S/W:4940-00-00

Internal Revenue Service

199950042

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

Date: SEP 17 1999

OP:E:EO:T:4

Legend:

B=
C=
D=
E=

Dear Sir or Madam:

This is in response to your letter dated June 28, 1999, in which you requested certain rulings with respect to the proposed transfer of all of the net assets of B to C, D, and E.

B is exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a).

C is exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a).

D is exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a).

E is exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a).

B proposes to transfer its assets to C, D and E. Owing to divergent charitable interests and investment philosophy of the Directors of B, management, administration achievement of the charitable goals of B has been increasingly difficult. Consistent with the interest of B's founders to have their children involved in charitable activities, the charitable purposes of B would be best achieved by the aforementioned proposal. B's assets will be distributed to C, D and E in equal proportion. C, D and E are organized to make grants to other charitable organizations.

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B represents that the transfer to C, D, and E will be without consideration and will not be from current income. After the transfer, B will voluntarily terminate its private foundation status and will notify the Service of said action. B will cease to exist after the termination of its private foundation status.

B has not notified the Service 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 a termination pursuant to section 507(a)(2) of the Code.

Section 507(a) of the Code, which provides for the voluntary and involuntary termination of private foundation status, provides, in part, that except for transfers described in section 507(b), an organization's private foundation status will be terminated only if (1) the organization notifies the Service of its intent to terminate or (2) there has been either 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 507(b)(2) of the Code provides that when a private foundation transfers assets to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, the transferee foundation shall not be treated as a new organization.

Section 1.507-1(b)(7) of the Income Tax Regulations provides that neither a transfer of all of the assets of a private foundation, nor a significant disposition of assets (as defined in section 1.507-3(c)(2)) by a private foundation (whether or not any portion of such significant disposition of assets is made to another private foundation) shall be deemed to result in a termination of the transferor private foundation under section 507(a) of the Code unless the transferor private foundation elects to terminate, pursuant to section 507(a)(1) or section 507(a)(2), is applicable.

Section 1.507-3(a)(5) of the regulations provides that, except as provided in section 1.507-3(a)(9) (which only relates to 507(b)(2) transfers where all net assets are transferred to one or more controlled private foundations), a private foundation is required to meet the distribution requirements of section 4942 of the Code for any taxable year in which it makes a section 507(b)(2) transfer of all or part of its net assets to another

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private foundation. Such transfer shall itself be counted toward satisfaction of the requirements to the extent the amount transferred meets the requirements of section 4942(g).

Section 1.507-3(b) of the regulations provides that since a transfer of assets, pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization to an organization not described in section 501(c)(3) (other than an organization described section 509(a)(4)), or section 4947, is a taxable expenditure under section 4945(d)(5), in order for such transfer of assets not to be a taxable expenditure, it must be to an organization described in section 501(c)(3) (other than an organization described in section 509(a)(4)) or treated as described in section 501(c)(3) under section 4947.

Section 4940(a) of the Code imposes a tax on the net investment income of private foundations.

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period.

Section 4945 of the Code imposes a tax on the foundation on each "taxable expenditure" as defined in section 4945(d). Section 4945(d)(4) of the Code provides that for purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an organization unless (A) such organization is described in paragraph (1),(2),or(3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or (B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h).

Section 4945(h) of the Code provides that expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures (1) to see that the grant is spent solely for the purpose for which made, (2) to obtain full and detailed reports with respect to such expenditures, and (3) to make full and detailed reports to the Secretary.

Section 53.4945-5(b)(2)(i) of the Foundation and Similar Excise Taxes Regulations provides, in part, that before making a grant to an organization with respect to which expenditure responsibility must be exercised under this section, a private foundation should conduct a limited inquiry concerning the

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potential grantee. Such inquiry should be complete enough to give a reasonable man assurance that the grantee will use the grant for the proper purposes.

Section 53.4945-5(b)(7)(i) of the regulations refers to the rules relating to the extent to which the expenditure responsibility rules contained in section 4945(d)(4) and (h), and this section apply to transfers of assets described in section 507(b)(2).

Accordingly, based on the information furnished, we rule as follows:

1. The proposed transfer of assets will not affect the continued qualification of B as an organization described in section 501(c)(3) that is exempt from federal income tax under section 501(a) and will not result in the termination of private foundation status of B, but will constitute an adjustment between private foundations within the contemplation of section 507(b)(2).

2. The proposed transfer will not constitute either a notification B's intent to terminate its status as a private foundation under section 507(a)(1), or willful repeated acts (or failure to act), within the meaning of section 507(a)(2), by B. Therefore, B will not be liable for the termination tax imposed by section 507(c).

3. The proposed transfer will constitute a significant disposition of assets to one or more foundations. C, D and E will not be treated as newly created organizations and will be treated as possessing the attributes and characteristics of B. Following the transfer, C, D and E may proportionately reduce their required distributions under section 4942, by their proportional amounts of B's excess qualifying distributions carryover for prior years.

4. The proposed transfer will not constitute a sale or other disposition within the meaning of section 4940(c)(4)(A), will not constitute an act of self-dealing within the meaning of section 4941 by B, C, D or E or by any disqualified person and will not constitute a jeopardizing investment within the meaning of section 4944(a) by B, C, D or E or by any disqualified person.

5. The proposed transfer will not constitute a taxable expenditure within the meaning of section 4945, and B will not be required to exercise expenditure responsibility under section 4945(h) with respect to the assets transferred to C, D and E.

6. The contemplated transaction will not result in any tax due by B under Chapter 42.

7. Provided B has no assets, B will not be required to file any tax returns for any taxable years subsequent to that in which all assets are distributed. Upon B's termination, B will be required to file a return required by section 6043(b).

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

Sincerely,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4