DEPARMENT OF TREASURY 200101035
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: OCT 11 2000

Contact Person:

ID Number:

Telephone Number:

SIN# 4945.00-00 4940.01-00 507.01-00
4942.00-00

T:EO:B3

A =

B =

C =

Dear Sir or Madam:

This is in reply to a ruling request dated April 25, 2000, with respect to a proposed transfer of all your assets to another private foundation followed by a termination of your organization.

A is an inter vivos irrevocable trust. A is recognized as exempt under section 501(c)(3) of the Internal Revenue Code and classified as a private foundation under section 509(a).

B is recognized as exempt under section 501(c)(3) of the Code and classified as a private foundation under section 509(a).

C is the creator and trustee of A and is the creator of B, with the power to appoint and remove all directors of B. C is also the current sole director of B.

The principal office of your organization has been relocated in B's state. Accordingly, A may be required to comply and keep informed as to the applicable laws in its own state as well as those in B's state. To accomplish the transition to B's state, all of the assets of A will be distributed to B. Before making its final liquidating distribution, A plans to make qualifying distributions for the year in which the liquidating distribution is made. If for any reason A fails to make qualifying distributions that are at least equal to its distributable amount and there are no assets remaining in A, B will distribute the amount necessary to cover the shortfall to qualifying charitable organizations. Alternatively, A may make excess qualifying distributions. Once A has made its final distribution and has transferred all of its assets to B, it will have no assets and the Service will be notified of its intention to terminate.

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Section 507(a) of the Code provides that except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if-

(1) such organization notifies the Secretary (at such time and in such manner as the Secretary may by regulations prescribe) of its intent to accomplish such termination, or

(2) (A) 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

(B) the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for tax imposed by subsection (c), and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

Section 507(b)(2) of the Code provides that for purposes of this part, 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 provides that there is imposed on each organization which is referred to in subsection (a) a tax equal to the lower of (1) the amount which the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from the section 501(c)(3) status of such foundation, or (2) the value of the net assets of such foundation.

Section 1.507-1(b)(6) of the Income Tax Regulations provides that if a private foundation transfers all or part of its assets to one or more other private foundations (or one or more private foundations and one or more section 509(a)(1), (2), (3), or (4) organizations) pursuant to a transfer described in section 507(b)(2) and section 1.507-3(c), such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Section 1.507-3(a)(1) of the regulations provides that for purposes of Part II, subchapter F, Chapter 1 of the Code, 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 organization shall not be treated as a newly created organization. Thus, in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of this section, the transferee organization shall not be treated as a newly created organization.

Section 1.507-3(a)(2) of the regulations provides that a transferee private foundation succeeds to that percentage of the transferor's "aggregate tax benefit" equal to the fair market value of the assets transferred divided by the fair market value of the assets held by the transferor immediately before the transfer. The fair market value of the assets held and transferred are determined at the time of transfer.

Section 1.507-3(a)(4) of the regulations provides that if a private foundation incurs liability for one or more of the taxes imposed under Chapter 42 of the Code (or any penalty resulting therefrom) prior to, or as a result of, making a transfer of assets described in section 507(b)(2) to one or more private foundations, then in any case where transferee liability applies, each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

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 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).

Section 1.507-3(a)(7) of the regulations provides that, except as provided in section 1.507-3(a)(9), where the transferor has disposed of all of its assets, during any period in which the transferor has no assets, section 4945(d) and (h) shall not apply to the transferee or the transferor with respect to any "expenditure responsibility" grants made by the transferor. The exception does not apply to information reporting requirements imposed by section 4945 and the regulations thereunder for the year in which the transfer is made.

Section 1.507-3(a)(9)(i) of the regulations provides that if a private 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)), directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of Chapter 42 of the Code and section 507 through section 509, the transferee private foundation shall be treated as if it were the transferor.

Section 1.507-3(b) of the regulations provides that a 507(b)(2) transfer of assets from a private foundation to an organization recognized as exempt under section 501(c)(3), including a private foundation, qualifies as a transfer for charitable purposes.

Section 1.507-3(c)(1) of the regulations provides, in part, that for purposes of section 507(b)(2), the terms "other adjustment, organization, or reorganization" shall 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 relevant part, that the term "significant disposition of assets to one or more private foundations" shall include any disposition for a taxable year where the aggregate of the dispositions to one or more private foundations for the taxable year is 25 percent or more of the fair market value of the net assets of the foundation at the beginning of the taxable year.

Section 1.507-3(d) of the regulations provides that if a private foundation transfers all or part of it assets to one or more other private foundations pursuant to a transfer described in section 507(b)(2), such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Section 4940(a) of the Code provides for the imposition on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period.

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

Section 53.4941(d)-2(f)(2) of the Foundation and Similar Excise Tax Regulations provides, in part, that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing.

Section 4942(a) of the Code provides for the imposition of a tax on the undistributed income of a private foundation.

Section 4942(c) of the Code defines "undistributed income" as the amount by which the distributable amount exceeds the qualifying distributions of the foundation.

Section 4942(i) of the Code provides that an excess qualifying distribution is a distribution of either undistributed income or corpus with respect to a taxable year beginning after December 31, 1969, that exceeds the distributable amount for that taxable year.

Section 53.4942(a)-3(e) of the regulations provides that any excess qualifying distributions may be carried over and used to reduce the private foundation's minimum distributions requirement for any subsequent taxable year within the specified five year adjustment period.

Section 53.4942(a)-3(a)(2)(i) of the regulations provides that reasonable and necessary administrative expenses paid to accomplish a purpose specified in section 170(c)(1) or section 170(c)(2)(B) are generally treated as 'qualifying distributions" within the meaning of section 4942.

Section 4945(a) of the Code imposes a tax on each "taxable expenditure" of a private foundation 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(d)(5) of the Code provides that a taxable expenditure includes any amount expended by a private foundation for purposes other than exempt purposes under section 170(c)(2)(B).

Section 4945(h) of the Code provides that the 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 complete reports from the grantee on how the funds are spent, and (3) to make full and detailed reports with respect to such expenditures to the Secretary.

Section 53.4945-6(b) of the regulations provides that, in general, unreasonable administrative expenditures will ordinarily be regarded as taxable expenditures unless the foundation can demonstrate that they were paid or incurred in the good faith belief that they were reasonable and that their payment was consistent with ordinary business care and prudence.

Section 53.4946-1(a)(8) of the regulations provides that, for purposes of self-dealing under section 4941, an organization exempt under section 501(c)(3) is not a disqualified person.

Rev. Rul. 78-387, 1978-2 C.B. 270, provides that if the transferor foundation has a carryover of excess qualifying distributions and the transferee organizations are effectively controlled by the same persons that control the transferor foundation, each transferee foundation is entitled to utilize a proportionate amount of the carryover.

The proposed transfer of all A's assets to B will not terminate A's status as a private foundation under section 509(a) of the Code because A will not at the time of the transfer notify the Internal Revenue Service that it intends to terminate its status as a private foundation pursuant to section 507(a)(1) of the Code. If, at the time A notifies the Internal Revenue Service

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of its intent to terminate its private foundation status pursuant to section 507(a)(1) of the Code, A has no assets, then the tax imposed on A by section 507(c) will be zero.

A and B are both controlled by C. A proposes to transfer all of its assets to B. Pursuant to section 1.507-3(a)(9) of the regulations, after the transfer B will be treated as if it were A for purposes of Chapter 42 of the Code. Since B is treated as A, rather than as the recipient of a grant from A, there are no expenditure responsibility requirements which must be exercised under sections 4945(d)(4) and (h) with respect to the transfer of assets from A to B. See Example (2) of section 1.507-3(a)(9)(iii) of the regulations.

When A makes qualifying distributions equal to its required distributable amount for the year of the Final Distribution and all prior years, it will not be subject to tax under section 4942 of the Code and B will not be required to make any qualifying distributions on behalf of A during the fiscal year in which it receives its distribution from A because section 1.507-3(a)(9) treats B, the transferee, as the transferor. Thus, B is permitted to meet all of A's section 4942 distriutions requirements.

As stated in Revenue Ruling 78-387, supra., after A transfers all of its assets to B, A's excess qualifying distributions carryover, if any, under section 4942(i) of the Code, can be used by B to reduce its annual distributable amount under section 4942.

Because B is described in section 501(c)(3) of the Code, pursuant to section 53.4946-1(a)(8) of the regulations, B is not disqualified person for purposes of section 4941. Therefore, the transfer of assets from A to B is not an act of self-dealing.

Pursuant to section 1.507-3(a)(9)(i) of the regulations, B, as transferee will be treated as if it was A after A transfers all of its assets to B. Thus, after this transfer, A's liability under section 4940 may be satisfied by B. Also, any refund to which A may be entitled to may be able to be used by B to offset its excise tax under section 4940.

Based on the facts submitted, we rule as follows:

1. If A makes the Final Distribution to B and has no assets at least one day prior to notifying the Internal Revenue Service of its intent to terminate its status as a private foundation under section 507 of the Code, A's termination tax under section 507 will be zero;

2. Neither the trustee of your organization not the board of directors of B will be required to exercise expenditure responsibility, as defined in section 4945(h) of the Code, in order to avoid triggering a taxable expenditure, as defined in section 4945(d), with respect to the Final Distribution;

3. If, during the year in which it distributes all of its assets to B, A makes qualifying distributions, as defined in 4942(g) of the Code, that are at least equal in amount to its distributable amount, as defined in section 4942(d), for the current year and all prior years, then A will not be subject to tax under section 4942, and B will not be required to make any distributions during the year in which it receives distributions from A (assuming it has no other assets);

   Moreover, qualifying distributions made by B following the date of the transfer to it of A's assets shall satisfy the distribution requirements of A for periods prior to making the Final Distribution to B;

4. B will succeed to any excess section 4942 distributions, as described in section 4942(i), that had been made by A prior to making the Final Distribution to B;

5. The Final Distribution from A to B will not constitute an act of self-dealing under section 4941 of the Code and ;

6. After A transfers all of its assets to B, A's excise tax liability under section 4940 of the Code for its final year may be satisfied by B, and any refund to which A is entitled may be used by B to offset its excise tax under section 4940.

We are informing your key District Director of this ruling. Because this ruling could help resolve future questions about your federal tax status you should keep it in your 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, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Robert C Harper, Jr.

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