DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Legend:

M = * * *
N = * * *
O = * * *
P = * * *
Q = * * *
x = $*

Dear Sir or Madam:

This is in response to a letter dated September 29, 2000, from M's authorized representative, who has requested certain rulings on M's behalf.

M is a nonprofit corporation located in N and organized under the laws of the State of O. M is exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). M has been classified as a private non-operating foundation under section 509(a).

According to M's original charter, M is organized and operated exclusively for charitable and educational purposes, including providing grants to colleges or universities exempt from tax under section 501(c)(3) of the Code; providing grants to deserving individuals residing within 125 miles of N for undergraduate and graduate education; endowing one or more faculty chairs; aiding the poor and distressed residents of N and surrounding areas by making grants to needy and indigent individuals for medical assistance and assistance in daily living; and, lessening the burdens of government by making grants to N for the maintenance of public recreational and municipal facilities which shall be available to the general public without regard to race, creed, color or religion.

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Until now, M has accomplished its exempt purpose(s) by making grants, such as annual scholarship grants to individuals graduating from the local public high school and attending nearby institutions of higher learning. M has also made grants to the local public high school to assist it in purchasing computers and other equipment, hiring additional teachers for the arts and sciences, and making repairs and improvements to its physical facilities. M recently funded a project whereby N's main street sidewalks were restored to brick, and gas light fixtures were installed restoring the historic nature of N's main street. Funds were also provided to N to maintain a small municipal picnic park and to make improvements to public recreational facilities utilized for softball, baseball and other outdoor recreational activities.

M's representative stated that M's operations have heretofore been limited due to limited resources, but otherwise are consistent with its exempt charitable purpose. However, a few years ago, M received substantial bequests because of the death of its founder and heirs, and the settlement of their estates. As a result, M is seeking to increase the scope of its charitable activities. For example, M funded the construction and equipping of a facility in N utilized by a satellite office of a community college for its public educational offerings. The community college is a state sponsored higher education institution.

M now proposes to build and operate a marina (the "Marina Project"), golf course (the "Golf Project") and certain common facilities (the "Common Facilities") consistent with its proposed amended and restated charter and by-laws. Collectively, the Marina Project, Golf Project and Common Facilities will be referred to as P. P will become an integral component of the State of O's park system and will be operated in compliance with rules and regulations of the State of O's department of environment and conservation ("Department"). The Department's responsibilities include operating and maintaining all state public recreational areas and facilities. It is M's intent that P will be built, maintained and operated for the benefit of the public at no cost to the State of O or the Department.

The State of O operates a number of parks, wilderness and recreational areas offering a variety of services to the general public. Marinas are offered in some locations where the park is situated on a large lake or navigable waterway, while golfing is offered in other locations. The golf courses are generally designed with four or five different tee boxes in order to attract and appeal to golfers of any skill level. Marinas generally have wet slips as well as dry storage. Marinas and golf sites generally have a marina store and pro shop, respectively.

The State of O passed legislation authorizing the executive branch to issue up to $x in general obligation bonds of the State of O ("Bonds") to fund a golf and marina public recreational facility in N. The Department has also expressed its intent to have a golf and marina park in N and included such project in the Department's strategic planning documents. After the legislation was passed, however, the Department completed a feasibility study and concluded that a marina and golf project may not be financially feasible due to current budget constraints and limitations.

The Department determined that the approved funding authorization of $x would not be sufficient to build and then subsequently operate and maintain P should the project not be fully self-supporting from inception. Budget constraints upon the Department would not permit it to operate or maintain a new facility in N while operating and maintaining other parks of the State

of O at standards established for all parks. However, the Department has indicated that such a project would be a welcome addition to O's state park system, and the Department has agreed to otherwise assist M in obtaining necessary approvals from various agencies.

Financing of the construction and equipping of P will take place as follows. M will contribute land, which it currently owns, along with any improvements thereon to the State of O. The State of O will issue the Bonds and make the proceeds of the sale thereof available to M to pay or reimburse M for the costs of constructing and equipping P pursuant to a lease agreement between the State of O as lessor and M as lessee (the "Lease"). The Lease will obligate M to make lease payments to the State of O from time to time in amounts equal to debt service on the Bonds. Any additional needed funding would come from M's assets or from the proceeds of borrowing.

The Bonds will be issued as tax-exempt "qualified 501(c)(3) bonds" within the meaning of section 145 of the Code, with the exception of certain taxable bonds that will finance the "Excluded Facilities" described below. The initial lease term would be for a period of 20 or 25 years during which time M would be expected to amortize fully any debt obligations issued by the State of O in connection with the funding. M would have an option to renew its lease for a period of time not exceeding the length of the initial lease term. During any renewal lease term, it is expected that lease rentals would be fixed, or some minimum fixed amount plus a percentage of gross revenues derived in connection with the operation of P, or simply a percentage of the gross revenue derived in connection with the operation of P. At the end of the initial lease term and renewal thereof, if any, the property and all improvements thereon will revert to the sole possession of the State of O.

The Golf Project will principally consist of an 18-hole course, club house/pro shop combination, several other buildings to house maintenance equipment and repair facilities, a golf-cart storage shed, and parking facilities. The club house/pro shop facility will be consistent in size, design and use to those at other Department courses. The pro shop will be utilized as an administrative center for assigning tee times, collecting greens and cart fees and other sales. Items sold will consist of clothing unique to the course such as hats or shirts containing P's logo, as well as tees, gloves, balls and any similar items for the convenience of park visitors. The facility will also house a small snack stand where visitors can obtain soft drinks and snacks. No alcoholic beverages are permitted on Department-owned or operated property. M has entered into a management contract with Q providing for the management of the Golf Project upon completion of construction and its opening to the public. The management contract is designed in form and substance to constitute a "qualified management contract" within the meaning of Rev. Proc. 97-13, 1997-1 C.B. 632.

The Marina Project will consist of 250-500 wet slips and facilities for a marina store, fuel, boat repair and a dry storage facility for smaller boats. M intends to enter into a management agreement constituting a "qualified management contract" within the meaning of Rev. Proc. 97-13, supra, with an experienced and competent service provider to manage the Marina Project except for the marina store, boat repair facility and fuel facility ("Excluded Facilities").

M intends to sublease the physical properties constituting the Excluded Facilities at fair market value to a qualified and experienced operator. The risks and rewards of the operational activities carried on in the Excluded Facilities would be solely those of the sub-lessee thereof.

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No part of the Excluded Facilities will be financed with proceeds from the tax-exempt Bonds. Rather the Excluded Facilities will be financed from the proceeds of the sale of taxable bonds or other available funds of M. The "service provider" under the contemplated marina qualified management contract and the "sub-lessee operator" of the Excluded Facilities may be the same or related persons. The Marina Project will also include parking facilities, some of which may be shared with the Golf Project.

The Marina Project also includes right-of-way acquisition and construction of a new bridge over a creek that runs through P. The bridge is necessary in order to allow boats access to the Marina Project since the current span over the creek is not high enough to permit any navigable traffic from a local river into the creek or the Marina Project. The Marina Project will be part of the Department's water-based recreational facilities and subject to its rules and regulations. The bridge, once completed, will be part of the State of O's highway system and maintained by the state. M will have no obligations with respect to the bridge other than to make payments to the State of O for its design, construction and right-of-way acquisitions.

Similar to other state parks, P will include common facilities such as one or more picnic pavilion facilities and parking, hiking and/or nature trails and walks for those park visitors who do not play golf or enjoy boating activities. In addition, common to both the Golf Project and the Marina Project will be a separate facility to house the office for park rangers ("Common Facilities"). One or more park rangers, who will be on duty, will be employees of the Department and state law enforcement officers. This facility will constitute the main park office where park visitors can obtain information specific to P or other state parks, and it will have parking facilities, some of which may be shared with the Golf Project or Marina Project. M will make cash contributions to the Department, in an agreed upon amount, to reimburse the Department for the costs of rangers and other Department overhead incurred by the Department for management and oversight of P. M will bear the costs of repairs and maintenance as well as utilities of the park rangers' office. Rangers will be housed either in a residence(s) built and maintained by M on site, or the Department will receive additional funds to reimburse it for housing allowances provided the rangers.

The Golf Project is currently under construction and is expected to be ready for the public by the Fall of 2001; the Marina Project is in the planning and permit stage. Most environmental permits have been obtained, and all appropriate requests of various state authorities have been made as required by law. The bridge design is being performed, however, soil problems have been discovered that may adversely impact the costs of the bridge. Upon receipt of final cost estimates, M must make a determination if the Marina Project should proceed as planned. Unless costs are so prohibitive as to render the Marina Project unfeasible, all portions of P will proceed as set forth herein. M intends to complete the Golf Project and Common Facilities even if bridge costs render the Marina Project unfeasible.

As part of the park system of the State of O, P will be subject to the same rules and regulations as other comparable state parks. Such rules and regulations include, for example, the prohibition of the sale or use of alcoholic beverages on park property, the fees that are charged for park resources, and the requirement that park resources be available to the general public in a nondiscriminatory manner. M intends to comply with all required Department rules and regulations. Further, M does not contemplate carrying on any activities, in any substantial manner, which are not carried on by the Department at other comparable public parks.

Section 501(a) of the Code exempts from federal income tax organizations described in section 501(c).

Section 501(c)(3) of the Code provides, in pertinent part, for the exemption from federal income tax for organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations requires that an organization be both organized and operated exclusively for one or more exempt purposes in order to be exempt.

Section 1.501(c)(3)-1(b)(1) of the regulations states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. It requires an organization to establish that it is not organized or 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.

Section 1.501(c)(3)-1(d)(2) of the regulations defines "charitable" in its generally accepted legal sense and includes, among other things, the erection or maintenance of public buildings, monuments, or works, and the lessening of the burdens of government.

Section 511 of the Code provides, in part, for the imposition of tax on the unrelated business taxable income of organizations described in section 501(c), including organizations described in section 501(c)(3).

Section 512(a)(1) of the Code provides that the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) that it regularly carries on, less the allowable deductions which are directly connected with the carrying on of such trade or business, and computed with the modifications contained in section 512(b).

Section 512(b)(3) of the Code excludes from the computation of unrelated business taxable income all rents from real property and all rents from personal property leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease.

Section 512(b)(4) of the Code provides that notwithstanding sections 512(b)(1), (2), (3), or (5), in the case of debt-financed property (as defined in section 514) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 514(a)(1), and there shall be allowed, as a deduction, the amount ascertained under section 514(a)(2).

Section 513(a) of the Code defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

Section 513(c) of the Code provides that the term "trade or business" includes any activity that is carried on for the production of income from the sale of goods or the performance of services. This provision also states that an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization.

Section 1.513-1(a) of the regulations provides that gross income of an exempt organization subject to the tax imposed by section 511 of the Code is includable in the computation of unrelated business taxable income if:

(1) It is income from trade or business;
(2) such trade or business is regularly carried on by the organization; and,
(3) the conduct of such trade or business is not substantially related to the organization's exempt functions.

Section 1.513-1(b) of the regulations states that for purposes of section 513 of the Code, the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services.

Section 1.513-1(c) of the regulations provides that specific business activities will ordinarily be deemed to be "regularly carried on" if they manifest a frequency and continuity, and are pursued in a manner, generally similar to comparable commercial activities of nonexempt organizations.

Section 1.513-1(d)(2) of the regulations provides that a trade or business is "related" to exempt purposes, in the relevant sense, only where the conduct of the business activities has causal relationship to the achievement of the exempt purposes (other than through the production of income); and it is "substantially related" for purposes of section 513 of the Code only if the causal relationship is a substantial one. Thus, for the conduct of a trade or business to be substantially related to the purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of these purposes. Whether the income producing activities contribute importantly to the accomplishment of any purpose for

which an organization is granted exemption depends in each case upon the facts and circumstances involved.

Section 514(a)(1) of the Code provides that unrelated business taxable income shall include a percentage of net income derived from debt-financed property.

Section 514(b)(1) of the Code defines the term "debt-financed property" as any property that is held to produce income and with respect to which there is acquisition indebtedness at any time during the taxable year (or during the 12 months preceding disposition in the case of property disposed of during the taxable year).

Section 514(c)(1) of the Code defines "acquisition indebtedness," with respect to any debt-financed property, as the unpaid amount of

(A) the indebtedness incurred by the organization in acquiring or improving such property;
(B) the indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and,
(C) the indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of acquisition or improvement.

Section 1.514(b)-1(b)(1) of the regulations excludes from the definition of "debt-financed property" any property substantially all the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption. The "substantially all" test is met if 85 percent or more of the use of such property is devoted to the organization's exempt purpose.

Section 4942(j)(3) of the Code defines an "operating foundation" as any organization, which makes qualifying distributions directly for the active conduct of the activities constituting the purpose(s) or function(s) for which it is organized. Qualifying distributions must satisfy the income test of section 4942(j)(3)(A) and either the asset, endowment, or support test of section 4942(j)(3)(B). Qualifying distributions are defined by section 4942(g) as any amount paid to accomplish one or more purposes described in section 170(c)(2)(B) of the Code, or any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 53.4942(b)-1(a)(1)(ii) of the regulations defines an "operating foundation" as any private foundation which, in addition to satisfying the assets test, the endowment test, or the support test set forth in sections 53.4942(b)-2(a), (b) and (c), makes qualifying distributions directly for the active conduct of activities constituting its charitable, educational, or other similar exempt purpose, equal in value to substantially all of the lesser of, the foundation's adjusted net income or minimum investment return.

Section 53.4942(b)-1(b)(1) of the regulations provides that amounts paid to acquire or

maintain assets, which are used directly in the conduct of the foundation's exempt activities, such as the operating assets of a museum, public park or historic site, are considered direct expenditures for the active conduct of the foundation's exempt activities.

Section 53.4942(b)-3(a) of the regulations provides, in part, that a foundation may satisfy the income test and either the assets, endowment, or support test by satisfying such tests for any three taxable years during a four-year period consisting of the taxable year in question and the three immediately preceding taxable years or on the basis of an aggregation of all pertinent amounts of income or assets held, received or distributed during such four-year period.

Section 4943(a) of the Code imposes a tax on a private foundation's excess business holdings in a business enterprise. Paragraph (c) of this section defines excess business holdings as the amount of stock or other interest in an enterprise, which the foundation would have to dispose of in order for the foundation's remaining holdings in that enterprise to be permitted holdings.

Section 4943(d)(3)(A) of the Code provides that the term "business enterprise" does not include a functionally related business (as defined in section 4942(j)(4)).

Section 4942(j)(4) of the Code provides that the term "functionally related business" means a trade or business which is not an unrelated trade or business (as defined in section 513), or an activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization.

Section 53.4943-10(a) of the regulations provides that a "business enterprise" includes the active conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services, and which constitutes an unrelated trade or business under section 513 of the Code. Paragraph (b) of that section provides that the term "business enterprise" does not include a functionally related business as defined in section 4942(j)(4).

Rev. Ruls. 85-1, 1985-1 C.B. 177, and 85-2, 1985-1 C.B. 178, set forth criteria for determining whether an organization's activities are lessening the burdens of government. First, a governmental unit must consider the organization's activities to be its burden. Second, these activities must actually lessen the burden of the governmental unit. An activity is a burden of government if there is an objective manifestation by the governmental unit that it considers the activities of the organization to be its burden. The interrelationship between the governmental unit and the organization may provide evidence that the governmental unit considers the activity to be its burden. Whether the organization is actually lessening the burdens of government is determined by considering all of the relevant facts and circumstances.

Rev. Rul. 74-399, 1974-2 C.B. 172, holds that the operation of a dining room, cafeteria and snack bar by a museum for the use of museum staff, employees and members of the public visiting the museum does not constitute an unrelated trade or business under section 513 of the Code.

Rev. Rul. 69-268, 1969-1 C.B. 160, holds that the operation of a cafeteria and coffee shop by a hospital described in section 501(c)(3) of the Code is substantially related to the hospital's exempt purpose and does not constitute unrelated trade or business under section 513.

M's representative has inquired as to the tax implications attendant to M's funding and operation of P, i.e., the Golf Project, Marina Project, and Common Facilities. With respect to its continuing qualification for recognition of exemption under section 501(c)(3) of the Code, M must show that it will be organized and operated exclusively for exempt purposes. With regard to the organizational test, M proposes to amend and restate its charter to include references to lessening the burdens of government and promoting the social welfare and the common good of the public. These charitable purposes will be in addition to M's educational purposes, and thus M will continue to meet the organizational test in accordance with section 1.501(c)(3)-1(b)(1) of the regulations.

With regard to the operational test, the question is whether M's funding and operation of P will be consistent with the requirements under section 501(c)(3) of the Code. In addition to the golf course and the marina, P will also contain picnic pavilion facilities, parking facilities, and hiking and/or nature trails and walks. As noted above, P will be operated and maintained as a state park within the State of O's park system subject to the rules and regulations of the Department. These rules and regulations include being open to all members of the public without regard to race, creed, color or religion. The State of O, through two separate legislative acts, has not only authorized the construction of P, but has also authorized the issuance of bonds for that purpose. The State of O's authorization of P through legislation and its intention to regulate it through the Department are objective manifestations by the State of O that it considers P its burden. The State of O would not be able to operate and maintain the park without M. All of the available information establishes that M will further its charitable purpose under section 501(c)(3) by operating and maintaining P as a state park. Under these circumstances, M will lessen the burdens of the State of O. See Rev. Ruls. 85-1 and 85-2, supra. Therefore, such activity will not adversely affect M's status as an organization described in section 501(c)(3).

Although owning, leasing or subleasing the Excluded Facilities will not be in furtherance of an exempt purpose under section 501(c)(3) of the Code, leasing these facilities in the manner described will not adversely affect M's tax-exempt status under section 501(c)(3). See section 1.501(c)(3)-1(c)(1) of the regulations. Amounts derived from leasing these facilities will be excluded from the computation of unrelated business taxable income under section 512(b)(3) as rent from real property. However, a portion of such rental payments may constitute unrelated business taxable income under sections 512(b)(4) and 514 to the extent the facilities are debt-financed property under section 514(b)(1).

In part, operating P consists of conducting activities carried on for the production of income from the sale of goods or the performance of services. These activities manifest a frequency and continuity, and are pursued in a manner generally similar to comparable for-profit entities, namely golf courses and marinas. Thus, M's operating of P constitutes a regularly carried on trade or business under sections 1.513-1(b) and (c) of the regulations. Generally, however, these activities will contribute importantly to M's charitable purpose of lessening the burdens of government, as described above. See section 1.513-1(d)(2). Thus, as these

activities have a substantial causal relationship to the achievement of M's exempt purposes, income derived by M from the operation of P will not be subject to tax under section 511 of the Code. Applying the "fragmentation rule" contained in section 513(c) to the clubhouse/pro shop facility, income from the sale of tees, gloves and balls to visitors to the golf course will not constitute unrelated business taxable income under section 512(a)(1). Similarly, income derived from the snack stand where visitors can obtain soft drinks and snacks will not constitute unrelated business taxable income. See Rev. Ruls. 74-399 and 69-268, supra. However, we conclude and you have agreed that income derived from the sale of clothing such as hats or shirts with P's logo will be unrelated business taxable income under section 512(a)(1). Such sales of clothing will not be substantially related to M's exempt purpose as required by section 513.

With regard to the issues of debt-financed income under section 514 of the Code and excess business holdings under section 4943, except as noted previously, income from the operation and maintenance of P will not constitute unrelated business taxable income because such revenues will be derived from a trade or business that is substantially related to M's exempt purpose. Therefore, such income will not constitute debt-financed income within the meaning of section 514, and, accordingly, will not be subject to tax under section 511. See section 1.514(b)-1(b)(1) of the regulations. Also, to the extent M's operation of P is not an unrelated trade or business under section 513, it is a functionally related business under section 4942(j)(4). As such, it is not a business enterprise in accordance with section 4943(d)(3)(A). See section 53.4943-10(a) and (b)

With regard to the issue of operating foundation status under section 4942(j)(3) of the Code, the amounts paid by M to construct, operate and maintain P are qualifying distributions under section 4942(g)(1) of the Code and are directly for the active conduct of the activities constituting M's exempt purpose. See section 53.4942(b)-1(b) of the regulations. For purposes of section 4942(j)(3), M will be classified as an operating foundation for the years in which it meets the relevant tests set forth in section 4942 and section 53.4942(b)-1. See section 53.4942(b)-3(a).

Based on the information you have submitted as presented above, we rule that:

1. The proposed amendment to M's charter and by-laws as contained in the Restated and Amended Charter and by-laws will not adversely affect M's status as an organization described in and exempt from tax under section 501(c)(3) of the Code;

2. Except as noted previously, operating P as described in this request, under the facts and circumstances, constitutes, with respect to M, an activity substantially related to M's exempt purpose(s) under sections 501(c)(3) and 509(a) of the Code; owning, leasing, or subleasing the Excluded Facilities will not adversely affect M's tax-exempt status under section 501(c)(3);

3. Except as noted previously, P will not constitute an unrelated trade or business under sections 512 or 513 of the Code, and, accordingly, such income, if any, derived therefrom will not be subject to tax under section 511; amounts derived from owning, leasing, and subleasing the Excluded Facilities will constitute rent from real property under section 512(b)(3), however, a portion of the rental payments may

constitute unrelated business taxable income under sections 512(b)(4) and 514 to the extent the facilities are debt-financed property under section 514(b)(1);

4. Except as noted previously, income derived by M from P, if any, will not constitute debt-financed income within the meaning of section 514 of the Code and accordingly, will not be subject to tax under section 511;

5. To the extent the operation of P is not an unrelated trade or business under section 513 of the Code, the activities contemplated by M in connection with operating P will not constitute a "business enterprise" under section 4943(d)(3);

6. Amounts paid by M to acquire or maintain assets which are used in connection with P will be deemed to be "qualifying distributions" within the meaning of section 4942(g)(1) of the Code and will also be deemed to be distributions to acquire or maintain assets used directly in the conduct of M's exempt activities within the meaning of section 4942(j)(3)(B) and section 53.4942(b)-1(b)(1) of the regulations;

7. M will be classified as an "operating foundation" within the meaning of section 4942(j)(3) of the Code for M's first taxable year for which it satisfies the "income test" as set forth in section 4942(j)(3)(A) and one of the "alternative tests" as set forth in section 4942(j)(3)(B) on a stand alone basis for each of M's three immediately preceding taxable years, or M will be classified as an operating foundation in the first taxable year of M in which it satisfies the tests of section 4942(j)(3)(A) and (B) on an aggregate basis as set forth in section 53.4942(b)-3(a) of the regulations for such first taxable year and M's immediately preceding three taxable years; and,

8. Once classified as an "operating foundation," M will continue to be classified as an "operating foundation" with respect to any subsequent tax year of M in which it satisfies the "income test" and one of the "alternative tests" for the taxable year and the immediately preceding three taxable years on an aggregate basis or in such future taxable year of M, if M has satisfied the "income test" and one of the alternative tests" on a stand alone basis in each of the three immediately preceding taxable years of M.

Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the transactions described above under any other provision of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to M's authorized representative. A copy of this letter should be kept in M's permanent records.

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.

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

Sincerely,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4