SP:4945-00-00

Internal Revenue Service

199947035

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

Date: AUG 27 1999

OP:E:EO:T:4

Legend:

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D=
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Dear Sir or Madam:

This is in response to your letter dated April 26, 1999, in which you requested a ruling under section 4942 of the Internal Revenue Code.

You are exempt under section 501(c)(3) of the Code and have been classified as a private foundation within the meaning of section 509(a).

In 1983, you made arrangements to construct a building to be known as B for your use and for the benefit of C, an organization described in Code sections 501(c)(3) and 170(b)(1)(A)(ii), and an arm of D. You leased property from D located on the campus of C and built B on that property. In order to contruct B, you borrowed funds from E. The loan was secured by a first deed of trust on B. D cannot accept a gift of property which is subject to a mortgage or deed of trust, so you leased the majority of B to D for a nominal amount and retained certain property rights in and to B.

You took as qualifying distributions in 1983 through 1986 the cost of constructing B. The last payment on the loan has been made. Upon termination of (a) the land lease from D to you and (b) the lease from you to D, B will become the sole and absolute property of D in fee simple. All your rights in and to the land and B will transfer to D, except those specified in a reservation of rights agreement with respect to your use of one floor of B. You propose to take as a qualifying distribution an amount equal to the current fair market of B less the amount of

previous qualifying distributions relating to B, less the fair market value of your retained rights in B.

You have represented that B has been, and continues to be, used directly to carry out a charitable or other public purpose.

Section 4942(a) of the Code imposes tax on the undistributed income that private foundation fails to timely distribute. Section 4942(c) provides that "undistributed income" is the distributable amount required to be distributed less qualifying distributions as defined under section 4942(g).

Section 4942(g)(1) of the Code provides that the term "qualifying distribution" means any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), or any amount paid to acquire an asset used or held for use directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 53.4942(a)-3(a)(1) of the Foundation and Similar Excise Taxes Regulations provides that the amount of a qualifying distribution of property is the fair market value of the property on the date the qualifying distribution is made.

Rev. Rul. 79-375, 1979-2 C.B. 389, holds that if a private foundation that has made a qualifying distribution equal to the purchase price of an asset donates the asset to a publicly supported charity, it will be allowed a second qualifying distribution to the extent that the fair market value of the asset on the date of contribution exceeds the amount of the first qualifying distribution under section 4942(g)(1)of the Code.

Based upon the information submitted, we have determined that you may claim as a qualifying distribution, in the year in which transfer of your rights in the land to D occurs, an amount equal to the fair market value of B less the amount of previous qualifying distributions claimed by you as to B less the fair market value of your reserved rights in B.

This ruling is conditioned on the understanding that there will be no material changes in the facts upon which it is based.

We are informing the EP/EO key district office of this action. Please keep a copy of this ruling with your permanent records.

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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.

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4

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