Bond Case Briefs

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IRS LTR: Change to Board Composition Wouldn't Affect Exempt Status.

The IRS ruled that an organization associated with healthcare facilities operated by a public university wouldn't lose its section 501(c)(3) exemption or its public charity status as a result of proposed changes that would make the organization's board of directors identical to the university's board.

Citations: LTR 201423026

Contact Person: * * *
Identification Number: * * *
Telephone Number: * * *

UIL Number: 501.03-05
Release Date: 6/6/2014
Date: March 12, 2014

Employer Identification Number: * * *

LEGEND:

Date = * * *
Public University = * * *
State = * * *

Dear * * *:

We have considered your ruling request dated February 7, 2014, submitted by your authorized representative, requesting rulings about maintaining your recognition of exemption from federal income taxation and public charity status.

FACTS

You are a nonprofit organization incorporated under the laws of State. On Date, you received recognition of exemption under § 501(c)(3) and were classified as a public charity under §§ 170(b)(1)(A)(iii) and 509(a)(1). You are associated with Public University, a public body created by an act of the State legislature. Public University operates three health care facilities. Your exempt purpose is offering medical care, research and education at these health care facilities. Specifically, you provide patient care, engage in investigative studies, and teach students.
Currently, your board has nineteen members. Nine of those directors are ex-officio members and hold concurrent positions with Public University. The remaining ten directors are members of the general public. All directors serve three-year terms. You are proposing to change the composition of your board of directors. Following your proposed change, the members of your board of directors will be identical to those of the board of Public University. Public University's board has seventeen

members. It has two ex-officio members — State's Governor and State's Superintendent of Education. The remaining fifteen members are by appointed by the State's Governor with the consent of the State Senate. Three appointed members represent the county in which Public University is located. Three represent State at large. Nine represent the nine State Senate districts surrounding the area in which Public University is located.

You will effectuate this change to your board composition by amending your articles of incorporation and bylaws. Also, the members of Public University's board of directors will resolve to accept their new positions as your directors. None of your new directors will receive compensation from you or any organization related to you. Further, none of your new directors will be related to each other through business or family relationships.

You represent that you are making this change to coordinate your and Public University's delivery of medical services and to simplify your and Public University's system of financial reporting. You have represented, and submitted documentation showing, that this change will not alter your purpose, mission, or operations. It will affect your board composition only.

RULINGS REQUESTED

1) That the proposed amendments to your articles of incorporation and by-laws (and their implementation) will not result in revocation of or otherwise adversely affect your exemption under § 501(c)(3).
2) That the proposed amendments to your articles of incorporation and by-laws (and their implementation) will not adversely affect your status as an organization described in §§ 509(a)(1) and 170(b)(1)(a)(iii).

LAW

I.R.C. § 170(b)(1)(A)(iii) describes an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research.

I.R.C. § 501(c)(3) provides that organizations may be exempted from tax if they are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and "no part of the net earnings of which inures to the benefit of any private shareholder or individual." I.R.C. § 509(a) provides that an organization exempt under I.R.C. § 501(c)(3) is a private foundation unless the organization is excepted under I.R.C. §§ 509(a)(1), (2), (3), or (4).

I.R.C. § 509(a)(1) provides that an organization described in I.R.C. § 501(c)(3) is other than a private foundation if it is described in I.R.C. § 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Treas. Reg. § 1.170A-9(d)(1) provides that an organization is described in § 170(b)(1)(A)(iii) if —

(i) It is a hospital; and
(ii) Its principal purpose or function is the providing of medical or hospital care or medical education or medical research.

Rev. Rul. 69-545, 1969-2 C. B. 117 compares two hospitals. The first hospital is controlled by a board of trustees composed of independent civic leaders. The hospital maintains an open medical staff, with privileges available to all qualified physicians; it operates a full-time emergency room open to all regardless of ability to pay; and it otherwise admits all patients able to pay (either themselves, or through third party payers such as private health insurance or government programs such as Medicare). In contrast, the second hospital is controlled by physicians who have a substantial

economic interest in the hospital. This hospital restricts the number of physicians admitted to the medical staff, enters into favorable rental agreements with the individuals who control the hospital, and limits emergency room and hospital admission substantially to the patients of the physicians who control the hospital. Rev. Rul. 69-545 notes that in considering whether a nonprofit hospital is operated to serve a private interest, the Service will weigh all the relevant facts and circumstances in each case, including the use and control of the hospital. The revenue ruling concludes that the first hospital continues to qualify as an organization described in § 501(c)(3) and the second hospital does not because it is operated for the private benefit of the physicians who control the hospital. Rev. Rul. 83-157, 1983-2 C.B. 94 states that the following factors indicative that an organization promotes health for the benefit of the community: a board of directors drawn from the community, an open medical staff policy, treatment of persons paying their bills with the aid of public programs like Medicare and Medicaid, and the application of any surplus to improving facilities, equipment, patient care, and medical training, education, and research, indicate that the hospital is operating exclusively to benefit the community.

ANALYSIS

Ruling 1: That the proposed amendments to your articles of incorporation and by-laws (and their implementation) will not result in revocation of or otherwise adversely affect your exemption under § 501(c)(3).

On Date, you received recognition as an organization exempt under § 501(c)(3). You are an organization that provides health care. Your previous recognition of exemption means that the Service determined that you provide health care in a charitable manner and for the benefit of the community. One factor that indicates that an organization provides care in a charitable manner is the composition of its board. See Rev. Rul. 69-545, 1969-2 C. B. 117; Rev. Rul. 83-157, 1983-2 C.B. 94. Currently, nine of your board members are public officials and the remaining ten members are from the general public. The inclusion of several community members on your board indicates that you provide health care for the benefit of the community.

You are proposing to change your board composition such that it will be identical to the board of Public University. Following this change, your board will be made up of State’s Governor, State’s Superintendent of Education, and fifteen individuals are by appointed by the Governor with the consent of the State Senate. These appointed individuals will represent State at large and specified areas within State. Your proposed board will be a community board. Your board members will be public officials and people appointed by public officials to represent certain geographic areas. They will have no family or business relationships to each other. They will serve without receiving compensation. Accordingly, these individuals will represent community rather than private interests. By contrast the board of the hospital found to be non-exempt in Rev. Rul. 69-545 was composed of physicians having economic interest in the organization. Your proposed board is a broad based community board and denotes that you operate for a charitable purpose.

Your proposal will not change the community nature of your board. Further, you represent that the proposed board plan will not affect your mission and operations. Accordingly, your proposal will not adversely affect your exemption under § 501(c)(3).

Ruling 2: That the proposed amendments to your articles of incorporation and by-laws (and their implementation) will not adversely affect your status as an organization described in §§ 509(a)(1) and 170(b)(1)(a)(iii).

On Date, you received recognition as a public charity under §§ 170(b)(1)(a)(iii) and § 509(a)(1). Thus, the Service determined that you are a hospital with a principal purpose of proving medical care,

education or research. See Treas. Reg. § 1.170A-9(d)(1). You represented that your proposed change will affect only your board composition, and not your mission and operations. Accordingly, your proposal will not change your recognition under §§ 170(b)(1)(a)(iii) and § 509(a)(1).

RULINGS

1) The proposed amendments to your articles of incorporation and by-laws (and their implementation) will not result in revocation of or otherwise adversely affect your exemption under § 501(c)(3).
2) The proposed amendments to your articles of incorporation and by-laws (and their implementation) will not adversely affect your status as an organization described in §§ 509(a)(1) and 170(b)(1)(a)(iii).

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,

Ronald J. Shoemaker
Manager, Exempt Organizations
Technical Group 2
Enclosure
Notice 437

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