

Internal Revenue Service

Number: **201829003**

Release Date: 7/20/2018

Index Number: 4942.03-03, 4942.03-05,
4942.05-00, 4942.05-01

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:EO1

PLR-132929-17

Date:

April 24, 2018

Foundation =

Trust =

Date 1 =

Land =

Developed Land =

Undeveloped Land =

A =

B =

C =

D =

E =

F =

Dear :

This letter responds to a request for a ruling from your authorized representative dated October 26, 2017, and subsequent correspondence, that certain land is held or used directly in carrying out Foundation's exempt purposes and, therefore, the value of such property is excluded in computing the minimum investment return under § 4942(e) of the Internal Revenue Code.¹

FACTS

¹ The Internal Revenue Code of 1986, as amended, to which all subsequent "section" references are made unless otherwise indicated.

Foundation is recognized as a tax-exempt organization described in § 501(c)(3) and is classified as a private operating foundation within the meaning of § 4942(j)(3). Foundation, was created pursuant to Trust, and in accordance to its terms, acquired on Date 1, Land. Land is comprised of Developed Land and adjoining Undeveloped Land. The Developed Land consists of a historic residence, a visitor and garden center, cottages, and buildings for administrative offices, collections and archives, operations, grounds, security, engineered wetlands, and storage that are used directly in furtherance of Foundation's exempt purposes. The Undeveloped Land consists of desert property which Foundation maintains in its natural state, to preserve fragile plant and wildlife ecosystems. Foundation represents that it is not using Undeveloped Land for the production of income or for investment.

Trust provides that Foundation is organized and shall be operated exclusively for charitable, scientific, literary, or educational purposes enumerated under § 170(c)(2)(B) and at all times shall be operated in accordance with § 501(c)(3). In accordance to terms of Trust, Foundation is required to use Developed Land to carry out certain enumerated exempt educational and charitable permitted programs. Among the enumerated exempt educational and charitable permitted programs is making Developed Land available for A and B to

and for A, C, D, and E and

E to meet

. The other enumerated exempt educational and charitable permitted programs allow for Developed Land's use by

Land;

Foundation does not charge any fees for use of its events space and cottages, and allows public access to the visitor and garden center free-of-charge during open hours.

Since , such as A and other , attend programs and events at Land, providing a safe and secure environment is of paramount importance and a necessity in order for Foundation to conduct its educational and charitable activities at the Developed Land. Thus, Foundation hired a leading independent security consulting firm, unrelated to it or any disqualified person with respect to it, to evaluate the state of physical security at Land to identify concerns, vulnerabilities, and to recommend security enhancements.

The security consulting firm prepared a letter and a report recommending the Undeveloped Land be maintained in its present state, because its natural boundaries

act as a buffer zone enhancing the safety and security at Land, thereby facilitating the exempt purposes of Foundation. The letter states that the distance provided by Undeveloped Land enhances Developed Land's security and
and defend guests and employees of Foundation present on Developed Land in cases where physical, biological, radiological, chemical, and human threats may avail themselves. The letter concludes that the Undeveloped Land must be preserved in its present natural state to facilitate the mission of Foundation. As further explained in the accompanying report, Foundation's guests include

facilitating their attendance at events held at Land. The report states that the buffer zone provided by the Undeveloped Land enhances protection from
. The report also identifies areas where enhancements to safety and security could be improved, most of which Foundation plans to implement.

Undeveloped Land also serves as an integral part of instructional discussions during weekly garden and bird tours held at Developed Land. Foundation educates the public by providing direct educational content with respect to the Undeveloped Land. One of Foundation's education program models is partnering with schools regarding sustainable conservation and science education. Foundation represents that Undeveloped Land in its natural state can be used as a study site. Undeveloped Land does not require additional irrigation or maintenance and provides a visual of what the desert looks like in an undeveloped natural state. Foundation anticipates allowing students to design and carry out projects to collect information about the health of the undeveloped ecosystems in the desert, thereby providing free content-driven programs for schools and field experience for students.

In addition, Foundation represents that it's maintenance of Undeveloped Land in its natural desert state preserves a sustainable native environment that contributes to the health of the community ecosystem. Parcels of land the size of Undeveloped Land are very rare. The population growth and increased land development in the area continue to push native plant species to the fringes of the desert, eliminating their access to the desert floor and impeding their contributions to low desert blow sand ecology. Undeveloped Land also provides habitat for a wide range of desert wildlife that naturally occur, travel, and hunt in the area.

RULING REQUESTED

Foundation requests a ruling that the Undeveloped Land is held or used directly in carrying out its exempt purposes and, therefore, that its value is excluded in computing its minimum investment return under § 4942(e).

LAW

Section 4942(a) generally imposes an excise tax on the undistributed income a private foundation fails to distribute by the end of the following taxable year.

Section 4942(c) provides that “undistributed income” is the amount by which the distributable amount exceeds the qualifying distributions (as defined by § 4942(g)) made out of such distributable amount.

Section 4942(d) defines “distributable amount” as an amount equal to the sum of the “minimum investment return” plus the amounts described in § 4942(f)(2)(C), reduced by the sum of the taxes imposed on the private foundation for the taxable year under subtitle A and § 4940.

Section 4942(e)(1) defines the term “minimum investment return” as five percent of the excess of the aggregate of fair market value of all assets other than those which are used (or held for use) directly in carrying out the foundation's exempt purposes, over the acquisition indebtedness (determined under § 514(c)(1) without regard to the taxable year in which the indebtedness occurred). Thus, an organization may exclude from its calculation of “minimum investment return”, the value of assets which are used (or held for use) directly in carrying out the organization's exempt purpose.

Section 4942(j)(3) provides that an operating foundation is any organization which makes certain qualifying distributions directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of the lesser of its adjusted net income or minimum investment return. Additionally, substantially more than half of its assets must be devoted directly to such activities or to a functionally related business, or both.

Treas. Reg. § 53.4942(a)-2(c)(2) states, in part, that the assets taken into account in determining minimum investment return shall not include any assets used (or held for use) directly in carrying out the foundation's exempt purpose.

Treas. Reg. § 53.4942(a)-2(c)(3)(i) provides that an asset is “used (or held for use) directly in carrying out a foundation's exempt purpose” only if the asset is actually used by the foundation in carrying out the charitable, educational, or other similar purpose which gives rise to the exempt status of the foundation. Consequently, assets which are held for the production of income or for investment (for example, stocks, bonds, interest-bearing notes, endowment funds, or, generally, leased real estate) are not being used (or held for use) directly in carrying out the foundation's exempt purpose, even though the income from such assets is used to carry out such exempt purpose. Whether an asset is held for the production of income or for investment rather than used (or held for use) directly by the foundation to carry out its exempt purpose is a question of fact.

Treas. Reg. § 53.4942(a)-2(c)(3)(ii) gives examples of assets which are used (or held for use) directly in carrying out a foundation's exempt purpose. These may include real estate used by the foundation directly in its charitable, educational, or other similar exempt activities, and any physical facilities used in such activities, such as paintings or other works of art owned by the foundation which are on public display.

Rev. Rul. 75-207, 1975-1 C.B. 361, describes a private foundation formed to further conservation, education, and the arts. The foundation owns and maintains an island dedicated to preserve the natural ecosystems and historical and archaeological remains on the island that have no residential use, and access is limited to invited public and private researchers. The ruling holds that the island is being used directly to carry out the foundation's exempt purpose in the manner indicated in the regulations under § 4942. Accordingly, the foundation may exclude the value of the island in computing its minimum investment return under § 4942(e).

Rev. Rul. 76-204, 1976-1 C.B. 152, describes an organization formed by scientists, conservationists, and other community representatives for the purpose of preserving the environment. It accomplished this purpose by acquiring and maintaining (or transferring to a governmental agency) ecologically significant undeveloped land such as swamps, marshes, forests, wilderness tracts, and other natural areas. Generally, public access to such land is limited so that the delicate balance of the ecosystem remains undisturbed. In these situations the organization will allow educational and scientific research or study, as long as such use will not disrupt the particular ecosystem. The ruling concludes that the organization is enhancing the accomplishment of an express national policy of conserving the nation's unique natural resources and, in this sense, is advancing education and science and benefiting the public in a manner that the law regards as charitable. Furthermore, the restrictions on current access to the lands maintained by the organization are essential to the preservation of their natural state, and are therefore essential to the fulfillment of the organization's charitable purpose.

ANALYSIS

As permitted under § 4942(e)(1)(A) and Treas. Reg. § 53.4942(a)-2(c)(2), when computing a foundation's "minimum investment return," the fair market value of assets used (or held for use) directly in carrying out the foundation's exempt purposes are excluded. Treas. Reg. § 53.4942(a)-2(c)(3)(i) further clarifies that the asset must actually be used by the foundation in carrying out the charitable, educational, or other similar purpose which gives rise to its exempt status, and cannot be held for the production of income or for investment.

Preserving the Undeveloped Land in its natural state is essential to the fulfillment of the charitable, scientific, and educational, exempt purposes of Foundation, and it is not being held for the production of income, or for investment, but only to further the exempt

purposes of Foundation. Maintaining the Undeveloped Land in its natural state enhances security for the exempt “permitted programs” occurring on Developed Land. In particular, as recommended by an independent security consulting firm, Undeveloped Land serves as an important buffer zone which enhances Land’s security as well as the ability of _____ to protect and defend Foundation’s guests in cases where physical, biological, radiological, chemical, and human threats avail themselves. Given the _____ nature of the events and guests that Foundation hosts on the Developed Land, this buffer is essential to Foundation’s ability to further the exempt charitable and educational “permitted programs” enumerated in the Trust.

In addition, Foundation includes discussions about Undeveloped Land and its conservation efforts when providing weekly garden and bird tours at Developed Land, and has education program models where it partners with schools on sustainable conservation and science education. Undeveloped Land in its natural state provides a study site for schools conducting conservation education.

Finally, preservation of Undeveloped Land in its natural desert state also serves conservation purposes within the meaning of § 501(c)(3). Preservation of Undeveloped Land contributes to sustainable conservation that improves the health of the community ecosystem, like the organization described in Rev. Rul. 76-204, 1976-1 C.B. 361, and, therefore, furthers charitable conservation purpose. Like the organization described in Rev. Rul. 75-207, 1975-1 C.B. 361, Foundation is directly using Undeveloped Land in carrying out its exempt purposes in the manner required under § 4942(e)(1) and Treas. Reg. § 53.4942(a)-2(c)(3)(i).

For these reasons, Undeveloped Land is being used in directly carrying out Foundation’s exempt purposes within the meaning of Treas. Reg. § 53.4942(a)-2(c)(3)(i), and its fair market value should not be taken into account in determining minimum investment return.

CONCLUSION

Based solely on the facts and representations submitted, we rule that Foundation may exclude the value of Undeveloped Land in computing its minimum investment return under § 4942(e) because it is used or held for use directly in carrying out its exempt purposes.

The ruling contained in this letter is based upon information and representations submitted by Foundation and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2018-1, 2018-1 I.R.B 1, § 7.01(16).

This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has

been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2018-1, § 11.05.

No ruling is granted as to whether Foundation qualifies as an organization described in § 501(c) or § 509(a), or whether Foundation is, or continues to be, an “operating foundation” described in § 4942(j)(3). Except as expressly provided above, no opinion is expressed or implied, concerning the federal income tax consequences of any aspects of any transaction or item of income described in this letter ruling.

This letter is directed only to Foundation. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to each of Foundation’s authorized representatives.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Mary Jo Salins
Chief, Exempt Organizations Branch 1
(TEGE Associate Chief Counsel)

cc: