Internal Revenue Service

Department of the Treasury
Washington, DC 20224

200003055

Contact Person:

Telephone Number:

In Reference to:

OP:E:EO:T:3

Date:
OCT 27 1999

Significant Index No.
4940.00-00

Legend:
M=
N=

Dear Sir or Madam:

This is in response to M's request for certain rulings under sections 501(c)(3) and 4940 of the Internal Revenue Code of 1986 (hereafter "Code") submitted on M's behalf by M's authorized representative.

M has been recognized exempt under section 501(c)(3) of the Code and classified as a private foundation under section 509(a). M's purposes include providing financial assistance and grants to other organizations described in section 501(c)(3).

N is an individual and a disqualified person with respect to M. N proposes to transfer to M certain interests in various pension plans described in section 401(a) and individual retirement accounts upon his death.

Section 4940(a) of the Code provides for the imposition of a tax equal to 2 percent on the net investment income of private foundations.

Section 4940(c)(1) of the Code provides that for purposes of subsection (a), the net investment income is the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the allowable deductions.

Section 4940(c)(2) of the Code provides that the term "gross investment income" means the gross amount of income from interest, dividends, rents, payments with respect to securities loans (as defined in section 512(a)(5)), and royalties, but not

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including any such income to the extent included in computing the tax imposed by section 511.

M has been recognized as exempt from federal income tax as an organization described in section 501(c)(3) of the Code. The transfer to M of N's interest in various pension plans described in section 401(a) and individual retirement accounts will be accomplished upon N's death. N's estate will transfer N's interest in such plans and individual retirement accounts to M. Distribution amounts from qualified employee pension plans and individual retirement accounts are treated as deferred compensation for federal income tax purposes.

As indicated above, under section 4940 the term "gross investment income" includes interest, rents dividends, payments with respect to securities loans, and royalties. Such term does not include deferred compensation. The transfer of the proceeds from various pension plans and individual retirement accounts to M under the circumstances described will not constitute gross investment income for purposes of imposing the excise tax described in section 4940 of the Code.

Based on the above we rule that M will not be subject to the federal excise tax on investment income under section 4940 of the Code at the time the proceeds from certain individual retirement accounts and qualified retirement plans described in section 401(a) previously held by N pass to M.

This ruling letter concerns only section 4940 of the Code. No opinion is expressed as to any other provision of the Code. 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.

We have received your letter of September 8, 1999 withdrawing your ruling request number 4. Therefore, we are not ruling on the issues raised in request number 4. We express no opinion on the statements and conclusions in your letter of September 8, 1999.

Sincerely yours,

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

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