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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: AUG 27 2002

Contact Person:

Identification Number:

Telephone Number:

SIN: 4941.00-00

T:EO:B4

Employer Identification Number:

Legend:
B=
C=
D=

Dear Sir or Madam:

This is in reply to a letter dated April 17, 2002, requesting a ruling on the proper treatment of C's proposed matching gifts program for employees, directors, officers and retirees of B, under sections 4941, 4942 and 4945 of the Internal Revenue Code.

C is exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a). B is public utility providing electricity service throughout the State of D.

B maintains an educational matching gifts program for all of its employees, officers, retirees and directors. B also matches gifts of regular part-time employees routinely scheduled to work at least 1,000 hours each year. B matches gifts made to bona fide degree granting accredited educational institutions located in the United States that have been accorded exempt status under section 501(c)(3) of the Code and are not private foundations under section 509(a). Eligible institutions also include alumni funds, foundations or associations, and technical schools that have been accorded exempt status under section 501(c)(3) of the Code and are not private foundations under section 509(a). Only gifts that support the primary educational objectives of the institution are matched.

C proposes to adopt and implement an educational matching gifts program that is identical to the current program provided by B with additional restrictions as set forth below. However, C may expand the eligible charitable donees to include, for example, arts and cultural organizations. Any such expansion would only include organizations that have been accorded exempt status under section 501(c)(3) of the Code and are not private foundations under

section 509(a). C would not match any gifts made by participants in the B matching gifts program prior to the termination of that program.

The C educational matching gift program will have the following additional conditions and restrictions:

(1) Ineligible gifts will include gifts to elementary or secondary schools, independent scholarship funds; dues, gifts or subscription fees to alumni groups, booster clubs or similar organizations whose purpose is other than a strict contribution to the institution's educational objectives; gifts for non-scholastic programs, such as athletics (including booster clubs) or stadium construction; and payments of tuition or student expenses, pledges, tithes or other church-related financial commitments;

(2) C will not match charitable contributions made by any organization which is controlled by C or indirectly by one or more "disqualified persons" as defined in section 4946, with respect to C;

(3) Pursuant to the C program, for every one dollar of gifts made by a program participant, in the range of $25 to $5,000, C will make a charitable contribution of one dollar. Gifts from $5,001 to $10,000 are matched at 75 cents on the dollar. Gifts from $10,001 to $50,000 are matched at 50 cents on the dollar. The minimum donation made by a program participant that C will match is $25. The annual maximum gifts that will be matched is $5,000. The lifetime maximum gifts that will be matched is $50,000. Gifts over $5,000 are only matched if the funds are used to memorialize or honor deceased, retired or former B employees;

(4) C will expressly prohibit matching any individual legal obligation of a program participant, or anyone else, and will provide that the program will not result in any economic benefit to a program participant. C will make a matching contribution only after a participant's contribution is actually paid to the donee organization (and not merely pledged). The donee organization will be required to certify that the program participant's contribution has been received and, further, to agree that no payment received from C will be used to reduce or satisfy any obligation of the program participant or anyone else;

(5) C will only permit earmarking any gift to a particular fund or purpose as long as C, or any "disqualified person" to C, does not directly or indirectly control the fund or activity;

(6) C will only match gifts of cash or marketable securities having a quoted value;

(7) Neither C nor B has entered into a collective bargained, or other contract that provides that either C or B will make matching gifts under the matching gifts program.

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

Section 4941(d)(1)(E) of the Code includes in the definition of self-dealing 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 of the Code requires a private foundation to make specified distributions of income for each taxable year.

Section 4945 of the Code provides for the imposition of taxes on each taxable expenditure of a private foundation.

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

Section 53.4942(a)-3(a)(2) of the regulations defines "qualifying distributions" to include amounts paid to accomplish one or more purposes described in section 170(c)(1) or section 170(c)(2)(B) or amounts paid to acquire an asset used in carrying out such purposes, and are not paid to organizations controlled by disqualified persons.

Section 53.4946-1(a)(1) of the regulations provides that the following are disqualified persons with respect to a private foundation: (i) A substantial contributor to the foundation, as defined in section 507(d)(2) and the regulations thereunder (ii) All foundation managers of the foundation as defined in section 4946(b)(1) and paragraph (f) (1)(i) of this section.

You have represented that B's officers and directors are disqualified persons with regard to C. B does receive a certain amount of indirect economic benefit from C taking over the matching gifts program because B's payments under the program will be reduced and eventually eliminated. However, there are no contractual, or other obligations, such as collective bargained agreement, to make payments under the matching gifts program. These particular facts and circumstances would indicate that any economic benefits to B would be incidental and tenuous, and would not rise to the level of self-dealing. See section 53.4941(d)-2(f)(2) of the regulations.

Furthermore, you have represented all payments made by C pursuant to the matching gifts program will be going to bona fide educational institutions, or other bona fide charitable organizations, that have been granted exempt status under section 501(c)(3) of the Code. Moreover, such donees will be public charities and not private foundations within the meaning of section 509(a). Also, the organizations will not be controlled by disqualified persons. Therefore, all transfers made under the matching gifts program would count as "qualifying distributions" within the meaning of section 4942(g) and do not constitute "taxable expenditures" within the meaning of section 4945 of the Code.

Accordingly, based on the above stated facts and circumstances, we rule as follows:

1. The matching gifts made by C under C's matching gift program do not constitute self-

dealing within the meaning of section 4941(d) of the Code.

2. The matching gifts under C's matching gift program will be "qualifying distributions" within the meaning of section 4942(g) of the Code.

3. The matching gifts under C's matching gift program will not be "taxable expenditures" within the meaning of section 4945(d) of the Code.

We are informing the TE/GE office of this action. Please keep a copy of this ruling with your organization's permanent records.

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