S/N:507-00-00

Internal Revenue Service

200050048

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

Date: SEP 20 2000

T:EO:B4

Legend:

B=
C=
D=
E=

Dear Sir or Madam:

This is in response to your letter dated June 9, 2000, in which you requested certain rulings with respect to the proposed transfer of net assets from B to C and D.

B is exempt under section 501(c)(3) of the the Internal Revenue Code and is classified as a private foundation under section 509(a). C is exempt under section 501(c)(3) of the Code and is classified as a nonprivate foundation under sections 509(a)(1) and 170(b)(1)(A)(vi). D is in the process of preparing a Form 1023 to filed with the Service seeking recognition of exempt status under section 501(c)(3) of the Code and classification as a private foundation under section 509(a).

B, C, and D all have members and officers who are related by blood or marriage. Over time, the charitable and philantrophic interests of the various family members have diverged. To facilitate the charitable objectives of the two family branches of E and in an effort to reduce the administrative costs associated with carrying out these charitable objectives, while at the same time effectively continuing a program of charitable giving, B proposes to transfer approximately one-half of its assets to C, in order to establish a donor advised fund. Following this transfer, B will then transfer its remaining assets to D.

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The current directors of D are also the trustees of B. Moreover, the directors of D are the child and the spouse of a child of the creators of B.

After the transfer, D will function independently and separate from B. D will not use the name of B.

B will not carry out the proposed transfer unless it receives a favorable ruling pursuant to this request with regard to the effect of the proposed transfer on the liability of B or others for taxes under section 507 or Chapter 42 of the Code.

B does not intend that this request constitute notice by it of its intention to terminate its status as a private foundation under section 507(a)(1), and intends to continue in existence for a short period of time following the proposed transfer of its assets to D. 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.

After the transfer of its assets to D, B will have no assets. At some time after the transfers, B expects to dissolve to provide voluntary notice to the Service of its intention to terminate its private foundation status under section 507(a)(1) of the Code. B has never received notice that its status as a private foundation has been terminated.

B currently has no grants outstanding that require the exercise of expenditure responsibility under section 4945 of the Code. However, should such grants be made, the responsibility for such grants will be transferred to D. B will pay all foundation excise taxes, if any, imposed by section 4940 of the Code, that it will owe as of the date of the transfer to D.

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). However, where the transferor has disposed of all of its assets, the recordkeeping requirements of section 4942(g)(3)(B) shall not apply during any period in which it has no assets.

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 1.507-1(b)(9) of the regulations provides that a private foundation that transfers all of its net assets is required to file the annual information return required by section 6033 of the Code for the taxable year in which such transfer occurs. However, neither such foundation nor its managers will be required to file returns for any taxable year following the taxable year in which the last of any such transfers occurred, if at no time during the subsequent taxable years in question the foundation has either legal or equitable title to any assets or engages in any activity.

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 4942(g)(3)(B) provides that private foundations making certain contributions to transferee organizations must in each case obtain adequate records or other sufficient evidence from the transferee organization showing the nature, amount, and other information concerning the transferee organization's distributions.

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 remaining assets of B to D will allow D to pursue charitable purposes and activities previously conducted by B. The current directors of D are also the trustees of B.

Because B intends to transfer more than 25 percent of the fair market value of its net assets to D, the transfer will constitute a significant disposition of B's assets. The transfer will thus be a transfer between private foundations within the meaning of section 507(b)(2) of the Code. Because transfers of all or part of a private foundation's assets to one or more other other private foundations pursuant to section 507(b)(2) will not result in the termination of status as a private foundation, unless and until B elects to voluntarily terminate by complying with the requirements of section 507(a)(1), B will continue to be a private foundation within the meaning section 509(a) following the proposed transfers.

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 B's assets to 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 B's assets to D will not result in the

imposition of a termination tax under section 507(c) of the Code.

Section 507(b)(2) of the Code provides that, in the 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. Thus, the transfer by B to D will constitute in the aggregate an "adjustment, organization, or reorganization" within the meaning of section 507(b)(2). Accordingly, the transfer by B to D will not be treated as a transfer to a newly created organization.

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

Because the transfers of B's assets to D will be a transfer described in section 507(b)(2) of the Code, the aggregate tax benefit of B should be carried over to 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 D, the transfer of assets to D will not constitute an act of self-dealing within the meaning of section 4941 of the Code.

Because the proposed transfer of assets to 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 D.

Because D should be treated as if it were B for the purposes of Chapter 42, the transfer of assets from B to 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 D in proportion to the assets transferred to it.

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

D will not be a taxable expenditure under section 4945 of the Code.

Because the proposed transfer of B's assets to D is a transfer within the meaning of section 507(b)(2), this transfer will be counted toward satisfaction of the distribution requirements of section 4942. Therefore, B will not be subject to any tax liability for a failure to distribute income.

Following the proposed transfer to D, B will have no assets. As long as it has no assets, section 4945(h), requiring a transferor private foundation to exercise expenditure responsibility with respect to grants to other private foundations, does not apply. Furthermore, because D will be treated as if it were B, there will be no expenditure responsibility requirements with respect to the transfer of assets by B to D.

Because B will have no assets after the proposed transfer to D, it will not be required to file any information returns under section 6033 for any taxable years after the transfer.

B proposes to terminate its private foundation status only in a year in which it has no assets by giving proper notice of such termination under section 507(a)(1). Accordingly, no tax will be imposed under section 507(c) because B will have no assets either on the date on which it takes its first action culminating in its ceasing to be a private foundation or on the date on which it ceases to be so.

Because B will have no assets after the proposed transfer to D, it will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B).

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

1. The proposed transfer of B's remaining assets to D will qualify as a transfer described in section 507(b)(2)of the Code and will not constitute a termination of B's status as a private foundation under section 507(a) of the Code.

2. The proposed transfer of B's remaining assets to D will not result in any tax under section 507(c) of the Code.

3. The transfer of assets by B to D will not be treated as a transfer to a newly created organization.

4. B will treat its aggregate tax benefit as having been transferred to D. B will treat the proposed transfer to D as a transfer of its assets subject to any liability B may have incurred in Chapter 42 of the Code to the extent not satisfied by B.

5. As a result of the proposed transfer to D, B's excess qualifying distributions carryovers for prior years, as defined under section 4942(i), will be transferred to D.

6. The proposed transfer to D will not constitute an act of self-dealing and will not subject B's foundation managers and disqualified persons with respect to B to any tax under sections 4941(a)(1)or (2) of the Code.

7. The proposed transfer to D will not give rise to net investment income and, therefore, will not result in the imposition of tax under section 4940 of the Code.

8. The proposed transfer to D will not constitute a jeopardizing investment within the meaning of section 4944(a).

9. The proposed transfer to D will not constitute a taxable expenditure and, therefore, will not subject B to tax under section 4945.

10. The proposed transfer to D will not subject B to any tax under section 4942(a) of the Code for failure to distribute income.

11. B will not have to exercise expenditure responsibility with respect to the proposed transfer of its assets to D, as long as B disposes of all its assets.

12. Except for the information return requirements for the year of the transfers, B will not be required to file any information returns under section 6033 of the Code for any taxable years subsequent to that in which the distribution occurs.

13. B will not be subject to tax under section 507(c)of the Code if B informs the Service of its intention to terminate its private foundation status in a later taxable year when it has no assets.

14. B will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) with respect to the proposed transfer after the transfer of all its assets.

We are informing the Ohio TE/GE 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
Manager, Exempt Organizations
Technical Group 4