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IRS LTR: Proposed Bequest to Camp Would Constitute an "Unusual Grant."

The IRS ruled that a proposed bequest to an organization that operates a camp for seriously ill children constitutes an unusual grant within the meaning of reg. section 1.170A-9(f)(6)(ii) because the size of the grant is not only unusual and unexpected but would also adversely affect the group's publicly supported status.

LEGEND:

C = Name of Founder

D = State

E = Date

G = Name of Foundation

T = Trust

f = $ Amount of Unusual Grant

Dear * * *:

We have considered your March 22, 2012 request for recognition of an unusual grant under Treasury Regulations section 1.170A-9(f)(6)(ii) and related provisions.

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

FACTS

You were incorporated in the State of D on E. You were recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code ("the Code"). You operate a camp for seriously ill children. We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

The camp is funded by donations. You have received funding from individuals, businesses, corporations, foundations, civic groups and other organizations. Your public support has continued to grow. You anticipate that this trend will continue. You have a representative governing body made up of individuals with previous experience with organizations similar to yours.

You are requesting recognition of a proposed grant of $f from T as an unusual grant under sections 1.170A-9(f)(6)(ii) and related provisions of the regulations. The grant is in the form of a charitable

bequest to you upon the passing of C. No restrictions were placed on the bequest.

The proceeds from this grant are to be used to pay off tax exempt bonds issued by you to fund the construction of your facilities for which C had provided a personal guarantee. Any remaining funds will be used to partially fund your operations for up to one (1) year and/or to establish an endowment in the name of C.

C was your founder. A review of your previously filed Form 990 filings indicates that you previously received contributions from C during Fiscal year ended 20* * * and 20* * *. You have also received contributions from G in previous years.

C was not an employee, board member, or person in position to exercise control over you. You met the facts and circumstances test in each of the years from 20* * * – 20* * *. Subject to the treatment of the bequest as an unusual grant your public support percentage would be * * *%

LAW

Treasury Regulations sections 1.170A-9(f)(6)(ii) and 1.509(a)-3(c)(4) set forth the criteria for an unusual grant:

Treasury Regulations section 1.170A-9(f)(6)(ii) states that, for purposes of applying the 2-percent limitation described in paragraph (f)(6)(i) of this section to determine whether the 33 1/3 percent support test or the 10 percent support limitation in paragraph (f)(3)(i) of this section is satisfied, one or more contributions may be excluded from both the numerator and the denominator of the applicable support fraction if such contributions meet the requirements of paragraph (f)(6)(iii) of this section. 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 Regulations section 1.509(a)-3(c)(4) 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 section 4946(b)

d. directly or indirectly exercised control over the organization, or

e. was in a relationship described in Internal Revenue Code 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 a. – 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 section 1.509(a)-3(a)(2) without the benefit of any exclusions of unusual grants pursuant to section 1.509-3(c)(3);

Whether the organization has a representative governing body as described in Treasury Regulations section 1.509(a)-3(d)(3)(i); and

Whether material restrictions or conditions within the meaning of Treasury Regulations section 1.507-2(a)(7) have been imposed by the transferor upon the transferee in connection with such transfer.

Treasury Regulations section 1.509(a)-3(c)(6), Example 5 read in conjunction with Example 4 provides an example of a bequest received by an organization from an individual not in control of the governing body, in cash, with no restrictions as to its use, which contribution could be excluded as an unusual grant for the purpose of determining the one-third support test.

APPLICATION OF LAW

The proposed bequest constitutes an unusual grant within the meaning of Section 1.170A-9(f)(6)(ii) and related provisions of the regulations for exclusion as an unusual grant. It is unusual and unexpected with respect to the amount and you received it due to your publicly supported nature. Additionally it would by reason of its size adversely affect your publicly supported status.

After reviewing the factors detailed in section 1.509(a)-3(c)(4) of the regulations we have determined that the proposed contribution constitutes an unusual grant. Although made by the founder, the proposed contribution is in the form of a bequest, was made in cash and has no restrictions as to its use. The founder had no authority with respect to you as an officer or board member. Further, you have carried on a program of exempt activities and have attracted public support since inception of your organization. You have met the public support tests yearly under facts and circumstances and will meet the one-third public support test if the proposed bequest is treated as an unusual grant. You are similar to the organization in Treasury Regulations section 1.509(a)-3(c)(6), Example 5.

We'll make our determination letter available for public inspection under Internal Revenue Code section 6110 after deleting certain identifying information. Please read the enclosed Notice 437, Notice of Intention to Disclose, and review the two attached letters that show our proposed

deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you don’t need to take any further action.

If you have any questions, please contact the person listed in the heading of this letter.

Sincerely,

Kenneth Corbin

Acting Director,

Exempt Organizations

Citations: LTR 201342011

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