

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

The Cleveland Foundation  
1400 Hanna Building  
Cleveland, Ohio 94115

Person to Contact:

Telephone Number:

Refer Reply to:  
OP:E:EO:R:1

Date: SEP 28 1987

Employer Identification Number: 34-0714588  
Key District Office: Cincinnati

Dear Sir or Madam:

This is in response to your request for a ruling that a new charitable corporation to be incorporated at the direction of your governing body and known as The Greater Cleveland Foundation will be treated as a component of The Cleveland Foundation under section 1.170A-9(e)(11)(ii) of the Income Tax Regulations rather than as a separate not-for-profit corporation. Your request was submitted on your behalf by your attorney in a letter dated April 3, 1987.

Our records disclose that you are recognized as being exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. Also, you are an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. On November 30, 1977, we ruled further that, if your 1977 Declarations of Trusts and Resolutions were adopted by January 19, 1978, you would be treated as a single entity with respect to your constituent trusts rather than as an aggregate of separate funds. The Board of Directors of the banks acting as trustees in 1977 adopted the Declarations and Resolutions prior to January 19, 1978.

Your corporate affiliate, The Cleveland Foundation, was ruled to be a component part of your organization under the provisions of section 1.170A-9(e)(11)(ii) of the regulations in a letter dated February 12, 1981.

You have express authority in your governing instrument to make grants for charitable purposes in the Greater Cleveland community and, in some circumstances, in other communities in the State of Ohio. Conversely, there is no express authority in the governing instrument for the making of any grants intended to benefit communities outside the State of Ohio.

The Cleveland Foundation

The new charitable corporation you intend to incorporate will allow prospective donors who are primarily interested in the Greater Cleveland area to designate that a portion of their gift be used outside the State of Ohio. You state in your ruling request that no more than 20% of the distribution arising from any particular contribution to the corporation should be subject to recommendation by the donor for use outside of the State of Ohio. You further represent that you recognize that the total assets available to you for use within the Greater Cleveland community and other communities in Ohio could be increased if potential contributors were allowed to specify charitable uses and purposes with respect to a portion of their gifts that are within the United States but not within the boundaries of the State of Ohio.

The proposed Articles of Incorporation of The Greater Cleveland Foundation include the following provision:

"FOURTH. Each donor or testator may express a desire (a) as to the time when and the purpose for which the principal shall be distributed, and/or (b) as to the purpose for which the income shall be used for a definite or indefinite period. Any such expressed desire of the donor or testator shall be respected and observed, subject, however, in every case, to the condition that if and whenever it shall appear to the Board of Trustees that circumstances have so changed since the execution of the instrument containing any gift, grant, devise or bequest as to render unnecessary, undesirable, impractical or impossible a full and direct compliance with the terms of such instrument, or that said circumstances have so changed as to render said expressed desires no longer wise or beneficial, the Board of Trustees, by resolution adopted by the affirmative vote of a majority of the Trustees, may at any time or from time to time, direct the application of such gift, grant, devise or bequest to such other public charitable or educational purposes as, in their judgment, will most effectually accomplish the general purposes of the Corporation, without regard to and free from any specific restriction, limitation or direction contained in such instrument."

Section 1.170A-9(e)(11)(i) of the regulations provides that, for purposes of sections 170, 501, 507, 508, 509, and chapter 42, any organization that meets the requirements contained in paragraph (e)(11)(iii) through (vi) of this section will be treated as a single entity rather than as an aggregation of separate funds, and except as otherwise provided, all funds associated with such organization (whether a trust, not-for-profit corporation, unincorporated association, or a combination thereof) which meet the requirements of paragraph (e)(11)(i) of this section will be treated as component parts of such organization.



## The Cleveland Foundation

Section 1.170A-9(e)(11)(ii) of the regulations provides, in part, that, in order to be treated as a component part of a community trust referred to in paragraph (e)(11) of this section (rather than as a separate trust or not-for-profit corporation or association) a trust or fund:

(A) Must be created by a gift, bequest, legacy, device, or other transfer to a community trust which is treated as a single entity under paragraph (e)(11) of this section; and

(B) May not be directly or indirectly subjected by the transferor to any material restriction or condition (within the meaning of section 1.507-2(a)(8)) with respect to the transferred assets.

Section 1.507-2(a)(8) of the regulations provides, in part, that whether or not a particular condition or restriction imposed upon a transfer of assets is "material must be determined from all the facts and circumstances of the transfer including whether the governing body of the public charity has the ultimate authority and control over such assets, and the income derived therefrom.


Based on the information submitted and the stipulation that the proposed Articles of Incorporation of The Greater Cleveland Foundation that you have submitted are executed and filed with the appropriate state agency in Ohio, we rule that The Cleveland Foundation, comprising its constituent trusts under the Resolution adopted by the Board of Directors of the Cleveland Trust Company on January 2, 1914, creating The Cleveland Foundation; the Resolution and Declaration of Trust creating The Cleveland Foundation under the Multiple Trusteeship Plan as supplemented by Resolutions adopted on April 14, 1967, and October 6, 1975; the Declaration of Trust providing for creation of the Cleveland Foundation Combined Fund; the Declaration of Trust Establishing The Cleveland Foundation 1977 Multiple Trusteeship Plan; the Declaration of Trust Establishing the 1977 Combined Fund of The Cleveland Foundation; as well as the non-profit corporation named The Cleveland Foundation and the new charitable corporation you intend to create, The Greater Cleveland Foundation, will be treated as a single entity, rather than as an aggregation of separate entities, for all purposes of sections 1.170A-9(e)(10) and (11) of the regulations and all funds associated with The Cleveland Foundation which meet the requirements of section 1.170A-9(e)(11)(ii) of the regulations will be treated as component parts of The Cleveland Foundation for all purposes of sections 1.170A-9(e)(10) and (11) of the regulations whether such funds are created and held under the Resolution adopted by the Board of Directors of the Cleveland Trust Company on January 2, 1914, creating The Cleveland Foundation; the Resolution and Declaration of Trust creating The Cleveland Foundation under the Multiple Trusteeship Plan as supplemented by Resolutions adopted on April 14, 1967, and October 6, 1975; the Declaration of Trust providing for creation of the Cleveland Foundation Combined Fund; the Declaration of Trust Establishing The Cleveland Foundation 1977 Multiple Trusteeship Plan; the Declaration of Trust Establishing the 1977 Combined Fund of The Cleveland Foundation; or by the nonprofit corporation, The Cleveland Foundation, or The Greater Cleveland Foundation.

The Cleveland Foundation

This ruling supplements our ruling of July 29, 1987.

We are informing your key District Director of this action. If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Milton Cerny". The script is cursive and fluid.

Milton Cerny  
Exempt Organizations  
Rulings Branch