SIN: 507.00-00

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: APR 0 2 2002

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Employer Identification Number:

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B=
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Dear Sir or Madam:

This is in response to your letter dated December 31, 2001, in which you requested certain rulings with respect to sections 507, 4941, 4942, 4943, 4944 and 4945 of the Internal Revenue Code.

B is an irrevocable, inter vivos charitable lead annuity trust that is a split interest trust pursuant to section 4947(a)(2) of the Code. C is exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a). C is the sole charitable beneficiary of B. F, a non-exempt limited partnership, is the sole remainder beneficiary of B.

At the time of the creation of B, the donors (D and E) transferred to B w shares of common stock, having a value of v. Upon the creation of B, D and E took a gift tax charitable deduction under sections 170 and 2522 of the Code.

The 1996 agreement provides that B will continue in existence for 15 years and will pay C

a guaranteed annual annuity payment of 11.399% or x. As of December 1, 2001, B had made four annuity payments to C. If B continued under the terms of the 1996 agreement, it would owe C eleven additional annual annuity payments totaling y. The 1996 agreement provides that at the end of B's fifteen year term, the trustees of B (the children of D and E) are to distribute the remainder interest to the remainder beneficiary, F.

Due to appreciation in the value of B's assets since the inception of B, the current value of B's assets greatly exceed the amount needed to fund the remaining annuity obligation to C. Accordingly, D and E, the trustees of B, C, and F desire to amend the 1996 agreement to distribute a portion of the excess assets to F and pay the undiscounted remaining annuity obligation to C over a new annuity period. The purpose of the change is to move excess assets from the restrictions the Code imposes on private foundations so that the assets can achieve greater economic good by producing a greater return on investment and stimulating economic activity in general, while at the same time providing more funds to C than mandated in the 1996 agreement.

Effective December 1, 2001, D and E, the trustees of B, C, and F executed an amended and restated agreement which provides that B is to distribute B's assets in excess of 110% of the remaining undiscounted annuity obligations to F. The remaining undiscounted annuity obligation will be paid in annual annuity installments over a new fifteen year term beginning December 1, 2001, based on the annuity factor determined in accordance with the applicable regulations and the December 2001 section 7520 rate, so that the remainder interest will be as close to zero as possible.

As a result of the 2001 amendment, B will pay to C both the undiscounted remaining annuity, plus a growth factor based on the section 7520 rate. Each of the annuity payments under the 2001 amendment will be z more than the annuity payments under the 1996 agreement.

The 2001 amendment requires B to obtain a ruling from the Internal Revenue Service that the distribution to the remainderman of trust of the excess assets does not violate any of the Code's restrictions on private foundations in sections 1941 through 4945, inclusive. In addition, all parties will petition the state court having jurisdiction to approve the amendments to the 1996 agreement and the parties will make the state Attorney General a party to the proceedings to protect the interests of C. If a favorable ruling letter and court authority is not granted by December 31, 2002, the amended and restated agreement will be void and the 1996 agreement will continue in effect. B will not distribute the excess assets until the aforementioned conditions are satisfied.

Section 507(a) of the Code states provides, in pertinent part, that the status of any organization as a private foundation shall be terminated only if such organization notifies the Secretary of its intent to accomplish such termination.

Section 507(c) of the Code imposes a tax upon a private foundation that terminates its private foundation status under section 507(a) of the Code.

Section 4941 of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4942 of the Code imposes a tax on a private foundation for failure to distribute income.

Section 4943 of the Code imposes a tax on a private foundation's excess business holdings in a business enterprise during any tax year.

Section 4944 of the Code imposes tax upon a private foundation which invest any amount in such a manner as to jeopardize the carrying out of any its exempt purposes.

Section 4945 of the Code imposes tax upon a private foundation's making of any taxable expenditure under section 4945(d).

Section 4945(d)(5) of the Code defines the term "taxable expenditure" as any amount paid or incurred by a private foundation for any purpose other than one specified in 170(c)(2)(B).

Section 4947(a)(2) of the Code provides that in the case of a trust which is not exempt from tax under section 501(a), not all the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(b), and which has amounts in trust for which a deduction was allowed under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, section 507 (relating to termination of private foundation status), section 508(e) (relating to governing instruments), section 4941 (relating to taxes on self-dealing) section 4943 (relating to taxes on excess business holdings) except as provided in subsection(b)(3), section 4944 (relating to investments which jeopardize charitable purposes), except as provided in section 4947(b)(3), and section 4945 (relating to tax on taxable expenditures), shall apply as if the trust were a private foundation.

Section 53.4947-1(e)(1) of the Foundation and Similar Excise Taxes Regulations provides that the provisions of section 507(a) shall not apply to a trust described in section 4947(a)(1) or (2) by reason of any payment to a beneficiary that is directed by the terms of the governing instrument of the trust and is not discretionary with the trustee or, in the case of a discretionary payment, by reason of, or following, the expiration of the last remaining charitable interest in the trust.

Section 53.4946-1(a)(8) of the regulations provides that, for purposes of section 4941, the term "disqualified person" does not include any organization described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Section 53.4945-6(a) of the regulations defines the term "taxable expenditure", as used under section 4945(d)(5) of the Code, to include any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B). Thus, ordinarily only an expenditure for an activity which, if it were a substantial part of an organization's total activities, would cause loss of tax exemption is a taxable expenditure under section 4945(d)(5).

Section 53.4945-6(b)(v) of the regulations provides that any payment which constitutes a qualifying distribution under section 4942(g) of the Code or an allowable deduction under section 4940 ordinarily will not be treated as a taxable expenditure under section 4945(d)(5).

B's distribution of excess assets to F and the payment of the new annuity amount to C will not constitute a termination under 507(c) of B's private foundation status because section 53.4947-1(e)1 of the regulations specifically provides that the provisions of section 507(a) do not apply to a trust described in section 4947(a)(2 by reason of any payment that is directed by the terms of the governing instrument of the trust and is not discretionary with the trustee. B's trust agreement directs the terms of the payments to C and is not discretionary with B's trustees.

B' s distribution of excess assets to F and the payment of the remaining undiscounted annuity obligation to C will not be self-dealing under section 4941 because B, treated as a private foundation described in section 501(c)(3) of the Code, is not a disqualified person with respect to C. Thus, B's payment of the remaining undiscounted annuity obligation to C would not be an act of self-dealing. There is no sale or exchange of property, C is merely agreeing to receive more money.

The distribution of excess assets to F and the payment of the undiscounted amount of the remaining annuities to C will not be an investment which jeopardizes charitable purposes under section 4944 because the payment of the remaining annuities will be made to accomplish charitable purposes. Moreover, this transaction will be based on the amended trust agreement approved by a court order and in a court action in which the state Attorney General is joined to protect the interest of C. C will be protected from decline in the value of B's assets by the fact that the undiscounted amount of the remaining annuities to C plus 10% will remain in B. There is no investment, B is merely paying its obligations.

B's distribution of excess assets to F and the payment of the remaining undiscounted annuity obligation to C will not subject B to tax on the undistributed income of a private foundation under section 4942 because B is already subject to a payout requirement. Although B's payout requirement has changed, the change is required by the amended agreement that will have been approved by court order and the state Attorney General.

The distribution of excess assets to F and the payment of the remaining undiscounted annuity obligation to C will not subject B to tax on excess business holdings under section 4943 because these payments to F and C will not result in B acquiring interests in business.

Moreover, B's expenditure to C as required under B's trust instrument is in furtherance of a section 170(c)(2)(B) purpose in fulfillment of its charitable lead annuity requirement in its governing instrument. Therefore there is no taxable expenditure under section 4945(d)(5) of the Code relating to the proposed transaction.

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

1. B's distribution of excess assets to F and the payment of the remaining undiscounted annuity obligation to C at a new annuity amount based on the December 2001 section 7520

rate for a new 15 year period, will not constitute a termination of a private foundation under section 507.

2. B's distribution of excess assets to F and the payment of the remaining undiscounted annuity obligation to C at a new annuity amount based on the December 2001 section 7520 rate for a new 15 year period, will not be self-dealing under section 4941.

3. B's distribution of excess assets to F and the payment of the remaining undiscounted annuity obligation to C at a new annuity amount based on the December 2001 section 7520 rate for a new 15 year period, will not subject B to tax on the undistributed income of a private foundation under section 4942.

4. The distribution of excess assets to F and the payment of the remaining undiscounted annuity obligation to C at a new amount based on the December 2001 section 7520 rate for a new 15 year period, will not subject B to tax on excess business holdings under section 4943.

5. The distribution of excess assets to F and the payment of the remaining undiscounted annuity obligation to C at a new annuity amount based on the December 2001 section 7520 rate for a new 15 year period, will not be an investment which jeopardizes charitable purposes under section 4944.

6. The distribution of excess assets to F and the payment of the remaining undiscounted annuity obligation to C at a new annuity amount based on the December 2001 section 7520 rate for a new 15 year period, will not be a taxable expenditure under section 4945.

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