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Internal Revenue Service

Department of the Treasury

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Contact Person:

Telephone Number:

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Date: FEB 25 1999

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Dear Sir or Madam:

This is in reference to your ruling request of August 18, 1997, as revised by your supplemental submissions dated July 13, 1998, and September 22, 1998, concerning a proposed transfer of the assets of A (the "Foundation") to two newly-formed non-profit corporations.

The information submitted indicates that the Foundation is a trust that has been recognized as exempt from federal income tax as an organization desrcibed in section 501(c)(3) of the Internal Revenue Code (the "Code") and is classified as a private foundation within the meaning of section 509(a) of the Code. The Foundation's purpose, as reflected in its trust agreement, is to operate a charitable foundation exclusively for religious, charitable, scientific, literary and educational purposes. The Foundation makes grants to various publicly supported charitable organizations.

For the past few years, the Foundation's trustees have had difficulty reaching agreements as to the management of the Foundation, the investment of the Foundation's assets, and the distribution of the Foundation's income. Therefore, the Foundation 's trustees propose to distribute 44.655% of the Foundation's assets (the "Transferred B Assets"), to B, and 55.345% of the Foundation's assets (the "Transferred C Assets"),

to C. B and C are newly created foundations that have been recognized as exempt from federal income tax as organizations described in section 501(c)(3) of the Code and have been classified as private foundations within the meaning of section 509(a).

The trustees of the Foundation are M, N, and O. N is M's wife. O is M's nephew. The Foundation's alternate trustees are P and R. P is O's wife. R is M's daughter. The principal managers of the Foundation are M and O.

The directors of B will be O and P. The president of B is O. The directors of C will be M, N, R, S and T. S is R's husband and M's son-in-law. T is a bookkeeper and a long-time assistant to the M's family. The president of C will be M.

In connection with the transfer of assets by the Foundation to B and C, the following representations are made:

(a) After the transfer, the Foundation will have transferred all of its assets to B and C. The Foundation intends to elect to terminate its private foundation status under Section 507(a)(1) of the Code. After the transfers by the Foundation to B and C, B and C expect to continue the Foundation's charitable activities.

(b) The Foundation currently has no grants outstanding that require the exercise of expenditure responsibility within the meaning of section 4945(h) of the Code, and the Foundation, B and C do not plan any future expenditure responsibility grants.

(c) The Foundation has not committed 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.

(d) None of the foundations are organizations described in Section 509(a)(4) of the Code, since they are not organized and operated exclusively for testing for public safety.

(e) Prior to, and in the same taxable year as the proposed transfers, the Foundation may or may not have met the distribution requirements of section 4942 of the Code. However, no part of the proposed transfers will be used to meet the requirements of section 4942 of the Code.

(f) The proposed transfers will not involve "excess business holdings," within the meaning of section 4943 of the Code, or amounts invested in a manner such as to "jeopardize," within the

meaning of section 4944 of the Code, the carrying on of the Foundation's exempt purpose.

(g) The Foundation currently holds no "jeopardizing" investments within the meaning of section 4944 of the Code.

(h) The legal, accounting and other expenses incurred by the Foundation in connection with the rulings requested and in carrying out the proposed transfer will be reasonable and necessary and will not be excessive.

TERMINATION OF PRIVATE FOUNDATION STATUS

Section 507(a) of the Code provides that except as provided in section 507(b), the status of any organization as a private foundation shall be terminated only if (1) such organization notifies the Secretary of its intent to accomplish such termination, or (2) with respect to such organization, there have 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, and the Secretary notifies such organization that such organization is liable for the tax imposed by section 507(c).

Section 507(b)(2) of the Code provides that in case of a transfer of assets of any private foundation 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 newly created organization.

Section 507(c) of the Code imposes a tax on each organization which terminates its private foundation status under section 507(a).

Section 1.507-1(b)(6) of the Income Tax Regulations (the "regulations") provides that if a private foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in section 507(b)(2) of the Code, such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Section 1.507-1(c) of the regulations provides that for purposes of section 507(a)(2)(A) of the Code, the term "willful repeated acts (or failures to act)" means at least two acts or failures to act both of which are voluntary, conscious, and intentional. For purposes of section 507(a)(2)(A), a "willful and flagrant act (or failure to act)" is one which is

voluntarily, consciously, and knowingly committed in violation of any provision of Chapter 42 (other than section 4940 or 4948(a)) and which appears to a reasonable man to be a gross violation of any such provision.

Section 1.507-3(c)(1) of the regulations provides, in part, that a transfer of assets is described in section 507(b)(2) of the Code if it is made by a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization or other adjustment, organization, or reorganization. The terms "other adjustment, organization, or reorganization" include any partial liquidation or any other significant disposition of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income.

Section 1.507-3(c)(2) of the regulations provides, in part, that the term "significant disposition of assets to one or more private foundations" includes any disposition for the taxable year of 25 percent or more of the fair market value of the net assets of the transferor foundation at the beginning of the taxable year.

Section 1.507-3(d) of the regulations provides that unless a private foundation voluntarily gives notice pursuant to section 507(a)(1) of the Code, a transfer of assets described in section 507(b)(2) will not constitute a termination of the transferor's private foundation status under section 507(a)(1).

The proposed transfers from the Foundation to B and C involve a transfer of at least 25% of the assets of the Foundation. Thus, under section 1.507-3(c)(2) of the regulations, the transaction will result in a significant disposition of the assets of the Foundation. Accordingly, the proposed transfers constitute an "other adjustment, organization, or reorganization" within the meaning of section 1.507-3(c)(1) of the regulations, and, therefore, the transfers will constitute transfers described in section 507(b)(2) of the Code.

As transfers described in section 507(b)(2) of the Code, under sections 1.507-1(b)(6) and 1.507-3(d) of the regulations, the proposed transaction will not result in a termination of the Foundation's private foundation status under section 507(a). Because no termination will take place, the tax imposed by section 507(c) of the Code will not apply. Further, under section 507(b)(2), B and C will not be treated as newly created organizations.

The transfer of the assets of the Foundation to B and C will be a single act and will not be one voluntarily, consciously, and knowingly committed in violation of any provision of Chapter 42, nor would it appear to to a reasonable man to be a gross violation of any such provision. Accordingly, for purposes of section 507(a) of the Code, the proposed transfer will not constitute a willful and flagrant act (or failure to act) within the meaning of section 1.507-1(c) of the regulations, giving rise to liability for tax under Chapter 42 of the Code.

EFFECT ON TAX EXEMPT STATUS

Section 501(c)(3) of the Code provides for the exemption from federal income tax of any nonprofit organization that is organized and operated exclusively for charitable and/or other exempt purposes stated in that section.

The Foundation has been recognized as an organization described in section 501(c)(3) of the Code and is classified as a private foundation within the meaning of section 509(a). The Foundation's purpose, as reflected in its trust agreement, is to operate a charitable foundation exclusively for religious, charitable, scientific, literary and educational purposes. The transfer of its assets to B and C does not involve a change in the manner of the Foundations's operation, nor will its private foundation status be terminated. Accordingly, the Foundation will continue to operate as a tax exempt entity. Likewise, the transfer of the assets from the Foundation to B and C will not involve a change in the manner of operation of B or C and, therefore, B and C will continue to operate as tax exempt entities.

CARRYOVER OF AGGREGATE TAX BENEFIT

Section 1.507-3(a)(1) of the regulations provides that a section 507(b)(2) transfer results in a carryover of certain tax attributes and characteristics of the transferor organization to the transferee foundation.

Section 1.507-3(a)(2) of the regulations provides that a transferee private foundation succeeds to that part of the transferor's "aggregate tax benefit" (defined in section 1.507-5) that is attributable to the assets transferred, based on the transferor's assets held just before the transfer.

Because the transfers from the Foundation to B and C are transfers described in section 507(b)(2) of the Code, under

section 1.507-3(a)(1) of the regulations, B and C will be deemed to possess certain attributes and characteristics of the Foundation. Accordingly, under section 1.507-3(a)(2) of the regulations, B and C will succeed to a proportionate share of the Foundation's aggregate tax benefits in proportion to the value of the assets transferred by the Foundation to B and C.

CHAPTER 42 PRIVATE FOUNDATION EXCISE TAXES AND SECTIONS 507 AND 509

Section 1.507-3(a)(9)(i) of the regulations provides that in a section 507(b)(2) transfer, if the transferee foundation transfers all of its assets to one or more private foundations which are effectively controlled (within the meaning of section 1.482-1(a)(3) [now redesignated as section 1.482-1A(a)(3)]) by the same person or persons who effectively controlled the transferor private foundation, for purposes of Chapter 42 and sections 507 through 509 of the Code, such transferee shall be treated as if it were the transferor.

Section 1.482-1A(a)(3) of the regulations provides that the term "controlled" includes any king of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. It is the reality of the control which is decisive, not the form or the mode of its exercise.

The Foundation is effectively controlled, within the meaning of section 1.482-1A(a)(3) of the regulations by its principal managers, M and O. Because of the family relationship between the directors of B, B will be effectively controlled, within the meaning of section 1.482-1A(a)(3) of the Regulations, by its president, O. Because of the family and other relationships existing among the directors of the C, C will be effectively controlled, within the meaning of section 1.482-1A(a)(3) of the regulations, by its president, M. Because one of the two managers who exercise effective control over A will exercise effective control over B and because one of the two managers who exercise effective control over the Foundation will exercise effective control over C, there is substantial continuity of control between the Foundation and B and between the Foundation and C.

Because the B and C will be effectively controlled, within the meaning of section 1.482-1A(a)(3) of the regulations, by the same persons who effectively control the Foundation, the transfers from the Foundation of all of its assets to the B and C will be transfers described in section 1.507-3(a)(9)(i) of the regulations. Therefore, for purposes of the Chapter 42 private

foundation excise tax provisions and sections 507 through 509 of the Code, B and C will each be treated as if it is the Foundation in the proportion which the net fair market value of the assets transferred by the Foundation to B and C bears to the net fair market value of all the Foundatioin's assets immediately before the Transfer. Accordingly, B and C will each succeed to their proportionate share of the Foundation's tax attributes under Chapter 42 and sections 507 through 509.

5. TAX ON NET INVESTMENT INCOME

Section 4940(a) of the Code imposes on each private foundation with respect to the carrying on of its activities a tax equal to two percent of the net investment income of such foundation for the taxable year.

Under section 507(b)(2) of the Code, in the case of a transfer of assets of one private foundation to another private foundation, the transferee foundation will not be treated as a newly created organization. Therefore, the transfers to B and C will not constitute a "sale or other disposition of property or other realizable event" within the meaning of section 4940. Accordingly, the transfer will not constitute a realizable event giving rise to net investment income to either the Foundation, B, or C. Therefore, the transfer will not give rise to tax under section 4940.

Because the B and C will each be treated as if it is the Foundation under section 1.507-3(a)(9)(i) of the regulations, for purposes of section 4940 of the Code, a proportionate share of the net investment income of the Foundation for the taxable year of the transfers will be apportioned to B and C and will be includible in the computation of the net investment income of both B and C in the taxable year of the transfers.

6. SELF-DEALING

Section 4941(a)(1) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(a)(2) of the Code imposes a tax on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act.

Section 4941(d)(1)(E) of the Code defines "self-dealing" as any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4946(a)(1) of the Code defines the term "disqualified person" to include, with respect to a private foundation, any person who is a foundation manager.

Section 53.4946-1(a)(8) of the Foundation and Similar Excise Taxes Regulations (also the "regulations") provides that for purposes of section 4941 of the Code only, the term "disqualified person" shall not include any organization which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

For purposes of section 4941 of the Code, the term "disqualified person" does not include any organization which is described in section 501(c)(3). The Foundation will make the contemplated distributions to the B and C, both of which are described in sectin 501(c)(3). Therefore, B and C will not be disqualified persons as to the Foundation at the time of the transfers and no transfer between a disqualified person and a private foundation will occur. Accordingly, the transfer the Foundation's assets to the newly created private foundations will not constitute acts of self-dealing under section 4941 of the Code and the transfers will not subject the Foundation, B, or C to tax under section 4941.

DISTRIBUTION REQUIREMENTS

Section 4942(a) of the Code imposes a tax on the undistributed income of a private foundation.

Section 1.507-3(a)(5) of the regulations provides that, except as provided in section 1.507-3(a)(9), 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.

Section 1.507-3(a)(9)(i) of the regulations provides that in a section 507(b)(2) transfer, if the transferee foundation transfers all of its assets to one or more private foundations which are effectively controlled (within the meaning of section 1.482-1(a)(3) [now redesignated as section 1.482-1A(a)(3)]) by the same person or persons who effectively controlled the transferor private foundation, for purposes of Chapter 42 and

sections 507 through 509, such transferee shall be treated as if it were the transferor.

Because B and C will be effectively controlled, within the meaning of section 1.482-1A(a)(3), by the same persons who effectively control the Foundation, the transfers from the Foundation of all of its assets to B and C will be transfers described in section 1.507-3(a)(9)(i) of the regulations. Therefore, B and C will be treated as if they were the Foundation. As a result, the Foundation will not be required to meet the section 4942 qualifying distribution requirement in the year in which the transfer of all its assets to B and C. Instead, B and C will be responsible for satisfying their proportionate share of the Foundation's distribution requirements under section 4942 to the extent that such distribution requirements are not satisfied by the Foundation.

EXCESS BUSINESS HOLDINGS

Section 4943 of the Code imposes a tax annually on the value of a private foundation's excess holdings in a business enterprise.

Provided that none of the assets transferred would place the Foundation, B, or C in the position of having excess business holdings, the proposed transfers do not involve the application of section 4943 of the Code concerning excess business holdings.

TAX ON INVESTMENTS JEOPARDIZING CHARITABLE PURPOSES

Section 4944(a)(1) of the Code imposes a tax on a private foundation that invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes.

Section 4944(a)(2) of the Code imposes a tax on any foundation manager who participates in the making of an investment which jeopardizes the carrying out of a private foundation's charitable purposes, unless such participation is due to reasonable cause and is not willful.

Section 4944(c) of the Code and section 53.4944-3(a)(1) of the regulations provide that an investment, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B) of the Code and no significant purpose of which is the production of income or the appreciation of property, is a program-related investment and will not be

considered as an investment which would jeopardize the carrying out of a private foundation's exempt purposes.

Because B and C will be organizations described in section 501(c)(3) of the Code, the primary purpose of the transfers will be to accomplish one or more of the purposes described in section 170(c)(2)(B) of the Code. Since the proposed transfers constitute an "adjustment, organization, or reorganization" within the meaning of section 1.507-3(c)(1) of the regulations, the production of income or the appreciation of property will not be a significant purpose of the transfers within the meaning of section 4944(c) of the Code and section 53.4944-3(a)(1) of the regulations. Accordingly, the transfers will not be considered to be investments jeopardizing charitable purposes within the meaning of section 4944 of the Code.

TAXABLE EXPENDITURES

Section 4945(a) of the Code imposes a tax on each taxable expenditure made by private foundations.

Section 4945(d)(4) of the Code defines the term "taxable expenditure" as an amount paid or incurred by a private foundation as a grant to an organization (other than an organization described in paragraph (1), (2) or (3) of section 509(a)), unless 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 means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures to see that the grant is spent solely for the purpose for which made, to obtain full and complete reports from the grantee on how the funds are spent, and to make full and detailed reports with respect to such expenditures to the Secretary.

Example (2) of section 1.507-3(a)(9)(iii) of the regulations indicates that when all net assets are transferred from one private foundation to one or more controlled foundations, there are no expenditure responsibility requirements that must be exercised under sections 4945(d)(4) and 4945(d)(h) of the Code with respect to the transfer.

Under section 4945(d)(4) of the Code, a transfer from one private foundation to another private foundation is a taxable expenditure unless the transferor private foundation exercises expenditure responsibility with respect to such grant in

accordance with section 4945(h). However, under section 1.507-3(a)(9)(i) of the regulations, expenditure responsibility over the transferred assets need not be exercised if the transferor organization transfers all of its assets to controlled organizations as defined in section 1.482-1A(a)(3). As indicated in example (2) of section 1.507-3(a)(9)(iii) of the regulations, when all net assets are transferred from one private foundation to one or more controlled foundations, the transferee foundations are treated as if they are the transferor foundation rather than as recipients of "expenditure responsibility" grants and, therefore, there are no expenditure responsibility requirements which must be exercised under sections 4945(d)(4) and (h) with respect to the transfers of assets to the transferee foundation.

Since the Foundation is transferring all of its assets to B and C, which are private foundations effectively controlled (within the meaning of section 1.482-1A(a)(3)) by the same person or persons who effectively controlled the Foundation, the transfers meet the requirements of section 1.507(a)(9)(i) of the regulations and, accordingly, the Foundation will not have to exercise expenditure responsibility with respect to the transfers to B and C.

EXPENSES OF THE TRANSACTION

Section 4942 of the Code imposes a tax on the undistributed income of a private foundation. The undistributed income is defined, in part, as the amount by which qualified distributions are less than the "minimum investment return".

Section 4942(g) of the Code and section 53.4942(a)-3(a)(2)(i) of the regulations provide that the term "qualifying distribution" means (A) any amount (including that portion of reasonable and necessary administration expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3), except as provided in paragraph (3), or (B) any amount paid to acquire as assets used (or held for use) directly in carrying out or more purposes described in section 170(c)(2)(B).

Under section 4942(g) of the Code and section 53.4942(a)-3(a) (2)(i) of the regulations the term "qualifying distribution" means any amount, including reasonable and

necessary administration expenses, paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to a controlled organization. Since the transfers of all of the assets of the Foundation to B and C meet the requirements of section 1.507-3(a)(9)(i) of the regulations, the transferee foundations are treated as if they are the transferor foundation rather than as recipients of "contributions" from the Foundation. Accordingly, the transfers to B and C, and the reasonable and necessary administration expenses which relate to the transfers are not contributions to controlled organizations for purposes of section 4942(g)(1) of the Code.

Under section 4942(g)(1)(A) of the Code, reasonable and necessary administration expenses paid to accomplish one or more purposes described in section 170(c)(2)(B) are qualifying distributions. Because B and C will be organizations described in section 501(c)(3) of Code, the primary purpose of the transfers will be to accomplish one or more of the purposes described in section 170(c)(2)(B) of the Code. Accordingly, the legal, accounting, and other expenses paid by the Foundation that relate to the transfers to B and C, will be qualifying distributions under section 4942(g)(1)(A).

Section 4945(a) of the Code imposes a tax on each taxable expenditure made by private foundations.

Section 4945(d) provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation--

(1) to carry on propaganda, or otherwise to attempt, to influence legislation, within the meaning of subsection (e),

(2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,

(3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g),

(4) 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), or

(5) for any purpose other than one specified in section 170(c)(2)(B).

Section 53.4945-6(c)(3) of the regulations provides that if a private foundation makes a transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization to any person, the transferred assets will be considered used exclusively for purposes described in section 170(c)(2)(B) if the assets are transferred to a fund or organization described in section 501(c)(3).

The legal, accounting, and other expenses paid by the Foundation that relate to the transfers to B and C, are not amounts paid or incurred to carry on propaganda, to attempt to influence legislation, to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive, and do not constitute grants to an individual for travel, study, or other similar purposes or grants to an organization.

Under section 53.4945-6(c)(3) of the regulations a transfer of assets described in section 507(b)(2) of the Code will be considered as used exclusively for purposes described in section 170(c)(2)(b) where the assets are transferred to an organization described in section 501(c)(3). Since B and C have received favorable determinations under section 501(c)(3), the proposed distribution will be regarded as made for purposes within the meaning of section 170(c)(2)(b). Accordingly, the legal, accounting, and other expenses paid by the Foundation that relate to the transfers to B and C, if reasonable in amount, will be regarded as made for section 170(c)(2)(b) purposes. Therefore, in conformity with section 53.4945-6(c)(3) of the regulations, the payment of these expenses will not constitute a taxable expenditure under section 4945.

SAVINGS PROVISIONS AND PROVISIONAL RULES

Section 1.507-3(a)(8) of the regulations provides that:

(i) Except as provided in subdivision (ii) of this subparagraph or subparagraph (6) or (9) of this paragraph or whenever a private foundation makes a transfer of assets described in section 507(b)(2) of the Code to one or more private foundations, the transferee foundation;

(a) Will not be treated as being in existence prior to January 1, 1970, with respect to any transferred assets;

(b) Will not be treated as holding the transferred assets prior to January 1, 1970; and

(c) Will not be treated as having engaged in, or become subject to, any transaction, lease, contract, or other obligation with respect to the transferred assets prior to January 1, 1970.

(ii) Notwithstanding subdivision (i) of this subparagraph, the provisions enumerated in (a) through (g) of this subdivision shall apply to the transferee foundation with respect to the assets transferred to the same extent and in the same manner that they would have applied to the transferor foundation had the transfer described in section 507(b)(2) not been effected:

(a) Section 4940(c)(4)(B) and the regulations thereunder with respect to basis of property,

(b) Section 4942(f)(4) and the regulations thereunder with respect to distributions of income,

(c) Section 101(l)(2) of the Tax Reform Act of 1969 (83 Stat. 533), as amended by sections 1301 and 1309 of the Tax Reform Act of 1976 (90 Stat. 1713, 1729), with respect to the provisions of section 4941,

(d) Section 101(l)(3)(A) of the Tax Reform Act of 1969 (83 Stat. 534) with respect to the provisions of section 4942, but only if the transferor qualified for the application of such section immediately before the transfer, and at least 85 percent of the fair market value of the net assets of the transferee immediately after the transfer was received pursuant to the transfer,

(e) Section 101(l)(3)(B) through (E) of the Tax Reform Act of 1969 (83 Stat. 534) with respect to the provisions of section 4942,

(f) Section 101(l)(5) of the Tax Reform Act of 1969 (83 Stat. 535) with respect to the provisions of section 4945, and

(g) Section 101(l)(6) of the Tax Reform Act of 1969 (83 Stat. 535) with respect to the provisions of section 508(e).

Since the transaction is a transfer described in section 507(b)(2), B and C will be entitled to the benefit of the savings provisions and provisional rules applicable to the Foundation with respect to the transferred assets, as set forth in section 1.507-3(a)(8) of the regulations.

SUBSEQUENT TERMINATION OF THE TRANSFEROR FOUNDATION

Section 507(a) of the Code provides, in part, that the status of any organization as a private foundation shall be terminated if the organization notifies the Secretary of its intent to accomplish a termination.

Section 507(c) of the Code imposes on each organization the private foundation status of which is terminated under section 507(a) a tax equal to the lower of (1) all of the income, estate, and gift tax benefits (with interest) received by the foundation and any of its substantial contributors since 1913, or (2) the value of its net assets.

As transfers described in section 507(b)(2), under sections 1.507-1(b)(6) and 1.507-3(d) of the regulations the proposed transfer of all of the Foundation's assets to B and C will not result in a termination of the Foundation's private foundation status under section 507(a). Under section 507(a)(1) of the Code, if, after the transfers, the Foundation properly notifies the Service that it intends to terminate its private foundation status, then such notice will be effective to terminate the private foundation status of the Foundation.

Since the tax imposed by section 507(c) of the Code on zero assets is zero, should the value of the net assets of the Foundation equal zero at such time as the Foundation gives the required notice and terminate its private foundation status, then the Foundation will not be liable for any termination tax under section 507(c).

Accordingly, we rule as follows:

(1) The proposed transfer of the Transferred B Assets by the Foundation to B will constitute a transfer described in section 507(b)(2) of the Code;

(2) The proposed transfer of the Transferred C Assets by the Foundation to C will constitute a transfer as described in section 507(b)(2) of the Code;

(3) As transfers described in section 507(b)(2)of the Code, the proposed transfers by the Foundation to B and C will not result in a termination of the Foundation's private foundation status under section 507(a) and will not cause the imposition of the termination tax described in section 507(c);

(4) The proposed transfer from the Foundation to B and C will not adversely affect the tax exempt status of the Foundation, B, or C;

(5) The proposed transfers by the Foundation to B and C will not constitute a willful and flagrant act (or failure to act) giving rise to liability for tax under Chapter 42 of the Code;

(6) B and C will not be treated as a newly-created organization;

(7) B and C will succeed to the aggregate tax benefit of the Foundation in proportion to the value of the assets transferred by the Foundation to B and C;

(8) For purposes of the Chapter 42 private foundation excise tax provisions and sections 507 through 509, B will be treated as if it is the Foundation, but only in the proportion which the net fair market value of the assets transferred by the Foundation to B bears to the net fair market value of all the Foundation's assets immediately before the transfer. Since B will receive 44.655% of all of A's assets, B will succeed to 44.655% of the Foundation's tax attributes under Chapter 42 and sections 507 through 509, including the following:

(a) For purposes of section 4940, 44.655% of the net investment income of the Foundation for the taxable year of the transfer to B will be apportioned to B will be includible in the computation of the net investment income of the B in the taxable year of the transfer.

(b) The transfer to B will not be an event giving rise to net investment income pursuant to section 53.4940-1(c) of the regulations. Therefore, such transfer itself will not give rise to tax under section 4940 of the Code.

(c) B will be responsible for satisfying 44.655% of the Foundation's distribution requirements under section 4942 to the extent that such distribution requirements are not satisfied by the Foundation. For purposes of determining the assumed distribution requirement responsibilities of B for the Foundation's taxable year of the transfer, 44.655% of the value of the Foundation's assets (calculated on a monthly basis as of the end of each calendar month falling within the taxable year of the transfer from the Foundation to B and then expressed as a monthly average) will be attributed to B. B will be deemed to have held net assets equal to 44.655% of such monthly average as of the last day of each month during B's taxable year of the transfer extending through the last day of the month immediately

preceding the transfer. Appropriate adjustments will be made if transfers are made during more than one month.

(9) For purposes of the Chapter 42 private foundation excise tax provisions and sections 507 through 509, C will be treated as if it is the Foundation, but only in the proportion which the net fair market value of the assets transferred by the Foundation to C bears to the net fair market value of all the Foundation's assets immediately before the transfer. Since C will receive 55.345% of all of the Foundation's assets, C will succeed to 55.345% of the Foundation's tax attributes under Chapter 42 and sections 507 through 509, including the following:

(a) For purposes of section 4940, 55.345% of the net investment income of the Foundation for the taxable year of the transfer to C will be apportioned to C and will be includible in the computation of the net investment income of C in the taxable year of the transfer.

(b) The transfer to C will not be an event giving rise to net investment income pursuant to section 53.4940-1(c) of the regulations. Therefore, such transfer itself will not give rise to tax under section 4940 of the Code.

(c) C will be responsible for satisfying 55.345% of the Foundation's distribution requirements under section 4942 to the extent that such distribution requirements are not satisfied by the Foundation. For purposes of determining the assumed distribution requirement responsibilities of C for the Foundation's taxable year of the transfer, 55.345% of the value of the Foundation's assets (calculated on a monthly basis as of the end of each calendar month falling within the taxable year of the transfer from the Foundation to C and then expressed as a monthly average) will be attributed to C. C will be deemed to have held net assets equal to 55.345% of such monthly average as of the last day of each month during C's taxable year of the transfer extending through the last day of the month immediately preceding the transfer. Appropriate adjustments will be made if transfers are made during more than one month.

(10) The transfers by the Foundation to B and C will not result in any liability for tax under section 4940 of the Code since the transfers will not constitute a "sale or other disposition of property or other realizable event" within the meaning of section 4940;

(11) The transfers by the Foundation to B and C will not constitute self-dealing under section 4941 of the Code because for purposes of section 4941 the term "disqualified person" does

not include an organization described in section 501(c)(3) other than an organization described in section 509(a)(4). Additionally, such transfer will not subject the Foundation, B, or C tax under section 4941;

(12) The proposed transfers do not involve the application of section 4943 of the Code concerning excess business holdings, provided that none of the assets transferred would place B or C in the position of having excess business holdings;

(13) The transfers by the Foundation to B and C will not constitute a jeopardizing investment within the meaning of section 4944 of the Code;

(14) The transfers by the Foundation to B and C will not constitute a taxable expenditure within the meaning of section 4945 of the Code, and A will not be required to exercise expenditure responsibility (as the term is defined in section 4945(h)) with respect to the Transferred B Assets or the Transferred C Assets;

(15) The legal, accounting, and other expenses incurred by the Foundation, B, or C in connection with this ruling request and in effectuating the proposed transfer will not constitute taxable expenditures pursuant to section 4945 and will be considered qualifying distributions under section 4942.

(16) B and C will be entitled to the benefit of the savings provisions and provisional rules applicable to the Foundation with respect to the Transferred B Assets and the Transferred C Assets, as set forth in section 1.507-3(a)(8) of the regulations.

(17) If, after the transfer of all of its assets to the B and C, the Foundation properly notifies the Service of its intent to terminate private foundation status, then such notice will be effective to terminate the private foundation status of the Foundation under section 507(a)(1) of the Code.

(18) If, after the transfer of all of its assets to B and C, the Foundation properly notifies the Service of its intent to terminate its private foundation status, and if the value of the Foundation's net assets at the time it gives the notice and terminates its private foundation status is zero, then the Foundation will not be liable for any termination tax under section 507(c) of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

Also, this ruling is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that this ruling may not be used or cited by others as precedent.

We are informing your key District Director of this action. Please keep a copy of this ruling in your permanent records.

Sincerely,

Robert C. Harper, Jr.
50-03055
Chief, Exempt Organizations
Technical Branch 3