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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

SIN:501.03-03;507.01-00;4941.04-00

July 29, 2003

Contact Person:

Identification Number:

Telephone Number:

T:EO:BR3

Employer Identification Number:

LEGEND:

X =

o =

y =

z =

Dear Sir or Madam:

This is in response to your ruling request concerning the effect of a proposed transaction on your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"), and the application of private foundation sections 507 and 4941 of the Code.

The Trust was created by X (the "Donor") under the X Trust Agreement (the "Trust Agreement"). The Trust is exempt under section 501(c)(3) of the Code and is a private foundation under section 509(a). The Trust received inter vivos gifts from the Donor and a bequest from the Donor's estate. From inception through December 31, 2000, the Trust has made very substantial charitable disbursements, with the majority of such disbursements going to local charities. The Trust's Form 990-PF for tax year 2000 reported the value of its total assets at approximately y dollar.

The Trust is managed by six Trustees. Each Trustee receives annual compensation of z dollars.

Paragraph 18 of the Trust Agreement provides that the Trust Agreement may be modified from time to time by the unanimous vote of the Trustees whenever necessary or advisable for the more convenient or efficient administration of the Trust, or to enable the Trustees to carry out the purpose of the Trust more effectively, provided that no such amendment or modification

shall alter the intention of the Donor that the Trust be operated exclusively for exempt purposes described in section 501(c)(3) of the Code,

Paragraph 19 of the Trust Agreement provides that the Trustees may terminate the Trust at any time by action of the Trustees; provided that upon such termination, the Trustees shall promptly distribute the entire remaining trust fund to recipients that are exempt under section 501(c)(3) of the Code. Paragraph 19 further provides that in all events the Trust Agreement and the Trust shall terminate no later than o (the "Termination Date").

The Trustees are desirous of reforming the Trust by amending Paragraph 19 to remove the Termination Date so that the Trust will continue into perpetuity and would terminate only upon the majority action of the Trustees. The Trustees believe this amendment would allow the Trust to carry on its charitable purpose more effectively. The Trustees also believe that had the Donor foreseen the substantial growth of the assets of the Trust and the beneficial impact it has on the local community, the Donor would have caused the Trust to have been drafted without a finite termination date so that the Trust could have a more substantial and lasting impact on the charities it supports and the local community.

The Trustees will petition the court for approval of the proposed amendment to the Trust Agreement. Article 19 of the Trust Agreement will be amended as follows:

> "19. The Trust shall be irrevocable on the part of the Donor, and shall continue in perpetuity until a majority of the Trustees agree to terminate the Trust; provided that upon such termination, the Trustees shall promptly distribute the entire then remaining Trust Fund to recipients classified as exempt organizations under the provisions of section 501(c)(3) of the Internal revenue Code of 1986, or the corresponding provisions of an (sic) future Internal Revenue Law, or to the Federal, State or local Government for exclusive public purposes, and no part of the income and/or corpus of the Trust shall ever revert to or become the property of the Donor or her heirs at law."

Law and Analysis:

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for educational, charitable or other exempt purposes.

Section 507(a)(1) of the Code provides that the status of any organization as a private foundation shall be terminated if such organization notified the Service that of its intent to accomplish such termination.

Section 4941 of the Code imposes excise tax on any act of self- dealing between a private foundation and any disqualified persons described in section 4946 of the Code.

Section 4941(d) (2) (E) of the Code provides that compensation paid by a private foundation to a disqualified person for personal services reasonable and necessary to carry out the exempt purposes of the private foundation is not an act of self-dealing if the compensation is not excessive.

Section 4946(a) of the Code provides the term "disqualified person" with respect to a private foundation includes a foundation manager.

Section 4946(b)(1) of the Code provides that the term "foundation manager" includes a trustee of a foundation.

Paragraph 18 of the Trust Agreement prohibits any amendment that alters the intent of the donor, that the Trust be operated exclusively for charitable purposes. The Trust has represented that it has been organized and operated exclusively for exempt purposes under section 501(c)(3) of the Code. The proposed amendment will extend the life of the Trust indefinitely but not change its charitable purposes and activities. Therefore, the purposes and activities of the Trust will be the same both before and after the adoption of the proposed amendment and the Trust's status as an organization described in section 501(c)(3) will not be adversely affected.

Amending the Trust Agreement to remove the finite termination date of the Trust concomitantly extends the period of time for the Trustees to serve the Trust and receive compensation. However, the proposed amendment would not give rise to an act of self-dealing under section 4941 of the Code as long as the amount of the annual compensation paid to the Trustees remains reasonable and is paid for reasonable and necessary services rendered to the Trust.

The Trust is not notifying the Service of an intent or desire to terminate its private foundation status. The proposed amendment, if approved by the court, merely extends the term of the Trust in continuing its charitable activities. Therefore, the Trust will not be terminating under section 507 of the Code.

The Trustees represented that they will obtain court approval in amending the Trust Agreement as described. The proposed amendment would enable the Trust to continue carrying out its exempt purposes. We stress that issues relating to reforming the Trust Agreement to allow the Trust to continue in perpetuity are matters under the jurisdiction of the appropriate state court.

Based on the foregoing, and assuming you obtain court approval of the proposed amendment to the Trust Agreement, we rule as follows:

1. The proposed amendment to the Trust Agreement will not jeopardize the Trust's tax-exempt status as an organization described in section 501(c)(3) of the Code.

2. The proposed amendment to the Trust Agreement will not constitute a termination of the Trust's private foundation status under section 507 of the Code.

3. The proposed amendment to the Trust Agreement will not constitute an act of self-dealing under section 4941 of the Code.

These rulings are based on the understanding that there will be no material changes in the facts upon which they were based. These rulings are directed only to the organization that requested them and should not be treated as implied endorsement of the proposed amendment. Section 6110(k)(3) of the Code provides that this ruling 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,

(signed) Robert C. Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3