifies as an organization described in § 501(c) or § 509(a), and, except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income set forth in the letter ruling.

This letter is directed only to Foundation. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Foundation's authorized representatives.

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,

Don R. Spellmann
Senior Counsel
Exempt Organizations Branch 3
(Employment Benefits, Exempt Organizations and Employment Taxes)