

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:Br.7-PLR-128444-00

Date:

December 14, 2000

Legend:

Trust:

Foundation:

Estate:

Land Estate:

Settlor:

Co-Trustee:

Treasurer:

Executor:

County:

State Tax Board:

Camp:

Trustees:

a:

b:

c:

d:

e:

m:

n:

o:

p:

Dear :

We received your representative's letter in behalf of Trust, Foundation and Estate dated, April 26, 2000. In that letter, as supplemented, you request rulings concerning the tax status of the Foundation and the estate tax consequences of the proposed transfer of the Land Estate from the Trust to the Foundation under § 501(c)(3) and § 2055(a)(2) of the Internal Revenue Code. You are respectively the

Co-Trustee, Treasurer and Executor of the Trust, Foundation and Estate. This letter responds to those requests.

The facts and representations submitted are summarized as follows: Prior to Settlor's death, Settlor created Trust, a revocable inter vivos trust, containing Land Estate and substantial assets. Settlor's intent was to preserve Land Estate as a museum and garden open to the public operating for exclusively charitable and educational purposes. To accomplish that intent, Settlor also created Foundation, a private tax exempt foundation on date a. On date b, the Internal Revenue Service determined that Foundation was both tax exempt under § 501(c)(3) of the Code and a private foundation under § 509(a). Settlor provided in Trust that Land Estate was to be transferred within m months of his death to Foundation provided that Foundation had received the necessary tax exemption determinations and local permits. During his lifetime, Settlor sought to obtain the Conditional Use Permit required by County for Land Estate's public use. Settlor died on date c, before obtaining the permit. Until Foundation receives the required use permit, the Foundation will be operated solely for the purposes of preserving and maintaining Land Estate for future use by the public and continuing to seek the permit for up to n years. Except for preservation activities and seeking the permit, no business will be conducted on or related to the Land Estate unless and until a satisfactory Conditional Use Permit is obtained, whereupon direct public use will begin.

Paragraph A of Article IV of the Trust provides that while the Settlor lives and is competent, he reserves the right to direct the distribution of all income from and the principal of the property held in Trust. Such directions shall be in writing delivered to the trustees.

Paragraph A of Article VII of the Trust provides, in part, that upon Settlor's death, the entire Trust estate shall be distributed as follows. The trustees are directed to distribute Land Estate, consisting of o acres to the Foundation provided that: Foundation is in existence at the date of Settlor's death; Foundation has maintained compliance with all the Internal Revenue Code and any other applicable legal requirements for tax exempt status and has received Determination Letters from the Internal Revenue Service and State Tax Board confirming such status; and Foundation has obtained all land use permits from County and other applicable governmental agencies or bodies which are necessary to operate Foundation in accordance with its stated purposes as set forth in its Articles of Incorporation and Bylaws. In the event all such status and permits have not been obtained within m months of the date of Settlor's death, then Land Estate shall be distributed to Camp. Camp received a determination letter of exempt status from the Internal Revenue Service effective date d, the date of Camp's formation.

Paragraph C of Article III of the Trust provides, in part, that if Foundation is not then in existence or has not then qualified as a tax exempt organization, then it is Settlor's intent that the Trust set forth herein will act as a support trust for Camp, or some other qualified, tax exempt nonprofit organization to which the Land Estate has

been distributed. The provisions of this trust document are to be construed in order to carry out the Settlor's intent.

Camp has waived its right to receive Land Estate under the terms of Trust and consents to the transfer of the Land Estate to Foundation, subject to subsequent transfer to Camp if a favorable ruling does not issue in response to this request or if the directors of Foundation find that they are unable to commence actual use by the public of Land Estate as contemplate by the Settlor prior to date e.

The trustees intend to carry out the Settlor's intent by transferring the Land Estate to the Foundation upon receipt of a favorable response to this ruling request.

Accordingly, Trust, Foundation and Estate seek rulings that:

1. Foundation will qualify as a § 501(c)(3) nonprofit organization, a private foundation, notwithstanding the fact that, for up to n years, the sole charitable purpose served is the preservation and maintenance of the Land Estate for eventual public use and that direct public use of the assets of Foundation may not commence until the earlier of n years following Settlor's date of death or p days after a Conditional Use Permit is issued authorizing direct public use, provided all other requirements for § 501(c)(3) nonprofit, private foundation status are satisfied by Foundation; and

2. An estate tax charitable deduction under § 2055(a)(2) will be allowable for the fair market value of Land Estate passing from Trust to Foundation.

Issue 1: (Section 501(c)(3) status)

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for one or more charitable or educational purposes.

Section 1.501(c)(3)-1(d)(1)(iii) of the Income Tax regulations provides that if, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the grounds that it is "educational", exemption will not be denied if, in fact it is "charitable".

Section 1.501(c)(3)-1(d)(3)(ii) of the regulations, Example (4), offers museums as an example of educational organizations.

The Historic Preservation Act of 1966 (16 U.S.C. §§ 461, 470) provides that it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States. The Act further states that the historical and cultural foundations of the nation should be preserved as a living part of our community life and development to give a sense of orientation to the American people.

Rev. Rul. 75-470, 1975-2 C.B. 207, provides that a nonprofit organization formed to promote an appreciation of history through the acquisition, restoration, and preservation of homes, churches, and public buildings having special historical or architectural significance and to open the structures for viewing by the general public qualifies for exemption under § 501(c)(3) of the Code.

Rev. Rul. 76-204, 1976-1 C.B. 152, provides that a nonprofit organization formed for the purpose of preserving the natural environment by acquiring, by gift or purchase, ecologically significant undeveloped land, and either maintaining the land itself with limited public access or transferring the land to a government conservation agency by outright gift or being reimbursed by the agency for its cost, qualifies for exemption under § 501(c)(3) of the Code.

The Foundation, in its initial application, described the charitable activity of preserving and maintaining Land Estate, an historic building, and the educational activity of operating Land Estate as a museum or similar organization. Based on the facts presented and the representations made, the inability to presently satisfy the educational activity of providing immediate public access to the Land Estate would not have an adverse effect on the exempt status of the Foundation. The regulations require only that an organization be organized and operated exclusively for one or more of the purposes specified in § 501(c)(3) of the Code. The Foundation will be conducting one such activity through preservation and maintenance, of an historically significant property which alone would support its continued exemption. The current political situation that presently limits public access to the Land Estate does not detract from the charitable nature of the preservation and maintenance of Land Estate for future public use.

Issue 2: (Estate Tax Charitable Deduction)

Section 2033 provides that the value of the gross estate will include the value of all property to the extent of the interest therein of the Settlor at the time of his death.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the Settlor has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—(1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2055(a) provides, in part, that for purposes of the tax imposed by § 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers—(2) to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific,

literary, or educational purposes, including the encouragement of art, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

In this case, Foundation was determined to be a tax exempt charitable organization on date b, and, as explained above, the local political situation which currently limits public access to the Land Estate does not detract from Foundation's charitable nature. Moreover, Camp, as the default recipient of Land Estate, has also been determined to be an organization exempt from federal income tax under § 501(a) of the Internal Revenue Code as an organization described in § 501(c)(3). Accordingly, we conclude that the transfer of Land Estate from the Trust to the Foundation is deductible by the estate as a charitable contribution under § 2055(a)(2).

Except as ruled above, no opinion is expressed or implied as to the federal tax consequences of this transaction under any other provision of the Code.

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

A copy of this ruling should be attached to the Estate's Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return), and Foundation and Trust should keep a copy of this ruling for their tax records.

Sincerely,
James C. Gibbons
Assistant to the Chief, Branch 7
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)