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Internal Revenue Service

200052038

Department of the Treasury

Washington, DC 20224

T:EO:R:B4

Contact Person:

Telephone Number:

In Reference to:

Date:

OCT 2 2000

**Legend:**

B=
C=
D=
G=
H=
x=

Dear Sir or Madam:

This is in response to your letters dated May 19, 2000 and August 21, 2000, in which you requested certain rulings with respect to the proposed transfer of all of the net assets of B to C and D.

B is exempt under section 501(c)(3) of the Internal Revenue Code and is classified as 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). C has submitted an application for recognition of exemption under section 501(c)(3) of the Code and classification as a private foundation under section 509(a).

B currently operates with two classes of trustees: Class A and Class B. The Class A trustees have effectively been the designees of G. The Class B trustees have effectively been the designees of H. The Board of Trustees of B has determined that it is in the best interests of B to separate its operations into two separate legal entities.

By resolution of B's Board of Trustees, the Class A trustees and the Class B trustees have been separately designating the grants which have been annually made by B. The Class A trustees and the Class B trustees have each been authorized to designate an equal amount of such grants. Pursuant to this authorization, the Class A trustees have annually designated the maximum amount of grants to which they are entitled. The Class B trustees have

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not exercised such maximum grant-making authority in multiple years. It was the express understanding between the Class A trustees and the Class B trustees that any of the unused amount of grants which the Class B trustees would otherwise have been able to designate in a given year would carryover to subsequent years for designation by the Class B trustees. On a cumulative basis, as of May 6, 2000, the Class A trustees have designated grants equal to x more than the grants which have been designated by the Class B trustees.

Effective May 6, 2000, the Board of Trustees of B formally adopted a plan of reorganization. The terms of the plan provide that after the adoption of the plan, the treasurer of B will cause B's assets to be physically separated into two funds for investment management and accounting purposes: Fund A and Fund B. Fund A will thereafter be managed and controlled solely by the Class A trustees. Fund B will thereafter be managed and controlled by the Class B trustees.

The segregation (which may be made in kind) into Fund A and Fund B is to be made on the basis of the fair market value of B's assets as of the time of such segregation (as reasonably determined by the treasurer). In making the segregation, the treasurer will (i) make a priority allocation to Fund B in the amount of x, and (ii)equally divide the balance of B's assets between Fund A and Fund B.

The following taxes, fees and expenses incurred by B prior to completion of the plan will be borne equally by Fund A and Fund B: (i)all fees and expenses incurred as a result of any matter relating solely to B as a whole and arising prior to the adoption of the plan (e.g., reasonable legal fees and expenses relating to an audit of B's federal income tax returns for prior years) (ii)all reasonable accounting fees and expenses (iii)all annual registration/filing fees (iv)all fees and expenses incurred in connection with the development and implementation of the plan (v)all taxes attributable to periods prior to the segregation of B's assets into the separate funds (as reasonably determined by B's independent certified public accountant).

All other taxes, fees, and expenses incurred by B after the effective date of the plan will be equitably apportioned between Fund A and Fund B (as reasonably determined by B's independent certified public accountant) so that they are borne by the particular fund whose assets or activities gave rise to such tax, fee or expense.

All estimated tax payments required to be made by B will be paid equally from Fund A and Fund B. The actual tax liability for each tax year will be allocated between Fund A and Fund B in

accordance with the foregoing principles (as determined by B's certified public accountant).

C has been created by G and is organized and operated exclusively for charitable, religious, educational, scientific and nonprofit purposes. The purposes of C are the same as those of B. Thus, C will continue to pursue the exempt purposes of B. C's trustees have effectively been the designees of G.

D has been created by H and is organized and operated exclusively for charitable, religious, educational, scientific and nonprofit purposes. The purposes of D are the same as those of B. Thus, D will continue to pursue the exempt purposes of B. D's directors have effectively been the designees of H.

B will (i)pay from the appropriate fund or make provision for the payment of, all unpaid expenses and obligations of B which will not be expressly assumed by either C or D (ii)distribute Fund A to C and (iii)distribute Fund B to D. Such distributions will be without consideration. After the distributions of Fund A and Fund B to C and D, B will take all actions necessary to dissolve and legally terminate its existence in accordance with applicable State law.

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.

At least one day after the transfer of all of its assets, B will notify the Service of its intent to terminate its private foundation status pursuant to section 507(a) of the Code. At the time B notifies the Service of its intent to terminate its private foundation status, it will have no remaining assets.

B does not have any outstanding grants with respect to which it is required to exercise expenditure responsibility under section 4945 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)(2)(i) of the regulations provides that a transferee organization, in the case of a transfer described in section 507(b)(2) of the Code, shall succeed to the aggregate tax benefit of the transferor organization in an amount equal to the amount of such aggregate tax benefit of the transferor organization, multiplied by a fraction the numerator of which is the fair market of the assets (less encumbrances) transferred to such transferee and the denominator of which is the fair market value of the assets of the transferor (less encumbrances) immediately before the transfer. Fair market value is determined at the time of transfer.

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 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(a)(9)(i)and(iii) of the regulations provides that if a private foundation transfers all of its net assets to another private foundation that is effectively controlled (within the meaning of section 1.482-1(a)(3) of the regulations by the same or persons who effectively controlled the transferor private

foundation the transferee shall be treated as if it were the transferor for purposes of Chapter 42 and sections 507 through 509 of the Code.

Section 1.507-3(b) of the regulations provides that in order for a transfer of assets, pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, 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 of the Code imposes a tax on the net investment income of private foundations.

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

Section 4942(g)(1)(A) of the Code defines a "qualifying distribution" as (a) any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons or (ii) a private foundation which is not an operating foundation, except as otherwise provided; or (b) any amount paid to acquire an asset used directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 4944 of the Code imposes certain taxes on investments jeopardizing a private foundation's charitable purposes.

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)(7)(i) of the Foundation and Similar Excise Taxes 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).

Based upon the above facts, the transfer of the net assets of B to C and D will allow C and D to continue the same charitable purpose and activities previously conducted by B. C and D will be controlled by the same trustees and directors that controlled B.

Because B is not terminating its existence and because there has been no willful, repeated or flagrant act giving rise to liability under Chapter 42, no tax will be imposed on B under section 507(c) as a result of the transfer of assets from B to C and D.

Because B will not notify the Service of its intent to terminate its private foundation status until at least one day after the transfer of all of B's assets to C and D has been accomplished, section 507(a)(1) of the Code will not apply to the transfers. Also, the Service has not notified B that its private foundation status is being terminated under section 507(a)(2) of the Code. Therefore, the transfer of all of B's assets to C and D will not result in the imposition of a termination tax under section 507(c) of the Code.

Because C and D are controlled by B, for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code, C and D will be treated subsequent to the transfer of all of B's assets, as if each were B, in the proportion which the fair market value of the assets (less encumbrances) transferred to each bears to the fair market value of B's assets (less encumbrances) immediately before the transfer.

Because the transfers of B's assets to C and D will be transfers described in section 507(b)(2) of the Code, the aggregate tax benefit of B should be carried over to C and D in proportions determined in accordance with section 1.507-3(a)(2)(i) of the regulations.

Because B, as an organization described in section 501(c)(3) of the Code, is not a disqualified person with respect to either C or D, the transfers of assets to C and D will not constitute

acts of self-dealing within the meaning of section 4941 of the Code.

Because the proposed transfers of assets to C and D will be made to accomplish the exempt purposes of B, the transfers will not constitute "investments" for purposes of section 4944 of the Code. Thus, the excise taxes imposed on jeopardizing investments under section 4944 of the Code will not apply to the transfer of assets from B to C and D.

Because C and D should be treated as if they are B for the purposes of Chapter 42, the transfer of assets from B to C and D will not impose tax under section 4940 of the Code. The transfer will not constitute a realizable event giving rise to net investment income to B, C, or D.

Because B has no outstanding grants with respect to which it is required to exercise expenditure responsibility, B will not be obligated to satisfy the expenditure responsibility requirement of section 4945(d)(4) of the Code, and the transfer of assets to C and D will not be a taxable expenditure under section 4945 of the Code.

Because all of the assets of B will be transferred to C and D, which are private foundations effectively controlled by the same persons who control B, C and D should be treated as if each were B, in the proportion which the fair market value of the assets (less encumbrances) transferred to each bears to the fair market value of B's assets (less encumbrances) immediately before the transfer. Therefore, B would not be required to meet the minimum distribution requirements of section 4942 of the Code for the year in which it transfers all of its assets and for subsequent years. On the same basis, C and D's distributable amount for such taxable year should be increased by their respective pro rata share of B's distributable amount for the year of the transfer, and all qualifying distributions made by B in the year of the transfer should be treated on a pro rata basis as having been made by C and D. Moreover, C and D would be responsible for reporting their respective pro rata share of all undistributed income for the year of the transfer, as determined in accordance with section 4942 of the Code.

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

1. The transfer of all of B's assets to C and D will constitute a transfer of assets described in section 507(b)(2)of the Code and will not result in the imposition of a termination tax pursuant to section 507(c) of the Code.

2. Provided that B notifies the Service of its intention to terminate private foundation status pursuant to section 507(a)(1) of the Code at least one day after the transfer of all of B's assets to C and D, then the amount of termination tax under section 507(c) of the Code will be zero.

3. For purposes of Chapter 42 of the Code and sections 507 through 509 of the Code, C and D will be treated, subsequent to the transfer of all of B's assets, as if each were B, in the proportion which the fair market value of the assets (less encumbrances) transferred to each bears to the fair market value of B's assets (less encumbrances) immediately before the transfer.

4. The "aggregate tax benefit", defined in section 507(d)(1) of the Code will be carried over to C and D in proportions determined in accordance with section 1.507-3(a)(2) of the regulations.

5. The transfer of B's assets to C and D will not result in tax under section 4940 of the Code.

6. The transfer of B's assets to C and D will not constitute self-dealing under section 4941 of the Code.

7. The transfer of B's assets to C and D will result in C and D succeeding to a portion of B's excess qualifying distributions, if any, based upon C and D's proportionate share of B's total assets received.

8. The legal, accounting and other expenses incurred by B, C and D, in connection with this ruling request and in carrying out the transfer of B's assets will be considered qualifying distributions under section 4942(g)(1)(A) on the basis that they have been made to achieve the exempt purposes of B.

9. The transfer of B's assets to C and D will not constitute a jeopardizing investment within the meaning of section 4944 of the Code.

10. The transfer of B's assets to C and D will not constitute taxable expenditures within the meaning of section 4945 of the Code and B will have no expenditure responsibility as set forth in sections 4945(d)(4) and 4945(h) with respect to these transfers.

These rulings are issued on the condition that C receive exempt status under section 501(c)(3) of the Code.

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We are informing the 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
Manager, Exempt Organizations
Technical Group 4