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

Date: MAY 14 1999

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T:3

Employer Identification Number:

Legend:

X =
Y =
Z =

Dear Sir or Madam:

This is in reference to a letter dated January 11, 1999, submitted by your authorized representatives, requesting a private letter ruling as to the federal income tax consequences of the proposed transactions described below.

The information provided indicates that you have been recognized as exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code and have been classified as other than a private foundation under section 509(a) of the Code. Your primary purpose is to promote low-speed magnetically levitated ("Maglev") transportation systems as a means of providing safe, nonpolluting, and efficient public transportation.

In order to demonstrate the feasibility of Maglev transportation systems to X (the "City") and other governmental entities, you plan to construct a Maglev people mover (the "Shuttle System") and a 5,000-space parking garage (the "Garage"). The Garage will be constructed to the east of an all-purpose auditorium/coliseum (the "Arena") in the downtown area of the City. The Shuttle system will connect the Garage to a subway station (the "Subway Station"), a distance of about 2,200 feet. The Shuttle System and the Garage are referred to herein as the "Project." The ride between the Garage and the Subway Station will take approximately 72 seconds. Passengers will be riding in a transit car magnetically supported two inches above the guideway about 20 to 30 feet above the streets.

There are currently approximately 2,300 surface parking spaces available at the Arena. The Garage will be on current surface parking at the Arena, thereby displacing 900 parking spaces, but adding an additional 5,000 spaces in the Garage. A study commissioned by you (the "Study") indicated that there is a current shortage of parking spaces in the City's downtown area of 6,459 spaces. There are several construction projects either planned or underway in the downtown area, which provide for some parking, but will also generate additional traffic. Overall, the Study projects

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that by 2004, that even with the addition of 5,000 parking spaces in the downtown area, a shortage of 6,090 spaces will remain.

The proposed Garage will be a multi-use parking facility. Day and evening usage will be by commuters and visitors to office, government and other buildings, most of which have little or no parking. Evening and weekend parking will be generated by about 137 Arena events per year. These will include hockey, basketball, soccer, wrestling, boxing, exhibit shows, ice shows, concerts, rodeos, graduations, etc. While patrons using the Garage will be charged a commercially reasonable fee to park, anyone will be permitted to ride on the Shuttle System free of charge. Those using the Garage for evening activities may use the Shuttle System for transportation to and from downtown restaurants, stores and office buildings. Both the City and Y County (the "County") have approved the Project, providing all the necessary rights of way, building permits, and other approvals.

You expect that the Project will be financed by both taxable and tax-exempt bonds, with an average maturity date of thirty years. After the bonds have been repaid, you intend to transfer the Garage and Shuttle System to the County, or an appropriate governmental agency selected by the County. The County will enter into a guaranty pledging its full faith and credit toward payment of principal and interest on certain bonds issued by you in connection with the Project.You will use any remaining surplus funds to build additional Maglev shuttle systems in the City and surrounding communities, or for other community development purposes, including the construction of a new ice hockey arena.

The City will enter into an agreement with you covenanting that the City will grant a minimum of $40 million in parking tax abatement to be credited against parking taxes due from Project operations. You will enter into agreements with relevant property tax authorities (the City, the County and the School District) whereby the authorities covenant to accept $100,000 annually commencing on the date of the closing of the financing (increased by 3% annually) to be paid by you in lieu of any applicable property taxes.

Y, a municipal authority, currently operates buses and a light rail transit system in the City and and the County. It also operates park-and-ride lots in the County, and is actively involved in expanding the number of park-and-ride lots to relieve traffic congestion in the downtown area and to facilitate the use of the public transportation system by area commuters. The City itself operates numerous downtown and fringe parking garages.

Section 501(c)(3) of the Code provides, in part, for an exemption from federal income tax for corporations organized and operated exclusively for charitable, scientific or educational purposes, provided no part of the corporation's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to

eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 511 of the Code imposes a tax on the unrelated business taxable income of organizations exempt from federal income tax under section 501(c).

Under section 512(a) of the Code, 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) regularly carried on by it, less allowable deductions directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection (b).

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

Section I.513-I(d)(2) of the Income Tax Regulations provides that a trade or business is "related" to exempt purposes only where the conduct of the business activity has a causal relationship to the achievement of any exempt purpose, and is "substantially related" for purposes of section 513, only if the causal relationship is a substantial one. Thus, for the conduct of a trade or business from which a particular amount of gross income derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services for which the gross income is derived must contribute importantly to the accomplishment of those purposes.

Rev. Rul. 69-269, 1969-1 C.B. 160 holds that the operation of a parking lot for patients and visitors only by a section 501(c)(3) hospital does not constitute unrelated trade or business under section 513 of the Code.

In Rev. Rul. 85-2, 1985-1 C.B. 178 the Service determined that an organization that providing legal assistance to guardians ad litem who represent abused and neglected children before a juvenile court that requires their appointment lessens the burdens of government and, therefore, qualifies for exemption under section 501(c)(3) of the Code. As part of its analysis the Service examined whether the organization's activities are activities that a governmental unit considers to be its burdens, and whether such activities actually "lessen" such governmental burden. The ruling notes that a favorable working relationship between the government and the organization is strong evidence that the organization is actually "lessening" the burdens of the government.

In Rev. Rul. 69-269, the hospital's charitable purposes were furthered by the operation of a parking facility. Similarly, the construction and operation of the Garage, in close proximity to the Shuttle System, will contribute importantly to your educational and scientific purpose of promoting the use of Maglev technology in the development of public transportation systems. Passengers are an important ingredient in creating an effective demonstration model. The lack of parking currently available at that location and in the surrounding downtown area would, without the Garage, create a lack of potential riders.

The public transportation system provided by the City and County through Z, as well as the numerous municipal parking facilities provided by the City, are objective manifestations by the City

and County that they consider such activities to be part of their governmental burden. The support and involvement of the City and County through the parking tax abatements, the property tax agreement, the guaranty agreement, and the grant of right of ways, and other needed approvals is strong evidence that they believe the Project will actually lessen that burden.

Accordingly, we rule as follows:

(1) The construction and operation of the Garage will not adversely affect the your status as a tax-exempt public charity under section 501(c)(3) of the Code.

(2) The operation of the proposed Garage will be substantially related to the your charitable, educational and scientific tax-exempt purposes, and it will lessen the burdens of government.

(3) The proposed Garage will not constitute an unrelated trade or business within the meaning of section 513 of the Code 513.

(4) The income generated by the proposed Garage will not constitute unrelated business taxable income within the meaning of section 512(a) of the Code and will not be subject to tax under section 511.

This ruling letter is directed only to the organization that requested it. Section 6110(j)(3) of the Internal Revenue Code provides that this ruling may not be used or cited by others as precedent.

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

Sincerely,

(signed) Robert C Harper, Jr.

Robert C. Harper, Jr.
ID# 50-03055
Chief, Exempt Organizations
Technical Branch 3