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Internal Revenue Service

Department of the Treasury

200003049

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:
OP:E:EO:T:4

Date:
OCT 19 1999

Legend:

B=
C=
D=

Dear Sir or Madam:

This is in response to your letter dated April 8, 1999, in which you requested certain rulings with respect to the proposed transfer of all of the net assets of B to C.

B is exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a).

We have determined that C is exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a) in separate correspondence.

B is organized and operated to make charitable contributions to other organizations provided that such organizations qualify as exempt organizations under section 501(c)(3) of the Code. The officers and directors of B have determined that its operation can be better accomplished and more conveniently administered if transferred to the state of D. B plans to transfer all of its net assets to C, a newly created foundation that is located and incorporated in D. C will have the same charitable purposes as B and will continue to carry on B's charitable activities. Thereafter, B will dissolve. B will not engage in any activity or have legal or equitable title to any assets following the transfer of its net assets.

The management of B and C is in the hands of the same parties. B and C are controlled by an interlocking Board of Directors.

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B represents that it does not have any outstanding grants with respect to which it is required to exercise expenditure responsibility 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 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.

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 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 1.507-3(a)(5) of the regulations provides that, except as provided in section 1.507-3(a)(9) (which only relates to 507(b)(2) transfers where all net assets are transferred to one or more controlled private foundations), a private foundation is required to meet the distribution requirements of section 4942 of the Code for any taxable year in which it makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation. Such transfer shall itself be counted toward

satisfaction of the requirements to the extent the amount transferred meets the requirements of section 4942(g).

Section 1.507-3(a)(9)(i)and(iii) of the regulations provides that if a private foundation transfers all of its net assets to another private foundation that is effectively controlled (within the meaning of section 1.482-1(a)(3) of the regulations) by the same or persons who effectively controlled the transferor private, the transferee shall be treated as if it were the transferor for purposes of Chapter 42 and sections 507 through 509 of the Code.

Section 1.507-3(b) of the regulations provides that since a transfer of assets, pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization to an organization not described in section 501(c)(3) (other than an organization described section 509(a)(4)), or section 4947, is a taxable expenditure under section 4945(d)(5), in order for such transfer of assets 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 4940(a) of the Code imposes a tax on the net investment income of private foundations.

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period.

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).

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)(2)(i) of the Foundation and Similar Excise Taxes Regulations provides, in part, that before making a grant to an organization with respect to which expenditure responsibility must be exercised under this section, a private foundation should conduct a limited inquiry concerning the potential grantee. Such inquiry should be complete enough to give a reasonable man assurance that the grantee will use the grant for the proper purposes.

Section 53.4945-5(b)(7)(i) of the 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).

Based upon the above facts, the transfer of the net assets of B to C will allow C to continue the same charitable purpose and activities previously conducted by B. Moreover, C will be controlled by the same governing body that controlled B.

Since B is not terminating its existence and since there have 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.

Since C should be treated as if it is B for the purposes of Chapter 42, the transfer of assets from B to C will not impose additional tax under section 4940 and will not be an act of self-dealing under section 4941 of the Code.

Since B has no outstanding grants with respect to which it is required to exercise expenditure responsibility, B will not be obligated to satisfy the expenditure responsibility requirement of section 4945(d)(4) of the Code, and the transfer of assets to C will not be a taxable expenditure under section 4945 of the Code.

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

1. The transfer of assets from B to C will constitute a transfer of assets pursuant to a reorganization under section 507(b)(2) of the Code and C will not be treated as a newly created organization.

2. B's transfer of assets will not result in the termination B's status as a private foundation under section 507(a) of the Code and will not result in the imposition of tax under section 507(c) of the Code.

3. B's transfer of assets will not be an act of self-dealing under section 4941 of the Code.

4. B's transfer of assets will not be a taxable expenditure under section 4945 of the Code.

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