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

Date: FEB 9 2001

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Dear Sir or Madam:

This is in response to your letter dated November 13, 2000, in which you requested certain rulings with respect to a proposed transfer of all of the assets of B to C.

B and C are exempt under section 501(c)(3) of the Internal Revenue Code and are classified as private foundations under section 509(a).

B was originally organized and funded by E. It has always operated exclusively for charitable, literary, educational and scientific purposes. C was originally organized and funded by F. It has always operated exclusively for educational and scientific purposes.

E and F recently merged, resulting in the creation of D. B and C are both funded exclusively by grants from D. B and C now share the same officers and directors. Because B and C now receive all of their funds for charitable giving from D, the officers and directors of B and C believe that the merger of B and C will eliminate duplicative administrative costs and allow more effective management of their charitable giving programs. Thus, the combined organization will be better able to meet their charitable goals. A single foundation would provide a more rational means of efficiently administering the charitable giving program of D. Therefore, B and C propose to merge. C will be the surviving entity.

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 stated that it 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.

317

Section 507(a) of the Code provides for the voluntary and involuntary termination of private foundation status. It states, 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 have 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 507(e) of the Code provides that, for purposes of section 507(c)(2) of the Code, the value of the net assets of the private foundation shall be determined at whichever time the value is higher: (1) the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation or (2) the date on which it ceases to be a private foundation.

Section 1.507-3(a)(5) of the Income Tax Regulations provides that a transferor private foundation is required to meet its charitable distribution requirements under section 4942 of the Code, even for any taxable year in which it makes a transfer of its assets to another private foundation. Such transfer shall itself be counted toward satisfaction of such requirements to the extent the amount transferred meets the requirements of section 4942(g) of the Code. However, where the transferor has disposed of all of its assets, the record-keeping requirements of section 4942(g)(3)(B) of the Code shall not apply during any period in which it has no assets.

Section 1.507-1(b)(7) of the 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 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 1.507-1(b)(9) of the regulations provides that a private foundation which transfers all of its assets is not required to file annual information returns required by section 6033 of the Code for its tax years after the tax year of its transfer when it has no assets or activities.

Section 1.507-3(a)(1)of the regulations provides that in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of this subsection, the transferor organization shall not be treated as a newly created organization.

Section 1.507-3(a)(2) 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 value 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)(8)(ii) of the regulations provides that, in a section 507(b)(2) transfer, the provisions enumerated in subparagraphs (a) through (g) thereof apply to the transferee foundation with respect to the assets transferred to the same extent and in the same manner that they would have applied to the transferor foundation had the transfer described in section 507(b)(2) been effected.

Section 1.507-3(a)(9)(i) of the regulations provides that, if a transferor private foundation transfers assets to a private foundation effectively controlled, directly or indirectly, by the same person or persons who effectively control the transferor private foundation, the transferee foundation will be treated as if it were the transferor foundation, for purposes of sections 4940 through 4948 and sections 507 through 509 of the Code. The transferee is treated as the transferor in the proportion which the fair market value of the transferor's assets that were transferred bears to the fair market value of all of the assets of the transferor immediately before the transfer.

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 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 a transfer of assets pursuant to section 507(b)(2) of the Code.

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

Section 4942 of the Code requires a private foundation to make specified distributions of income for each taxable year, including the year in which it transfers substantial assets to another private foundation under section 507(b)(2).

Section 4942(g)(1)(A) of the Code defines a qualifying distribution as 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 4942(g)(3) of the Code requires that a grantor private foundation, in order to have a

qualifying distribution for its grant to another private foundation, which is not an operating foundation under section 4942(j)(3) of the Code, must have adequate records, as required by section 4942(g)(3)(B) of the Code, to show that the grantee private foundation, in fact, subsequently made qualifying distributions that were equal to the amount of the grant and that were paid out of the grantee's own corpus within the meaning of section 4942(h) of the Code. Such grantee foundation's qualifying distributions out of corpus must be expended before the close of the grantee's first tax year after its tax year in which it received the grant.

Section 4944 of the Code imposes tax upon a private foundation which invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes.

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

Section 4945(d)(4) of the Code defines the term taxable expenditure to include any amount paid or incurred by a private foundation as a grant to an organization unless (A) the organization is described in subparagraphs (1), (2), or (3) of section 509(a) of the Code or is an exempt operating foundation as defined in section 4940(d)(2) of the Code, or (B) the private foundation exercises expenditure responsibility with to such grant in accordance with section 4945(h) of the Code. The exercise of expenditure responsibility requires the foundation that makes the transfer to keep detailed records of the way the payment is spent by the recipient foundation.

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).

Section 53.4945-6(c)(3) of the regulations allows a private foundation to make transfers of its assets pursuant to section 507(b)(2) of the Code to organizations exempt from federal income tax under section 501(c)(3) of the Code, including private foundations, without the transfers being taxable expenditures under section 4945 of the Code.

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 represented that it 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.

Because B is not terminating its existence and assuming 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.

320

Because a transfer of assets as described in section 507(b)(2) will not cause a termination of an organization's private foundation status, the transfer from B to C will not terminate B's status as a private foundation under section 507(b)(1).

Under section 507(e) of the Code, the value of B's assets after it has transferred all of its assets to C will be zero. Thus, B's voluntary notice of termination of its private foundation status pursuant to section 507(a)(1) will not result in tax under section 507(c) of the Code.

Under section 1.507-3(a)(1) of the regulations, the transfer of B's assets to C pursuant to section 507(b)(2) of the Code will not result in C being considered a newly-created organization. Moreover, C will succeed to all of B's aggregate tax benefits.

Because B and C are controlled by D, for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code, C will be treated subsequent to the transfer of all of B's assets, as if it were B, in the proportion which the fair market value of the assets (less encumbrances) transferred bears to the fair market value of B's assets (less encumbrances) immediately before the transfer. Thus C can succeed to B's excess qualifying distributions carryover for purposes of section 4942 of the Code (including the election under section 53.4942(a)-3(c)(2)(iv) of the regulations).

Under section 1.507-3(a)(8)(ii) of the regulations, the provisions enumerated in subparagraphs (a) through (g) thereof apply to C with respect to the assets transferred to the same extent and in the same manner that they would have applied to B had the transfer described in section 507(b)(2) of the Code not been effected.

Because B will dispose of all of its assets, the recordkeeping requirements of section 4942(g)(3)(B) will not apply during any period in which it has no assets. Therefore, B's recordkeeping under section 4942(g)(3)(B) will not apply after the merger since B will have disposed of all of its assets.

Because B and C are both exempt under section 501(c)(3), they are not considered disqualified persons for purposes of self-dealing. Therefore, the transfer of assets from B to C would not be considered an act of self-dealing.

Because C is exempt under section 501(c)(3) and is organized for purposes described in section 170(c)(2)(B), and the reason for the transfer is to carry out more efficiently such exempt purposes, the transfer would not be a jeopardizing investment under section 4944.

Under section 1.507-3(a)(9)(ii) of the regulations, C will be treated the same as B, so that B's undistributed income under section 4942(c), if not already distributed by B, must be taken into account by C as the successor to B. B's transfer of assets to C will not subject B to tax under section 4942 for failure to distribute income.

Because B is transferring all of its assets to C pursuant to a merger, and B and C are controlled by the same persons, C will be treated as B. The transfer will be treated as not having

taken place for expenditure responsibility purposes under section 4945(d)(4) of the Code. Thus, the transfer will not be a taxable expenditure under section 4945(d)(4). Therefore, B need not exercise expenditure responsibility with regard to the transfer.

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

1. The transfer of the assets of B to C will not result in the termination of B's private foundation status within the meaning of section 507(a) of the Code or the imposition of any termination tax under section 507(c).

2. C as the transferee of B's assets will not be treated as a new foundation. C will succeed to all of B's aggregate tax benefits.

3. C will succeed to B's excess qualifying distributions carryover for purposes of section 4942 of the Code (including the election under section 53.4942(a)-3(c)(2)(iv) of the regulations).

4. The provisions of section 1.507-3(a)(8)(ii)(a) through (g) will apply to C with respect to assets transferred from B.

5. B will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code with respect to and following the transfer of assets to C. The transfer of assets from B to C will not constitute an act of self-dealing under section 4941 of the Code and will not constitute a jeopardy investment under section 4944.

6. The transfer of assets from B to C will not subject B to any tax under section 4942(a) of the Code for a failure to distribute income.

7. B will not be subject to tax under section 507(c) of the Code if B informs the Service of its intention to terminate its private foundation status following the transfer of assets to C.

8. The transfer of assets from B to C will not constitute a taxable expenditure under section 4945 of the Code, and B will not be required to exercise expenditure responsibility under section 4945(d)(4) or (h) as a result of the transfer.

We are informing the Ohio 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