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Firm Requests Guidance on Recognizing Nonprofit News Organizations as Exempt From Tax.

Celia Roady of Morgan, Lewis, and Bockius LLP, in response to a request for items to be placed on the IRS 2013-2014 priority guidance plan (Notice 2013-22), has asked for guidance on the standards for recognizing nonprofit news organizations as exempt from tax under section 501(c)(3).

April 29, 2013

Internal Revenue Service

Attn: CC:PA:LPD:PR (Notice 2013-22)

1111 Constitution Avenue, N.W.

Washington, D.C. 20224

Re: 2013-2014 Treasury/IRS Guidance Priority List

Dear Sir or Madam:

The purpose of this letter is to propose guidance for inclusion on the 2013-2014 Treasury/IRS Guidance Priority List. We recommend that the list include guidance about the standards for recognizing organizations engaged in the publication of information that is useful to the individual and beneficial to the community, including general news, as exempt under Section 501(c)(3). In this letter, we refer to such organizations as “nonprofit news organizations.”

As background, in 2011 the Federal Communications Commission (the “FCC”) issued a report, *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, which documents the substantial decrease in accountability reporting by commercial news organizations. For example, the FCC report points to a study conducted by the Pew Center for Excellence in Journalism which found that in 2009 the Baltimore Sun produced 32 percent fewer investigative stories than it did in 1999 and 73 percent fewer stories than in 1991.¹ It explains that financial pressures are forcing commercial news organizations to reduce coverage of investigative pieces involving lengthy documents and records searches or stories requiring a reporter to develop comprehensive knowledge of a particular subject matter. This cut-back affects coverage of issues that Americans care about — such as schools, health care, the environment, and local public affairs — and that offer substantial public benefit and civic value. The FCC report also describes the serious consequences that result from communities losing information that can improve government responsiveness and accountability. It explains that nonprofit news organizations can help to fill the gap in coverage and notes that uncertainty about the standards required for nonprofit news organizations to obtain tax exemption under Section 501(c)(3) is a significant barrier to this evolution.

The FCC report recommended that tax and journalism experts study the tax exemption requirements

for nonprofit news organizations more carefully, and the Council on Foundations convened a working group of such experts. The group released its findings in a report issued earlier this year, The IRS and Nonprofit Media: Toward Creating a More Informed Public. The report is available online at

<http://www.cof.org/files/Bamboo/home/documents/Nonprofit-Media-Full-Report-03Q42013.pdf>.

The working group report confirms that many nonprofit news organizations have experienced lengthy delays and even rejections of their applications for exemption. It concludes that the Internal Revenue Service ("IRS") approach for evaluating whether an organization primarily engaged in publishing qualifies for tax exemption under Section 501(c)(3), namely Revenue Ruling 67-4,2 needs to be modernized. The working group report notes that Revenue Ruling 67-4 was issued decades before the advent of the digital era. That ruling establishes four criteria for analyzing the tax-exempt status of nonprofit news organizations, whether: (1) the content of the publication is educational, (2) the preparation of material follows methods generally accepted as "educational" in character, (3) the distribution of the materials is necessary or valuable in achieving the organization's educational and scientific purposes, and (4) the manner in which the distribution is accomplished is distinguishable from ordinary commercial practices. The fourth criterion, in particular, does not reflect dramatic changes in the manner of dissemination of information by all news organizations, nonprofit and for-profit alike.

This request for guidance is consistent with the recommendations of the working group report, and the discussion below explains how such guidance meets the factors that Treasury/IRS considers in choosing to add an item to the priority list.

1. The guidance will resolve significant issues relevant to many taxpayers.

The Section 501(c)(3) status of nonprofit news organizations is of great importance to the millions of Americans who seek information about the events shaping their lives. According to the FCC report, "communities and citizens are seriously harmed — including financially — if there is not a critical mass of full-time professional journalists watching over the key institutions — such as state and local government, local schools, state and local courts, police, environmental planning, land use, transportation, and public health."³ Nonprofit news organizations offer an additional source of information on these topics just as the for-profit news sector is cutting back. These stories help Americans gain useful and beneficial information that allows them to make more-informed decisions.

Moreover, investigative reporting benefits residents of communities whether or not they are readers of a particular paper. For example, the working group report points to an in-depth series in the Raleigh News & Observer on the quality of the city's parole system that helped take criminals off the streets in the Raleigh-Durham area, thereby improving safety for all residents, regardless of whether they were readers of the paper.⁴ Nonprofit news organizations, often with philanthropic support from foundations, are the hope of the future for this type of reporting.

Section 501(c)(3) status is critical for nonprofit news organizations, in part because their ability to provide or expand accountability coverage on subjects such as local government, schools, and healthcare often hinges on philanthropic support from funders that require such exemption as a prerequisite for providing support. These organizations also want to structure their activities in a manner consistent with the requirements for Section 501(c)(3), but lack guidance about how to do so. In this regard, the working group report notes that the operator of the Oshkosh Community News Network, a Section 501(c)(3) nonprofit news organization, shut down the organization in part because of uncertainty regarding the tax laws.⁵ Updated guidance will help these organizations gain important information about how to structure their activities in order to ensure continued qualification as a Section 501(c)(3) organization.

Finally, private foundations are investing in nonprofit news organizations, with one report estimating contributions of nearly \$128 million to news and information projects since 2005.⁶ The guidance will facilitate and streamline the grant-making programs of these foundations and help ensure their investments are advancing charitable and educational purposes.

2. The guidance will promote sound tax administration.

As noted above and in the working group report, nonprofit news organizations have experienced substantial delays associated with the processing of their applications for exemption under Section 501(c)(3). Recently, the IRS centralized a group of applications submitted by nonprofit news organizations as it attempted to understand, analyze, and apply the rules for exemption to these organizations and needed to ensure consistent treatment. Providing updated guidance about how nonprofit news organizations advance Section 501(c)(3) purposes will facilitate the IRS's processing of applications for exemption, as well as nonprofit news organizations' compliance with the law.

3. The guidance can be drafted in a manner that will enable taxpayers to easily understand and apply the guidance.

The guidance can be drafted in a form such as a revenue procedure that provides background on the rules for evaluating the Section 501(c)(3) status of nonprofit news organizations, outlines the various factors the IRS will consider in evaluating whether a nonprofit news organization is advancing charitable and educational purposes, and identifies the factors that are not relevant in such a determination. The IRS has issued similar types of revenue procedures in the past to help give guidance about how a particular sector or industry advances tax-exempt purposes. For example, Revenue Procedure 96-32 provides a safe harbor for organizations providing low-income housing to qualify as Section 501(c)(3) organizations, and this has proved to be an invaluable tool for low-income housing organizations seeking to apply for exemption, and for IRS agents processing such applications.

4. The guidance involves regulations that are outmoded, ineffective, insufficient, or excessively burdensome and that should be modified, streamlined, expanded, or repealed.

As noted above and in the working group report, the IRS is relying on outdated standards for evaluating whether nonprofit news organizations are furthering charitable and educational purposes. For example, Revenue Ruling 67-4 evaluates whether an organization's manner of distribution of a publication is distinguishable from ordinary commercial publishing practices. However, since the publication of Revenue Ruling 67-4, advances in the development of technology and devices that facilitate the low-cost dissemination of information have made the distribution of free or low-cost content to the public an ordinary practice by Section 501(c)(3) organizations and commercial publishers alike.

5. The Service can administer the guidance on a uniform basis.

The IRS has faced challenges with applying the rules for tax exemption under Section 501(c)(3) on a uniform basis to nonprofit news organizations, in part because the current outdated guidance does not reflect changes in the manner of dissemination of useful and beneficial public information. Updated guidance will enable the IRS to administer the tax laws on a more uniform basis.

6. The guidance will reduce controversy and lessen the burden on taxpayers and the Service.

As noted above, the guidance will have a substantial positive impact on the American public, nonprofit news organizations, private foundations, and the IRS. It will enable new nonprofit news

organizations to move forward to meet the information and accountability needs of their communities. It will provide certainty to philanthropy funders. It will provide clear standards for the IRS to apply. And it will avoid litigation that will inevitably result if the IRS does not address the need for updated guidance in this area.

We appreciate your consideration of this request. We believe the time is right and the time is now for the IRS to issue updated guidance. Every month more commercial newspapers close their doors or reduce new coverage to the detriment of their communities. Nonprofit news organizations can and will emerge to help address this problem, but they need Section 501(c)(3) status to do so. Updated guidance is essential to allow that to happen.

Sincerely,

Celia Roady

Morgan, Lewis & Bockius LLP

Washington, DC

cc:

The Honorable Mark Mazur

Assistant Secretary for Tax Policy

Department of the Treasury

The Honorable William J. Wilkins

Chief Counsel

Internal Revenue Service

FOOTNOTES

1 S. Waldman and the Working Group on Information Needs of Communities, *The Information Needs of Communities: the Changing Media Landscape in a Broadband Age*, 123 (July 2011).

2 Revenue Ruling 67-4, 1967-1 CB 121.

3 S. Waldman and the Working Group on Information Needs of Communities, *The Information Needs of Communities: the Changing Media Landscape in a Broadband Age*, 263 (July 2011).

4 See S. Waldman and the Working Group on Information Needs of Communities, *The Information Needs of Communities: the Changing Media Landscape in a Broadband Age*, 18 (July 2011).

5 Council on Foundations, *The IRS and Nonprofit Media: Toward Creating a More Informed Public*, 12 (2013).

6 J. Schaffer, *New Media Makers: A Toolkit for Innovators in Community Media and Grantmaking* 2 (2009).

