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

199937053

Date: JUN 24 1999

Contact Person:

ID Number:

Contact Number:

OP:E:EO:T:2

Uniform Issue List: 507.00-00
509.00-00
4940.00-00
4941.04-00
4942.03-05
4944.00-00
4945.04-06
6033.02-01

Legend:

A =
B =
C =
D =
E =
F =
G =
H =
I =
J =
K =
L =

Dear Sir or Madam:

This is in reply to your rulings request of October 28, 1998, on the proposed transfer by A of all of its assets to C, D, E, F, G, H, and I, and the proposed transfer by B of all its assets to C, D, and E, pursuant to section 507(b)(2) of the Internal Revenue Code.

A, B, C, D, E, F, G, H, and I are exempt from federal income tax under section 501(c)(3) of the Code and are private foundations under section 509(a) of the Code. A will transfer all of its assets: one-third to C, one-ninth to D, two-ninths to E, one-twelfth to F, one-twelfth to G, one-twelfth to H, and one-twelfth to I. B will transfer all of its assets: one-half to C, one-sixth to D, and one-third to E. These transfers of assets will allow the private foundations to pursue their own charitable objectives. After A's and B's transfers, A and B will each terminate its private foundation status under section 509(a) of the Code by notice to the Internal Revenue Service pursuant to section 507(a)(1) of the Code, and will dissolve under state law.

J, K, and L are charitable income lead trusts under section 4947(a)(2) of the Code. J and K presently fund A, and L funds B. After transfers by A and B, J and K will distribute all future annuity payments one-third to C, one-ninth to D, two-ninths to E, one-twelfth to F, one-twelfth to G, one-twelfth to H, and one-twelfth to I. L will make its charitable annuity payments one-half to C, one-sixth to D, and one-third to E.

Neither A nor B has any grant outstanding that requires the exercise of expenditure responsibility under section 4945(h) of the Code, and neither A nor B has any plans to make such grants. However, if either or both of A or B does make any grant to any organization (other than their transfers under section 507(b)(2) of the Code to C, D, E, F, G, H, and I) that does require the exercise of expenditure responsibility under section 4945(h) of the Code, then, pursuant to the Expenditure Responsibility Agreement terms concerning A, B, and C, and as agreed by A, B, C, D, E, F, G, H, and I, private foundation C will exercise any required expenditure responsibility under section 4945(h) of the Code for any expenditure responsibility grants if made by A or B prior to A's and B's transfers of all of their assets to C, D, E, F, G, H, and I pursuant to section 507(b)(2) of the Code.

Your letter requests the following rulings:

1.a. The transfers of all of the assets of A to C, D, E, F, G, H, and I will qualify as transfers pursuant to section 507(b)(2) of the Code, will not constitute 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 of the Code, will not terminate the status of A as a private foundation described in section 509(a) of the Code and exempt from taxation under section 501(a) of the Code, and will not result in the imposition on A of any termination tax under section 507(c) of the Code.

1.b. The transfers of all of the assets of B to C, D, and E will qualify as transfers pursuant to section 507(b)(2) of the Code, will not constitute 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 of the Code, will not terminate the status of B as a private foundation described in section 509(a) of the Code and exempt from taxation under section 501(a) of the Code, and will not result in the imposition on B of any termination tax under section 507(c) of the Code.

2. The transfers of all of the assets of A and B to C, D, E, F, G, H and I will not adversely affect the tax exempt status of any of C, D, E, F, G, H and I under sections 501(a) and 509(a) of the Code.

3. If either A or B notifies the Internal Revenue Service that it intends to terminate its private foundation status pursuant to section 507(a)(1) of the Code at least one day after the transfer of all of its remaining assets to its transferee foundations, no termination tax under section 507(c) will be imposed on A or B.

4. The transfers of the assets of A to C, D, E, F, G, H and I and the transfers of the assets of B to C, D, E will not subject either A or B to any excise tax on net investment income under section 4940 of the Code.

5.a. With respect to the transfers of all of the assets of A to C, D, E, F, G, H and I, the provisions of section 4940 of the Code will apply to each of the transferee private foundations in the taxable year of the transfers and any subsequent year as if each transferee private foundation were A, to the extent of each transferee private foundation's pro rata share of the assets distributed to it by A. Therefore, each of the transferee private foundations will report its pro rata share of the net investment income of A for the year of the transfers and will pay any excise tax imposed by section 4940 of the Code with respect to such pro rata share.

5.b. With respect to the transfers of all of the assets of B to C, D, and E, the provisions of section 4940 of the Code will apply to each of the recipients in the taxable year of the transfers and any subsequent year as if each recipient were B, to the extent of each recipient's pro rata share of the assets distributed to it by B. Therefore, each of B's recipients will report its pro rata share of the net investment income of B for the year of the transfers and will pay any excise tax imposed by section 4940 of the Code with respect to such pro rata share.

6. The transfers of the assets of A to C, D, E, F, G, H and I and the transfers of the assets of B to C, D, and E will not constitute acts of self-dealing under section 4941 of the Code and will not subject any foundation manager or other disqualified person of either A or B or any foundation manager or other disqualified person of any of C, D, E, F, G, H and I to the imposition of tax under section 4941 of the Code.

7.a. The transfers of all of the assets of A to C, D, E, F, G, H and I will be counted toward the satisfaction of the distribution requirements of A under section 4942 of the Code to the extent that the amounts transferred meet the requirements of section 4942(g) of the Code.

7.b. The transfers of all of the assets of B to C, D, and E will be counted toward the satisfaction of the distribution requirements of B under section 4942 of the Code to the extent that the amounts transferred meet the requirements of section 4942(g) of the Code.

8. Neither A nor B will be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code with respect to the transfer of all of its assets to C, D, E, F, G, H and I or to C, D, and E, as the case may be.

9.a. With respect to the transfers of all of the assets of A to C, D, E, F, G, H and I, the distribution requirements of section 4942 of the Code will apply to each of the transferee private foundations in the taxable year of the transfers and any subsequent year as if each transferee private foundation were A, to the extent of each transferee private foundation's pro rata share of the assets distributed to it by A. Therefore, each of the transferee private foundations will succeed to a pro rata share of the distribution requirements of A for the year of the transfers. Each of the transferee private foundations will take into account, for purposes of determining such transferee private foundation' s distribution requirements under section 4942 of the Code, a pro rata share of the excess qualifying distributions, if any, of A with respect to each year preceding the taxable year of the transfers, undistributed income, if any, with respect to the taxable year of the transfers and each preceding year, minimum investment return for the taxable year of the transfers, and any qualifying distributions made by A during the taxable year of the transfers either prior to, or as a result of, the transfers.

9.b. With respect to the transfers of all of the assets of B to C, D, and E, the distribution requirements of section 4942 of the Code will apply to each of B's recipients in the taxable year of the transfers and any subsequent year as if each recipient were B, to the extent of each recipient' s pro rata share of the assets distributed to it by B. Therefore, each of B's recipients will succeed to a pro rata share of the distribution requirements of B for the year of the transfers. Each of B's recipients will take into account, for purposes of determining such recipient's distribution requirements under section 4942 of the Code, a pro rata share of : the excess qualifying distributions, if any, of B with respect to each year preceding the taxable year of the transfers, undistributed income, if any, with respect to the taxable year of the transfers and each preceding year; minimum investment return for the taxable year of the transfers, and any qualifying distributions made by B during the taxable year of the transfers either prior to, or as a result of, the transfers.

10. The transfers of all of the assets of A to C, D, E, F, G, H and I and the transfers of all of the assets of B to C, D, and E will not constitute jeopardizing investments with respect to either A or B or any of C, D, E, F, G, H and I within the meaning of section 4944 of the Code.

11.a. The transfers of all of the assets of A to C, D, E, F, G, H and I and the transfers of all of the assets of B to C, D, and E will not constitute taxable expenditures and will not subject either A or B to the imposition of any tax under section 4945 of the Code.

11.b. A will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to the transfers to C, D, E, F, G, H and I, except for information return requirements for the year of the transfers, and B will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to the transfers to C, D, and E, except for information return requirements for the year of the transfers.

11.c. Although neither A nor B has any outstanding grants that require the exercise of expenditure responsibility within the meaning of section 4945(h) of the Code and neither A nor B has any plans to make any future grants that would require expenditure responsibility, if, notwithstanding the foregoing, either A or B makes any grants that require expenditure responsibility prior to the transfer of all of its assets to the transferee private foundations C, D, E, F, G, H and I or to the C, D, and E recipients, as the case may be, C will exercise expenditure responsibility for all such grants, in accordance with the Expenditure Responsibility Agreement. Such expenditure responsibility by C will begin after the transfer by A or B of all of its assets to the transferee private foundations C, D, E, F, G, H and I or to the C, D, and E recipients, as the case may be. Any expenditure responsibility requirements imposed on either A or B with respect to grants made to organizations other than the transferee private foundations C, D, E, F, G, H and I will not subject A or B or any of the transferee private foundations C, D, E, F, G, H and I to the imposition of any tax under section 4945 of the Code, provided that C exercises such expenditure responsibility.

12. Each foundation A and B will not be required to comply with the periodic reporting, return and notice provisions of section 6033 of the Code for any taxable year subsequent to that in which all assets are distributed by such A or B to C, D, E, F, G, H and I or to C, D, and E, as the case may be, provided that such A or B does not receive any assets and does not engage in any activity at any time after such distribution.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for charitable and/or other exempt purposes stated in that section.

Section 509(a) of the Code defines organizations exempt from federal income tax under section 501(c)(3) of the Code that are private foundations subject to the private foundation provisions of Chapter 42 of the Code.

Section 507(a)(1) of the Code and section 1.507-1(b)(1) of the Income Tax Regulations provide that a private foundation may voluntarily terminate its private foundation status by submitting to the Internal Revenue Service a statement of its intention to terminate its private foundation status and by paying the termination tax under section 507(c) of the Code.

Section 507(c) of the Code impose excise tax on any private foundation which voluntarily terminates its private foundation status pursuant to section 507(a)(1) of the Code. This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefits that have resulted from the private foundation's status under section 501(c)(3) of the Code, or (b) the value of the net assets of the private foundation.

Section 507(b)(2) of the Code concerns the transfer of assets by one private foundation to one or more other private foundations, and provides that each transferee private foundation shall not be treated as a newly created organization.

Section 1.507-3(c)(1) of the regulations provides that a transfer under section 507(b)(2) of the Code includes a transfer of assets from one private foundation to one or more other private foundations pursuant to any reorganization, including any significant disposition of 25% or more of the transferor's assets.

Section 1.507-3(a)(1) of the regulations provides that, in a transfer of assets from one private foundation to one or more other private foundations pursuant to a reorganization, each transferee private foundation is not treated as a newly created organization, but succeeds to the transferor's aggregate tax benefits under section 507(d) of the Code.

Section 507(d) of the Code provides that the aggregate tax benefits of a private foundation refer to the value of its exemption from federal income tax under section 501(c)(3) of the Code and of the deductions taken by its donors during its existence.

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 tax years after the tax year of such transfer when it has no assets or activities.

Section 1.507-3(a)(5) of the regulations provides that a transferor private foundation is required to meet its charitable distribution requirements under section 4942 of the Code, even for a tax year in which it makes a transfer of its assets to another private foundation pursuant to section 507(b)(2) of the Code.

Section 1.507-3(a)(7) of the regulations provides that a private foundation that has transferred all of its assets to another private foundation pursuant to section 507(b)(2) of the Code is not subject to the expenditure responsibility requirement of section 4945(h) of the Code.

Section 1.507-3(a)(9)(i) of the regulations provides that, if a transferor private foundation transfers assets to one or more private foundations which are controlled, directly or indirectly, by the same persons who control the transferor foundation, each 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. Each transferee is treated as the transferor in the proportion which the fair market value of the assets transferred to it bears to the fair market value of all of the assets of the transferor immediately before the transfer.

Section 1.507-3(a)(9)(ii) of the regulations provides that a transfer of assets pursuant to section 507(b)(2) of the Code does not relieve the transferor private foundation from filing its own final return as required by section 6043(b) of the Code.

Section 1.507-3(a)(9)(iii), Example (2), indicates that a private foundation transferee of assets pursuant to section 507(b)(2) of the Code can enter into an expenditure responsibility agreement with its transferor(s) of the assets whereby the transferee(s) agree to assume the continuing expenditure responsibility under section 4945(h) of the Code for one or more of the outstanding expenditure responsibility grants of the transferor(s). That Example 2 mentions such an expenditure responsibility agreement between transferor and transferee private foundations. In that Example, two trustees of private foundation P are the only substantial contributors to P. On July 1, 1973, in order to facilitate accomplishment of diverse charitable purposes, the two trustees create and control the R foundation, the S foundation and the T foundation, and transfer all of P's assets to R, S, and T. As of the end of 1973, P also has an outstanding grant to foundation W for which P has been required to exercise expenditure responsibility with respect to its grant to W under section 4945(h) of the Code. Under these circumstances, R, S, and T are each treated as if they are P in the proportion that the fair market value of the assets transferred to each bears to the fair market value of the assets of P immediately before the transfer. Since R, S, and T are treated as P, absent a specific provision for exercising expenditure responsibility with respect to P's outstanding expenditure responsibility grant to W, each of R, S, and T is required to exercise expenditure responsibility with respect to P's outstanding grant to W. However, if, as a part of P's transfer of assets to R, P assigned, and R assumed, P's duties with respect to P's outstanding expenditure responsibility grant to foundation W, only R would be required to exercise expenditure responsibility with respect to P's grant to W. The Example also indicates that, since transferees R, S, and T are treated as P, rather than as recipients of expenditure responsibility grants, there are no expenditure responsibility requirements which must be exercised under section 4945(h) of the Code with respect to P's transfers of all of its assets to R, S, and T.

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.

Sections 1.507-1(b)(7) and 1.507-3(d) of the regulations provide that a transferor foundation's transfer of assets pursuant to section 507(b)(2) of the Code will not constitute a termination of the transferor foundation's status as a private foundation under section 509(a) of the Code.

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 tax years after the tax year of such transfer when it has no assets or activities.

Section 1.507-3(a)(5) of the regulations provides that a transferor private foundation is required to meet its charitable distribution requirements under section 4942 of the Code, even for a tax year in which it makes a transfer of its assets to another private foundation pursuant to section 507(b)(2) of the Code.

Section 1.507-3(a)(7) of the regulations provides that a private foundation that has transferred all of its assets to another private foundation pursuant to section 507(b)(2) of the Code is not subject to the expenditure responsibility requirement of section 4945(h) of the Code.

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 tax years after the tax year of such transfer when it has no assets or activities.

Section 1.507-3(a)(5) of the regulations provides that a transferor private foundation is required to meet its charitable distribution requirements under section 4942 of the Code, even for a tax year in which it makes a transfer of its assets to another private foundation pursuant to section 507(b)(2) of the Code.

Section 1.507-3(a)(7) of the regulations provides that a private foundation that has transferred all of its assets to another private foundation pursuant to section 507(b)(2) of the Code is not subject to the expenditure responsibility requirement of section 4945(h) of the Code.

Section 4942(g)(3) of the Code provides that a transferor private foundation, in order to make a qualifying distribution for its grant to another private foundation, must have adequate records, as required by section 4942(g)(3)(B) of the Code, to show that the transferee private foundation, in fact, subsequently made qualifying distributions that were equal to the amount of the transfer received and that were paid out of the transferee's own corpus within the meaning of section 4942(h). Such transferee foundation's qualifying distributions must be expended before the close of the transferee's first tax year after the transferee's tax year in which it received the transfer.

Revenue Ruling 78-387, 1978-2 C.B. 270, describes the carryover of a transferor private foundation's excess qualifying distributions under section 4942(i) of the Code where the transferor and the transferee foundations are controlled by the same persons. Under section 1.507-3(a)(9)(i) of the regulations, the transferee is treated as the transferor, so that the transferee can reduce its own distributable amount under section 4942 of the Code by the amount, if any, of its transferor's excess qualifying distributions under section 4942(i) of the Code.

Section 4944 of the Code imposes excise tax on a private foundation's making of any investment that jeopardizes its exempt purposes.

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

Section 4945(d)(4) of the Code requires that, to avoid making a taxable expenditure, a transferor private foundation must exercise "expenditure responsibility" under section 4945(h) of the Code on its transfers to another private foundation.

Section 4945(h) of the Code defines expenditure responsibility in terms of a grantor private foundation requiring proper pre-grant and post-grant reports from its grantee private foundation on the grantee's uses of the grant.

Section 4945(d)(5) of the Code provides that a taxable expenditure includes any amount expended by a private foundation for purposes other than exempt purposes.

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.

Analysis

A will transfer all of its assets to C, D, E, F, G, H, and I, and B will transfer all of its assets to C, D, and E. Your requested rulings are discussed below:

1.

Under section 507(b)(2) of the Code and section 1.507-3(c)(1) of the regulations, a transfer under section 507(b)(2) includes a transfer of assets from one private foundation to one or more other private foundations pursuant to any reorganization, including any significant disposition of 25% or more of the transferor's assets. Because A and B each will be in such a reorganization by their dispositions of all of all of their assets, A's and B's transfers will be transfers under section 507(b)(2) of the Code.

Under section 507(a)(2)(A) of the Code, A's and B's transfers for exempt purposes under section 501(c)(3) of the Code will not constitute any act or failure to act under that section which would result in any tax under Chapter 42 of the Code.

Under section 1.507-4(b) of the regulations, A's and B's transfers of their assets pursuant to section 507(b)(2) of the Code will not cause a termination of A's or B's private foundation status under section 509(a) of the Code and will not result in any termination tax under section 507(c) of the Code.

2.

Under section 501(c)(3) of the Code, A's and B's transfers of their assets will be for exempt purposes under that section and, thus, the transfers will not adversely affect their exemptions from federal income tax under section 501(c)(3) of the Code of A or B or their transferees.

3.

Section 507(c) of the Code imposes excise tax on a private foundation which voluntarily terminates its private foundation status pursuant to section 507(a)(1) of the Code. This tax under section 507(c) of the Code is equal to the lower of: (a) the aggregate tax benefits that have resulted from the foundation's exemption from federal income tax under section 501(c)(3) of the Code, or (b) the value of the net assets of the foundation. After A and B each transfer all of their assets, the value of each's assets will be zero when A and B notify the Service of their voluntary termination of private foundation status pursuant to section 507(a)(1) of the Code and, thus, such termination of A's and B's private foundation status under section 509(a) of the Code will result in zero termination tax under section 507(c) of the Code.

4.

A's and B's transfers of their assets will be for exempt purposes under section 501(c)(3) of the Code and, thus, will not be investment income or a disposition of property or subject them to tax on investment income under section 4940 of the Code.

5.

Section 1.507-3(a)(9)(i) of the regulations indicates that, if a transferor private foundation transfers assets to one or more private foundations which are controlled, directly or indirectly, by the same persons who control the transferor foundation, each 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. Each transferee is treated as the transferor in the proportion which the fair market value of the assets transferred to it bears to the fair market value of all of the assets of the transferor immediately before the transfer. Thus, A's and B's investment income under section 4940 of the Code can be treated as that of its transferees, and A's and B's tax on such income under section 4940 of the Code can be paid by their transferees.

6.

Under section 4941 of the Code, A's and B's transfers will not be acts of self-dealing because the transfers will be made for exempt purposes to organizations exempt from federal income tax under section 501(c)(3) of the Code, which are not disqualified persons, for purposes of section 4941 of the Code pursuant to section 53.4946-1(a)(8) of the regulations.

7.

Section 4942(g)(3) of the Code provides that a transferor private foundation, in order to make a qualifying distribution for its grant to another private foundation, must have adequate records, as required by section 4942(g)(3)(B) of the Code, to show that the transferee private foundation, in fact, subsequently made qualifying distributions that were equal to the amount of the transfer received and that were paid out of the transferee's own corpus within the meaning of section 4942(h). Such transferee foundation's qualifying distributions must be expended before the close of the transferee's first tax year after the transferee's tax year in which it received the transfer. Thus, A's and B's transfers will be counted toward the satisfaction of each's own distribution requirements under section 4942 of the Code to the extent that such amounts transferred meet the requirements of section 4942(g)(3) of the Code.

8.

Under section 1.507-3(a)(5) of the regulations, A and B will not be required to meet the recordkeeping requirements of section 4942(g)(3)(B) of the Code with respect to their transfers of all of their assets.

9.

As in Revenue Ruling 78-387, described above, after A's and B's transfers of all of their assets to their transferee private foundations, A's and B's excess qualifying distributions, if any, under section 4942 of the Code may be used by their transferees to reduce each's distributable amount under section 4942 of the Code by each's proportionate share of the amount, if any, of A's and B's excess qualifying distributions carryovers under section 4942(i) of the Code. Similarly, A's and B's transfers will result in these transferee private foundations being treated as their transferor(s) with respect to each transferee's pro rata share of A's and B's minimum investment return and qualifying distributions under section 4942 of the Code.

10.

Because A's and B's transfers will be made for exempt purposes, they will not constitute jeopardizing investments or result in tax under section 4944 of the Code.

11.

Section 53.4945-6(c)(3) of the regulations indicates that a private foundation can transfer 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. Thus, A's and B's transfers to the exempt transferees C, D, E, F, G, H, and I for exempt purposes under section 501(c)(3) of the Code will not be taxable expenditures under section 4945 of the Code.

Section 1.507-3(a)(7) of the regulations provides that, if a private foundation transfers all of its assets to one or more transferee private foundations pursuant to section 507(b)(2) of the Code, such transferor foundation does not incur any expenditure responsibility requirement under section 4945(h) of the Code with respect to its transfer of all of its assets pursuant to section 507(b)(2) of the Code. Thus, when A and B transfer all of their assets to C, D, E, F, G, H, and I pursuant to section 507(b)(2) of the Code, A and B will not be required to exercise any expenditure responsibility under section 4945(h) of the Code with respect to such transfers of all of their assets to C through I pursuant to section 507(b)(2) of the Code.

Under section 1.507-3(a)(9)(iii), Example (2), of the regulations, A's and B's transferee, C, has an expenditure responsibility agreement with A and B whereby C agrees to assume any expenditure responsibility under section 4945(h) of the Code with respect to any outstanding expenditure responsibility grants, if any, of A and/or B. Thus, although neither A nor B has any grant outstanding that requires the exercise of expenditure responsibility under section 4945(h) of the Code, and neither A nor B has any plans to make such grant, if either or both of A or B makes any grant to any organization (other than the transfers under section 507(b)(2) of the Code to C, D, E, F, G, H, and I) that does require the exercise of expenditure responsibility under section 4945(h) of the Code, then, pursuant to the Expenditure Responsibility Agreement terms concerning A, B, and C, and as agreed among A, B, C, D, E, F, G, H and I, private foundation C will exercise any required expenditure responsibility under section 4945(h) of the Code for any expenditure responsibility grants that might be made by A or B prior to their transfers of assets pursuant to section 507(b)(2) of the Code.

12.

Under section 1.507-1(b)(9) of the regulations, A and B will not be required meet the annual reporting requirements of section 6033 of the Code, for any tax years after the tax year of their transfers when A and B will have no assets.

Accordingly, we rule, as you have requested, that:

1. A's transfers of all of its assets to C, D, E, F, G, H, and I, and B's transfers of all of its assets to C, D, and E will qualify as transfers under section 507(b)(2) of the Code, will not be any acts or failures to act under section 507(a)(2)(A) of the Code giving rise to liability for tax under Chapter 42 of the Code, will not terminate the status of A or B as a private foundation under section 509(a) of the Code exempt from federal income tax under section 501(c)(3) of the Code, and will not result in the imposition of any termination tax under section 507(c) of the Code.

2. A's and B's transfers will not adversely affect the exemption from federal income tax under section 501(c)(3) of the Code or the private foundation status under section 509(a) of the Code of any of their transferees: C, D, E, F, G, H, and I.

3. If A or B notifies the Internal Revenue Service of its intent to terminate its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code at least one day after transfer of all of its assets to its transferees, no termination tax under section 507(c) of the Code will be imposed on A or B.

4. A's transfers of all of its assets to C, D, E, F, G, H, and I, and B's transfers of all of its assets to C, D, and E will not subject A or B to any excise tax on investment income under section 4940 of the Code.

5. With respect to A's transfers of all of its assets of to C, D, E, F, G, H, and I, and with respect to B's transfers of all of its assets to C, D, and E, the provisions of section 4940 of the Code will apply to each of the transferee private foundations in the tax year of the transfers and any subsequent year as if each transferee were its transferor(s) to the extent of each transferee's pro rata share of the assets distributed to it by its transferor(s). Each of the transferees will report its pro rata share of the net investment income of its transferor(s) for the tax year of the transfers and will pay any excise tax under section 4940 of the Code with respect to the transferee's pro rata share.

6. A's transfers of all of its assets to C, D, E, F, G, H, and I, and B's transfers of all of its assets to C, D, and E will not constitute acts of self-dealing under section 4941 of the Code and will not subject any foundation manager or other disqualified person of A or B or any foundation manager or other disqualified person of any of the transferee private foundations to tax under section 4941 of the Code.

7. A's transfers of all of its assets to C, D, E, F, G, H, and I, and B's transfers of all of its assets to C, D, and E will be counted toward the satisfaction of the respective transferor's own distribution requirements under section 4942 of the Code to the extent that the amounts transferred meet the requirements of section 4942(g)(3) of the Code.

8. A and B will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code with respect to their transfers of all of their assets to their transferee private foundations.

9. With respect to A's transfers of all of its assets to C, D, E, F, G, H, and I, and with respect to B's transfers of all of its assets to C, D, and E, the distribution requirements of section 4942 of the Code will apply to their transferee private foundations in the tax year of the transfers and any subsequent tax years as if the transferees were their transferor(s) in proportion to each transferee's pro rata share of the assets distributed to each by its transferor(s). Each transferee will succeed to a pro rata share of the distribution requirements of its transferor(s) for the tax year of the transfers. Each transferee will take into account, for purposes of determining each transferee's distribution requirements under section 4942 of the Code, each transferee's pro rata share of its transferor(s) excess qualifying distributions, if any, with respect to each year preceding the tax year of the transfers and undistributed income, if any, with respect to the tax year of the transfers and each preceding year, and minimum investment return for the tax year of the transfers, and any qualifying distributions made by its transferor(s), during their tax years of the transfers, prior to, or, as a result of, their transfers.

10. A's and B's transfers will not be jeopardizing investments under section 4944 of the Code with respect to A or B or any of their transferee private foundations.

11.a. A's and B's transfers will not be taxable expenditures or subject A or B to tax under section 4945 of the Code.

11.b. A and B will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to each's transfers of all of its assets to its transferee private foundations, except for each's annual information return requirement for each's tax year of its transfers.

11.c. If A or B makes any grants that require expenditure responsibility prior to each's transfers of all of its assets to its transferee private foundations, C will exercise the required expenditure responsibility for all such grants by A and/or B in accordance with their expenditure responsibility agreement, and C's expenditure responsibility for such grants by A and/or B would begin after the transfers by A and/or B to the transferees. Any expenditure responsibility requirements imposed on A and/or B with respect to such grants made to organizations other than the transferees C, D, E, F, G, H, or I will not subject A, B, C, D, E, F, G, H, or I to tax under section 4945 of the Code if C exercises such expenditure responsibility on behalf of A and/or B.

12. A and B will not be required to comply with the periodic reporting, return and notice provisions of section 6033 of the Code for any tax years subsequent to that in which all assets are distributed by A and B to their transferee private foundations and A and B will have no assets.

Because this letter could help to resolve any questions, please keep it in your permanent records.

This ruling letter is directed only to the organizations that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2