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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: AUG 30 2002

Contact Person:

Identification Number:

Telephone Number:

SIN: 507.00-00
T:ED:B4

Employer Identification Number:

Legend:
B=
C=
D=
E=

Dear Sir or Madam:

This is in response to a letter dated April 9, 2002, which requested certain rulings with respect to a proposed transfer of all of the assets of 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). C, a charitable trust, is exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a). D is the sole director of B and its substantial contributors are D and E. C's initial trustees and substantial contributors are D and E.

B has always had as its primary charitable purpose, the distribution of gifts and grants to other organizations that are exempt under section 501(c)(3) to be used in furtherance of programs for the control and study of the growth in human populations. According to the trust agreement that created C, C will make grants to charitable organizations that support work being done abroad and in the United States in connection with promoting reproductive rights, and providing abortion and modern methods of family planning. C will also support certain non-governmental organizations that give women access to the education and means to limit their family size to the number of children they can financially and emotionally sustain.

Since its inception, B has had specific goals and patterns of giving that carry out the charitable goals of D and E. D and E want to insure that their charitable goals and patterns of

giving continue beyond their lifetimes. They are specifically concerned that future board members could easily change B's existing charitable purposes by amending its bylaws or articles of incorporation.

Therefore, B's board of directors has created C. B proposes to transfer all of the assets it currently owns to C. At least one day after the transfer, B will notify the Service of its intent to terminate its private foundation status within the meaning of section 507. Thereafter, B will dissolve.

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 other 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 would be similar to the facts and circumstances described in Situation Two 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 will constitute a transfer described in section 507(b)(2) of the Code and, as such, will not result in a termination of B's private foundation status under section 507(a) and will not cause the imposition of the termination tax described in section 507(c). The proposed transfer will not constitute a willful and flagrant act (or failure to act) giving rise to liability for tax under Chapter 42.

2. The proposed transfer will not adversely affect the tax-exempt status of either B or C under section 501(c)(3) of the Code.

3. The proposed transfer will not result in any liability for tax under section 4940 of the Code.

4. The proposed transfer will not constitute an act of self-dealing under section 4941 of the Code and will not subject B or C to tax under section 4941 of the Code.

5. B will not be required to meet the qualifying distribution requirements under section 4942 of the Code for the taxable year of the proposed transfer, provided that C's distributable amount for the year of the proposed transfer, if any, is increased by B's distributable amount for the year of the proposed transfer, if any, and any excess qualifying distribution carryover of B under section 4942(i), if any, will be carried over to C and may be used by C to meet its distribution requirements under section 4942.

6. The proposed transfer will not constitute a jeopardizing investment within the meaning of section 4944 of the Code.

7. The proposed transfer 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 the assets transferred to C.

8. The legal, accounting and other expenses incurred by B and C in connection with this ruling request and effectuating the proposed transfer will be considered qualifying distributions under section 4942 of the Code and will not constitute taxable expenditures pursuant to section 4945.

9. If, after the transfer of all of its assets to C, B properly notifies the Service of its intent to terminate its private foundation status, such notice will be effective to terminate the private foundation status of B. If the value of B's net assets at the time it gives notice and terminates its private foundation status is zero, then B will not be liable for any termination tax under section 507(c) of the Code.

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