

Internal Revenue Service
P. O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: 1/21/2015

Employer Identification Number:

Number: 201516069
Release Date: 4/17/2015

Person to Contact - ID#:

Contact Telephone Numbers:

LEGEND:

UIL: 501.03-08

B = Organization
C = Organization
D = Trustee
F = Organization
G = Organization
H = Founder
M = Organization
N = State
P = Artist
Q = Date
R = Date
S = Date
T = Years
x = Amount
y = Amount

Dear :

We have considered your February 28, 2014, request for recognition of an unusual grant under Treasury Regulations section 1.170A-9(f)(6)(ii) and related provisions.

Based on the information provided, we have concluded that the proposed grant constitutes an unusual grant under section 1.170A-9(f)(6)(ii) and related provisions of the regulations. The basis for our conclusion is set forth below.

Facts:

C is a public charity described in Section 509(a)(2) of the Code. Its mission is to promote an understanding of and appreciation for contemporary among all people by maintaining a park composed of works by well-known and emerging American and international artists, organizing accessible exhibitions, and interpreting these exhibitions through publications, lectures, workshops, and educational programs. In keeping with its mission, C operates a acre park and museum.

C has a Board of Trustees made up of nine trustees, one of whom, D, is also a Trustee and director of each of B, F, and G. Each trustee is entitled to one vote. H, creator of B, serves as an Emeritus Trustee of C, with no voting rights.

The above referenced Foundations intend to enter into a reorganization plan that will include the establishment of M, an artist foundation that enhances the public understanding and appreciation of and public art with a primary focus on the work of P. The reorganization plan will also include a series of transfers of all B assets to C and M, with subsequent termination of B's private foundation status under Section 507(a)(1) of the Code and dissolution of B under N state law. Land and buildings currently owned by F and G will be transferred to C and M and various "start-up" grants will be paid by F and G to M.

The reorganization plan, in part, will provide for increased and ongoing financial stability and independence for C, and promote the continued growth and expansion of the C park.

B currently owns a significant amount of P's completed works. B also owns all of P's incomplete works, maquettes, and all copyrights to his work. In addition, family members of P own several of his completed works, as do hundreds of unrelated parties. All of the existing and future works (with the exception of completed pieces owned by P family members and private parties) and the copyrights to all P works were previously assigned by P to B.

B also owns a substantial collection of and artwork created by other artists (the Artist Collection) and has additional assets including cash and marketable securities, commissioned works in progress, and property and equipment.

As part of the reorganization plan, B signed an agreement with C loaning 16 P complete works and the Artist Collection to C. The pieces will be on loan through Q and have an estimated value of x.

The C pieces will be transferred by B to C subject to the restriction that all future decisions by C regarding the siting, and any de-accession of the C pieces will be subject to the sole written approval of the M Trustee. These pieces created by P are permanently displayed and have become associated with the C park, and are an integral to the established artistic and setting presented there.

The Artist Collection will be transferred by B to C subject to the restriction that all future decisions by C regarding the siting, and any de-accessions of certain iconic pieces that are integrated with the landscape of the C park and intended to be part of the C's park's permanently displayed collection, will be subject to the sole written approval of the M Trustee. These permanently displayed iconic pieces have become associated with the C park in the same way the other pieces discussed above, and are integral to the established artistic and aesthetic setting presented there.

F and G currently own land and buildings that comprise the C park (the "Property") which are valued at y. The property is subject to a lease between C, F, and G. As part of the reorganization plan, F and G intend to transfer the property to C on or before R. Certain areas of the property will be transferred subject to the restriction that all future decisions by C regarding landscaping, maintenance, and any future development of those areas will be subject to the sole written approval of the F Trustee. Additional areas of property will be transferred subject to restrictions that all future decisions by C regarding landscaping,

maintenance and any future development of those areas will be subject to the mutual consent of a committee composed of the C Chief Executive Officer, C Curator, and the F Trustee.

The property will also be transferred subject to restrictions that, if it can no longer be used as a park, all future decisions by C regarding alternative use(s) of the property, transfer of all or part of the property to another charitable entity, or merger of C with another charitable entity, will be subject to the sole written approval of the F Trustee.

C has previously received 60.14% of its total support from public sources. C has relied in the past on the support of visitors to the C park, art patrons, donations from the public, governmental grants, grants from unrelated organizations, and support from its various educational programs.

C will continue to attract a significant amount of public support subsequent to the reorganization plan and transfer of assets from B, F, and G to C by further advancing and expanding its fundraising and development programs. C is also focused on researching various grant opportunities and has increased its grant funding from foundations, corporations, and government entities over the past several years.

C currently has nine trustees, one of whom is also a Trustee and Director of each B, F, and G. Each trustee is entitled to one vote. P currently serves as a non-voting, emeritus board member of C. One individual serving on the C board is a nephew of P, however, his status as P's nephew does not make him disqualified person with respect to the Foundations or B.

The C board currently includes an entrepreneur, the trustee of a major corporation, a , and two attorneys. Several board members also serve as directors and officers of unrelated nonprofit and for profit organizations.

Law:

Treasury Regulations sections 1.170A-9(f)(6)(ii) and 1.509(a)-3(c)(4) set forth the criteria for an unusual grant.

Treasury Regulations section 1.170A-9(f)(6)(ii) states that, for purposes of applying the 2-percent limitation to determine whether the 33 1/3 percent-of-support test is satisfied, one or more contributions may be excluded from both the numerator and the denominator of the applicable percent-of-support fraction. The exclusion is generally intended to apply to substantial contributions or bequests from disinterested parties which:

- are attracted by reason of the publicly supported nature of the organization;
- are unusual or unexpected with respect to the amount thereof; and
- would, by reason of their size, adversely affect the status of the organization as normally being publicly supported.

Treasury Regulations section 1.509(a)-3(c)(4) states that all pertinent facts and circumstances will be taken into consideration to determine whether a particular contribution may be excluded. No single factor will necessarily be determinative. Such factors may include:

- Whether the contribution was made by a person who
 - a. created the organization
 - b. previously contributed a substantial part of its support or endowment
 - c. stood in a position of authority with respect to the organization, such as a foundation manager within the meaning of section 4946(b)
 - d. directly or indirectly exercised control over the organization, or
 - e. was in a relationship described in Internal Revenue Code section 4946(a)(1)(C) through 4946(a)(1) (G) with someone listed in bullets a, b, c, or d above.

A contribution made by a person described in a. - e. is ordinarily given less favorable consideration than a contribution made by others not described above.

- Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer.
- Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum.
- Whether (except in the case of a new organization) prior to the receipt of the particular contribution, the organization (a) has carried on an actual program of public solicitation and exempt activities and (b) has been able to attract a significant amount of public support.
- Whether the organization may reasonably be expected to attract a significant amount of public support after the particular contribution. Continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future public support.
- Whether, prior to the year in which the particular contribution was received, the organization met the one-third support test described in section 1.509(a)-3(a)(2) without the benefit of any exclusions of unusual grants pursuant to section 1.509-3(c)(3);
- Whether the organization has a representative governing body as described in Treasury Regulations section 1.509(a)-3(d)(3)(i); and
- Whether material restrictions or conditions within the meaning of Treasury Regulations section 1.507-2(a)(7) have been imposed by the transferor upon the transferee in connection with such transfer.

Application of Law:

There are several factors to take into consideration when determining whether the assets transferred by the reorganization plan constitute an unusual grant. First of all, the C park was originally created and developed by P as a project of G. B currently loans a significant amount of _____ to C at no cost for display at the C _____ park. In addition, C currently

leases the property from F and G at no cost. These foundations have been substantial contributors to C since its inception. Although P originally created C, C currently has nine trustees. One trustee is a Class B Trustee and Director of each B, F, and G. However, each trustee is only entitled to one vote. Additionally, P currently serves as a non-voting, emeritus board member of C.

Next, it is important to consider whether the contribution is in the form of cash, marketable securities, or assets which further the exempt purpose of the organization, such as a gift of a painting to a museum. C will use the contributions of art collections and property to further its exempt purpose of operating the C park and educating the public about contemporary art. C's ownership of the art collections and property will support its long-term sustainability as an independent organization, provide increased and ongoing financial stability for C, and enable it to attract financial support and donations of artwork for its collection.

Another factor in making the determination is whether the organization previously carried on an actual program of public solicitation and exempt activities and whether it has been able to attract a significant amount of public support. Additionally, it is important to look at whether the organization is expected to continue to attract public support after the assets are transferred. C is publicly supported. It solicits contributions from individual donors and grants from unrelated organizations and governmental entities. C has relied in the past on the financial support of visitors to and members of the C park, art patrons, donations from the public, grants and revenue from its educational programs and other related sources. C will continue to attract a significant amount of public support subsequent to the reorganization plan and transfer of assets by further advancing and expanding its fundraising and development programs. Fundraising begins at the individual level through the C Annual Fund, which provides unrestricted income for programs and operation, but also serves to bring in new donors to broaden C's base of support and identify major gift prospects. C also maintains major gift and planned giving programs. In order to accomplish the continued expansion of its development and fundraising efforts, C relies on its Director of Development and Development Associate, both full-time employees, and on its Executive Director of Marketing. C has also expanded its use of board members and other volunteers for fundraising purposes, and developed and improved its website to secure and maximize C's capacity to attract online contributions.

Another factor to consider is whether the organization has excluded unusual grants in prior years in order to meet the one third public support test. C has relied on the unusual grant exclusion once in its 13 year history. In the fiscal year ending S, C relied on the unusual grant exclusion to exclude B debt forgiveness. B had provided several loans to C, which B forgave during C's T fiscal years. C had not relied on the unusual grant exclusion prior to T.

The next item to consider is whether the grantee organization is controlled, directly or indirectly, by the contributor, or any person standing in a relationship to the contributor which is described in Section 4946(a)(1)(C) through (G) of the Code and whether the organization has a representative governing body. C currently has nine trustees. It has a representative governing body comprised of an entrepreneur, a trustee of a major corporation, two attorneys, and a . Several board members also serve as directors and officers of unrelated foundations. Each trustee is entitled to one vote. Only one board member is also a Trustee and Director of B, F, and G. Moreover, the Foundations do not directly or indirectly control C either by power of appointment or overlapping boards. P currently serves as a non-voting, emeritus board member of C.

The final factor to consider is whether or not material restrictions or conditions have been imposed by the contributor upon the organization in connection with the contribution. Section 1.507-2(a)(8)(i) provides that a material restriction or condition is one that prevents the transferee organization from freely and effectively using the contribution, or the income derived therefrom, in furtherance of its exempt purposes. The reorganization transfers under the reorganization plan will constitute a complete transfer of ownership of the assets to C. All assets included in the transfers will be held and administered by C in a manner consistent with one or more of its exempt purposes. The foundations plan to place certain restrictions on some of the assets included in the reorganization transfers. However such restrictions will not prevent the C board from having and maintaining ultimate authority and control over the transferred assets. For instance, certain art pieces will be transferred and subject to the restriction that all future decisions by C regarding the siting, re-siting, and any de-accession of these pieces will be subject to the sole written approval of the M Trustee. The restriction does not prevent C from freely and effectively using the artwork in support of its mission to maintain a park composed of works by well-known and emerging American and international artists. In addition, certain areas of the property will be transferred subject to the restriction that all future decisions by C regarding landscaping, maintenance, and any future development of those areas will be subject to the sole written approval of the F Trustee. Additional area of property will be transferred subject to restrictions that all future decisions by C regarding landscaping, maintenance and any future development of those areas will be subject to the mutual consent of a committee composed of the C Chief Executive Officer, C Curator, and the F Trustee. The property will also be transferred subject to restrictions that, if it can no longer be used as a park, all future decisions by C regarding alternative use(s) of the property, transfer of all or part of the property to another charitable entity, or merger of C with another charitable entity, will be subject to the sole written approval of the F Trustee. This last restriction is not material because it does not take effect unless it is impossible for C to use the property to operate a park. If the Property is used and operated as a park, C will not be prevented from freely and effectively using the property in furtherance of its exempt purposes.

In conclusion, the following seven factors from Section 1.509(a)-3(c)(4) of the Regulations support C's exclusion of the reorganization transfers from its public support calculation as an unusual grant: 1) the transferred assets will be used by C in furtherance of its exempt purpose, 2) C carries on a program of public fundraising and was publicly supported in the past, 3) C can expect to attract a significant amount of public support subsequent to the transfers, 4) C previously relied on the unusual grant exclusion only once before in its 13 year history, 5) C is not controlled, directly or indirectly, by disqualified persons or organizations, 6) C has a representative governing body, and 7) B, F, and G will not impose material restrictions or conditions on the assets transferred as part of the transfers. In addition, the reorganization transfers will occur pursuant to the reorganization plan, and the IRS has repeatedly recognized that the transfer of funds and assets between related organizations pursuant to a reorganization plan constitutes unusual grants.

The transfers pursuant to the reorganization plan should constitute an unusual grant. They are associated with the reorganization plan, are one-time transfers, and would adversely affect C's status as normally being a publicly supported. C will use the assets transferred directly in furtherance of its exempt purposes, and the transferred assets will provide for increased and ongoing financial stability and independence for C, and promote the continued growth and expansion of the C park. C has received public support since its inception, and can reasonably expect to attract a significant amount of public support following its receipt of the reorganization transfers. Finally, although P founded the park and serves as a trustee

and director of the related foundations, he serves as a non-voting member of the C board. He does not directly or indirectly, exercise control over C.

For all the forgoing reasons, the reorganization transfers should be characterized as an unusual grant within the meaning of Treasury Regulations section 1.509(a)-3(c)(4).

If you have any questions, please contact the person listed in the heading of this letter.

Sincerely,

Director, Exempt Organizations