DEPARTMENT OF THE TREASURY 199933050
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Significant Index No.: 507.04-00
4949.00-00

Date:
MAY 25 1999

Contact Person:

ID Number:

Telephone Number:

Employer Identification Number:

Dear Sir or Madam:

This refers to a letter dated November 30, 1998, requesting an advance ruling pursuant to section 1.507-2(e)(1) of the Income Tax Regulations pertaining to a proposed termination of your status as a private foundation. You have also requested a ruling concerning the application of section 4942 of the Internal Revenue Code during the advance ruling period.

The information provided indicates that you have been recognized as exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. In a letter dated December 8, 1997, the District Director, Brooklyn, New York determined that you are a private foundation within the meaning of section 509(a) of the Code.

Based upon the information submitted, we have concluded that you can reasonably be expected to terminate your private foundation status and become a supporting organization described in section 509(a)(3) of the Code.

After amendments to your Articles of Incorporation have been filed with the appropriate officials of your state, you will notify your key District Director that you will begin a 60-month termination of your private foundation status. After that notification, and for a continuous 60-month period thereafter you will operate as other than a private foundation as an organization described in section 509(a)(3) of the Code. In order to comply with the requirements under section 507(b)(1)(A)(iii), you must file within 90 days after the expiration of the 60-month period such information with the District Director as is necessary to make a final determination as to your status under section 509(a)(3).

Upon receipt of this ruling you will file an appropriate consent under section 6501(c)(4) of the Code to extend the period of limitation of assessment of tax due under section 4940 of the Code.

Pursuant to section 1.507-2(e)(3) of the regulations, for purposes of sections 170, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, grants or contributions to you, as an organization which has obtained this ruling, will be treated as made to an organization described in section 509(a)(3), until notice that such advance ruling is being revoked is made to the public (such as by publication in the Internal Revenue Bulletin). The preceding sentence shall not apply, however, if the grantor or contributor was responsible for, or aware of, the act or failure to act that

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resulted in your failure to meet the requirements of section 509(a)(3) of the Code, or acquired knowledge that the Internal Revenue Service had given notice to you that your advance ruling would be revoked.

Please be advised that prior to the making of any grant or contribution which allegedly will not result in the grantee's failure to meet the requirements of section 509(a)(1), (2), or (3), you, the potential grantee organization, may request a ruling whether such grant or contribution may be made without failure. You may file such request with your key District Director and the grantor may rely upon such favorable ruling, if issued, for purposes of sections 170, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522. The issuance of such a ruling will be at the sole discretion of the Commissioner.

Pursuant to the provisions of section 1.507-2(e)(4) of the regulations, you cannot rely on this ruling. Consequently, if you do not pay the tax imposed by section 4940 of the Code for any taxable year or years during the 60-month period, and it is subsequently determined that such tax is due for such year or years (because you did not in fact complete a successful termination pursuant to section 507(b)(1)(B) and were not treated as an organization described in section 509(a)(3) of the Code for such year or years, you are liable for interest in accordance with section 6601 for any amount of tax under section 4940 which has not been paid on or before the last date prescribed for payment. However, since any failure to pay such tax during the 60-month period (or period prior to the revocation of this ruling) is due to reasonable cause, the penalty under section 6651 with respect the tax imposed by section 4940 will not apply. The same is true with respect to the tax imposed by section 4942, except that failure to pay in this case must be due to reasonable cause. This ruling is not sufficient, in and of itself, to create reasonable cause.

Even though you are treated as a non-private foundation for some purposes, pursuant to sections 6033 and 6056 of the Code you are still required to file annual return 990-PF. Page 1 of Form 990-PF has a block to indicate that you are in the process of terminating your private foundation status. You should attach a copy of this ruling to each 990-PF you file during the 60-month period of your termination.

In the event you supply your key District Director within 90 days from the end of your termination period with information that shows the termination was effective, then you should file Form 990 for the final year of the termination period. This applies even if the key District Director has not affirmed that you have appropriately terminated your private foundation status by the time the return for the final year of termination is due.

Section 507(a) of the Code provides that, except as provided in section 507(b) [regarding transfers to, or operation as, public charities], an organization's status as a private foundation is terminated only if either (1) the organization notifies the Service of its intent to terminate its status 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, and the Service notifies such organization that it is liable for the termination tax imposed by section 507(c) by reason of such acts, and, in addition to (1) or (2), the tax under section 507(c) is either paid or abated.

Section 507(b)(1)(B) of the Code provides a procedure whereby a private foundation can terminate its private foundation status without incurring tax under subsection (c) by (i) providing notice of its intent to terminate its private foundation status; and (ii) operating as a public charity for a continuous 60-month period.

Section 507(c) of the Code imposes a tax on each private foundation described in section 507(a) equal to the lower of the aggregate tax benefit resulting from the foundation's section 501(c)(3) status or the value of its net assets.

Section 1.507-2(f)(2) of the regulations provides that any organization which fails to satisfy the requirements of section 507(b)(1)(B) for the continuous 60-month period, but does satisfy these requirements for any taxable year or years during such 60-month period will be treated as a section 509(a)(1), (2), or (3) organization for such taxable years. In addition, sections 507 through 509, and Chapter 42 shall not apply to such organization for any taxable year within such 60-month period for which it does meet such requirements.

Section 4942 of the Code imposes taxes on a private foundation's failure to distribute income for charitable purposes.

Since you will notify the Service prior to the commencement of the 60-month termination period of your intent to terminate your private foundation status, you will not be subject to the provisions of Chapter 42 of the Code, including provisions of section 4942, for any taxable year within the 60-month period for which you operate as a public charity. Reg. 1.507-2(f)(2).

Because this letter could help resolve any questions about your exempt status and foundation status, you should keep it in your permanent records. In addition, you should submit a copy of this letter to your key District Director when you file your notification of termination of private foundation status.

This ruling letter is directed only to the organization that requested it. Section 6110(j)(3) of the Internal Revenue Code provides that this ruling may not be used or cited by others 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,

Robert C. Harper, Jr.

Robert C. Harper, Jr.
ID# 50-03055
Chief, Exempt Organizations
Technical Branch 3