

Subject: Richard L. Fox - Newspapers Look to Philanthropy to Support Local Journalism

“Local newspapers across the country, whether in printed or digital form, are turning to philanthropy to help sustain their operations. As demonstrated recently by the Seattle Times, the Salt Lake Tribune, and the Philadelphia Inquirer, there is no one size fits-all model, as there are various alternatives available to local newspapers to attract philanthropic dollars from both individuals, private foundations and other donors, whether the newspaper is a for-profit entity or a Section 501(c)(3) tax-exempt organization.”

Richard L. Fox provides members with his commentary on the recent trend of local newspapers, in the face of declining advertising revenue and subscribers, looking to philanthropy to support the continuation of local journalism that is vital to local communities.

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Now, here is Richard's commentary:

EXECUTIVE SUMMARY:

In response to the economic crisis facing local newspapers, newspapers across the country are now turning to their local communities for philanthropic support, similar to local hospitals, schools, museums and other organizations serving the public interest that seek community

donations to help fund their ongoing operations. This past April, the Seattle Times, a for-profit newspaper, created a community-funded initiative, known as the “Seattle Times Investigative Journalism Fund,” with the Seattle Foundation to seek support for its investigative journalism from individual donors. Because the donations are made to the Seattle Foundation, and not directly to a for-profit newspaper, the contributions from individuals are tax-deductible, although the ultimate recipient of the funds is a for-profit newspaper. In this situation, the for-profit newspaper is merely the instrument through which a tax-exempt purpose in the form of public interest journalism is accomplished.

In May, in a similar effort to obtain funding through charitable contributions, the Salt Lake Tribune, another for-profit newspaper, announced that it would relinquish its for-profit status by converting to a nonprofit news organization and seeking classification with the IRS as a tax-exempt organization under Internal Revenue Code Section (“Section”) 501(c)(3), which would make it the first legacy newspaper in America to go this route. Whether a newspaper is a for-profit entity or classified as a tax-exempt organization, it is possible for an individual to make charitable contributions to support public interest journalism on a tax-deductible basis. Similarly, a private foundation can make a grant to support such journalism at either a for-profit or tax-exempt newspaper which, in either case, can be applied against its annual 5% minimum distribution requirement.

FACTS:

The importance of local newspapers in America cannot be overstated. They provide local communities with a vital source of original, substantive news and information reporting and high-impact public interest investigative journalism. Their role as watchdog organizations, which provides essential oversight of fundamental institutions of our society both in the public and private sector, benefits not only their subscribers but provides value to those who never even buy a newspaper or read their website. Indeed, in recognizing the crucial role of newspapers to a functioning democratic society, Thomas Jefferson once said that “were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.” *Letter from Thomas Jefferson to Edward Carrington (January 16, 1787).*

In the face of shrinking advertising revenue and a significant drop in circulation, local newspapers across the country are struggling, having been forced to reduce staff, including journalists, as well as reduce the scope and depth of their coverage. An alarming number of newspapers, unable to overcome their financial struggles, have ceased operations in recent years, as a result of which many communities have been left without the vital local journalism traditionally supplied by local newspapers, which can't readily be replaced by other resources. "*The U.S. newspaper crisis is growing: More than 1 in 5 local papers have closed since 2004,*" E. Keane, The Salon (October 16, 2018). And, while local newspapers are seeking to transition into digital businesses in an effort to save them from the decline of the printed newspaper, the data shows that while the national papers, like The Wall Street Journal, the New York Times and the Washington Post, have managed to stabilize their businesses in this difficult financial environment, local newspapers are not keeping up with this transition and are facing difficulties converting readers into paying digital customers. "*In News Industry, a Stark Divide Between Haves and Have-Nots,*" K. Hagey, L. Alpert and Y. Serkez, The Wall Street Journal (May 4, 2019).

Local Newspapers Turning to Philanthropy

In response to the economic crisis facing local newspapers, many local newspapers across the country are now turning to philanthropy for community funded support, similar to local hospitals, schools, museums and other organizations serving the public interest that seek community donations to help fund their ongoing operations. This past April, the Seattle Times, a for-profit newspaper, created a community-funded initiative, known as the "Seattle Times Investigative Journalism Fund," with the Seattle Foundation, as a fiscal sponsor, to seek support for its investigative journalism from individual donors. "*Seattle Times launches Investigative Journalism Fund,*" Seattle Times (April 14, 2019). Because the donations are made to the Seattle Foundation, a Section 501(c)(3) tax-exempt organization, contributions by individuals are tax-deductible, although the donated funds are ultimately used to support investigative journalism at a for-profit newspaper. In May, in a similar effort to obtain funding through tax-deductible charitable contributions, it was announced that the Salt Lake Tribune would relinquish its for-profit status by converting to a nonprofit news organization and seeking classification with the IRS as a tax-exempt organization under Section 501(c)(3), which would make it the first legacy

newspaper to go this route. “*Can Paul Huntsman Save The Salt Lake Tribune?*, K. Rosman,” The New York Times (May 17, 2019).

From 2010 to 2018, the Seattle Times received \$4 million directly from 21 foundations, corporations and nonprofits to support news coverage in the areas of education, traffic and homelessness. “*How The Seattle Times brought in more than \$4 million to fund critical coverage*,” K. Hare, Poynter (August 22, 2018). Because of its for-profit status, however, under the applicable provisions of Section 170, donations made directly to the newspaper by individuals are not tax-deductible as charitable contributions. In an effort to obtain individual fundraising support, including from readers, individuals are now able to make tax-deductible contributions to the Seattle Times Investigative Journalism Fund, a fund maintained by the Seattle Foundation, a Section 501(c)(3) tax-exempt community foundation that can receive tax-deductible donations that are used to support investigative journalism initiatives at the Seattle Times. The ultimate responsibility for ensuring that the donations are used for tax-exempt purposes and in the public interest is in the hands of the Seattle Foundation. The first milestone for the new investigate journalism fund is \$500,000 in individual contributions.

To convert from a for-profit entity to a Section 501(c)(3) tax-exempt organization, the individual ownership of the Salt Lake Tribune has to be relinquished, as any earnings of such an organization cannot inure to the benefit of any private shareholder or individual. Because of the prohibition on political activities under Section 501(c)(3), the paper will also have to relinquish political endorsements, something often held near and dear by many for-profit newspapers. Moreover, as in the case of any organization seeking Section 501(c)(3) tax-exempt status, to approve its application for tax-exempt status, the IRS must be convinced that the newspaper is now both organized and operated for tax-exempt purposes under Section 501(c)(3). If approved as a tax-exempt organization, charitable contributions to the Salt Lake Tribune would be deductible under Section 170 of the Internal Revenue Code, allowing the paper to become a community-funded enterprise that can receive tax-deductible donations directly from individuals without the need, as in the case of the Seattle Times, to partner with a charitable foundation. The paper will be governed by a community board and essentially become a community asset.

Under an innovative approach utilized by the late philanthropic and cable television entrepreneur H.F. “Gerry” Lenfest, in 2016, as owner of the for-profit Philadelphia Inquirer, Mr. Lenfest donated this daily metropolitan newspaper that was founded in 1829 to what is now known as the Lenfest Institute for Journalism, a Section 501(c)(3) tax-exempt organization in partnership with the Philadelphia Foundation, Philadelphia’s community foundation. “*Could It Be Sunny In Philadelphia,*” T. Griggs, The Knight Foundation (June 15, 2016); “*Must newspapers die? A prescription for revitalizing local news,*” *Opinion*, J. Friedlich, The Philadelphia Inquirer (March 15, 2019). The Philadelphia Inquirer remained a for-profit newspaper, but became a wholly owned taxable subsidiary of the Lenfest Institute for Journalism that was then converted to a public benefit corporation under Delaware law. The Lenfest Institute for Journalism is dedicated to supporting sustainable business models for local journalism, accelerating the transition of print newspapers to full digital integration, and engaging in grant-making and program activities to support and preserve public interest journalism nationwide. Thus, the Philadelphia Inquirer is now a public benefit corporation wholly owned by a charity focused on preserving public interest journalism.

The Philadelphia Inquirer is not the only local newspaper owned by a charity. Nelson Poynter controlled the St. Petersburg Times, a legacy newspaper subsequently renamed the Tampa Bay Times in 2012, and upon his death in 1978 contributed the paper to the Poynter Institute for Media Studies, a nonprofit journalism school and research organization located in St. Petersburg, Florida, classified as a tax-exempt organization under Section 501(c)(3). Unlike the route currently being taken by the Salt Lake Tribune in seeking tax-exempt status, the Philadelphia Inquirer and the Tampa Bay Times, although owned by a charity, remained for-profit newspapers not subject to the various restrictions and limitations imposed upon newspapers that are Section 501(c)(3) tax-exempt organizations.

Interestingly, donors who have donated their for-profit businesses to charity historically have done so as a means to support the charity. One of the best-known examples of this was the donation by Milton S. Hershey of his famous chocolate company to the Milton Hershey School, a Section 501(c)(3) tax-exempt organization classified as an educational organization under Section 170(b)(1)(A)(ii). As a result of its ownership of shares of stock of what is now known as the “Hershey Company” and the receipt of dividends over the years since Mr. Hershey’s donation, the Milton Hershey

School now has an endowment exceeding \$12 billion that is used to fund its operations. Unlike the Hershey Company situation, local newspapers are not the revenue-generating engines they once were and are therefore not ideal candidates to fund charities. The contribution of the Philadelphia Inquirer to the Lenfest Institute for Journalism was premised upon Mr. Lenfest's vision of making the Philadelphia Inquirer a "community asset" and preserving local journalism.

Although Section 501(c)(3) tax-exempt organizations that are classified as private foundations (as opposed to public charities) generally cannot own 100% of a for-profit company under the excess business holdings rule of Section 4943, under the recently enacted "Newman's Own Exception," a private foundation can now own 100% of a for-profit company, including a newspaper, if it meets the requirements under this new exception, including that the company be contributed to the foundation (as opposed to the foundation acquiring the company). The Newman's Own Exception was enacted so that upon Paul Newman's death, his food company, "Newman's Own," could be bequeathed to his private foundation, the "Newman's Own Foundation," and continue to be held by the foundation without regard to the excess business holdings rule of Section 4943, which would have otherwise not permitted such ownership except for a limited time period.

Qualifying a Newspaper as a Section 501(c)(3) Tax-Exempt Organization

A newspaper that qualifies as a Section 501(c)(3) tax-exempt organization is eligible to receive tax-deductible contributions, a potentially significant funding source, including from individuals. Such status, particularly if the organization is a public charity under Section 509 (as opposed to a private foundation), also streamlines the ability of a private foundation to make grants and provide other funding, such as program-related investments, to a newspaper by eliminating the need of the foundation to exercise "expenditure responsibility" under Section 4945(h), which imposes administrative burdens and can create a significant impediment to the foundation making a grant to a for-profit newspaper in the first instance.

Whether in a printed or digital version, a newspaper, like any other Section 501(c)(3) tax-exempt organization, can only qualify for such status if it is ***both organized and operated*** exclusively for one or more tax-exempt purposes under Section 501(c)(3) (e.g., religious, charitable, scientific,

testing for public safety, literary, or educational purposes), and its earnings do not inure to the benefit of any individual or shareholder. Reg. Section 1.501(c)(3)-1(a)(1). Tax-exempt newspapers may not participate in any political campaign, thereby prohibiting the endorsement of political candidates, and no substantial part of their activities may constitute lobbying, thereby imposing restrictions on newspapers pushing for legislation. Even if a newspaper is able to attain Section 501(c)(3) tax-exempt status, unless it can qualify as a public charity under the requirements of Section 509(a), it will be classified as a private foundation and subject to the restrictive excise tax regime under Chapter 42 of the Internal Revenue Code. Nonprofit news organizations that attain tax-exempt status under Section 501(c)(3) are, however, generally able to meet the public support tests under either Section 509(a)(1) or (2) and therefore avoid private foundation status.

Interestingly, a Senate Bill, S. 673, known as the “Newspaper Revitalization Act,” was introduced in 2009, which provided that a “qualified newspaper corporation” would be treated as described in Section 501(c)(3) and deemed the activities of such an entity to be “educational,” which constitutes a tax-exempt purpose under Section 501(c)(3). Under S. 673, a corporation was treated as qualified newspaper corporation if (1) the trade or business of such corporation or organization consists of publishing on a regular basis a newspaper for general circulation, (2) the newspaper published by such corporation or organization contains local, national, and international news stories of interest to the general public and the distribution of such newspaper is necessary or valuable in achieving an educational purpose, and (3) the preparation of the material contained in such newspaper follows methods generally accepted as educational in character. S. 673 still required that the newspaper not participate in any political campaign and that no substantial part of its activities constitute lobbying. The Newspaper Revitalization Act proved to be rather controversial and never became law, so that there is currently no provision under the Internal Revenue Code providing a specific exemption to organizations publishing newspapers. And, although the bill would have made it easier for a newspaper to achieve tax-exempt status, it did not make attaining such status a certainty and likely would have provided substantial obstacles to legacy newspapers converting to such status.

In light of the absence of any specific statute providing for the tax-exempt status of a newspaper, an organization publishing a newspaper or other

news publication must look to authority interpreting the requirements under Section 501(c)(3) for a publisher of a newspaper or other similar publication. A complete discussion of a newspaper qualifying for tax-exempt status is beyond the scope of this article. Generally, however, the success of newspapers obtaining such status has depended upon the underlying facts and the application of case law and IRS rulings to such facts. The tax-exempt purpose typically relied upon for such status is “educational,” as opposed to “journalism” which is not an enumerated purpose under Section 501(c)(3). The IRS has ruled that a publication is educational in nature if (1) the content is “educational”; (2) the material materials was prepared by following procedures generally accepted as “educational”; (3) the publication’s distribution is necessary or useful to accomplish the organization’s educational purposes; and (4) the manner in which the materials is distributed is distinguishable from ordinary commercial practices. Rev. Rul. 67-4, 67-1 C.B. 121. In this ruling, an organization was formed for the purpose of encouraging basic research in specific types of physical and mental disorders, to improve educational procedures for teaching those afflicted with such disorders, and to disseminate educational information about such disorders, by the publication of a journal containing current technical literature relating to these disorders. The IRS ruled that the organization qualified under Section 501(c)(3), stating:

The methods used in preparing and presenting the abstracts conform to methods traditionally accepted as “educational” in character. The organization provides a reference to literature on the research undertaken in the area, and enables the afflicted to receive improved instruction and treatment. The distribution of the abstracts is carried out essentially in a “charitable” manner, in the sense that there is a public benefit derived from the distribution. The charges for the publication recover only a portion of the costs.

In Rev. Rul. 67-4, the IRS noted that the facts in that ruling were distinguishable from another ruling, Rev. Rul. 60-351, C.B.1960-2, 161, “involving an organization which is publishing a magazine and selling it to the general public in accordance with ordinary commercial publishing practices.” Unlike in Rev. Rul. 67-4, where the charges for the publication recovered only a portion of the cost, in Rev. Rul. 60-351, the publication was sold to the general public at “regular subscription rates,” which

accounted for most of its revenue, with only a limited amount received in the form of charitable contributions. Interestingly, in failing to find that the organization met the requirements of Section 501(c)(3) in Rev. Rul. 60-351, the IRS particularly noted that the articles of incorporation of the organization, in addition to providing that the organization was formed to further charitable, scientific, literary and educational purposes, also stated that it was organized to published a magazine “to provide a vehicle for the creative activity of writers and scholars,” which the IRS determined was not limited to furthering Section 501(c)(3) tax-exempt purposes. Based upon the specific authority in the articles of incorporation for the corporation “to publish a magazine, the use or distribution of which is not distinctly required to accomplish any” Section 501(c)(3) purposes, the IRS concluded that the corporation “was devoted to publishing a magazine and selling it to the general public in accordance with ordinary commercial practices.”

Nonprofit news organizations that have successfully attained Section 501(c)(3) status have focused on the delivery of public interest journalism through print and interactive media, and rely substantially upon charitable contributions for their ongoing operations as opposed to the more traditional subscription and advertising revenue sources of commercial newspapers. They provide coverage of such issues as the environment, housing, homelessness, transportation, education, politics, government, public policy and breaches of the public trust. Examples of news organizations classified as tax-exempt organizations under Section 501(c)(3) include the San Francisco Public Press, ProPublica, Mother Jones, The Texas Tribune and the Voice of San Diego.

Although the Philadelphia Inquirer and the Tampa Bay Times are owned by charities, as for-profit newspapers, they not subject to the “educational” and “non-commercial” requirements imposed on Section 501(c)(3) tax-exempt organizations. Because it is seeking tax-exempt status, the Salt Lake Tribune, the first legacy newspaper apparently seeking to do so, would have to meet such requirements, in addition to giving up its for-profit ownership structure and political endorsements. The 148-year-old Salt Lake Tribune provides a wide mix of coverage well beyond investigate journalism, including sports and entertainment, which are not the type of topics generally considered to be “educational” or to further any other exempt purpose enumerated under Section 501(c)(3), perhaps setting the stage for a challenge by the IRS to a successful transition of the paper from a for-profit to tax-exempt.

Under the “operational test” applicable to a Section 501(c)(3) tax-exempt organization, it is not necessary for an organization to engage “exclusively” in activities accomplishing tax-exempt purposes. Instead, the standard is that the organization must engage “primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) ... An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.” Reg. Section 1.501(c)(3)-1(c)(1). In *Better Business Bureau v. U.S.*, 34 AFTR 5 (66 S.Ct. 1945), where the asserted basis for the exemption under Section 501(c)(3) was “educational,” the U.S. Supreme Court stated:

In this instance, in order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes. It thus becomes unnecessary to determine the correctness of the educational characterization of petitioner's operations, it being apparent beyond dispute that an important if not the primary pursuit of petitioner's organization is to promote not only an ethical but also a profitable business community. The exemption is therefore unavailable to petitioner.

An organization operating a nonprofit newspaper, including one that is seeking Section 501(c)(3) status, is essentially engaged in a trade or business. Where an organization otherwise meets the requirements of Section 501(c)(3), the operation of a trade or business that is substantially related to the exercise or performance by such organization of its tax-exempt purposes constituting the basis for its tax-exempt status, i.e., a “related trade or business,” will not negatively impact its Section 501(c)(3) exempt status, notwithstanding the fact that it constitutes a “trade or business.” Therefore, even where an organization conducts a trade or business of operating a newspaper or other news organization, Section 501(c)(3) tax-exempt status is still available where the operation of the newspaper substantially furthers the organization’s educational purposes, such as the provision of public interest and investigative journalism for the benefit of the local community. Indeed, this is the case with the various

nonprofit news organizations across the country that have been able to obtain a favorable IRS ruling as to their Section 501(c)(3) tax-exempt status.

As indicated above, if more than an insubstantial of a newspaper's activities are not in furtherance of its exempt purposes, then the Section 501(c)(3) status of the paper would be at risk under the operational test of Section 501(c)(3). Thus, the coverage by a newspaper of sports, entertainment and other topics that may be beyond that which is considered "educational" under Section 501(c)(3) and, therefore, not considered to further a tax-exempt purpose, i.e., an "unrelated trade or business," if more than as an insubstantial part of the entire coverage provided by the paper, could lead to disqualification under Section 501(c)(3). Under a so-called "fragmentation rule" under Reg. Section 1.513-1(b), an activity does not lose its identity as a trade or business merely because the activity is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors that may, or may not, be related to the exempt purposes of the organization. The regulations provide, for example, that "activities of soliciting, selling, and publishing commercial advertising do not lose identity as a trade or business even though the advertising is published in an exempt organization periodical which contains editorial matter related to the exempt purposes of the organization." Thus, in the case of a legacy newspaper that continues to cover sports and entertainment within the body of one newspaper whose primary purpose is educational may be viewed as operating two separate trades or businesses, one an "unrelated trade or business" and the other a "related trade or business."

Because an organization running a newspaper presumably would be considered to be operating an unrelated trade or business by virtue of its "non-educational" coverage, it is instructive to look to the "commensurate in scope" test of Rev. Rul. 64-182, 1964-1 CB 186, and the related provisions under Reg. Section 1.501(c)(3)-1(e)(1). Under this authority, an organization otherwise qualifying under Section 501(c)(3) will not be disqualified from such status "although it operates [an unrelated] trade or business as a substantial part of its activities" provided, however, that the organization is not organized and operated for the primary purpose of carrying on an unrelated trade or business and the Section 501(c)(3) tax-exempt activities "are commensurate in scope with its financial resources." By its terms, "the primary purpose test recognizes that under certain

circumstances, the operational requirement of Section 501(c)(3) may be met even though an organization operates [an unrelated] trade or business as a substantial part of its activities.” See GCM 36130. Where the activities of an unrelated trade or business grow to the point that they generate revenues that outpace the financial needs of the organization's exempt activities, the organization could then be at risk for disqualification under Section 501(c)(3) and, in such a situation, may be better served to spin-off such activities into a wholly owned taxable subsidiary to protect its tax-exempt status.

The commensurate in scope test is “essentially a proof requirement, the practical application of which results in a denial of an exempt status only if it affirmatively appears that the particular trade or business activities in question are being so conducted as to substantially serve some non-exempt purpose. The test is satisfied if the facts show that an organization is carrying on a charitable program reasonably commensurate with its financial resources, including income from business activities.” Id.

In GCM 34682, for example, the IRS, in applying the commensurate in scope test, ruled that the operation of large department store by a Section 501(c)(3) tax-exempt organization, which was otherwise separately engaged in activities furthering tax-exempt purposes through grants and other charitable activities, would not negatively impact its tax-exempt status, stating that so long the profits of the department store owned by a nonprofit corporation “have been effectively dedicated to some charitable objective ... ***such organization could engage in an indeterminate amount of business and still be exempt under section 501(c)(3) so long as it can be said that there is a reasonable operation of the property for the beneficial use of charity.*** In such case, we would regard it as being operated exclusively for charitable purposes, and not for the primary purpose of carrying on unrelated trade or business within the meaning of regulations section 1.501(c)(3)-1(e).” (Emphasis added.) Thus, in GCM 34682, the fact that a Section 501(c)(3) tax-exempt organization ran a large department store as part of its overall operations, which clearly did not operate for tax-exempt purposes, had no effect on the organization’s tax-exempt status.

In the case of a legacy newspaper seeking Section 501(c)(3) exempt status, the continued historical provision of sports, entertainment and other coverage beyond that which may be considered “educational” would

appear to be essential to the organization's ongoing ability to maintain and attract readers, which is vital to sustaining the very existence of the newspaper and its ability to provide the type of public interest journalism that the IRS has considered to be educational in granting Section 501(c)(3) tax-exempt status to newly created news organizations. That is, the discontinuation of the sports, entertainment and other non-educational coverage that a legacy paper has historically provided, and which readers have come to expect, could jeopardize the continued viability of the paper and, therefore, its very ability to provide any coverage, including public interest journalism important to the local community that otherwise primarily furthers a Section 501(c)(3) tax-exempt purpose.

In determining the effect of such non-educational coverage on the Section 501(c)(3) status of a legacy newspaper, it would appear appropriate to apply the commensurate in scope test, given that such non-educational coverage of a newspaper may essentially be considered to be an unrelated trade or business carried on in conjunction with, and as part of, a larger trade or business that directly furthers educational purposes under Section 501(c)(3) by primarily providing investigative and other public interest journalism for the benefit of the local community.

Therefore, so long as a legacy newspaper otherwise meets all of the requirements under Section 501(c)(3), then continuing to provide sports, entertainment and other coverage that may not be considered to be "educational" (i.e., as an unrelated trade or business) should not be fatal to Section 501(c)(3) tax-exempt status provided, however, that the primary purpose of the paper is not the coverage of sports, entertainment or other non-educational issues and any revenue produced by the paper is effectively and primarily dedicated to the achievement of the Section 501(c)(3) tax-exempt objectives of the paper, such that the educational activities and programs of the newspaper are commensurate in scope with its financial resources.

Thus, while a newspaper devoted solely to sports and entertainment would not likely qualify for Section 501(c)(3) tax-exempt status, a legacy newspaper that only incidentally covers these areas in order to continue to attract readers to a newspaper focusing primarily on public interest journalism and other "educational" topics presumably should qualify. Indeed, without the incidental sports and entertainment coverage that induces the continued readership of a legacy newspaper, the educational

objectives of the newspaper may never be even accomplished because without sports and entertainment, the continued operations of the paper, may no longer be viable. Thus, the sports and entertainment coverage, albeit as an unrelated trade or business, should be considered to be carried out only for the beneficial use of a newspaper focusing on public interest journalism and other educational topics consistent with its Section 501(c)(3) tax-exempt purposes.

Just as in GCM 34682, where the reasonable operation of a department store for the beneficial use of the charity would not negatively impact its tax-exempt status, there is no reason why the reasonable coverage of topics such as sports and entertainment, without which a legacy newspaper would presumably not be viable and could not therefore further its tax-exempt purposes, should cause the paper that otherwise meets the requirement of Section 501(c)(3) to be disqualified from such status.

There is, of course, no certainty that the IRS will agree with this approach and it may simply take the position that mixing sports and entertainment coverage with public interest journalism is fatal to attaining tax-exempt status or that a particular newspaper is operating in a manner indistinguishable from a commercial enterprise.

Pending the IRS approval of the transition to Section 501(c)(3) tax-exempt status, the Salt Lake Tribune will retain its current business model or to subscriptions, as stated by Paul Huntsman, the Tribune's publisher, to the readers on May 8, 2019, stating:

We are in the beginning stages of transitioning The Salt Lake Tribune to a 501(c)(3) nonprofit organization. We will be the first legacy newspaper in the United States to take this bold move. To be clear, there are no immediate changes to our current business model or to subscriptions while we await approval from the IRS.

I have always seen The Salt Lake Tribune as Utah's institution, much

like our libraries, hospitals and the arts and cultural organizations that enrich our lives and reflect our shared civic goals. I will continue to serve as publisher, and Jennifer Napier-Pearce will continue in her role as editor.

These are challenging times for our nation, our state, and journalism. Utahns have relied on The Tribune to make sense of the world around us, to create a common conversation that crosses geography and party lines, and to participate effectively in a democratic society. By transitioning to a nonprofit business model we are ensuring that Utahns will continue to have the impactful, empowering journalism they need in perpetuity.

Funding a For-Profit Newspaper Using Philanthropy

Even where a newspaper retains its for-profit status, it is still possible for it to receive funding directly from private foundations and other charitable foundations for certain public interest journalism beneficial to the community, and this in fact is being done. A grant by a private foundation in this context can be applied against its annual 5% minimum distribution requirement. Although the grantee in this situation is a for-profit entity, the grant must be used to accomplish tax-exempt purposes and, indeed, in Rev. Rul. 74-587, 1974-2 CB 162, the IRS specifically recognized that for-profit entities may serve as “the instruments by which the charitable purposes are sought to be accomplished.” Thus, the focus in this situation is not on the entity receiving the funds, but on the use of the funds for tax-exempt purposes.

For example, in 2012, the Ford Foundation awarded a \$500,000 grant to the Washington Post for government-accountability coverage. That same

year, the Ford Foundation awarded a \$1 million grant to the Los Angeles Times to hire five journalists, including one in Brazil, to focus on the Vietnamese, Korean and other immigrant communities, the California prison system, the border region and Brazil. In 2010, the Gates Foundation awarded a \$1.5 million grant to ABC News to expand coverage of global health issues. In each case, although the grant was made to a for-profit newspaper, the grants were made exclusively to further tax-exempt purposes.

Private foundations can indeed make grants to “noncharitable” organizations and treat these grants as qualifying distributions and not taxable expenditures if the foundation exercises expenditure responsibility and complies with the requirements of the applicable regulations, including complying with Reg. Section 53.4945-6 (“Expenditures for noncharitable purposes”) whereby the grantee must maintain the grant funds in a separate fund dedicated to Section 170(c)(2)(B) tax-exempt purposes. Indeed, many private foundations across the country are funding local journalism at for-profit newspapers. Public charities may similarly make a grant to a for-profit newspaper and in making such grants to noncharitable entities typically follow the rules applicable to private foundations, so as to ensure the grant funds will be used for tax-exempt purposes.

Individuals, of course, as well as corporations, may not take an income tax deduction for a charitable contribution made directly to a for-profit newspaper. The alternative is to make a contribution to a tax-exempt entity that supports public interest journalism coverage of a for-profit newspaper, such as to a charitable foundation that supports local journalism, even where the local journalism it is carried out by a for-profit newspaper. And, as the Seattle Times situations demonstrates, a for-profit newspaper may establish a fund at a community or other charitable foundation, to seek support for investigative journalism from individual donors. Because the donations are made a tax-exempt organization, which retains control and oversight over the funds, contributions are tax-deductible, although used to support public interest journalism at a for-profit newspaper.

COMMENT:

Local newspapers across the country, whether in printed or digital form, are turning to philanthropy to help sustain their operations. As demonstrated

recently by the Seattle Times, the Salt Lake Tribune, and the Philadelphia Inquirer, there is no one size fits-all model, as there are various alternatives available to local newspapers to attract philanthropic dollars from both individuals, private foundations and other donors, whether the newspaper is a for-profit entity or a Section 501(c)(3) tax-exempt organization.

HOPE THIS HELPS YOU HELP OTHERS MAKE *POSITIVE* DIFFERENCE!

Richard L. Fox

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