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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200243051

Date: JUL 30 2002

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Legend:
B=
C=
D=

Dear Sir or Madam:

This is in response to a letter dated April 16, 2002, which requested certain rulings with respect to a proposed transfer of all of the assets of B to C and D.

B is exempt under section 501(c)(3) of the Internal Revenue Code and is classified as a private foundation under section 509(a). Both C and D have filed an application for recognition of exempt status under section 501(c)(3) of the Code and classification as a private foundation under section 509(a).

A difference of opinion has developed among the trustees of B as to the governance of B. In order to resolve these concerns, the trustees of B have proposed that B be split into two smaller new private foundations, C and D. B would transfer two-thirds of its assets to C. D would receive the remaining one-third of B's assets. C and D would continue to carry out the charitable purposes previously conducted by B. Once B's assets are transferred to C and D, B will have no assets and may elect to terminate its private foundation status. Following the transfer, C and D would be effectively controlled by the same trustees who control B.

B has never notified the Service in the past 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. 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 liability for tax under Chapter 42.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 507 of the Code and the regulations to section 507 sets forth rules applicable to terminating foundations.

The Internal Revenue Service, in Rev. Rul. 2002-28, 2002-20 IRB 941 (copy attached), has issued guidance on the filing obligations and tax issues that arise when a private foundation transfers all of its assets to one or more other private foundations under section 507(b)(2) of the Code.

The Rev. Rul. presents three situations in which a private foundation transfers all of its assets to one or more private foundations. In Situation One, the foundation, under a plan of dissolution, distributes all of its remaining assets in equal shares to three other private foundations. In Situation Two, the trustees of a private foundation trust create a not-for-profit corporation to carry on the trust's charitable activities, which the trustees have determined can be more effectively accomplished by operating in corporate form. All of the trust's assets and liabilities are transferred to the not-for-profit corporation. In Situation Three, two private foundations transfer all of their assets and liabilities to a newly formed private foundation.

In the Rev. Rul., the Service has ruled that a private foundation that transfers all of its assets to one or more private foundations in a transfer described in section 507(b)(2) is not required to notify the Manager, Exempt Organizations Determinations (Tax Exempt/Government Entities) that it plans to terminate its private foundation status under section 507(a)(1). The ruling further states that if the private foundation does not provide notice and does not terminate, it is not subject to termination tax under section 507(c). If the private foundation provides notice and terminates, then it is subject to the tax. However, if the private foundation has no assets on the day it provides notice, the section 507(c) tax will be zero.

The Rev. Rul. gives detailed information as to the applicability of the excise taxes imposed by sections 4940-4945 of the Code. The ruling further provides that a private foundation that has disposed of all its assets and terminates its private foundation status must file a Form 990-PF for the tax year of the disposition and must comply with any expenditure responsibility reporting obligations on the return. A private foundation that has disposed of all its assets and does not terminate its private foundation status must file a Form 990-PF for the tax year of the disposition and must comply with any expenditure responsibility reporting obligations on the return, but does not need to file returns in the following tax years if it has no assets and does not engage in any activities. If the private foundation receives additional assets or resumes activities in later years, it must resume filing Form 990-PF for those years.

Our evaluation of the facts and circumstances in your ruling request indicates that the transfer of B's assets to C and D would be similar to the facts and circumstances described in Situation One of the Rev. Rul. Under the facts described the foundations would not be subject to tax under section 507 and sections 4940-4945 of the Code.

Accordingly, based on the information furnished, and the Code and regulations, as interpreted in Rev. Rul. 2002-28, we rule as follows:

1. The proposed transfer of all of the assets of B to C and D will qualify as a transfer under section 507(b)(2) of the Code. Because B will not terminate as a result of the transfer, B will not be subject to any tax under section 507(c) of the Code.

2. If B elects to terminate its private foundation status after it has transferred all of its assets to C and D, no tax will be due under section 507(c) of the Code, provided that B complies with the notification requirement under section 507(a)(1) of the Code.

3. Because C and D will be effectively controlled by the same persons who control B, both C and D will be treated, under section 1.507-3(a)(9) of the regulations, as if they were B in the proportion that the fair market value of the assets transferred to each bears to the fair market value of B's assets immediately before the transfer.

4. The proposed transfer of assets from B to C and D will not give rise to net investment income and, therefore, will not give rise to the imposition of tax under section 4940 of the Code for B. B will not be required to pay the tax imposed by section 4940 in the year of distribution. C and D will report their share of B's net income for the year of distribution and pay the tax imposed by section 4940 on such share.

5. The proposed transfer of assets will not be treated as an investment that jeopardizes the charitable purposes of B.

6. The proposed transfer of assets from B to C and D will not constitute an act of self-dealing which will occasion an excise tax under section 4941 of the Code.

7. Because C and D will both be effectively controlled by the same persons who control B, B itself will not be required to meet the distribution requirement of section 4942 for fiscal year 2002, the taxable year in which B transfers its assets. C and D's minimum distributable amount will be increased by its share (2/3 and 1/3 respectively) of B's distributable amount for fiscal year 2002, the taxable year of the transfer, and will be credited with a proportionate (2/3 and 1/3 respectively) amount of the qualifying distributions actually made by B in fiscal year 2002, before the transfer.

8. The proposed transfer of all the assets from B to C and D will not constitute a taxable expenditure, within the meaning of section 4945 of the Code, and B will not be required to exercise expenditure responsibility with respect to such transfer of assets. Likewise, C and D each will be required to exercise expenditure responsibility over operations by the other after the transfer.

This ruling is issued on the assumption that C and D are recognized as exempt under section 501(c)(3) of the Internal Revenue Code and classified as private foundations under section 509(a).

We are informing the 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