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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200201036

Date: OCT - 9 2001

U/A: 507.00-00

Contact Person:

Identification Number:

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Employer Identification Number:

Legend:
B=
C=
D=
E=
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Dear Sir or Madam:

This in response to your letter dated July 18, 2001, in which you requested certain rulings with respect to a proposed transfer of assets from B to C.

B is exempt under section 501(c)(3) of the Internal Revenue Code and is classified as a private foundation under section 509(a). We have determined that C is tax-exempt under section 501(c)(3) of the Code and have classified it as a private foundation under section 509(a) in separate correspondence.

The current directors of B are D, E and F. The directors of C are D and E.

B proposes to transfer one-half of its assets to C. The transferred assets will form part of C's capital endowment. B will continue in existence after the transfer. B will carry out this proposed transfer only if B and C receive favorable rulings pursuant to this request, and C is recognized as tax-exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a).

B has not notified the Service that it intends to terminate its private foundation status, nor has B ever received notification that its status as a private foundation has been terminated.

Section 507(a) of the Code provides for the voluntary and involuntary termination of private

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foundation status. It states, 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 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.

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 507(c) of the Code imposes a tax on an organization that terminates its private foundation status under section 507(a) of the Code.

Section 1.507-1(b)(7) of the Income Tax Regulations provides that neither a transfer of all of the assets of 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 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)(1) of the regulations provides that in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of this subsection, the transferee organization shall not be treated as a newly created organization. A transferee organization to which this paragraph applies shall be treated as possessing those attributes and characteristics of the transferor organization which are described in subparagraphs (2), (3), and (4) of this paragraph.

Section 1.507-3(a)(9)(i) the regulations provides that, if a transferor private foundation transfers assets to a private foundation which is effectively controlled (within the meaning of section 1.482-1A(a)(3), directly or indirectly, by the same person or persons who effectively control the transferor foundation, the transferee foundation will be treated as if it were the transferor foundation, for purposes of sections 4940 through 4948 and 507 through 509 of the Code. Where a private foundation transfers less than all of its assets to a transferee foundation, such transferee shall be treated as if it were the transferor in the proportion which the fair market value of the assets (less encumbrances) transferred to such transferee bears to the fair market value of the assets (less encumbrances) of the transferor immediately before the transfer.

Section 1.507-3(c) of the regulations provides, in pertinent part, that a transfer under section 507(b)(2) includes any significant disposition of 25% or more of the transferor private foundation's assets to one or more private foundations (in one or more related dispositions).

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

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Because B intends to transfer more than 25 percent of the fair market value of its net assets to C, 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 a transfer of assets as described in section 507(b)(2) will not cause a termination of an organization's private foundation status, the transfer of B's assets to C will not terminate B's status as a private foundation.

B will not terminate its status as a result of this transaction. Therefore, the transfer of B's assets to C will not result in the imposition of tax under section 507(c) of the Code.

Because B and C are effectively controlled by the same persons, for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code, C 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. Thus C can succeed to B's qualifying distributions carryover for purposes of section 4942 of the Code, and in proportions determined in accordance with section 1.507-3(a)(9)(i) of the regulations (consistent with succeeding to B's tax attributes).

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

1. The proposed transfer will be a transfer described in section 507(b)(2) of the Code.

2. The proposed transfer will not result in a termination of B's classification as a private foundation under section 507 of the Code.

3. The proposed transfer will not result in the imposition on either B or C of the private foundation termination tax under section 507(c) of the Code.

4. Following the transfer, C will succeed to the aggregate tax benefits of B in proportion to the value of assets received from B.

We are informing the Ohio TE/GE office of this action. Please keep a copy of this ruling in 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.

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.

Sincerely,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4

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