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June 8, 1999

A =

B =

C =

D =

E =

=

City =

State =

Country =

X =

Y =

Z =

D1 =

Dear :

This is in reply to your letter written on behalf of A, dated May 28, 1998, and subsequent correspondence, requesting a ruling with respect to the federal tax classification of the

.

The information submitted provides that A, a United States citizen, intends to contribute a collection of paintings and drawings, which she inherited from her father, E, who was a

citizen of Country, to the . F died on D1. F had amassed a significant collection of paintings and drawings during his lifetime and expressed a desire to have this art collection displayed in an appropriate building in City. In order to carry out their father's wishes, A's three siblings, B, C, and D, who are citizens of Country, formed the . B, C, and D will also contribute a collection of paintings and drawings to the . The was organized under Country law as a public foundation with a charitable or public purpose.

Section 2 of the Articles of the provides that the purpose of the is to preserve and administer the stock of paintings and drawings of the art collection of F, in particular to treat and conserve this stock scientifically, further to make this stock accessible to the public through exhibitions and otherwise. The purpose of the will be attained through the exhibition of the stock in a museum to be built by City or by another corporate entity under public law, whereby it is provided that the stock shall be given on perpetual loan to such museum and that financial assistance may be granted to such museum with cash income from the property of the .

Section 3 of the Articles of the provides that the is organized and is to be operated exclusively and directly for charitable purposes in accordance with Country law. It further provides that the is charitable and its primary purpose is not business. No legal entity or individual may be given benefits through distributions outside of the performance of the purposes of the Articles of the or through unreasonably high support payments, gifts or compensation.

Section 4 of the Articles of the provides that the basic property of the is a core stock of paintings and drawings of the Collection F, as set forth in the exhibit attached to the Articles, and an amount of x in cash. It further provides that it is an intention to transfer until December 31, 1999, an additional y amount of cash, or of property with a value of y, which may consist of other paintings and drawings which are not part of the core stock contributed to the . It is the intention that the additional paintings and drawings be sold by the in order to raise y. In addition, it provides that the is entitled to sell paintings and drawings of the core stock if this is unavoidable for the preservation of its economic viability. The y amount is to be maintained unimpaired and invested profitably.

Section 11 of the Articles of the _____ provides that in the case of the termination or liquidation of the _____ the property of the _____ shall be transferred to State (within Country) with the requirement that it be used exclusively for charitable purposes in accordance with Country tax law and the Internal Revenue Code as much as possible in accordance with the purposes of the founders of the _____ .

In order to carry out its charitable purpose, the _____ has entered into a joint venture with City to build a museum to hold and display the art collection. The _____ will make the art collection available to the museum by perpetual loan. State is donating z to City to finance the building of the museum on land belonging to City. _____ will have no interest in the museum real estate.

Section 301.7701-1(a) of the Procedure and Administration Regulations provides that the Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

Section 301.7701-1(b) of the regulations provides that the classification of organizations that are recognized as separate entities is determined under sections 301.7701-2, 301.7701-3, and 301.7701-4 unless a provision of the Internal Revenue Code (such as section 860A addressing Real Estate Mortgage Investment Conduits (REMICs)) provides for special treatment of that organization.

Section 301.7701-2(a) of the regulations provides that for purposes of section 301.7701-2 and section 301.7701-3, a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under section 301.7701-3) that is not properly classified as a trust under section 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. Section 301.7701-3(b)(2) provides that except as provided in section 301.7701-3(b)(3), unless the entity elects otherwise, a foreign eligible entity is (A) a partnership if it has two or more members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

Section 301.7701-4(a) of the regulations provides that in general, the term "trust" as used in the Internal Revenue Code refers to an arrangement created either by will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules provided in chancery or probate courts. Usually the beneficiaries of such a trust do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. However, the beneficiaries of such a trust may be the persons who create it and it will be recognized as a trust under the Internal Revenue Code if it was created for the purpose of protecting or conserving the trust property for beneficiaries who stand in the same relation to the trust as they would if the trust had been created by others for them. Generally speaking, an arrangement will be treated as a trust under the Internal Revenue Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

Based on the facts and circumstances presented, the _____ is not a trust under section 301.7701-4(a) of the regulations because its primary purpose is not protecting and preserving the paintings and drawings for beneficiaries but rather it is to carry out a number of activities, including the following: displaying the art collection in the museum which the _____ will help build with City through the joint venture; educating the public concerning the art collection through exhibitions and other activities; and investing the y amount profitably and thereby raising money to operate the museum. Further, the _____ is not subject to special treatment under the Code. Therefore, the _____ is classified as a business entity under section 301.7701-2(a).

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under the cited Code provisions or any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, copies of this ruling are being sent to A and A's authorized representative.

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Sincerely yours,

J. THOMAS HINES
Senior Technician Reviewer
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and Special
Industries)

Enclosures: 2
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