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Internal Revenue Service

200003045

Department of the Treasury

Washington, DC 20224

OP:E:EO:T:4

Contact Person:

Telephone Numbe

In Reference to:

Date: OCT 18 1999

Legend:

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D=
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Dear Sir or Madam:

This is in response to your letter dated April 30, 1999, in which you requested certain rulings with respect to a proposed transfer of assets from B and C to D.

B is exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a). C is exempt under section 501(c)(3) and is classified as a private foundation under section 509(a). D is exempt under section 501(c)(3) and has been determined to be nonprivate foundation with classification under section 509(a)(3).

D owns and operates a cultural, educational, and charitable center in E. The center, which is open to the public as well as to numerous educational groups, is designed to promote the appreciation of history, arts, and industry in F. In addition to operating the center, D furthers its exempt purposes by operating a historical dwelling and a botanic garden in E.

For the past several years, B and C have made annual grants to D to help meet the expenses of operating the center and D's other exempt purposes. Now B and C desire to assist D by making grants on an annual basis from B and C's investment assets. Unlike the operational grants, these grants are designed to help build D's endowment.

B and C intend that the grants will reduce and eventually eliminate the annual operational grants. In light of the purpose

244

of the grants, B and C do not intend to continue awarding grants once D's endowment is self-sufficient. B and C plan to award the grants to D over a ten-year period.

You have represented that since D received its letter classifying it as a section 509(a)(3) organization in 1989, it has operated and been treated for all purposes as an organization described in section 509(a)(3).

You have represented that the grants to D will be made for purposes described in section 170(c)(2)(B) of the Code; that D is not controlled by B and C; and that D is not a private foundation because it is an organization described in section 509(a)(3).

You have further represented that neither B and C will voluntarily terminate its status as a private foundation under section 507(a)(1) in connection with the grants (or otherwise). In addition, there have been neither willful repeated acts (or failures to act) nor a willful and flagrant act (or failure to act) with respect to either B or C, and the involuntary termination provisions of section 507(a)(2) therefore are not applicable to B or C.

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 507(c) of the Code imposes a termination tax on each organization described in section 507(a).

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 1.507-1(b)(8) of the regulations provides that if a private foundation makes a transfer described in paragraph (7) of this paragraph and prior to, or in connection with, such transfer, liability for any tax under chapter 42 is incurred by the transferor foundation, transferee liability may be applied against the transferee organization for payment of such taxes.

Section 509(a) of the Code provides that the term "private foundation" means an organization described in section 501(c)(3) other than certain organizations described in section 509(a)(1), (2),(3), or (4).

Section 4942(a) of the Code imposes a tax on a private foundation's undistributed income for failure to distribute the required amounts of income. Under the provisions of section 4942, a private foundation must have qualifying distributions equal to its minimum investment return.

Section 4942(g)(1) of the Code provides that the term "qualifying distribution" means any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), or any amount paid to acquire an asset used or held for use directly in carrying out one or more charitable purposes described in section 170(c)(2)(B), other than any contribution to (i)an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii)a private foundation which is not an operating foundation (as defined in subsection (j)(3), except as provided in paragraph (3), or (B)any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(b).

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).

Based upon the above facts, the grants to D from B and C would not jeopardize D's status under section 509(a)(3) of the Code. The grants do not change the relationship between D and the organization it supports and do not cause D to become controlled by a disqualified person.

Grants to D, an organization described in section 501(c)(3) of the Code, would serve a charitable purpose within the meaning of section 170(c)(2)(B) by helping D to build an endowment. D is not controlled by B and C or by disqualified persons with respect to B and C. Therefore the grants made by B and C to D would constitute qualifying distributions within the meaning of section 4942(g)(1).

D has been classified as not a private foundation by reason of section 509(a)(3) of the Code. Section 4945(d)(4) states that a grant to an organization described in section 501(c)(3) that has been classified as not a private foundation is not a taxable expenditure.

Since neither B nor C is voluntarily terminating its existence and since there have been no willful, repeated or flagrant acts giving rise to liability under Chapter 42, no tax will be imposed under section 507(c) as a result of the grants.

Since D is a public charity within the meaning section 509(a)(3), the transferee liability provisions of section 1.507-1(b)(8) of the regulations do not apply. However, you should note that under section 1.507-3(e) of the regulations if D loses its status under section 509(a)(3) within three years after the making of a grant, the grant will be treated as a transfer described in section 507(b)(2) and the provisions of section 1.507-3(a) apply to D.

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

1. After receiving the grants from B and C, D will continue to be an organization described in section 509(a)(3) of the Code.

2. The grants will constitute qualifying distributions by B and C under section 4942(g) of the Code.

3. The grants will not constitute taxable expenditures by B and C under section 4945(d) of the Code.

4. The grants will not result in the imposition of tax on B and C under section 507(c) of the Code.

5. The grants will not result in the imposition of transferee liability on D for taxes under section 1.507-1(b)(8) of the regulations. You should note the provisions of section 1.507-3(e) of the regulations would apply in the event that D is reclassified as a private foundation.

We are informing the EP/EO key district 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
Chief, Exempt Organizations
Technical Branch 4