Bond Case Briefs

Municipal Finance Law Since 1971

IRS LTR: Historic Preservation Charity's Agreement Won't Jeopardize Exemption.

The IRS ruled an historic preservation charity's tax-exempt status won't be adversely affected as a result of its preservation agreement with a section 501(c)(7) organization for the restoration of a building.

Citations: LTR 201442066

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

UIL: 501.03-00
Release Date: 10/17/2014
Date: July 24, 2014

Employer Identification Number: * * *

LEGEND:

Club = * * *
Building = * * *

Dear * * *:

This is in response to your letter dated December 6, 2013 in which you requested certain rulings with respect to I.R.C. § 501(c)(3).

BACKGROUND

You have been recognized as a publicly supported charitable organization exempt under § 501(c)(3) of the Code and classified within the meaning of §§ 509(a)(1) and 170(b)(1)(A)(vi). Your Articles of Incorporation list your specific charitable and educational purposes as dedicated to preserving and memorializing the history and architecture of the city in which you are located; to research, restore and insure the preservation of buildings, land, homes or other articles which may relate to the history and architecture of the city.

The Club is a private social club that has been recognized as an organization exempt under § 501(c)(7). The Club currently owns and occupies the Building, which is located within the city, which has been recognized as a historic building, and which has been listed on the National Register of historic buildings and landmarks. The Building is over 150 years old and occupies one square block. You executed a written Preservation Agreement with the Club, under which you raised public funds to be used for the restoration of the Building in accordance with the Secretary of the interior's Standards for the Treatment of Historic Properties and the Secretary of the Interior's Guidelines for

Preserving, Rehabilitating, Restoring and Restructuring Historic Buildings (hereinafter, "The Secretary of the Interior's Standards and Guidelines."). Any restoration or projects using your funds on the Building would require your prior approval before such projects could be started.

You represent that currently the interior of the Building, including the Designated Interior Historic Spaces, are primarily accessible only to Club members, with the Building primarily used by the Club. Scholars and other educational or architectural groups interested in the Building's historic character have access to the interior portions of the Building only when sponsored by a Club member or holders of privilege cards (spouses and widows/widowers of deceased members). However, persons who attend seminars, meetings, receptions and cultural events in the Building, which are scheduled pursuant to approval by the Club, have access to the interior portions of the Building during these events.

You represent that the Preservation Agreement would increase public access to the Designated Interior Historic Spaces. Specifically, the Amended Agreement as modified by your submission provides for increased public access in the following manner:

The general public will be given the opportunity to tour the Designated Historic Spaces on a given day twice every month throughout the year

Organizations of architects, engineers, historians or others whose professional or academic pursuits are concerned with the creation, preservation or restoration of historic buildings may arrange to tour the Designated Historic Spaces at a time mutually agreed to by the Club and the organizations.

No member sponsorship will be required to participate in the tours described above. The Club will accept reservations for such tours by telephone or on the Internet.

In addition, the Club agrees to make virtual tours available through the Internet via video and photographs. These tours will consist of interactive tours, whereby viewers will have full control of the viewing of a majority of the rooms and the rooms will contain a voice over tour to accompany the images.

This availability of these viewings will be displayed prominently on your web site, along with the ability for the public to make reservations for tours either via your web site or via telephone. Also in your submission, you make it clear that there will be an unlimited number of tours for professional groups interested in historic preservation and restoration.

Finally, your Agreement with Club constitutes a Covenant on this property that will run with the land for any future purchasers of the Building. You have recorded this Covenant in the local property Register.

RULING REQUESTED

Your agreement to the terms of the Preservation Agreement, your performance of those terms, and the Club's acceptance of contributions to be utilized to defray the costs of the preservation and restoration in a manner consistent with the Preservation Agreement will not adversely affect your tax exemption under § 501(c)(3).

LAW

I.R.C. § 501(c)(3) provides, in part, for the exemption from Federal income tax of organizations that are organized and operated exclusively for charitable purposes, provided no part of the net earnings of the organization inures to the benefit of any private individual or shareholder.

Treas. Reg. § 1.501(c)(3)-1(c)(1) provides, in part, that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such purposes described in § 501(c)(3), but will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) provides, in part, that an organization is not operated exclusively for exempt purposes "unless it serves a public, rather than a private, interest," Thus, it is necessary for an organization to establish that "it is not operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

Treas. Reg. § 1.501(c)(3)-1(d)(2) provides that the term charity includes, but is not limited to, "erection or maintenance of public buildings, monuments or works."

Rev. Rul. 75-470, 1975-2 C.B. 207, describes a nonprofit organization that was formed to promote an appreciation of history through the acquisition, restoration, and preservation of buildings having special historical or architectural significance. After restoration was completed, the buildings were open to the general public for viewing. The organization was financed with admission fees to the restored buildings. The Service held that "[t]he organization is carrying on activities similar to those of a museum and is educational and charitable within the meaning of § 501(c)(3)."

Rev. Rul. 86-49, 1986-14 I.R.B. 7, describes an organization that was formed for the purpose of preserving the historical and/or architectural character of a community through the acquisition, restoration, and subsequent sale of historically and/or architecturally significant properties, subject to restrictive covenants. The Service held that the organization would qualify as an organization that is organized and operated exclusively for charitable or educational purposes under § 501(c)(3). The organization sold the properties to private parties in arms-length transactions subject to restrictive covenants designed to ensure public access to the properties; thereby, preserving the properties for the public's benefit. Where the properties were not visible from the public right of way "the organization provides in the restrictive covenants that visual access to the property will be made available to the public on a regular basis and the terms of the restrictive covenants contain prescribed conditions for such access, under the requirements set forth in Treas. Reg. § 1.170A-14(d)(5)(iv)."

In Better Business Bureau v. United States, 326 U.S. 279, 66 S.Ct. 112, (1945), the Supreme Court ruled that an organization that is tax-exempt as an educational institution must be devoted to educational purposes exclusively, and the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes.

In Columbia Park and Recreation Association v. Commissioner, 88 T.C. 1 (1987), an organization that was organized to develop and operate utilities, systems, services and facilities for the common good and the social welfare of the homeowner's association within the planned community, sought tax-exempt status under § 501(c)(3) of the Code. The Tax Court found that the majority of services and facilities the organization provided were only offered to association members, with only a small fraction of those services actually offered to the general public, with the public paying higher rates than association members for the same services. The Tax Court held that the organization was not organized or operated as charitable within the meaning of § 501(c)(3).

ANALYSIS

You intend to engage in the activities outlined in your Preservation Agreement and expend public

funds for the repair, restoration and preservation of certain interior spaces of the Club's Building that have been labeled as "Designated Historic Interior Spaces." The issue therefore arises whether the public is given substantial access to the Designated Interior Historic Spaces to justify your expenditures of public monies to restore these spaces, which are currently owned and utilized by a private social club, so as not to violate your tax-exempt status under § 501(c)(3) of the Code. If the public does not have substantial access to these areas for viewing, then you would have expended public funds for the private benefit of the Club and its members, in violation of your tax-exempt status under § 501(c)(3).

Under § 501(c)(3), an organization that is exempt from Federal income tax must be both organized and operated exclusively for charitable or educational purposes, and must provide that no part of the net earnings of the organization inures to the benefit of any private shareholder or individual. The term charity includes, but is not limited to, "erection or maintenance of public buildings, monuments or works." Section 1.501(c)(3)-1(d)(2).

An organization is not organized and operated exclusively for charity "unless it serves a public rather than a private interest" Section 1.501(c)(3)-1(d)(1)(ii). The presence of private benefit, if substantial in nature, will destroy the organization's tax-exempt status regardless of whether the organization has other charitable purposes or activities; however, where private benefit is incidental to the accomplishment of an organization's charitable or educational purposes, it will not prevent the organization from being described in § 501(c)(3) of the Code. See Section 1.501(c)(3)-1(c)(1); Better Business Bureau, 326 U.S. 279.

Several court cases and revenue rulings have focused on the issue of whether the public's access to an organization's facilities is substantial. In Columbia Park and Recreation, 88 T.C. 1, the Tax Court denied an organization's 501(c)(3) status on the grounds that the public's access to the organization's facilities were not substantial. The Court found that only a small percentage of the organization's total assets, and a rather limited percentage of the organization's total budget, were actually spent on facilities and services that were open to the public, with the remainder of the organization's assets and budget spent on facilities only open to the organization's members. This is contrasted with Rev. Rul. 75-470, supra, in which the organization's facilities were deemed to be substantially open to the public. In Rev. Rul. 75-470, an organization qualified for tax-exemption under § 501(c)(3) for its activities of acquiring and restoring buildings having historical and/or architectural significance. After restoration was completed, the buildings were open to the public for viewing. The Service found that the public's access to the interiors of the buildings was substantial because the organization was operating the buildings as museum exhibits, which were open regularly for public viewing. Furthermore, in Rev. Rul. 86-49, supra, the Service held that an organization that was formed for the purpose of restoring historical and/or architecturally significant buildings and subsequently selling the same buildings was sufficient to qualify the organization under § 501(c)(3) because the buildings were sold with restrictive covenants that permitted substantial public access to the buildings.

In Rev. Rul. 86-49, supra, the charitable organization sold properties subject to restrictive covenants designed exclusively to preserve and to allow for public viewing of the historical and/or architecturally significant properties. Where the properties were not visible from the public right of way "the organization provides in the restrictive covenants that visual access to the property will be made available to the public on a regular basis and the terms of the restrictive covenants contain prescribed conditions for such access, under the requirements set forth in section 1.170A-14(d)(5)(iv)." Id. Specifically, § 1.170A-14(d)(5)(iv) provides the following:

Where the historic land area or certified historic structure which is the subject of the donation is not visible from a public way (e.g., the structure is hidden from view by a wall or shrubbery, the

structure is too far from the public way, or interior characteristics and features of the structure are the subject of the easement), the terms of the easement must be such that the general public is given the opportunity on a regular basis to view the characteristics and features of the property which are preserved by the easement to the extent consistent with the nature and condition of the property.

Factors to be considered in determining the type and amount of public access required under paragraph (d)(5)(iv)(A) of this section include the historical significance of the donated property, the nature of the features that are the subject of the easement, the remoteness or accessibility of the site of the donated property, the possibility of physical hazards to the public visiting the property (for example, an unoccupied structure in a dilapidated condition), the extent to which public access would be an unreasonable intrusion on any privacy interests of individuals living on the property, the degree to which public access would impair the preservation interests which are the subject of the donation, and the availability of opportunities for the public to view the property by means other than visits to the site.

As a result of these restrictive covenants, the Service held in Rev. Rul. 86-46, supra, that the public was ensured substantial access to the historical and/or architecturally significant buildings, resulting in the organization's purpose qualifying for tax-exemption under § 501(c)(3).

Rev. Rul. 86-49, supra, references § 1.170A-14(d)(5)(iv) to determine whether the public's access to the property is substantial, given the nature and condition of the property. Although § 1.170A-14(d)(5)(iv) pertains to the issue of public benefit from the standpoint of whether the donor of a constructive easement in a historic and/or architecturally significant building has permitted substantial public access to the building to allow the donor a charitable deduction, these same factors, according to Rev. Rul. 86-49, are germane to the evaluation of public benefit from the standpoint of a tax-exempt organization that receives the donated conservation easement and is required to expend public funds to repair, restore, and maintain the historical and/or architecturally significant buildings comprising the conservation easement. In Rev. Rul. 86-49, the buildings were sold to private owners with restrictive covenants, consistent with § 1.170A-14(d)(5)(iv), to guarantee substantial public access. Absent these restrictive covenants guaranteeing public access, it would be difficult for the organization to claim that it was fulfilling a charitable purpose if public funds were used to restore historical and/or architecturally significant buildings primarily for the private benefit of the property owners.

Section 1.170A-14(d)(5)(iv) references Example (1) as an example of what facts constitute substantial public access to the exterior and interior facade of a building. Example (1) describes a donation by A of an easement to the exterior and interior of his Victorian period home that he and his family live in. The view of A's home is obscured by a high stone wall. The easement provides that the house may be opened to the general public from 10:00 a.m. to 4:00 p.m. on one Sunday in May and one Sunday in November each year for house and garden tours. The donee organization is given the right to photograph the exterior and interior of the house for use in publications and to permit persons affiliated with educational organizations, professional architectural associations, and historical societies to make appointments to study the property. In this example, the regulations concluded that the two opportunities for public visits per year, when combined with both the ability of the general public to view the subject of the easement through photography and the opportunity for scholarly study of the property on a reasonable basis, coupled with the fact that the house is used as a family residence, enabled the donation to satisfy the requirement of public access.

The transaction you wish to engage in pursuant to the Preservation Agreement is similar to Example (1) in § 1.170A-14(d)(5)(iv). The subject of your Preservation Agreement is the "Designated Interior Historic Spaces" of the Building. As in Example (1), your Preservation Agreement provides that

persons affiliated with educational organizations, professional architectural associations, and historical societies have unlimited opportunities to make appointments to study the Building's interior. Furthermore, as in Example (1), your Preservation Agreement provides the public the opportunity to view images of the Building's interior via a virtual tour available on the Club's internet website. However, in several respects, your Preservation Agreement goes beyond the public access described in Example (1). Expanding on Example (1), which provided public access to the historic building twice a year as part of house and gardens tours, your Preservation Agreement provides the public with the opportunity to view the interior of the Building twice a month throughout the year. Furthermore, your Preservation Agreement establishes both a telephone and an internet reservation system, expediting the public's ability to schedule visits to gain access to the interior of the Building. Furthermore, as in Rev. Rul. 86-49, supra, you also provide that the provision of funds by you is subject to a restrictive covenant that will be recorded in the local registry. As such, these conditions create sufficient public access to the Designated Interior Historic Spaces of the Building, with any private benefit to the Club and its members being incidental.

RULING

Your agreement to the terms of the Preservation Agreement, your performance of those terms, and the Club's acceptance of contributions to be utilized to defray the costs of the preservation and restoration in a manner consistent with the Preservation Agreement will not adversely affect your tax exemption under § 501(c)(3).

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. Specifically, this ruling does not reach any conclusion as to the qualifying distribution status of your proposed transfer under § 4942(g)(3). 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,

Michael Seto
Manager, Exempt Organizations

Technical
Enclosure
Notice 437

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com