Internal Revenue Service

Department of the Treasury

Washington, DC 20224

SIN# 507.02-00
4942.03-05

Contact Person:

199914049

Telephone Number:

In Reference to:

EIN:
Key District:

Date: JAN 12 1999

Trust =
Fund =

Dear Sir or Madam:

This is in reply to a ruling request dated July 14, 1998, with regard to a proposed transfer to the Fund of all the Trust's assets pursuant to section 507(b)(2) of the Internal Revenue Code (hereafter Code).

The Trust is a charitable trust recognized as exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a). The Fund is a nonprofit charitable nonprofit corporation recognized as exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a). Both organizations are controlled by the same individuals.

Pursuant to the proposed transfer, the Trust will transfer all of its assets to the Fund and then subsequently dissolve and voluntarily terminate its private foundation status by giving notice of such voluntary termination pursuant to section 507(a)(1) of the Code. The Fund will remain in existence as a organization recognized as exempt under section 501(c)(3) of the Code.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations that are organized and operated exclusively for charitable and/or the other exempt purposes within that section.

Section 1.501(c)(3)-1(b)(4) of the Income Tax Regulations (hereafter regulations) provides that, upon dissolution, the assets of an organization exempt from federal income tax under section 501(c)(3) of the Code must be used for exempt purposes under that section, donated to another exemption section 501(c)(3) organization (whether or

not a private foundation), or donated to the federal, state or local government for a public purpose.

Section 509(a) of the Code provides that certain organizations exempt from federal income tax under section 501(c)(3) are further classified as private foundations so that they are thus subject to the private foundation provisions of Chapter 42 of the Code.

Section 507 of the Code provides several means for a private foundation to terminate its classification as a private foundation under section 509(a).

Section 507(a)(1) of the Code and section 1.507-1(b)(1) of the regulations provide that a private foundation may voluntarily terminate its private foundation status by submitting to the Service a statement of its intention to terminate its private foundation status and by paying the termination tax, if any, under section 507(c).

Section 507(c) of the Code imposes an excise tax on a private foundation which voluntarily terminates its status as a private foundation under section 507(a)(1). This tax is equal to the lower of:(a) the aggregate tax benefit that has resulted from the foundation's section 501(c)(3) status, or (b) the value of the net assets of the foundation.

Section 507(b)(2) of the Code concerns the transfer of assets by one private foundation to one or more other private foundations, and provides that each transferee private foundation shall not be treated as a newly created organization.

Section 1.507-3(a)(1) of the regulations indicates that, in a transfer of assets from one private foundation to one or more other private foundations pursuant to a reorganization, each transferee private foundation shall not be treated as a newly created organization, but shall succeed to the transferor' s aggregate tax benefits under section 507(d) of the Code.

Section 1.507-3(c)(1) of the regulations indicates that a transfer under section 507(b)(2) of the Code includes a transfer of assets by one Private foundation to one or more other private foundations pursuant to any reorganization, including any significant disposition of 25% or more of the transferor private foundation' s assets.

Section 507(d) of the Code indicates that the aggregate tax benefits of a private foundation include the value of its exemption

from federal income tax and of the deductions taken by its donors during its existence.

Section 1.507-1(b)(9) of the regulations provides that a private foundation which transfers all of its net assets is not required to file its annual information return under section 6033 of the Code for its tax years after the year of such transfer when it has no assets or activities.

Section 1.507-3(a)(5) of the regulations indicates that a transferor private foundation is required to meet its charitable distribution requirements under section 4942 of the Code, even for any tax year in which it makes a section 507(b)(2) transfer of its assets to another Private foundation

Section 1.507-3(a)(8) of the regulations provides that certain tax provisions, listed therein, will carry over to the transferee private foundation that is given a section 507(b)(2) transfer of assets by a transferor private foundation.

Section 1.507-(3)(a)(9)(i) of the regulations indicates that, if a transferor private foundation transfers assets to one or more private foundations which are "effectively controlled" within the meaning of section 1.482-1(a)(3), (now section 1.482-1(i)(4)), directly or indirectly, by the same person or persons who effectively control the transferor private foundation, each transferee private foundation will be treated as if it were the transferor private foundation, for purposes of sections 4940 through 4948 and sections 507 through 509 of the Code. Each transferee foundation is treated as the transferor in the proportion which the fair market value of the transferor foundation's assets transferred bears to the fair market value of all of the assets of the transferor foundation immediately before the transfer.

Section 1.507-3(a)(9)(ii) of the regulations indicates that Section 1.507- 3(a)(9)(i) does not relieve the transferor private foundation from filing its annual information return.

Section 1.507-4(b) of the regulations provides that the tax on termination of private foundation status under section 507(c) of the Code does not apply to any transfers of assets under section 507(b)(2).

Sections 1.507-1(b)(7) and 1.507-3(d) of the regulations provide that a private foundation's transfer of assets pursuant to section 507(b)(2) of the Code will not constitute any termination under section 507 of the transferor's status as a private foundation.

Section 4940 of the Code imposes excise tax on certain investment income of a private foundation.

Section 4941 of the Code imposes excise tax upon any act of self-dealing between a private foundation and any of its disqualified persons under section 4946.

Section 53.4946-1(a)(8) of the Foundation and Similar Excise Taxes Regulations provides that, for purposes of self-dealing under section 4941 of the Code, an organization exempt from federal income tax under section 501 (c)(3) is not a disqualified Person

Section 4942 of the Code requires that a private foundation must expend annual qualifying distributions under section 4942(g) for the direct active conduct of exempt purposes.

Revenue Ruling 78-387, 1978-2 C.B. 270, indicates the carryover of excess qualifying distributions under section 4942(i) of the Code where a private foundation transfers all of its assets to another private foundation that is effectively controlled by the same persons. In accordance with section 1.507-3(a)(9)(i) of the regulations, cited above, the transferee foundation is treated as the transferor foundation and, thus, the controlled transferee foundation can reduce its own distributable amount under section 4942(g) by the amount of the transferor foundation's excess qualifying distributions, if any, under section 4942(i).

Section 4942(g)(1)(A) of the Code provides that a private foundation does not make any qualifying distribution under section 4942(g) where the distribution is a contribution to: (i) another organization controlled by the transferor or by one or more of the transferor's disqualified persons, or (ii) any private foundation which is not an operating foundation under section 4942(j)(3).

Sections 4942(g)(3)(A) and 4942(g)(3)(B) of the Code require that a transferor private foundation, in order to have a qualifying distribution for its grant to another private foundation, must have adequate records, as required by section 4942(g)(3)(B), to show that the transferee private foundation subsequently made qualifying distributions equal to the amount of the transfer received that were paid out of the transferee's own corpus within the meaning of section 4942(h). Such qualifying distributions by the transferee must be expended before the close of its first tax year after its tax year in which it received the transfer.

Section 4944 of the Code imposes excise tax on any investment by a private foundation that jeopardizes its exempt purposes.

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

Section 4945(d)(4) of the Code provides that a grantor private foundation must exercise expenditure responsibility under section 4945(h) of the Code on any grants to another private foundation.

Section 4945(h) of the Code defines expenditure responsibility in terms of a grantor private foundation requiring proper reports from a grantee private foundation on the grantee's uses of a grant.

Section 1.507-3(a)(7) of the regulations indicates that any private foundation granting all of its assets to another private foundation pursuant to section 507(b)(2) of the Code will not be required to exercise any expenditure responsibility under section 4945(h).

In this case, a private foundation, the Trust, will transfer by donation all of its assets to another private foundation nonprofit corporation, the Fund. Such transfer will be a transfer of assets pursuant to section 507(b)(2) of the Code.

The requested rulings will be discussed in order below:

Under section 1.501(c)(3)-1(b)(4) of the regulations requiring any dissolution to be for exempt purposes under section 501(c)(3) of the Code, the Trust can donate all of its assets to the Fund without adversely affecting the exemptions from federal income tax under section 501(c)(3) of either the Trust or the Fund because the Trust's donation is made to the Fund as an exempt organization under section 501(c)(3) to further exempt purposes under that section.

Under section 1.507-3(a)(1) of the regulations, the Trust's transfer of all of its assets to the Fund pursuant to section 507(b)(2) of the Code will result in the transferee, the Fund, not being considered a newly created organization but as possessing certain tax attributes of the Trust.

Under section 1.507-3(d) of the regulations, the Trust's transfer of all of its assets to the Fund pursuant to section 507(b)(2) of the Code does not terminate the Trust's Private foundation status and, thus, under section 1.507-4(b) of the regulations, the Trust's transfer of its assets to the Fund pursuant to section 507(b)(2) of the Code will also not result in any private foundation status termination tax under section 507(c).

Under section 507(e) of the Code, after the Trust transfers all of its assets to the Fund, the value of the Trust's assets will be zero when it notifies the Service of its voluntary termination of its private foundation status pursuant to section 507(a)(1), so that such termination of the Trust's private foundation status will not result in imposition of any private foundation status termination tax under section 507(c).

Under section 1.507-3(a)(2)(i) of the regulations, after the Trust's transfer of all of its assets to the Fund, the Fund will succeed to the Trust's aggregate tax benefits under section 507(d) of the Code.

Under section 1.507-3(a)(9)(i) of the regulations, the Fund will be treated as the transferor foundation, the Trust, for purposes of Chapter 42 of the Code and also for Chapter 1, Subchapter F, Part II of the Code: sections 507 through 509.

Under section 1.507-3(a)(4) of the regulations, after the Trust transfers all of its assets to the Fund, the Fund will be responsible for any liabilities of the Trust under Chapter 42 of the Code to the extent that the Trust does not satisfy its own such liabilities.

Under section 1.507-3(d) of the regulations, the Trust's transfer to the Fund is a transfer under section 507(b)(2) of the Code and so it does not terminate the Trust's status as a private foundation under section 509(a).

Under section 1.507-3(a)(9)(i) of the regulations, the Fund will be treated as if it were the Trust after the Trust transfers all of its assets to the Fund pursuant to section 507(b)(2) of the Code. The Trust's excise tax liability under section 4940 for its final tax year can be paid by the Fund and, further, any refund to which the Trust is entitled can be used by the Fund to offset its own section 4940 excise tax and no taxes under Chapter 42 will be imposed on the Trust or the Fund for the Fund's payment of the Trust's excise tax liability, if any, under Chapter 42.

Under section 4941 of the Code, the Trust's transfer of its assets to the Fund is not an act of self-dealing because the transfer is a donation and is made to an organization exempt from federal income tax under section 501 (c)(3) which, pursuant to section 53.4946-1(a)(8) of the regulations, is not considered to be a disqualified person under section 4946 for the purposes of section 4941.

As in Revenue Ruling 78-387, cited above, after the Trust transfers all of its assets to the Fund, the Trust's excess

qualifying distributions carryover, if any, under section 4942(i) of the Code, can be used by the Fund to reduce the Fund's annual distributable amount under section 4942.

Under section 4944 of the Code, the Trust's transfer of assets to the Fund is not a jeopardy investment because it is a donation for exempt purposes.

Under section 4945 of the Code, the Trust's donation of all of its assets to the Fund is not a taxable expenditure because the transfer is a donation for exempt purposes made to an organization exempt under section 501(c)(3).

Under section 1.507-3(a)(7) of the regulations, the Trust will not be required to exercise any expenditure responsibility under section 4945(h) of the Code because the Trust will transfer all of its assets to the Fund.

Under section 1.507-3(a)(5) of the regulations, any recordkeeping requirement under section 4942(g)(2)(B) of the Code will not apply after the Trust transfers all of its assets to the Fund.

Under section 1.507-3(a)(9)(ii) of the regulations, the Trust must satisfy any information reporting requirements under section 4945 of the Code for its tax year in which its transfer is made.

Under section 1.507-1(b)(9) of the regulations, the Trust will not be required to file its annual return under section 6033 of the Code for any tax year subsequent to its tax year in which it transfers all of its assets to the Fund when it will have no assets or activities.

Based on the information furnished with regard to the Trust and Fund we rule as follows:

1. The Trust's transfer of all of its assets to the Fund will not adversely affect the exemptions from federal income tax under section 501 (c)(3) of the Code of the Trust or the Fund.

2. The Trust's transfer of its assets to the Fund will qualify as a transfer under section 507(b)(2) of the Code, will not constitute any termination of the Trust's private foundation status, and will not cause the imposition of any termination tax under section 507(c).

3. If the Trust voluntarily terminates its private foundation status at least one day after the transfer of all of its assets to the Fund and so notifies the Service pursuant to

section 501(a)(1) of the Code, the Trust will have no assets upon its termination of its private foundation status so that no tax will be due under section 507(c).

4. The Fund will be treated as if it were the Trust for purposes of Chapter 42 and sections 507 through 509 of the Code; the transfer will not subject the Trust to any of the taxes imposed by sections 4941 through 4945; and the Fund may use any special rules or savings provisions of Chapter 42 to the same extent that the Trust could have used them if the Trust had continued in existence.

5. The Fund's receipt of all of the assets of the Trust will not cause any foundation status termination under section 507 of the Code of the Fund's status as a private foundation under section 509(a).

6. After the Trust's transfer of all of its assets to the Fund, the Trust's existing tax liability under section 4940 of the Code, if any, for its final tax year may be satisfied by the Fund, if not already satisfied by the Trust, and any refund of such excise tax to which the Trust is entitled may be used by the Fund to offset the Fund's section 4940 excise tax.

7. Under section 4941 of the Code, the Trust's transfer of its assets to the Fund will not be any act of self-dealing.

8. The Fund may reduce the amount of its required annual distributions under section 4942 of the Code by the amount, if any, of the Trust's qualifying distributions carryover under section 4942(i). The Fund's distributable amount under section 4942(d) for the tax year in which the transfer occurs can be increased by the Fund's distributable amount for the tax year in which the transfer occurs as if the Fund had held the assets of the Trust for the Fund's entire tax year. All qualifying distributions made by the Trust and the Fund during the tax year in which the transfer to the Fund occurs can be treated as if made by the Fund. The Trust's distribution requirements under section 4942 of the Code in the year of the transfer may be fulfilled by the Fund.

9. Under section 4944 of the Code, the Trust's transfer of its assets to the Fund will not be a jeopardizing investment.

10. Under section 4945 of the Code, the Trust's transfer of all of its assets to the Fund will not be a taxable expenditure.

11. Under section 1.507-3(a)(7) of the regulations, the Trust will not be required to exercise expenditure responsibility under

section 4945(h) of the Code with respect to its transfer of all of its assets to the Fund.

12. After the Trust transfers all of its assets to the Fund, the Trust will no longer be required to file Form 990-PF annual information returns, except for its filing of such return for its final tax year in which its transfer of all of its assets to the Fund is made.

We are informing your key District Director of this ruling. Because this ruling could help resolve future questions about your federal income tax status, you should keep it in your permanent records.

This ruling is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Kenneth Earnest

Kenneth J. Earnest
Acting Chief, Exempt
Organizations
Technical Branch 3