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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: JUN 19 2001

Contact Person:

Identification Number:

Telephone Number:

T:EO:B2

Employer Identification Number:

LEGEND: M =
N =

Dear Sir or Madam:

This is in reply to the letter of May 10, 2000, regarding the proposed transfer of all of M's assets to N.

M has been recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and is a private foundation within the meaning of section 509(a) of the Code. N has been recognized as exempt under section 501(c)(3) of the Code and is a private foundation within the meaning of section 509(a).

The trustees of M have concluded that a corporate form affords a superior organizational and operational structure than a trust does. Furthermore, questions as to legal obligations of the entity and its officers, as well as the status and relative roles of various persons are better defined and understood in terms of corporate law, than trust law. Accordingly, N was incorporated to be the transferee of all of M's assets. After the transfer of assets from M, N will continue to carry on the purposes and charitable goals currently carried on by M. In addition, management of the assets will remain under the control of the individual who is currently the managing trustee of M. It is expected that M will cease operating shortly after the transfer of all its assets to N. It will then notify the Internal Revenue Service of its termination and file final tax returns.

The following rulings have been requested:

1. The proposed transfer will not result in the termination of M's private foundation status within the meaning of section 507(a) or the imposition of any termination tax pursuant to section 507(c), but will constitute an other adjustment, organization, or reorganization between private foundations within the meaning of section 507(b)(2) because it is a significant disposition of assets to one or more private foundations within the meaning of section 1.507-3(c) of the Income Tax Regulations.

2. After M transfers its assets to N and subsequently notifies the Internal Revenue Service of its intent to terminate under section 507(a)(1), no tax will be due pursuant to section 507(c) because M will have no assets.

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3. Under section 507(b)(2) and section I.507-3(a)(I) of the regulations, N will not be treated as a newly-created organization.

4. Under section I.507-3(a)(9), N will be treated as if it were M for purposes of Chapter 42 and sections 507 through 509 of the Code;

5. The transfer from M to N will not constitute either a flagrant act (or failure to act) or one of a series of repeated acts (or failures to act) giving rise to liability for tax under Chapter 42 of the Code;

6. The proposed transfer will not give rise to net investment income and will not constitute a sale or other disposition within the meaning of section 4940(c)(4)(A) of the Code.

7. The proposed transfer will not constitute an act of self-dealing within the meaning of section 4941(d) of the Code between M and N and will not result in the imposition of any tax under section 4941 of the Code.

8. M's distribution requirement for the taxable year of the proposed transfer may be fulfilled by N; M will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B); and M will not be subject to tax pursuant to section 4942 of the Code;

9. M's transfer of all of its assets to N, as a controlled private foundation, may in itself be counted towards satisfaction of M's charitable distribution requirements under section 4942 of the Code if, and to the extent that section 4942(g)(3) of the Code is met.

10. Any excess qualifying distributions carryover of M under section 4942(i) of the Code will be carried over to N and may be used by N to meet its distribution requirements under section 4942 of the Code.

11. The transfer will not result in the imposition of any tax under section 4943 of the Code.

12. The transfer will not result in the imposition of any tax under section 4944 of the Code as an investment jeopardizing M's exempt purpose.

13. The proposed transfer will not constitute a taxable expenditure under section 4945(d) and M will not be required to exercise expenditure responsibility with respect to the transfer.

14. N, not M, will be required to exercise expenditure responsibility with respect to any expenditure responsibility as to grants made by M prior to the proposed transfer.

15. Under section I.507-I(b)(9) and I.507-3(a)(9)(i) of the regulations, N will not be required to file the annual information return required by section 6033 of the Code for any taxable year following the taxable year in which the proposed transfer occurs, if during the subsequent taxable years M has neither legal nor equitable title to any assets and engages in no activity, provided that upon M's liquidation and dissolution under state law, M will file a returned required by section 6043(b).

16. The reasonable legal, accounting, and other expenses, incurred by M in connection with obtaining the ruling requested herein ,will not constitute taxable expenditures for purposes of section 4945 of the Code.

Re:

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

Section 509(a) of the Code describes organizations exempt from federal income tax under section 501(c)(3) of the Code that are private foundations subject to the provisions of Chapter 42 of the Code.

Section 507(a)(1) of the Code provides that a private foundation may voluntarily terminate its private foundation status by submitting to the Commissioner a statement of its intention to terminate its private foundation status and by paying the termination tax imposed under section 507(c) of the Code.

Section 507(b)(2) of the Code concerns the transfer of assets by one private foundation to one or more other private foundations, and provides that each transferee private foundation shall not be treated as a newly created organization.

Section 507(c) of the Code imposes a tax on a private foundation which voluntarily terminates its status as a private foundation under section 507(a)(1) of the Code. This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefit that has resulted from the foundation's exemption from federal income tax under section 501(c)(3) of the Code, or (b) the value of the net assets of the foundation.

Section 4940(a) of the Code imposes an excise tax on the net investment income of a private foundation.

Section 4940(c)(l) of the Code defines the net investment income of a private foundation as the amount by which the sum of the gross investment income and the capital gain net income exceeds the deductions allowed under section 4940(c)(3).

Section 4940(c)(2) of the Code defines the gross investment income as the amount of income from interest, dividends, rents, payments with respect to securities loans and royalties.

Section 4940(c)(4)(A) of the Code provides that there shall be taken into account only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties, and property used for the production of income included in computing the tax imposed by section 511.

Section 4941(a) of the Code imposes excise tax on acts of self-dealing between a private foundation and any of its disqualified persons as defined in section 4946 of the Code.

Section 4941(d)(l)(E) of the Code provides that the term self-dealing includes 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 4942(a) of the Code imposes an excise tax on a private foundation which fails to meet the distributions requirements set forth in section 4942(d).

Section 4942(d) of the Code defines the term distributable amount as the amount equal to the sum of the minimum investment return, plus certain other amounts reduced by the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

Section 4942(g)(3)(B) of the Code provides that the term qualifying distribution includes a contribution to a section 501(c)(3) organization if not later than the close of the first taxable year after its taxable year in which a contribution is received such organization makes a distribution equal to the amount of such contribution and the private foundation making the contribution maintains adequate records on the

distribution.

Section 4942(i) of the Code provides for the adjustment of the distributable amount where distributions during prior years have exceeded income.

Section 4943(a)(l) imposes a tax on the excess business holdings of any private foundation in a business enterprise.

Section 4943(c)(l) of the Code defines the term "excess business holdings" as the amount off stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings within the meaning of section 4943(c)(2) and (3).

Section 4944(a) of the Code provides for the imposition of an excise tax on investments which jeopardize the carrying out of any of the exempt purposes of a private foundation.

Section 4945(a) of the Code imposes an excise tax upon a private foundation's making of any taxable expenditures as defined in section 4945(d).

Section 4945(d)(4) of the Code requires that, in order to avoid making a taxable expenditure, a transferor private foundation must exercise "expenditure responsibility" under section 4945(h) of the Code on its grants to another private foundation.

Section 4945(h) of the Code provides the term expenditure responsibility means that the private foundation is responsible to exert all reasonable efforts and establish adequate procedures to see that the grant is spent solely for the purposes 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.

Section 4946(a)(l)(B) of the Code defines the term disqualified person as including a foundation manager as that term is described in section 4946(a)(b)(l).

Section 6033(a)(l) of the Code requires that every organization exempt from taxation under section 501(a), with certain exceptions which are not applicable here, shall file an annual return.

Section 6043(b) of the Code and section 1.6043-3(a)(1) of the regulations provides that a private foundation must file a return with respect to its dissolution.

Section I.507-l(a) of the regulations provides, in general, that the status of any organization as a private foundation shall be terminated only if such organization notifies the district director of its intent to accomplish such termination.

Section I.507-l(b)(6) of 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) and section I.507-3(c) such transferor foundation will not have terminated its private foundation status under section 507(a)(l).

Sections 1.507-1(b)(7) and 1.507-3(d) of the regulations provide that a transferor foundation's transfer of assets under section 507(b)(2) of the Code will not constitute a termination of the transferor foundation's status as a private foundation unless the transferor private foundation elects to terminate pursuant to section 507(a)(l) or section 507(a)(2) is applicable.

Re:

Section 1.507-1(b)(9) of the regulations provides that a private foundation which transfers all of its assets is not required to file annual information returns required by section 6033 of the Code for its tax years after the tax year of its transfer if it has no legal or equitable title to any assets an does not engage in any activities.

Section 1.507-3(a)(l) of the regulations 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 organization shall not be treated as a newly created organization.

Section I.507-3(a)(2)(i) of the regulations provides that a transferee organization shall succeed to the aggregate tax benefit of the transferor organization.

Section I.507-3(a)(2), (3) and (4) of the regulations describe in particular terms the treatment to be accorded assets transferred pursuant to a section 507(b)(2) reorganization under Chapter 42 and other provisions where the transferee organization succeeds to the aggregate tax benefit of the transferor organization.

Section 1.507-3(a)(5) of the regulations indicates that a transferor private foundation is required to meet its charitable distribution requirements under section 4942 of the Code, even for any taxable year in which it makes a transfer of its assets to another private foundation pursuant to section 507(b)(2) of the Code.

1.507-3(a)(7) of the regulations provides that where the transferor has disposed of all of its assets during any period in which the transferor has no assets, section 4945(d)(4) and (h) shall not apply to the transferee or the transferor with respect to any expenditure responsibility grants made by the transferor.

Section I.507-3(a)(8)(ii) of the regulations provides that the transitional and other rules regarding Chapter 42 of the Code set forth in section I.507-3(a)((8)(ii)(a) through (g), apply to a transferee foundation 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) had not be effected.

Section 1.507-3(a)(9)(i) of the regulations indicates that, if a transferor private foundation transfers assets to a private foundation effectively controlled, directly or indirectly, by the same person or persons who effectively control the transferor private foundation, the transferee foundation will be treated as if it were the transferor foundation, for purposes of sections 4940 through 4948 and sections 507 through 509 of the Code. The transferee is treated as the transferor in the proportion which the fair market value of the transferor's assets that were transferred bears to the fair market value of all of the assets of the transferor immediately before the transfer.

Section 1.507-3(c)(1) of the regulations indicates that a transfer under section 507(b)(2) of the Code includes a transfer of assets from one private foundation to one or more other private foundations pursuant to any reorganization, including a significant disposition of 25% or more of the transferor foundation's assets.

Section 1.507-4(b) of the regulations provides that the tax on termination of private foundation status under section 507(c) of the Code does not apply to a transfer of assets pursuant to section 507(b)(2) of the Code.

Section 53.4944-1(a)(2)(i) of the Foundation and Similar Excise Tax Regulations states that with certain exceptions an investment shall be considered to jeopardize the carrying out of the exempt purposes of a private foundation if it is determined that the foundation managers, in making such investment, have

failed to exercise ordinary business care and prudence, under the facts and circumstances prevailing at the time of making the investment, in providing for the long- and short-term financial needs of the foundation to carry out its exempt purposes. In the exercise of the requisite standard of care and prudence the foundation managers may take into account the expected return (including both income and appreciation of capital), the risks of rising and falling price levels, and the need for diversification within the investment portfolio (for example, with respect to type of security, type of industry, maturity of company, degree of risk and potential for return). The determination as to whether the investment of a particular amount jeopardizes the carrying out of the exempt purposes of a foundation shall be made on an investment by investment basis, in each case taking into account the foundation's portfolio as a whole. No category of investments shall be treated as a per se violation of section 4944. However, certain types of investments, such as an investment in futures, require close scrutiny to determine whether foundation managers have met the requisite standard of ordinary business care and prudence.

Sections 53.4945-6(c)(3) and 1.507-3(b) of the regulations allow a private foundation to make transfers of its assets pursuant to section 507(b)(2) of the Code to organizations exempt from federal income tax under section 501(c)(3) of the Code, including private foundations, without the transfers being taxable expenditures under section 4945 of the Code.

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

Revenue Ruling 78-387, 1978-2 C. B. 270, concerns a private foundation that transferred all of its assets to another private foundation that was effectively controlled by the same persons. In accordance with section 1.507-3(a)(9)(i) of the regulations, the transferee foundation is treated as the transferor foundation and, thus, the transferee can use its transferor's excess qualifying distributions carryover, if any, under section 4942(i) of the Code to reduce the transferee's distributable amount under section 4942 of the Code by the amount, if any, of its transferor's excess qualifying distributions carryover under section 4942(i) of the Code.

The information submitted establishes that M intends to transfer all of its assets to N. N is a private foundation and because M has the same managing director as N does, N is considered a controlled organization for the purposes of section 507 and Chapter 42 of the Code. As the successor to M, the transitional and other rules regarding Chapter 42 of the Code set forth in section I.507-3(a)((8)(ii)(a) through (g), apply to N. Furthermore, N is not considered a newly created organization and is treated in the same manner as M would be for the purposes of Chapter 42 and sections 507 through 509. After M transfers all its assets to N, M intends to notify the Service of its intent to terminate its private foundation status and comply with the notice and other requirements of section 507(a)(1) of the Code.

Based on the information submitted and the representations made we hold that:

1. The proposed transfer will not result in the termination of M's private foundation status within the meaning of section 507(a) or the imposition of any termination tax pursuant to section 507(c), but will constitute an other adjustment, organization, or reorganization between private foundations within the meaning of section 507(b)(2) because it is a significant disposition of assets to one or more private foundations within the meaning of section I.507-3(c) of the Income Tax Regulations.

2. After M transfers its assets to N and subsequently notifies the Internal Revenue Service of its intent to terminate under section 507(a)(I), no tax will be due pursuant to section 507(c) because M will have no assets.

3. Under section 507(b)(2) and section I.507-3(a)(I) of the regulations, N will not be treated as a newly-created organization.

4. Under section I.507-3(a)(9), N will be treated as if it were M for purposes of Chapter 42 and section 507 through 509 of the Code;

5. The transfer from M to N will not constitute either a flagrant act (or failure to act) or one of a series of repeated acts (or failures to act) giving rise to liability for tax under Chapter 42 of the Code;

6. The proposed transfer will not give rise to net investment income and will not constitute a sale or other disposition within the meaning of section 4940(c)(4)(A) of the Code.

7. The proposed transfer will not constitute an act of self-dealing within the meaning of section 4941(d) of the Code between M and N and will not result in the imposition of any tax under section 4941 of the Code.

8. M's distribution requirement for the taxable year of the proposed transfer may be fulfilled by N; M will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B); and M will not be subject to tax pursuant to section 4942 of the Code;

9. M's transfer of all of its assets to N, as a controlled private foundation, may in itself be counted towards satisfaction of M's charitable distribution requirements under section 4942 of the Code if, and to the extent that section 4942(g)(3) of the Code is met.

10. Any excess qualifying distributions carryover of M under section 4942(i) of the Code will be carried over to N and may be used by N to meet its distribution requirements under section 4942 of the Code.

11. The transfer will not result in the imposition of any tax under section 4943 of the Code.

12. The transfer will not result in the imposition of any tax under section 4944 of the Code as an investment jeopardizing M's exempt purpose.

13. The proposed transfer will not constitute a taxable expenditure under section 4945(d) and M will not be required to exercise expenditure responsibility with respect to the transfer.

14. N, not M, will be required to exercise expenditure responsibility with respect to any expenditure responsibility as to grants made by M prior to the proposed transfer.

15. Under section I.507-I(b)(9) and I.507-3(a)(9)(i) of the regulations, N will not be required to file the annual information return required by section 6033 of the Code for any taxable year following the taxable year in which the proposed transfer occurs, if during the subsequent taxable years M has neither legal nor equitable title to any assets and engages in no activity, provided that upon M's liquidation and dissolution under state law, M will file a returned required by section 6043(b).

16. The reasonable legal, accounting, and other expenses, incurred by M in connection with obtaining the ruling requested herein ,will not constitute taxable expenditures for purposes of section 4945 of the Code.

Because this letter could help to resolve any questions, please keep it in your permanent records and include a copy in your annual information return, Form 990-PF.

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This ruling letter is directed only to the organizations 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 about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact the Ohio TE/GE Customer Service Office.

Sincerely yours,

/S/

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

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