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

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Date:
SEP 14 1999

NO THIRD PARTY CONTACTS

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T:1

Employer Identification Number:

Legend:
B =
M =
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Dear Sir or Madam:

We have considered your ruling request dated January 19, 1999, as supplemented by your letter of August 23, 1999. You have asked us to rule that the proposed use of M's parking facility by certain other exempt organizations will not result in M's receipt of unrelated business taxable income or adversely affect M's tax exempt status.

M is an outgrowth of N. N is a liberal arts college exempt under section 501(c)(3) of the Code and classified as a public charity under section 170(b)(1)(A)(ii). In the 1970's, N received a federal grant to study the feasibility of developing a two-year program to train students for careers as primary care physicians who would work in medically under-served areas among minority and poor populations. The study revealed a severe shortage of S physicians in the United States as well as a shortage of physicians for rural areas and inner cities in the United States. To address these shortages, N developed a two-year basic sciences program. The students in this program transferred to other medical schools at the end of the two-year program to complete their medical training.

M was formed in 1980 to become a four-year degree granting institution and to carry on N's program of medical training as a full fledged medical school. M has been recognized as exempt under section 501(c)(3) of the Code and is classified as a public charity under section 170(b)(1)(A)(ii). M's Articles of Incorporation require that at least four members of its board of trustees be persons who are also members of N's board of trustees. N's president serves as an additional, ex-officio member on that board. M's Charter also specifies that upon dissolution, all of its assets will be distributed to N or for its benefit.

227

M is also structurally tied to N, O, P, Q, and R, through its membership in B. B is a consortium of private institutions of higher education exempt under section 501(c)(3) of the Code and a supporting organization described in section 509(a)(3). B's Charter limits its membership to section 501(c)(3) educational institutions. B's board of trustees currently consists of 18 members as follows: (i) the chair of the governing board of each of the six member institutions; (ii) the president of each of the six member institutions; and (iii) six elective members.

All of B's member institutions are located within walking distance from each other. B functions as a vehicle to assist the member institutions in activities that may be carried out jointly and cooperatively for the benefit of each and all said institutions. B promotes the interests of its member institutions by directing programs, building and maintaining joint facilities and raising external funds for cooperative ventures. B's members currently share the Library, the Dual Degree Engineering Program, the Radiation Safety Program, the Administrative Data Processing Center, the Career Planning and Placement Center, security and shuttle services, and cross registration.

Within this context, M proposes to build a 700 space parking deck adjacent to its administration and classroom building. The parking facility will be used by M's employees, students, and visitors. Employees will pay an annual or daily parking fee. Reserved spaces will be offered for an additional fee. Students will receive a reduced rate. M will operate the facility 24 hours a day, seven days a week.

M proposes to let the students, faculty and staff affiliated with the other members of B, specifically with N and O, use the parking facility, as available, for the same fees charged its own students, faculty and staff. M indicates that this is primarily for the convenience of the members of the academic community it serves in that the facility will provide safe, affordable parking for students, faculty and staff and allow the easy cross registration and cross facility use contemplated by B. Based on these representations, M has asked us to rule that the revenue received from the use of the parking deck by its faculty, students and staff, as well as the faculty, students, and staff of institutions affiliated with M through B, specifically, N and O, will not be considered unrelated business taxable income and that the receipt of such amounts will not jeopardize M's exemption under section 501(c)(3) of the Code.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated "exclusively" for religious, charitable, educational, or other specified purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which does not engage in proscribed legislative and political activities.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in its generally accepted legal sense, and includes the advancement of education.

Section 511 of the Code imposes a tax on the "unrelated business taxable income" of organizations described in section 501(c) of the Code.

Section 512(a)(1) of the Code defines the term "unrelated trade or business" to mean the gross income derived by an organization from any unrelated trade or business (defined in section 513) regularly carried on by it, less the allowable deductions which are 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 provides that the term "unrelated trade or business" means, any trade or business the conduct of which is not substantially related to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption. However, section 513(a)(2) further states that such term does not include any trade or business which is carried on by an organization described in section 501(c)(3) primarily for the convenience of its members, officers, patients, or employees.

Section 1.513-1(b) of the regulations provides that for purposes of section 513 the term "trade or business" generally includes any activity carried on for the production of income from the performance of services. Section 513(c) of the Code provides that an activity does not lose its identity as a trade or business merely because it is carried on 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(d)(2) of the regulations provides that a trade or business is "related" to exempt purposes only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than through the production of income). Further, it is "substantially related", only if the causal relationship is a substantial one. For this relationship to exist, the production of the income or the performance of the service from which the gross income is derived must contribute importantly to the accomplishment of exempt purposes. Whether the activities productive of gross income contribute importantly to such purposes depends, in each case, upon the facts and circumstances involved.

In Rev. Rul. 69-269, 1969-1 C.B. 160, a hospital was concerned with providing sufficient parking space for visitors because visitation was considered to be supportive therapy and part of patient treatment. Because of a serious lack of adequate parking space, the hospital constructed a parking lot for patients and visitors only adjacent to its main building. The lot was not for general public use. A fee was charged for the use of these facilities and all profits were placed in the hospital's general operating fund. The revenue ruling states, in part, that "one of the purposes of the hospital is to provide health care for members of the community... [and] without adequate parking facilities for patients and visitors, the hospital could not operate with maximum effectiveness in serving the public." The revenue ruling concludes that providing the parking facilities contributes importantly to the accomplishment of the hospital's exempt purposes and, therefore, does not constitute an unrelated trade or business within the meaning of section 513 of the Code.

In Rev. Rul. 69-268, 1969-1 C.B. 160, a hospital operated a cafeteria and coffee shop that was open to persons visiting hospital patients. The operation of the eating facilities was held not unrelated trade or business within the meaning of section 513 because visits by outsiders were regarded as a form of supportive therapy that assists in the recovery of patients. By allowing the visitors to use the eating facilities, the hospital enabled the visitors to spend more time with the patients and contributed importantly to the hospital's exempt purpose. In addition, the facilities served hospital personnel which allowed them to remain on the premises in order to be available for emergency situations and other hospital duties.

In Rev. Rul. 58-194, 1958-1 C.B. 240, an organization operated a book and supply store and a cafeteria and restaurant on the campus of a state university for the convenience of the student body and faculty. The facilities of the organization were available to everyone connected with the university, and the profits were used solely for the benefit of the students and faculty of the university. Because the organization served almost exclusively the members of the faculty and student body, it was considered performing functions for their benefit and convenience and in furtherance of the university's educational program.

Rev. Rul. 81-19, 1981-1 C.B. 353, describes an organization formed as a support organization to a university. One of its activities was the management of vending machine facilities in all parts of the campus for the convenience of the students. The revenue ruling concluded that because this activity was an integral part of the activities of the university, and the organization was operating the program for the convenience of the university community, the income from this activity would not be subject to tax as unrelated business income.

M proposes to operate the parking deck for the convenience of its own students, faculty and staff. Section 513(a)(2) provides a specific exception to the definition of unrelated trade or business for a business that is carried on by an organization described in section 501(c)(3) primarily for the convenience of its members, officers, patients, or employees. Rev. Ruls. 58-194 and Rev. Rul. 81-19 provide two examples of the type of business activity often encompassed within the "convenience exception." The operation of a parking deck for faculty, students and staff, like the operation of a book store or the operation of vending machines on campus, is an integral part of operating a large urban campus and is undertaken primarily for convenience rather than income production. Accordingly, the income from the operation of the parking deck for M's faculty, students and staff is not subject to tax as unrelated business income. Section 513(a)(2), however, does not cover services provided for the convenience of other members of the community.

M's plans to allow the faculty, students and staff of the other members of B to use the facility must be analyzed under the facts and circumstances test of section 1.513-1(d)(2) of the regulations. In Rev. Ruls. 69-269 and 69-268, the Service applied the facts and circumstances test to hospitals operating a parking lot, a cafeteria and a gift shop for both patients and visitors. Providing similar services for its patients would have been clearly covered by the convenience exception in section 513(a)(2) of the Code. Because the services were not limited to its patients, the hospital had to establish that the services to visitors contributed importantly to its accomplishment of exempt purposes to establish that the activity was not an unrelated trade or business. To determine that allowing other consortium members to use the parking facility is related to M's exempt purposes, M must similarly establish that this activity contributes importantly to the accomplishment of its exempt purposes.

M is structurally related to N and several other members of B through interlocking boards of trustees. In addition, M, along with N, O, P, Q, and R, share an educational mission and have agreed to share resources through the consortium structure of B. This results in many faculty, students and staff participating in activities on more than one campus. Allowing free access to M's campus for faculty, students and staff of these associated institutions is essential for M to satisfy its educational purposes. The provision of parking facilities to the faculty, students and staff of consortium members will enable them to park safely while teaching, working, or attending classes at M. Providing convenient parking facilities thus contributes importantly to M's exempt purpose of operating a medical school. Without such a parking facility, M could not operate at maximum

effectiveness. Accordingly, we rule that operating the parking deck for M's faculty, students and staff, as well as the faculty, students and staff of consortium members, will not constitute unrelated trade or business within the meaning of section 513.

In addition, we rule that the operation of the parking facility in the manner described will not jeopardize M's exempt status under section 501(c)(3) of the Code as long as M continues to operate as a school within the meaning of section 170(b)(1)(A)(ii) of the Code.

This ruling is directed only to the organization that requested. Section 6110(k)(3) of the Internal Revenue Code provides that it 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,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4