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Internal Revenue Service

200007041

Department of the Treasury

Washington, DC 20224

OP:E:EO:T:4

Contact Person

Telephone Number

In Reference to

Date: 11/26/99

Legend:

B=
C=
D=

Dear Sir or Madam:

This is in response to your letter dated August 27, 1999, in which you requested certain rulings with respect to the proposed transfer of all of the net assets of B to C and D.

B, C and D are exempt under section 501(c)(3) of the Internal Revenue Code and are classified as private foundations under section 509(a).

B's directors have had differences of opinion as to how the charitable objectives of B can best be achieved. Therefore, the directors propose to distribute all of B's assets to C and D so that both will receive approximately fifty percent (50%) of B's assets subject to adjustment to reflect distributions made to charitable organizations directly by B prior to distribution. C and D will continue to pursue the exempt purposes of B. After the transfer, the control of C and D will be in the hands of the directors of B.

B represents that the transfers to C and D will be without consideration and will not be from current income. At least one day after the transfer of all of its assets, B will notify the Internal Revenue Service of its intent to terminate its private foundation status pursuant to section 507(a) of the Code. At such time as B notifies the Service of such intent, it will have no remaining assets.

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B represents that it does not have any outstanding grants with respect to which it is required to exercise expenditure responsibility under section 4945 of the Code.

B has not notified the Service that it intends to terminate its private foundation status, nor has B ever received notification that its status as a private foundation has been terminated. Furthermore, B has not committed willful repeated acts or failures to act or a willful and flagrant act or failure to act giving rise to a termination pursuant to section 507(a)(2) of the Code.

Section 507(a) of the Code, which provides for the voluntary and involuntary termination of private foundation status, provides, in part, that except for transfers described in section 507(b), an organization's private foundation status will be terminated only if (1) the organization notifies the Service of its intent to terminate or (2) there has been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42.

Section 507(b)(2) of the Code provides that when a private foundation transfers assets to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, the transferee foundation shall not be treated as a new organization.

Section 1.507-1(b)(7) of the Income Tax Regulations provides that neither a transfer of all of the assets of a private foundation, nor a significant disposition of assets (as defined in section 1.507-3(c)(2)) by a private foundation (whether or not any portion of such significant disposition of assets is made to another private foundation) shall be deemed to result in a termination of the transferor private foundation under section 507(a) of the Code unless the transferor private foundation elects to terminate, pursuant to section 507(a)(1) or section 507(a)(2), is applicable.

Section 1.507-3(a)(2) of the regulations provides that a transferee organization, in the case of a transfer described in section 507(b)(2) of the Code, shall succeed to the aggregate tax benefit of the transferor organization in an amount equal to the amount of such aggregate tax benefit of the transferor organization, multiplied by a fraction the numerator of which is the fair market of the assets (less encumbrances) transferred to such transferee and the denominator of which is the fair market value of the assets of the transferor (less encumbrances)

immediately before the transfer. Fair market value is determined at the time of transfer.

Section 1.507-3(a)(5) of the regulations provides that, except as provided in section 1.507-3(a)(9) (which only relates to 507(b)(2) transfers where all net assets are transferred to one or more controlled private foundations), a private foundation is required to meet the distribution requirements of section 4942 of the Code for any taxable year in which it makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation. Such transfer shall itself be counted toward satisfaction of the requirements to the extent the amount transferred meets the requirements of section 4942(g).

Section 1.507-3(a)(9)(i)and(iii) of the regulations provides that if a private foundation transfers all of its net assets to another private foundation that is effectively controlled (within the meaning of section 1.482-1(a)(3) of the regulations by the same or persons who effectively controlled the transferor private foundation the transferee shall be treated as if it were the transferor for purposes of Chapter 42 and sections 507 through 509 of the Code.

Section 1.507-3(b) of the regulations provides that in order for a transfer of assets, pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, not to be a taxable expenditure, it must be to an organization described in section 501(c)(3) (other than an organization described in section 509(a)(4)) or treated as described in section 501(c)(3) under section 4947.

Section 4940(a) of the Code imposes a tax on the net investment income of private foundations.

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4942(g)(1) of the Code defines a "qualifying distribution" as (a) any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons or (ii) a private foundation which is not an operating foundation, except as otherwise provided; or (b) any amount paid to acquire an asset used directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 4944 of the Code imposes certain taxes on investments jeopardizing a private foundation's charitable purposes.

Section 4945 of the Code imposes a tax on the foundation on each "taxable expenditure" as defined in section 4945(d). Section 4945(d)(4) of the Code provides that for purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an organization unless (A) such organization is described in paragraph (1),(2),or(3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or (B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h).

Section 4945(h) of the Code provides that expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures (1) to see that the grant is spent solely for the purpose for which made, (2) to obtain full and detailed reports with respect to such expenditures, and (3) to make full and detailed reports to the Secretary.

Section 53.4945-5(b)(7)(i) of the Foundation and Similar Excise Taxes Regulations refers to the rules relating to the extent to which the expenditure responsibility rules contained in section 4945(d)(4) and (h), and this section apply to transfers of assets described in section 507(b)(2).

Based upon the above facts, the transfer of the net assets of B to C and D will allow C and D to continue the same charitable purpose and activities previously conducted by B. C and D will be controlled by the same directors that controlled B.

Because B is not terminating its existence and because there has been no willful, repeated or flagrant act giving rise to liability under Chapter 42, no tax will be imposed on B under section 507(c) as a result of the transfer of assets from B to C and D.

Because B will not notify the Service of its intent to terminate its private foundation status until at least one day after the transfer of all of B's assets to C and D has been accomplished, section 507(a)(1) of the Code will not apply to the transfers. Also, the Service has not notified B that its private foundation status is being terminated under section 507(a)(2) of the Code. Therefore, the transfer of all of B's assets to C and D will not result in the imposition of a termination tax under section 507(c) of the Code.

Because C and D are controlled by B, for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code, C and D will be treated subsequent to the transfer of all of B's assets, as if each were B, in the proportion which the fair market value of the assets (less encumbrances) transferred to each bears to the fair market value of B's assets (less encumbrances) immediately before the transfer.

Because the transfers of B's assets to C and D will be transfers described in section 507(b)(2) of the Code, the aggregate tax benefit of B should be carried over to C and D in proportions determined in accordance with section 1.507-3(a)(2)(i) of the regulations.

Because B, as an organization described in section 501(c)(3) of the Code, is not a disqualified person with respect to either C or D, the transfers of assets to C and D will not constitute acts of self-dealing within the meaning of section 4941 of the Code.

Because the proposed transfers of assets to C and D will be made to accomplish the exempt purposes of B, the transfers will not constitute "investments" for purposes of section 4944 of the Code. Thus, the excise taxes imposed on jeopardizing investments under section 4944(a) of the Code will not apply to the transfer of assets from B to C and D.

Because C and D should be treated as if they are B for the purposes of Chapter 42, the transfer of assets from B to C and D will not impose tax under section 4940 of the Code. B's net investment income under section 4940 of the Code will be treated as the income of C and D in proportion to the assets transferred to each.

Because B has no outstanding grants with respect to which it is required to exercise expenditure responsibility, B will not be obligated to satisfy the expenditure responsibility requirement of section 4945(d)(4) of the Code, and the transfer of assets to C and D will not be a taxable expenditure under section 4945 of the Code.

Because all of the assets of B will be transferred to C and D, which are private foundations effectively controlled by the same persons who control B, C and D should be treated as if each were B, in the proportion which the fair market value of the assets (less encumbrances) transferred to each bears to the fair market value of B's assets (less encumbrances) immediately before the transfer. Therefore, B would not be required to meet the minimum distribution requirements of section 4942 of the Code for

the year in which it transfers all of its assets and for subsequent years. On the same basis, C and D's distributable amount for such taxable year should be increased by their respective pro rata share of B's distributable amount for the year of the transfer, and all qualifying distributions made by B in the year of the transfer should be treated on a pro rata basis as having been made by C and D. Moreover, C and D would be responsible for reporting their respective pro rata share of all undistributed income for the year of the transfer, as determined in accordance with section 4942 of the Code.

Accordingly, based on the information furnished, we rule as follows:

1. The transfer of all of B's assets to C and D will constitute a transfer of assets described in section 507(b)(2)of the Code and will not result in the imposition of a termination tax pursuant to section 507(c) of the Code.

2. Provided that B notifies the Service of its intention to terminate private foundation status pursuant to section 507(a)(1) of the Code at least one day after the transfer of all of B's assets to C and D, then the amount of termination tax under section 507(c) of the Code will be zero and neither the preparation and/or filing by B of any final accounting or other documents required by State law in winding up, dissolution and termination will result in imposition of tax under section 507(c) of the Code.

3. For purposes of Chapter 42 of the Code and sections 507 through 509 of the Code, C and D will be treated, subsequent to the transfer of all of B's assets, as if each were B, in the proportion which the fair market value of the assets (less encumbrances) transferred to each bears to the fair market value of B's assets (less encumbrances) immediately before the transfer.

4. The "aggregate tax benefit", defined in section 507(d)(1) of the Code will be carried over to C and D in proportions determined in accordance with section 1.507-3(a)(2) of the regulations.

5. The transfer of B's assets to C and D will not constitute self dealing under section 4941 of the Code.

6. The transfer of B's assets to C and D will not constitute a jeopardizing investment within the meaning of section 4944 of the Code.

7. The transfer of B's assets to C and D will not result in tax under section 4940 of the Code.

8. The transfer of B's assets to C and D will not constitute taxable expenditures within the meaning of section 4945 of the Code and B will have no expenditure responsibility as set forth in sections 4945(d)(4) and 4945(h) with respect to these transfers.

9. B will not be required to comply with the record-keeping requirements of section 4942(g)(3)(B) of the Code with respect to the transfers, subsequent to the transfer of all of its assets to C and D.

10. For the taxable year of the proposed transfer and any subsequent year, B will not be required to comply with the minimum distribution requirements of section 4942 with respect to the proposed transfer of assets.

11. C and D will assume all obligations with respect to any of B's "undistributed income" within the meaning of section 4942(c) of the Code for the taxable year of the proposed transfer in proportions determined in accordance with section 1.507-3(a)(9)(i) of the regulations and C and D will also succeed, in proportions determined in accordance with section 1.507-3(a)(9)(i) of the regulations, to B's excess qualifying distributions for the taxable year of the proposed transfer, if any, as determined in section 4942(g) of the Code.

We are informing the Ohio EP/EO key district office of this action. Please keep a copy of this ruling with your organization's permanent records.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4

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