



Department of the Treasury  
 Internal Revenue Service  
 Tax Exempt and Government Entities  
 P.O. Box 2508  
 Cincinnati, OH 45201

Date: 4/20/2022

Employer ID number:

Person to contact:

Check if valid POA

Number: 202228019  
 Release Date: 7/15/2022

LEGEND

- B = individual 1
- C = state 1
- D = year 1
- E = state 2
- F = year 2
- G = individual 2
- H = trust
- I = date
- x dollars = amount

UIL: 509.02-01

Dear :

We have considered your June , 20 request for recognition of an unusual grant under Treasury Regulation Section 1.170A-9(f)(6)(ii) and related provisions.

Based on the information provided, we concluded that the proposed grant constitutes an unusual grant under Treas. Reg. Section 1.170A-9(f)(6)(ii) and related provisions of the regulations. The basis for our conclusion is discussed below.

**Facts:**

You are classified as public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi). You are a theater company, and have staged over productions regionally, nationally, and internationally.

You were incorporated by B in C in D. You dissolved then reincorporated in E in F, with B again as your creator. B is the of G.

You are expecting to receive a grant of x dollars from H. G, who died on I, created H. H stipulated funds were to be given to a foundation related to G; that foundation is no longer in existence therefore H must select another 501(c)(3) charity per its provisions. The rest of your current officers and board of directors are not related to G. The current trustees of H are also not your current officers or board of directors.

**Law:**

Two sections of the Treasury Regulations set forth the criteria for an unusual grant. They are:

**Treasury Regulation Section 1.170A-9(f)(6)(ii)**

This section states that, for purposes of applying the 2% limitation to determine whether the 33 1/3% of-support test is satisfied or the 10 % support limitation is met, one or more contributions may be excluded from both the numerator and the denominator of the applicable percent-of-support fraction. The exclusion is generally intended to apply to substantial contributions or bequests from disinterested parties which:

- are attracted by reason of the publicly supported nature of the organization;
- are unusual or unexpected with respect to the amount thereof; and
- would, by reason of their size, adversely affect the status of the organization as normally being publicly supported.

**Treasury Regulation Section 1.509(a)-3(c)(4)**

This section states that all pertinent facts and circumstances will be taken into consideration to determine whether a particular contribution may be excluded. No single factor will necessarily be determinative. Such factors may include:

- Whether the contribution was made by a person who;
  - a created the organization;
  - b. previously contributed a substantial part of its support or endowment;
  - c. stood in a position of authority with respect to the organization, such as a foundation manager within the meaning of Internal Revenue Code (IRC) Section 4946(b);
  - d. directly or indirectly exercised control over the organization, or;
  - e. was in a relationship described in IRC Section 4946(a)(1)(C) through 4946(a)(1) (G) with someone listed in bullets a, b, c, or d above.

A contribution made by a person described in bullets a through e is ordinarily given less favorable consideration than a contribution made by others not described above.

- Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer.
- Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum.
- Whether (except in the case of a new organization) prior to the receipt of the particular contribution, the organization (a) has carried on an actual program of public solicitation and exempt activities and (b) has been able to attract a significant amount of public support.
- Whether the organization may reasonably be expected to attract a significant amount of public support after the particular contribution. Continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future public support.
- Whether, prior to the year in which the particular contribution was received, the organization met the one-third support test described in Treas. Reg. Section 1.509(a)-3(a)(2) without the benefit of any exclusions of unusual grants pursuant to Treas. Reg. Section 1.509-3(c)(3);
- Whether the organization has a representative governing body as described in in Treas. Reg. Section 1.509(a)-3(d)(3)(i); and
- Whether material restrictions or conditions within the meaning of Treas. Reg. Section 1.507-2(a)(7) have been imposed by the transferor upon the transferee in connection with such transfer.

**Application of Law:**

The grant meets the requirements of Treas. Reg. Section 1.170A-9(f)(6)(ii) because the grant is from a disinterested party which:

- Was attracted by reason of your publicly supported nature;
- Is unusual or unexpected with respect to the amount; and
- Will adversely affect your status as normally being publicly supported.

The grant meets the requirements of Treas. Reg. Section 1.509(a)-3(c)(4) based on the following facts and circumstances:

- a) The grant was not made by a person who created or previously contributed a substantial amount of funds to you. H was not your creator, and has not made any contributions to you in the past.
- b) The grantors do not stand in a position of authority or exercise control over you
- c) The grant is in the form of cash.
- d) Prior to the receipt of this contribution, you have carried on an actual program of public solicitation and exempt activities and have been able to attract a significant amount of public support.
- e) You have a large representative governing body.
- f) You have met the public support test in past years.
- g) It can be assumed you will be able to maintain a level of public support in the future.

We'll make this determination letter available for public inspection after deleting personally identifiable information, as required by IRC Section 6110. We've enclosed Letter 437, Notice of Intention to Disclose - Rulings, and a copy of the letter that shows our proposed deletions.

- If you disagree with our proposed deletions, follow the instructions in the Letter 437 on how to notify us.
- If you agree with our deletions, you don't need to take any further action.

If you have questions, please contact the person listed at the top of this letter.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:

Redacted Letter 4787

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