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

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Date: DEC - 1 2000

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Identification Number:
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Employer Indentification Number
SIN# 1.507.00-00

1.507.01-00 1.507.02-00

A =

B =

C =

Dear Sir or Madam:

This is in reply to a ruling request dated March 16, 2000, as amended by a letter dated August 31, 2000 with respect to a proposed transfer of assets from B to C.

B is currently a nonprofit corporation recognized as exempt under section 501(c)(3) of the Code and is classified as a private foundation. B was formed exclusively for charitable purposes and to implement the charitable goals of its principal donor, A.

C will operate as a nonprofit grant making organization focusing on organizations that provide medical research, medical education, and community assistance to the needy, human services and wildlife habitat preservation. All grants made by C shall only be made in the state where C was formed. Also distributions by C shall be subject to the following limitations; no distributions to religious organizations, for religious purposes or to a church; no distributions for political activities of any kind; no distributions to any community foundation or similar organizaiton; no distributions to individuals; no funds shall be used to pay salaries of individuals; and distributions cannot be used for attending conventions or other similar activities. Awarding of funds does not entitle the recipient to receive the same funds in the future.

A is the principal contributor to B. B's funds have been supplemented by its earnings. B will accept donations from the general public, but has not received any yet and you anticipate that A will continue to be its principal contributor.

Since B's inception, it has made annual or more frequent distributions to organizations exempt from taxation under section 501(c)(3) of the Code. The board of directors has developed specific goals and patterns of giving since its inception. These charitable goals and

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patterns carry out the charitable goals of A and the other directors. Aand the other directors intend to insure that their charitable giving goals and patterns continue beyond their lifetimes. The board members are specifically concerned that future board members could easily change the existing charitable purposes by amending its by-laws or articles of incorporation or through unnecessary and costly litigation aimed at broadening B's stated purposes. Therefore, the board members have determined to fix B's charitable purposes by changing its governing entity from a corporation to a charitable trust, the terms of which will be fixed. This trust will be called C. The directors have approved and entered into a charitable trust agreement, which would govern all of C's future operations. A is the grantor of C and all the current directors are the trustees for C. B's board of directors proposes to transfer all its assets to C and then B will dissolve. Thereafter, C, as the trust, will control the administration of the assets.

The trust agreement provides that the charitable purposes not be changed after the death of A, including the location of the trust. Aspecifically intends to discourage judicial intervention in any decisions regarding the trust's charitable purposes. The trustees are required to make annual distributions of so much income and principal of the trust as is necessary to avoid application of section 4942 of the Code.

The trust agreement also provides that the trustees shall distribute assets only to organizations that are tax-exempt under section 501(a) or 501(c)(3) of the Code and to which contributions made are deductible under section 170(c)(2) by the donor. No distributions shall be made to any individual. All distributions shall be made in the state in which C was formed and shall stay in this state. The trustees shall make no distributions for any religious purpose or to any church or religious organization; and no distributions shall be made to or for political activities or any kind including publication or distribution of statements to influence any election or legislation, or on behalf of or in opposition to any candidate for political office or for voter education or voter registration.

C's current trustees are the initial trustees. C shall always have at least three trustees and not more than five trustees. A, during her lifetime, may remove, add, or appoint a trustee to fill a trustee vacancy. Following the death of A, the remaining initial trustees shall have these same powers.

Section 507(a) of the Code provides that except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if-

(1) such organization notifies the Secretary (at such time and in such manner as the Secretary may by regulations prescribed) of its intent to accomplish such termination, or

(2) (A) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42, and

(B) the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for tax imposed by subsection (c), and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

Section 507(b)(2) of the Code provides that for purposes of this part, in 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 provides that there is imposed on each organization which is referred to in subsection (a) a tax equal to the lower of (1) the amount which the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from the section 501(c)(3) status of such foundation, or (2) the value of the net assets of such foundation.

Section 1.507-1(b)(6) of the Income Tax Regulations provides 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), (3), or (4) 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 that for purposes of Part II, subchapter F, Chapter 1 of the Code, 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.

Section 1.507-3(a)(2) of the regulations provides that a transferee private foundation succeeds to that percentage of the transferor's "aggregate tax benefit" equal to the fair market value of the assets transferred divided by the fair market value of the assets held by the transferor immediately before the transfer. The fair market value of the assets held and transferred are determined at the time of transfer.

Section 1.507-3(a)(4) of the regulations provides that if a private foundation incurs liability for one or more of the taxes imposed under Chapter 42 of the Code (or any penalty resulting therefrom) prior to, or as a result of, making a transfer of assets described in section 507(b)(2) to one or more private foundations, then 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)(5) of the regulations provide that except as provided in subparagraph 1.507-3(a)(9), 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 such requirements to the extent that the amount transferred meets the requirements of section 4942(g).

Section 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its 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 private foundation, for purposes of Chapter 42 of the Code and section 507 through section 509, the transferee private foundation shall be treated as if it were the transferor.

Section 1.507-3(c)(1) of the regulations describes the criteria in order to come within the provisions of section 507(b)(2) of the Code. First, the asset transfer must be from one private foundation to another. Second, the transfer must be pursuant to a liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization. In this context, "other adjustment, organization, or reorganization" includes any partial liquidation or significant distribution of assets to one or more private foundations. Third, the transfer must represent 25 percent or more of the fair market value of their net assets of the transferring foundation.

The transfer of assets from B to C qualifies as a section 507(b)(2) transaction. First, both B and C are qualifying foundations. Second, the proposed transfer is an "other adjustment, organization, or reorganization" that constitutes a significant distribution of assets since it represents 100% of the net assets of B as of the date of transfer, well exceeding the 25% threshold required by section 1.507-3(c)(2) of the regulations. Therefore, pursuant to section 1.507-3(a)(2) of the regulations, C will succeed to 100% of B's aggregate tax benefit.

Section 1.507-3(a)(3) of the regulations provides that 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. A is the only substantial contributor with respect to B and will continue to be treated as such with respect to the trust, C.

Under section 1.507-3(a)(4) of the regulations, after B transfers all of the assets to C, it will be responsible for any liabilities of C under Chapter 42 of the Code to the extent C does not satisfy its own such liabilities incurred prior to or as a result of making the transfer of assets.

Also, the transfer of assets from B to C counts towards the satisfaction of the distribution requirements of section 4942 for B's taxable year to the extent the amount transferred meets the requirements of section 4942(g).

B does not intend to notify the Internal Revenue Service of its intention to accomplish a termination on or before the proposed transfer. Since B has neither been notified of any involuntary termination nor has committed any acts of which could trigger an involuntary termination, the transfer of assets to C will not cause the imposition of the termination tax under section 507(c) of the Code.

The transfer of assets from B to C is intended to further the charitable purposes of both organizations. As a transfer from one organization described in section 501(c)(3) of the Code to another such organization, it does not give rise to any liability for tax under Chapter 42 of the Code.

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Based on the facts submitted, we rule as follows:

1. C has been recognized as exempt under section 501(c)(3) of the Code and its exemption is unaffected by the transaction described in the ruling request;

2. The transfer of assets from B to C is a non-terminating transfer under section 507(b)(2) of the Code;

3. C succeeds to all of the tax attributes of B and

4. The transfer is not an act or failure to act under section 507(a)(2)(A) of the Code.

We are informing your key District Director of this ruling. Because this ruling could help resolve future questions about your federal income tax status, you should keep it in your 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.

If you have any questions, 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