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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: JUL 25 2002

Contact Person:

Identification Number:

Telephone Number:

T:EO:4

Employer Identification Number:

Legend:
B=
C=

Dear Sir or Madam:

This is in response to a letter dated February 7, 2002, which requested certain rulings with respect to a proposed transfer of all of the assets of B to C.

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

B and C have approved a plan of merger under which B would merge with C. Under the plan C would be the surviving entity. B and C believe that their charitable objectives can be more economically and effectively accomplished as a result of the merger. After the merger, C will continue to carry out the charitable purposes previously conducted by B. B and C are effectively controlled by the same Board of Directors. B represents that the merger of its assets to C will be without consideration. B will cease its separate legal existence upon completion of the merger. 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.

Once the merger has been completed B will notify the Service of its intent to terminate its private foundation status pursuant to section 507(a) of the Code. At that time B will not have assets.

B has never notified the Service in the past 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 liability for tax under Chapter 42.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 507 of the Code and the regulations to section 507 sets forth rules applicable to terminating foundations.

The Internal Revenue Service, in Rev. Rul. 2002-28, 2002-20 IRB 941 (copy attached), has issued guidance on the filing obligations and tax issues that arise when a private foundation transfers all of its assets to one or more other private foundations under section 507(b)(2) of the Code.

The Rev. Rul. presents three situations in which a private foundation transfers all of its assets to one or more other private foundations. In Situation One, the foundation, under a plan of dissolution, distributes all of its remaining assets in equal shares to three other private foundations. In Situation Two, the trustees of a private foundation trust create a not-for-profit corporation to carry on the trust's charitable activities, which the trustees have determined can be more effectively accomplished by operating in corporate form. All of the trust's assets and liabilities are transferred to the not-for-profit corporation. In Situation Three, two private foundations transfer all of their assets and liabilities to a newly formed private foundation.

In the Rev. Rul., the Service has ruled that a private foundation that transfers all of its assets to one or more private foundations in a transfer described in section 507(b)(2) is not required to notify the Manager, Exempt Organizations Determinations (Tax Exempt/Government Entities) that it plans to terminate its private foundation status under section 507(a)(1). The ruling further states that if the private foundation does not provide notice and does not terminate, it is not subject to termination tax under section 507(c). If the private foundation provides notice and terminates, then it is subject to the tax. However, if the private foundation has no assets on the day it provides notice, the section 507(c) tax will be zero.

The Rev. Rul. gives detailed information as to the applicability of the excise taxes imposed by sections 4940-4945 of the Code. The ruling further provides that a private foundation that has disposed of all its assets and terminates its private foundation status must file a Form 990-PF for the tax year of the disposition and must comply with any expenditure responsibility reporting obligations on the return. A private foundation that has disposed of all its assets and does not terminate its private foundation status must file a Form 990-PF for the tax year of the disposition and must comply with any expenditure responsibility reporting obligations on the return, but does not need to file returns in the following tax years if it has no assets and does not engage in any activities. If the private foundation receives additional assets or resumes activities in later years, it must resume filing Form 990-PF for those years.

Our evaluation of the facts and circumstances in your ruling request indicates that the transfer of B's assets to C would be similar to the facts and circumstances described in Situation

Three of the Rev. Rul. Under the facts described the foundations would not be subject to tax under section 507 and sections 4940-4945 of the Code.

Accordingly, based on the information furnished, and the Code and regulations, as interpreted in Rev. Rul. 2002-28, we rule as follows:

1. B's transfer of all its assets to C pursuant to the merger will be a transfer pursuant to section 507(b)(2) of the Code and will not cause imposition of the termination tax under section 507(c) of the Code.

2. B's transfer of all of its assets to C pursuant to the merger will be treated as a transfer of all of B's assets to a private foundation, which is effectively controlled by the same persons, which effectively control B. Thus, pursuant to section 1.507-3(a)(9)(i) of the regulations, C will be treated as though C were B for purposes of Chapter 42 of the Code. Further, C will succeed to the aggregate tax benefits of B, including B's section 4942 excess distributions carry forwards.

3. B and C will not be subject to tax under Chapter 42 as a result of the merger because the merger will not be an act of self-dealing under section 4941, will not result in excess business holdings of a private foundation under section 4943, will not be a jeopardy investment under section 4944, will not be a taxable expenditure under section 4945, and will not generate any gain or loss for purposes of computing net investment income under section 4940 of the Code.

4. C's distributable amount under section 4942(d) for its taxable year in which the proposed transfer occurs will be increased by B's distributable amount for its taxable year in which the proposed transfer occurs, as if C had held the assets of B for C's entire tax year. All qualifying distributions made by C during the entire year, and all qualifying distributions made by B during its tax year in which the proposed transfer occurs will be treated as if made by C. Thus, B's distribution requirements under section 4942 of the Code in the tax year of the proposed transfer may be fulfilled by C.

5. The merger described above will not affect the status of B or C under section 501(c)(3) or 509(a) of the Code.

6. After the proposed merger and transfer of assets and once B files a notice of its termination with the Service, B will no longer be required to file annual information returns for future years.

We are informing the TE/GE office of this action. Please keep a copy of this ruling in 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.

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
Manager, Exempt Organizations
Technical Group 4