

UCOP

Research Administration Library
(Library Copy)
12th Floor
Kaiser Building
Oakland

University of California
Office of the President

University Controller

Research Administration Office

Memo

Operating Guidance

No. 83-33

Supplement No. 1

January 19, 1993

VICE CHANCELLORS—BUSINESS AND FINANCE ADMINISTRATION*
CONTRACT AND GRANT OFFICERS
OFFICE OF THE PRESIDENT FUNCTIONAL MANAGERS

SUBJECT: Exempt Status of The Regents of the University of California--Clarification

Contract and Grant *Memo* No. 83-33 (December 2, 1983) provided documentation concerning the University's tax exempt status under Section 501(c)(3) of the Internal Revenue Code, and IRS acknowledgment that the University is not a private foundation within the meaning of Section 509(a)(1) of the Code. Tax laws governing private foundations are more burdensome than those governing other kinds of charitable organizations.

Recently, one campus was asked to complete a tax-exempt certification which asked for further information about the University's status as "not a private foundation," with reference to 170(b)(1)(A) of the Code. A brief background on the meaning of "private foundation" is given in Enclosure 1, which is copied from pp. 436-7 of *The Law of Tax Exempt Organizations* by Bruce R. Hopkins (John Wiley & Sons, 1987). Note that in §21.1 the text states that organizations deemed not to be private foundations are listed in the Code at 170(b)(1)(A)(i) through (v). Enclosure 2 is a copy of a form filed by the University in 1970 stating that it is not a private foundation because it is "a governmental unit, 170(b)(1)(A)(v)."

Thus the answer to the question about the University's status as not a private foundation is that the University is not a private foundation pursuant to 170(b)(1)(A)(v) of the Code. We hope this information will help other campuses that may have to complete a similar tax-exempt status form.

Refer: William Sellers
510-987-9847

Subject Index: 13
Organization Index: U-115



David F. Mears
Director
Research Administration Office

Enclosures

*Note: The addressees above represent the standard distribution of Contract and Grant Memos. Additional addressees, if any, may be added based on the subject of the Memo. See cc's.

21

"Private Foundations" and "Public Charities"

Prior to enactment of the Tax Reform Act of 1969, there was no statutory definition of the term "private foundation." However, up to that time, a private foundation generally was recognized as a charitable organization to which contributions could be made which were deductible in an amount up to 20 percent of an individual donor's adjusted gross income, in contrast to contributions to churches, schools, hospitals, and other public charities, which were deductible to the extent of 30 percent of the donor's adjusted gross income.¹

This 30 percent/20 percent distinction was introduced in the federal tax law in 1964. Before that, it was not until 1954 that Congress acted in recognition of the fact that there are distinctive differences in the nature of charitable organizations. In that year, Congress permitted an extra ten percent deduction (from 20 to 30 percent) for contributions to operating educational institutions, churches, and hospitals, and enacted other provisions in their favor. In 1964, the privileged class of "30 percent organizations" was expanded to include other public and publicly supported organizations and a five-year carryover of excess contributions was added for gifts to these organizations.

By the mid-1960s, the likelihood that alleged private foundation abuses would eventually result in statutory modifications was on the increase. A Treasury Department Report on Private Foundations, issued in 1965, emphasized the view that there was a need for more public involvement in the operation of philanthropic institutions that benefit from preferential treatment under the tax laws. Failing such direct public involvement, the Treasury Report stated that there must be an assurance through other means (namely, governmental regulation) that funds set aside for appropriate charitable purposes will find their way promptly into the hands of those institutions where there is assurance of public control and operation.

Congress, having become convinced that there were problems concerning charitable organizations that needed remedy, believed that these problems

¹IRC § 170(b)(1) (pre-1969 Act).

were especially prevalent in the case of organizations in the 20 percent deduction category. On the other hand, it was also apparent that certain organizations in the 30 percent deduction group were not involved in these problems. Consequently, in enacting a definition of the term "private foundation," Congress conjured up a statute which provides that a private foundation is any domestic or foreign charitable organization,² other than four categories of organizations.³ The classification of the organizations which are deemed not to be private foundations—and hence are "public charities"—is the subject of IRC § 509(a).

The organizations which fall into the categories of IRC § 509(a)(1), (2), or (3) are those which either have broad public support or actively function in a supporting relationship to public charities.⁴ The fourth category of nonprivate foundation is the organization organized and operated exclusively for testing for public safety, as described in IRC § 509(a)(4). Contributions to public safety testing organizations are not deductible and therefore, according to the 1965 Treasury Report, they are more analogous to business leagues, social welfare organizations, and similar tax-exempt groups than to private foundations.

Despite the technicalities of the term "private foundation" accorded to it by Congress, a private foundation essentially is a charitable organization that is funded from one source (usually, one individual, family, or corporation), that receives its ongoing funding from investment income (rather than a consistent flow of contributions), and that makes grants for charitable purposes to other persons rather than conduct its own programs. The "private" aspect of a private foundation, then, principally looks to the nature of its financial support, rather than to the nature of its governance.

§ 21.1 "Public" Institutions

Organizations which are deemed not to be private foundations by reason of IRC § 509(a)(1) are essentially those in the old 30-percent deduction category.⁵ These organizations, that may be termed the "public" institutions, are described in IRC §§ 170(b)(1)(A)(i) through (v). Other organizations in other categories of nonprivate foundation status may also have the attributes of "institutions" but the entities in the "public" institution classification are those that are there because they satisfy—*per se*—the requirements of at least one category of "public" institution.

²That is, an organization described in IRC § 501(c)(3) (and exempt from federal income taxation under IRC § 501(a) for that reason).

³Reg. §§ 1.509(d)-1, 1.509(e)-1.

⁴Reg. § 1.509(a)-1.

⁵Reg. §§ 1.170(A)-9(a)(3), 1.509(a)-2.

1003

Notification Concerning Foundation Status

☐ For
☐ Cl.
☐ Col.
☐ Le.
☐ Con.

Enclosure 2

(June 1970)


Department of the Treasury,
Internal Revenue Service

Please check one block only. If necessary, check more than one block. If necessary, check more than one block.	Remove address label on front cover and place it here <input type="checkbox"/>	Name of organization	Employer Identification Number
	Check name, etc. if necessary.	The Regents of the University of California (see attached)	
	Enter employer identifica- tion number at right only if incorrect or not shown on label.	Number and street Suite 689 University Hall, 2200 University Avenue	
		City or town, State and ZIP code Berkeley, California 94720	

Please place an "X" in the one numbered block that applies to your organization, provide any additional information called for, and return the form promptly to the Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19155. Do not check a block until you have read the instructions and Code definitions applicable to that block. Section references are to the Internal Revenue Code of 1954.

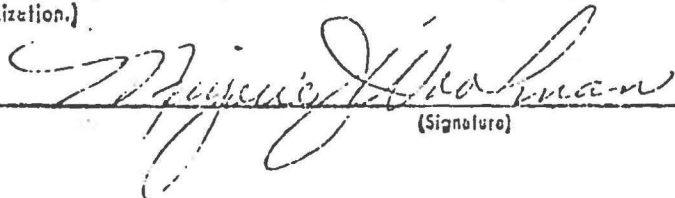
- 1 ☐ We are a private foundation within the meaning of section 507(a). (If you are a private foundation, are you claiming status as an operating foundation within the meaning of section 4942(j)(3)? ... ☐ Yes ☐ No If "Yes," attach a statement setting forth all the facts upon which you base your answer including an identification of the clause of section 4942(j)(3)(B) that is applicable.)

We are not a private foundation because we are:

- 2 ☐ A church. Section 170(b)(1)(A)(i).
- 3 ☐ A school. Section 170(b)(1)(A)(ii).
- 4 ☐ A hospital. Section 170(b)(1)(A)(iii).
- 5 ☐ A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(iii).
- 6 ☒ A Governmental unit. Section 170(b)(1)(A)(v). 
- ☐ An organization operated for the benefit of a college or university owned or operated by a Governmental unit. Section 170(b)(1)(A)(iv).
(Complete the Financial Schedule on page 2.)
- 8 ☐ An organization that normally receives a substantial part of its support from a Governmental unit or from the general public. Section 170(b)(1)(A)(vi).
(Complete the Financial Schedule on page 2.)
- 9 ☐ An organization that normally receives no more than 1/3 of its support from gross investment income and more than 1/3 of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions. Section 509(c)(2).
(Complete the Financial Schedule on page 2.)
- 10 ☐ An organization operated solely for the benefit of and in connection with one or more of the organizations described in 2 through 9 (or for the benefit of one or more organizations described in section 501(c)(1), (2), or (3) and also described in 9 above), but not controlled by disqualified persons other than foundation managers. Section 507(b)(3).
(Attach a statement identifying and describing the organization(s) for whose benefit you are operated and the relationship between you and the organization(s).)
- 11 ☐ An organization organized and operated to test for public safety. Section 507(a)(4).

- 12 ☐ We are not sure of our classification.
(Attach a copy of your most recently filed information return, Form 990-A, if you filed one, and a statement describing your operations and explaining why you are not sure of your classification. If you think you may be described in 7, 8, or 9, complete the Financial Schedule on page 2.)

I declare that I have examined the information entered on this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete. (Must be signed by a principal officer, manager, or authorized trustee of the organization.)


(Signature)

NOV 30 1970

(Date)

Secretary of The Regents of the University of California

(Title)

1. 12

2.