DEPARTMENT OF THE TREASURY 200009063
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: DEC - 7 1999

OP:E:EO:T:3

Contact Person:

ID Number:

Telephone Number:

Significant Index Number
507.00-00
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Third Party Contacts
None

Legend

X =
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Employer Identification Number:

Dear Sir or Madam:

We have considered your ruling request with regard to the federal income tax consequences of the proposed transfer of assets from X to Y.

X, originally formed as A, was recognized as exempt under section 501(c)(3) and classified as a private foundation. A was initially funded with a cash gift from Z for the purpose of operating a charitable foundation exclusively for charitable, scientific, literary and educational purposes. Its original program goal was to provide computers and Internet access to public libraries serving low-income communities in the United States.

Initially, A made grants to B, an organization recognized as exempt under section 501(c)(3) and that was classified as a private operating foundation. At that time B had a staff who helped install computer systems and train librarians. A exercised expenditure responsibility over the grants to B in accordance with section 4945 of the Code.

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Subsequently, A merged with and into B, in a statutory merger. Although B was the surviving entity in the merger, it changed its name to X, its sole director resigned and was replaced by the Board of Directors of the A, its officers resigned and were replaced by the officers of the A, its Articles of Incorporation were amended and restated to be consistent with those of A and it adopted, in their entirety, the Bylaws of A. X is classified as a private operating foundation.

X currently conducts three dominant programs. The first program is X's ongoing effort to implement its initial program goal of providing computers and internet access to public libraries serving low income communities. The goal of X is to provide grants to domestic libraries as well as to make the program international in scope. X had awarded grants to libraries to bring Internet access to their patrons as well as to provide technical assistance and training for library staffs.

The second program is designed to address the imbalance in access to technology in B schools by supporting and training classroom teachers in the use of computers and the Internet in the educational environment. X received advance approval of grant-making procedures for its program of individual grants.

The third program is designed to provide access to technology throughout a particular geographic area of the United States, as well as to Native American reservations throughout the country. This program supports X's grant recipients through logistical support, technical support, training and curriculum development, research and development and network services components.

X is governed by a Board of Directors consisting of X's substantial contributor, Z, his wife,C, D, and several independent directors. F is the President and Treasurer of X and Chair of the Board. X has an established operating structure and has its own office space and employee benefit plans.

Z has given a number of separate gifts of stock. As of the date of the ruling, X holds no shares of E common stock, and it is anticipated that no additional gifts of such stock will be made to X. At no time has X held more than 2% of the issued and outstanding stock of E.

Y, a charitable trust, was formed by Z to operate a charitable foundation exclusively for charitable, religious, scientific, literary and educational purposes within the meaning of section 501(c)(3). In addition, the trust has been amended to provide that at such time as the trustor ceases to serve as the trustee of Y, the purposes of Y shall be restricted to those purposes consistent with the charitable goals and directions that the trustor has set forth during his lifetime, including without limitation, providing access to technology, world health and population solutions, and education and charitable giving in a particular part of the United States. The trust has been

recognized as exempt from federal income tax under section 501(c)(3) and classified as a private foundation within the meaning of section 509(a).

Z, the trustor, is the sole trustee of Y. Z's father, F and D, the President and chair of the Board of X, are foundation managers. To date, Y has operated with the services of two independent contractors and fewer than three employees. It has not leased office space and it has operated with minimal management and administrative support.

Y's primary activity is making grants to publicly supported organizations. In addition to the initial gifts, the trustor has given shares of E stock in a series of gifts. As of the date of this ruling, Y holds no shares of E stock. Y does not now hold, nor has it ever held, more than 2% of the issued and outstanding stock of E.

A substantial overlap in the charitable objectives of X and Y has developed as the organizations have grown and developed their charitable activities and their potential grant recipients. This overlap in objective and different management structures has created confusion among potential grant recipients and raised internal approval and implementation issues. It is anticipated that consolidation of the two foundations into a single entity will eliminate these issues and streamline the conduct of the organizations' common charitable objectives. The combined foundation will continue to conduct all of the activities of X and Y.

In addition, as the assets of the private foundations have grown, the need for management, administrative, legal and accounting services has grown as well. It is anticipated that if the foundations continue to operate as separate entities, needless extra expenses will be incurred. Y, which has very little formal structure to date, is now beginning to hire staff and develop a management structure. If the two foundations are combined, Y will gain a fully trained staff and the need to administer duplicative employee benefit plans will be eliminated. The consolidation will also eliminate duplicative tax and administrative requirements.

To achieve these and other benefits of consolidation, the Board of X and the Trustee of Y have decided to combine the activities and operations of X and Y into one entity. It is anticipated that X will transfer all of its assets and liabilities, including all grant obligations, to Y. To minimize expenses, X and Y propose to make the transfer at midnight between December 31, 1999 and January 1, 2000. It is intended that the transfer take place in the first moment of the new tax year so as to permit the filing of complete year returns for both X and Y for calendar tax year 1999, to insure that Y will have ownership of all transferred assets for the complete new tax year and to avoid questions about the status of any parties to the transfer during any intermediate period.

Law

Section 501(c)(3) of the Internal Revenue Code provides in part for the exemption from federal income tax of organizations organized and operated exclusively for charitable and educational purposes.

Section 507(b)(2) of the Internal Revenue Code provides in part that for purposes of this part, in the case of a transfer of assets of any private foundation 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 newly created organization.

Section 507(c) 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 intent to terminate its private foundation status and by paying the termination tax under section 507(c) of the Code.

Section 509(a) of the Code defines organizations 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 1.507-1(b)(6) of the regulations provides in part that if a private foundation transfers all or part of its assets to one or more other private foundations (or one or more private foundations and one or more section 509(a)(1),(2) or (3) organizations) pursuant to a transfer described in section 507(b)(2) and section 1.507-3(c) , such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Section 1.507-3(a)(1) of the regulations provides in part that in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, the transferee organization shall not be treated as a newly created organization. Thus, in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of this section, the transferee organization shall not be treated as a newly created organization. A transferee organization to which this paragraph applies shall be treated as possessing those attributes and characteristics of the transferor organization which are described in subparagraphs (2), (3), and (4) of this paragraph.

Section 1.507-3(a)(2)(i) of the regulations provides in part that a transferee organization to which this paragraph applies shall succeed to the aggregate tax benefit of the transferor organization in an amount determined as follows: Such amount shall

be an amount equal to the amount of such aggregate tax benefit multiplied by a fraction the numerator of which is the fair market value of the assets (less encumbrances) immediately before the transfer and the denominator of which is the fair market value of the assets of the transferor (less encumbrances). Fair market value shall be determined as of the time of the transfer.

Section 1.507-3(a)(2)(ii) of the regulations provides that notwithstanding subdivision (i) of this subparagraph, a transferee organization which is not effectively controlled (within the meaning of section 1.482-1(a)(3) of the regulations), directly or indirectly by the same person or persons who effectively control the transferor organization shall not succeed to an aggregate tax benefit in excess of the fair market value of the assets transferred at the time of the transfer.

Section 1.507-3(a)(3) of the regulations provides in part that in the event of a transfer of assets described in section 507(b)(2), any person who is a "substantial contributor "with respect to the transferor foundation shall be treated as a "substantial contributor" with respect to the transferee foundation, regardless of whether such person meets the $5,000-two percent test with respect to the transferee organization at any time.

Section 1.507-3(a)(4) of the regulations provides in part that if a private foundation incurs liability for one or more of the taxes imposed under chapter 42 prior to, or as a result of, making a transfer of assets described in section 507(b)(2) to one or more private foundations, in any case where transferee liability applies each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

Section 1.507-3(a)(9) of the regulations provides in part that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled (within the meaning of section 1.482-1(a)(3), directly or indirectly, by the same person or persons which effectively controlled the transferor, for purposes of chapter 42 and sections 507 through 509 such a transferee private foundation shall be treated as if it were the transferor. (Section 1.507-1(a)(3) has been revised and the term "controlled" is now defined in section 1.482-1A(a)(3) of the regulations.)

Section 1.482-1A(a)(3) defines the term "controlled" for purposes of the allocation of income and deductions as including any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise.

Section 1.507-3(b) of the income tax regulations provides in part 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 in section 509(a)(4)) or 4947 is a taxable expenditure under section 4945(d)(5). In order for such a 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. See section 53.4945-6(c)(3) of this chapter.

Section 1.507-3(c)(1) of the regulations provides in part that a transfer of assets is described in section 507(b)(2) if it is made by a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization.

Section 1.507-3(c)(2) of the regulations provides in part that the term "significant disposition of assets to one or more private foundations" shall include any disposition for a taxable year where the aggregate of (i) the dispositions to one or more private foundations for the taxable year and (ii) where any disposition to one or more private foundations for the taxable year is part of a series of related dispositions made prior to the tax year is part of a series of related dispositions made during such prior tax years, the total of the related dispositions made during such prior taxable years is 25 percent or more of the fair market value of the net assets of the foundation at the beginning of the taxable year (in the case of subdivision (i) of this subparagraph) or at the beginning of the first taxable year in which any of the series of related dispositions was made (in the case of subdivision (ii) of the this subparagraph).

Section 1.507-3(d) of the regulations provides that unless a private foundation voluntarily gives notice pursuant to section 507(a)(1), a transfer of assets described in section 507(b)(2) will not constitute a termination of the transferor's private foundation status under section 507(a)(1). Such transfer must, nevertheless, satisfy the requirements of any pertinent provisions of chapter 42. However, if such transfer constitutes an act or failure to act which is described in section 507(a)(2)(A), then such transfer will be subject to the provisions of section 507(a)(2) rather than section 507(b)(2).

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.

Rev. Rul. 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 same persons control the transferor and the transferee foundations. 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 qualifying distributions under section 4942 of the Code.

Section 4943 of the Code imposes an excise tax on any private foundation's excess business holdings as defined in that section.

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

Section 4945 of the Code imposes an 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 grantees' 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 any purpose other than one specified in section 170(c)(2)(B).

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.

The proposed transfer of all of the assets of X to Y will result in a significant disposition of the assets of X under section 1.507-3(c)(2) of the regulations. Accordingly, the proposed transfer will constitute an "other adjustment, organization, or reorganization" within the meaning of section 1.507-3(c)(1) of the regulations. Therefore, the transfer of all the assets of X to Y will constitute a transfer described in section 507(b)(2) of the Code.

As a transfer described in section 507(b)(2) of the code, under Section 1.507-1(b)(6) and 1.507-3(d), the proposed transfer will not result in a termination of X's

private foundation status under section 507(a) of the Code. Because X's private foundation status will not be terminated as a result of the proposed transfer, the tax imposed by section 507(c) of the Code will not apply to the proposed transfer and Y will not be treated as a newly created organization.

The proposed transfer of assets from X to Y will be a single act that will not be voluntarily, consciously and knowingly committed in violation of any provision of chapter 42 of the code, nor will it be or appear to a reasonable person to be a gross violation of any of the provisions of chapter 42. Accordingly, the proposed transaction will not constitute a willful and flagrant act (or failure to act) within the meaning of section 1.507-1(c) of the regulations, giving rise to liability for tax under chapter 42 of the Code.

Both X and Y have been recognized as exempt under section 501(c)(3) of the Code and are classified as private foundations within the meaning of section 509(a) of the Code. The purposes of X and Y as reflected in their respective governing documents are to operate charitable programs exclusively for charitable, scientific, literary and educational purposes. The transfer of the assets of X to Y will not involve a change in X's purposes. Furthermore, X's foundation status will not be terminated as a result of the transfer. In addition, after the transfer of assets from X to Y, Y will continue to be organized and operated exclusively for 501(c)(3) purposes. Accordingly, after the proposed transfer, Y will continue to be described in section 501(c)(3) of the Code.

A transfer under section 507(b)(2) of the Code results in the carryover of certain attributes and characteristics of the transferor organization to the transferee organization. Pursuant to section 1.507-3(a)(2) of the regulations, the transferee foundation succeeds to the portion of the transferor's aggregate tax benefit, as defined in section 501(d) of the code. In this case, because X will transfer all of its assets to the Y in a transfer described in section 507(b)(2) of the Code, Y will succeed to X's entire aggregate tax benefit.

Pursuant to section 1.507-3(a)(3) of the regulations, for purposes of section 507(d)(2) of the code, any person who is a substantial contributor within the meaning of section 507(d)(2) of the Code, with respect to the transferor will be treated as a substantial contributor to the transferee foundation, regardless of whether such person meets the $5,000/two percent test with respect to the transferee organization at any time. Accordingly the substantial contributors to X will be treated as substantial contributors to Y.

Section 1.507-3(a)(4) of the regulations provides in part that if a private foundation incurs liability for taxes imposed under chapter 42 of the code prior to, or as a result of, making a transfer of assets described in section 507(b)(2) to one or more private foundations, in any case where transferee liability applies, the transferee foundation(s)

shall be treated as receiving the transferred assets subject to such liability to the extent the transferor foundation does not satisfy the liability. Accordingly, on the transfer of X's assets to Y, Y will be responsible for all liabilities under chapter 42 ,if any, to the extent that X does not satisfy such liabilities.

If a private foundation transfers all of its net assets to one or more private foundations that are effectively controlled (within the meaning of section 1.482-1A(a)(3) of the regulation) directly or indirectly, by the same person or persons that effectively controlled the transferor private foundation, then for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code, such transferee private foundation shall be treated as if it were the transferor. Section 1.482-1A(a)(3) of the regulations defines the term "controlled" to include any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. It is the reality of the control that is decisive.

Y is effectively controlled by its sole Trustee and substantial contributor, Z, and its managers, K (the father of Z) and G . X is effectively controlled by its Board of C Directors and its officers. X's Board consists of X's substantial contributor Z, F, G, and several independent directors. Pursuant to the Bylaws of X, the act of a majority of the board at a meeting at which there is a quorum is an act of the board, and a quorum exists if one third of the directors (any two directors) are present. Z and his family, along with a key employee, exercise effective control over both Y and X. Therefore, there is a substantial continuity of control between the two foundations.

Since Y and X are effectively controlled by the same persons, the proposed transfer of all of the assets of X to Y will be a transfer described in section 1.507-3(a)(9)(i) of the regulations and for purposes of chapter 42 and sections 507-509 of the Code, Y will be treated as X and will succeed to X's tax attributes under such sections of the Code.

In the case of a transfer under section 507(b)(2), the transferee private foundation is not treated as a newly created organization. Because Y will not be treated as a newly created organization, the transfer will not constitute a "sale or other disposition of property or other realizable event" within the meaning of section 4940 of the Code and the transfer will not give rise to net investment income to either X or Y and therefore, the transfer will not give rise to tax under section 4940 of the Code.

Generally, because Y will be treated as if it is X, for purposes of section 4940 of the Code the net investment income of X for the taxable year of the proposed transfer will be includible in the computation of the net investment income of Y for the taxable year of the proposed transfer. If, as anticipated, the proposed transfer occurs in the first moment of the year 2000, the taxable year of the proposed transfer will be calendar year 2000. Any excise tax payable by X under section 4940 of the Code for the

calendar year 1999 will remain the obligation of X and will not be included in the computation of the net investment income of Y for either calendar years 1999 or 2000.

Y is an organization described in section 501(c)(3) and is not described in section 509(a)(4). Accordingly, it is not a disqualified person for purposes of section 4941 of the Code. Therefore, the transfer of assets from X to Y will not be considered to be a transfer between and private foundation and a disqualified person and the transfer will not constitute an act of self-dealing subject to the excise tax under section 4941 of the Code.

Because Y will be treated as if it were X for purposes of section 4942 of the code, Y will succeed to X's qualifying distribution requirement in the taxable year of the transfer of all of its assets to Y. If the proposed transfer takes place at midnight between December 31, 1999 and January 1, 2000, i.e. in the first moment of the year 2000, the taxable year of the proposed transfer will be calendar year 2000. Accordingly, X will not be required to meet the distribution requirements of section 4942 of the code for the year of the transfer, provided that Y 's distributable amount is increased by X's distributable amount for the year of the transfer, if any, and any excess qualifying distribution carryover of X under section 4942(i) of the code, if any, will be carried over to Y and may be used by Y to meet its distribution requirements under section 4942 of the Code.

As of the date of this ruling request, neither X nor Y hold any E common stock and disqualified persons with regard to X and Y do not hold, in the aggregate, more than 35% of the voting stock of E. Therefore, the asset transfer would not cause X or Y to be in the position of having excess business holdings within the scope of section 4943 of the Code.

Because Y is an organization described in section 501(c)(3) of the Code, the primary purpose of the proposed transfer will be to accomplish one or more of the purposes under section 501(c)(3) of the Code. In addition, since the proposed transfer constitutes an "adjustment, organization or reorganization" within the meaning of section 1.507-3(c)(1) of the regulations, the production of income or appreciation of property will not be a significant purpose of the transfer within the meaning of section 4944(c) of the code and section 53.4944-2(a)(1) of the regulations. Accordingly, the transfer will not be considered to be an investment jeopardizing the charitable purposes of X and Y within the meaning of section 4944 of the Code.

Under section 1.507-3(a)(9)(i) of the regulations, expenditure responsibility over transferred assets need not be exercised if the transferor organization transfers all of its assets to controlled organizations as defined in section 1.482-1(a)(3) of the regulations. When all net assets are transferred from one private foundation to one or more controlled private foundations, the transferee foundation is treated as if is the transferor

foundation rather than as the recipient of an expenditure responsibility grant. Therefore, there are no expenditure responsibility requirements that must be exercised under section 4945(d)(4) and 4945(h) of the Code with respect to the transfer of assets to the transferee foundation.

Furthermore, since X will transfer all of its net assets to a controlled private foundation within the meaning of section 1.507-3(a)(9)(i) of the regulations Y will be treated as if it is X for purposes of section 4945 of the code and Y will expressly assume X's duties with respect to any grants for which it must exercise expenditure responsibility. Accordingly, since X has received advance approval of its individual grant program and Y will be treated as if it were X for purposes of section 4945, the ruling that X received from the Service with regard to the grant-making program will continue in effect with respect to Y.

Reasonable and necessary administrative expenses paid to accomplish the transfer all of X's net assets to Y will result in a more efficient use of charitable resources. Accordingly, the expenses related to the transfer, if reasonable in amount, will be considered as amounts used exclusively for purposes described in section 170(c)(2)(B) of the Code. Since this is a transfer under section 507(b)(2), Y will be treated as if it were X rather than a recipient of a contribution from a controlled corporation. Accordingly, the legal, accounting and other expenses paid by X and Y that relate to the proposed transfer will be qualifying distributions under section 4942 and will not constitute taxable expenditures under section 4945.

Since the proposed transfer is described in section 507(b)(2) of the Code, Y will be entitled to the benefit of the savings provisions and provisional rules applicable to X with respect to the transferred assets, as set forth in section 1.507-3(a)(8) of the regulations.

Finally, if, after the proposed transfer X properly notifies the Service that it intends to terminate its private foundation status, then such notice will be effective to terminate the private foundation status of X. If, at such time X has no assets, X will not be liable for any termination tax under section 507(c) of the Code.

Accordingly, we conclude as follows:

1. The proposed transfer of all of the assets of X to Y will constitute a transfer described in section 507(b)(2) of the Code and as such, (1) will not result in a termination of X's private foundation status under section 507(a) of the Code; (2) will not cause the imposition of the termination tax described in section 507(c) of the Code; and (3) will not cause X to be treated as a newly created organization. The proposed transfer from X to Y will not constitute a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42 of the Code.

2. The proposed transfer of assets from X to Y will not adversely affect the tax-exempt status of either X or Y under section 501(c)(3) of the Code

3. Y will possess the attributes and characteristics of X specified in section 1.507-3(a)(2)(4) of the regulations: (1) Y will succeed to the entire aggregate tax benefit of X under section 507(d) of the Code; (2) Substantial contributors to X under section 507(d)(2) of the Code will be treated as substantial contributors to Y; and (3) Y will be responsible for any liabilities under chapter 42 to the extent that X does not satisfy such liabilities, if any.

4. X and Y are effectively controlled, within the meaning of section 1.482-1(a)(3) of the regulations, directly or indirectly, by the same persons and, pursuant to section 1.507-3(a)(9) of the Code, for purposes of the private foundation excise taxes imposed under chapter 42 of the Internal Revenue Code and sections 507 through 509 of the Code, Y will be treated as if it is X.

5. (a) The transfer by X to Y will not result in any liability for tax under section 4940 of the Code since the transfer will not constitute a "sale or other disposition of property or other realizable event" within the meaning of section 4940 of the Code. Because X will be treated as if it is X under section 1.507-3(a(9)(i) of the regulations, for purposes of section 4940 any investment income of X for the taxable year of the transfer will be includible in the computation of the net investment income of Y for the taxable year of the transfer.

(b) The transfer by X to Y will not constitute self-dealing under section 4941 of the Code because for purposes of section 4941 of the Code the term "disqualified person" does not include an organization described in section 501(c)(3) other than an organization described in section 509(a)(4). In addition, such transfer will not subject X or Y to tax under section 4941 of the Code.

(c) Because Y will be treated as if it is X under section 1.507-3(a)(9)(i) of the regulations, for purposes of section 4942 of the Code, X will not be required to meet the qualifying distribution requirements under section 4942 of the Code for the taxable year of the transfer, provided that Y's distributable amount for the year of the transfer, if any, is increased by X's distributable amount for the year of transfer, if any, and any excess qualifying distribution carryover of X under section 4942(i) of the Code, if any, will be carried over to Y and may be used by Y to meet its distribution requirements under section 4942 of the code.

(d) The proposed transfer will not result in the application of section 4943 of the Code with regard to excess business holdings provided that none of the assets transferred would place Y in the position of having excess business holdings.

(e) The transfer by X to Y will not constitute a jeopardizing investment within the meaning of section 4944 of the Code.

(f) The transfer by X to Y will not constitute a taxable expenditure within the meaning of section 4945 of the Code and X will not be required to exercise expenditure responsibility with respect to the assets transferred to Y. Y will be required to exercise expenditure responsibility with respect to any expenditure responsibility grants of X. The advance approval that X received from the Service with regard to its grant-making program will apply to Y and will continue in full force and effect after the transfer of such program to Y.

6. The legal, accounting and other expenses incurred by X and Y in connection with this ruling request and effectuating the proposed transfer will be considered qualifying distributions under section 4942 of the Code and will not constitute taxable expenditures pursuant to section 4945 of the Code.

7. Y will be entitled to the benefit of the savings provisions and provisional rules applicable to X with respect to the assets as set forth in section 1.507-3(a)(8) of the regulations.

8. If, after the transfer of all of its assets to Y, X properly notifies the Service of its intent to terminate the private foundation status of X, such notice will be effective to terminate the private foundation status of X. If the value of X's net assets at the time it gives notice and terminates its private foundation status is zero, then X will not be liable for any termination tax under section 507(c) of the Code.

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

This ruling letter is directed only to the organizations that requested it. Section 6110(k)(3) of the Code provides that it 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

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