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Internal Revenue Service

OP:E:EO:T:4

200009059

Department of the Treasury

Washington, DC 20224

Contact Person

Telephone Number

In Reference to

Date: DEC 3 1999

Legend:

B=
C=
D=
E=
F=
G=
H=
J=

Dear Sir or Madam:

This is in response to your letter dated August 18, 1999, in which you requested certain rulings with respect to a proposed transfer of assets from B to C.

In a letter dated November 23, 1999, you have amended your ruling request dated August 18, 1999. In your amended request you have withdrawn ruling request number 3; you have amended ruling request number 1; and you have made an additional representation of fact.

B is exempt under section 501(c)(3) of the Internal Revenue Code and is classified as a private foundation under section 509(a). C is exempt under section 501(c)(3) and has been determined to be a nonprivate foundation with classification under section 509(a)(1).

C is located in D, and is open to the public, to school tours, to researchers, and to numerous cultural institutions, groups, collectors, and artists. C features permanent collections of African, American, Asian, Contemporary, and European Art, as well as prints, drawings, and photographs, decorative arts, textiles, and costumes.

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The collection includes old master paintings and drawings and various decorative arts, from the beginning of the fourteenth to the end of the nineteenth centuries. E and F developed the collection through purchases dating back to the 1930's. For several decades, the paintings and objects that comprise the collection graced E and F's home, G, in D.

Following E's death in 1958, the collection became the property of B and was first exhibited to the public at the H in 1959. Public viewings at G followed for a number of years and, in April 1972, the J at C was dedicated in memory of F. J has been home to the collection, on indefinite loan from B, since that time.

At the annual joint meeting of B's members and Board of Directors, B decided to transfer its entire interest in the collection to C over an undetermined number of years. B will transfer each year to C one or more specifically identified objects of art in the collection. The collection was subject to a qualified appraisal on April 27, 1999.

In late 1999, B will make the first transfer to C by transferring specific objects in the collection. B has not previously counted as a qualifying distribution any interest in the collection or any object or art therein and has excluded the value of the art in its annual calculation of its minimum investment return for section 4942 purposes.

Section 4940(e)(1) of the Code provides in the case of any private foundation which meets the requirements of paragraph (2) for any taxable year, subsection (a) shall be applied with respect to such taxable year by substituting "1 percent" for "2 percent". A private foundation meets the requirements of this paragraph for any taxable year if (A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of (i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus (ii) 1 percent of the net investment income of such foundation for such taxable year, and (B) such private foundation was not liable for tax under section 4942 with respect to any year in the base period.

Section 4942(a) of the Code imposes a tax on a private foundation's undistributed income for failure to distribute the required amounts of income. Under the provisions of section 4942, a private foundation must have qualifying distributions equal to its minimum investment return.

Section 4942(g)(1)(A) of the Code provides that for purposes of this section, the term "qualifying distribution" means generally any amount (including that portion of reasonable and necessary administrative 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), or (B) any amount paid to acquire an asset (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B). The purposes described in section 170(c)(2)(B) are, in part, religious, charitable, scientific, literary, or educational.

Section 4942(i) of the Code provides that where a private foundation makes qualified distributions (as that term is described in section 4942(g) that exceed the required distributable amount for a particular year, such excess may be carried over for five years. A private foundation may generally "carry forward" any qualifying distributions made during a taxable year to the extent that such qualifying distributions exceed the private foundation's distributable amount for the year. By carrying forward excess qualifying distributions, a private foundation may reduce its distributable amount in any five immediately subsequent taxable years.

Section 53.4942(a)-3(a)(1) of the Foundation and Similar Excise Taxes Regulations provides that in calculating the amount of the qualifying distribution, a private foundation must use the fair market value of the distributed property "as of the date such qualifying distribution is made."

Rev. Rul. 79-375, 1979-2 C.B. 389, holds that when a private foundation that has made a qualifying distribution equal to the purchase price of an asset donates the asset at a later date to a publicly supported charity, it will be allowed a second qualifying distribution to the extent that the fair market value of the asset on the date of contribution exceeds the amount of the first qualifying distribution.

Based upon the above facts, each distribution of assets to C would meet the definition of a qualifying distribution under section 4942(g)(1)(A) of the Code. As required, in order to receive credit for making a qualifying distribution, B will give the property to C to be used to carry out one or more of the exempt purposes described in section 170(c)(2)(B). Moreover, C

is not a private foundation, and is not controlled by persons who are disqualified persons with respect to B. Further, B has never included the value of the art in determinations of qualifying distributions in the past. See Rev. Rul. 79-375, supra.

Because we have determined that the transfers of property from B to C are qualifying distributions, if the value of the collection exceeds B's distributable amount in any taxable year, the excess may be carried forward to reduce B's distributable amount in any of the five taxable years immediately following the taxable year in question.

Because we have determined that the distributions of property C will constitute qualifying distributions, then these distributions (along with B's other qualifying distributions) may be used to perform the calculation described in section 4940(e)(2) of the Code. Moreover, if B satisfies the requirements of the that provision, then B would be entitled to the reduced one percent net investment income tax under section 4940(e)(1).

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

1. Each of the proposed property transfers will constitute a qualifying distribution of B under section 4942(g)(1)(A).

2. If the property, together with B's other qualifying distributions, exceed B's aggregate distributable amount in any taxable year, B may carry forward such excess under section 4942(I) to reduce B's distributable amount in any of the five taxable years immediately following such taxable year.

3. If the property transferred in any one taxable year, together with B's other qualifying distributions during such taxable year, equal or exceed the sum of the items set forth in section 4940(e)(2)(A), and if B was not liable for tax under section 4942 during the base period described section 4940(e)(4), then B will be eligible for the reduced excise tax described in section 4940(e)(1).

We are informing the 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.

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Sincerely,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4