SIN: 507.00-00

200124027

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

Date: MAR 20 2001

Contact Person:
Danny Smith
Identification Number:
50-06769
Telephone Number:
(202) 622-7732

T:EO:B4

Employer Identification Number:

Legend:
B=
C=
D=

Dear Sir or Madam:

This is in response to your letter dated November 27, 2000, in which you requested certain rulings with respect to a proposed transfer of assets from B to C.

Both B and C are exempt under section 501(c)(3) of the Internal Revenue Code and are classified as a private foundations under section 509(a). Both B and C were established by members of the D family.

As the D family has grown, the charitable and philanthropic interests of the various family members have diverged and many of these family members have established private foundations to carry out their respective charitable and philanthropic interests. To facilitate the charitable objectives of one branch of the family, B proposes to transfer approximately one-third of its net assets to C.

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 stated that it has not committed 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(a) of the Code provides for the voluntary and involuntary termination of private foundation status. It states, 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 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.

154

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 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)(2)(i) of the regulations provides that, in a section 507(b)(2) transfer, the transferee organization shall succeed to the aggregate tax benefit of the transferor organization in an amount equal to the amount of such aggregate tax benefit of the transferor organization, multiplied by a fraction the numerator of which is the fair market value of the assets (less encumbrances) transferred to such transferee and the denominator of which is the fair market value of the assets of the transferor (less encumbrances) immediately before the transfer. Fair market value is determined at the time of transfer.

Section 4940 of the Code imposes a tax on the net investment income of private foundations.

Section 4941 of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(E) of the Code includes in the definition of self-dealing any direct or indirect transfer to, or use for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4943(a)(1) of the Code provides that there is hereby imposed on the excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period a tax equal to 5 percent of the value of such holdings.

Section 4944 of the Code imposes a tax upon a private foundation which invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes.

Section 4945(d)(4) of the Code states that the term taxable expenditure includes any amount paid or incurred by a private foundation as a grant to an organization unless (A) the organization is described in subparagraphs (1), (2), or (3) of section 509(a) of the Code or is an exempt operating foundation as defined in section 4940(d)(2) of the Code, or (B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h) of the Code.

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

155

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)(7)(i) of the Foundation and Similar Excise Taxes 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).

Section 53.4945-5(c)(2) of the regulations provides that if a private foundation makes a grant described in section 4945(d)(4) to a private foundation which is exempt from taxation under section 501(a) for endowment, for the purchase of capital equipment, or for other capital purposes, the grantor foundation shall require reports from the grantee on the use of the principal and income (if any) from the grant funds. The grantee shall make such reports annually for its taxable year in which the grant was made and the immediately succeeding two taxable years.

Because a transfer of assets as described in section 507(b)(2) will not cause a termination of an organization's private foundation status, the transfer of B's assets to C will not terminate B's status as a private foundation.

B will not terminate its status as a result of this transaction. Therefore, the transfer of B's assets to C will not result in the imposition of tax under section 507(c) of the Code.

Under section 507(b)(2) 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 foundation shall not be treated as a newly created organization. The transfer from B to C will constitute an "adjustment, organization, or reorganization" within the meaning of section 507(b)(2). Accordingly, the transfer by B to C will not be treated as a transfer to a newly created organization.

Because the proposed transfer of one-third of B's assets to C qualifies as a transfer within the meaning of section 507(b)(2) of the Code, B can treat its aggregate tax benefit as having been transferred to C in proportion to the assets transferred.

The proposed transfer of one-third of the assets of B to C will be a transfer for no consideration. Consequently, B will not recognize gain on the transfer, and the transfer will not generate gain or loss from the sale or other disposition of property for the purposes of section 4940(c) of the Code. Therefore, the transfer will not result in imposition of tax on B under section 4940. Because the transferred assets will not constitute gross investment income to C, the transfer will not result in imposition of tax on C under section 4940.

Because C has certain foundation managers in common with B, these managers will be disqualified persons with respect to the proposed transfer. However, the transfer will not constitute an act of self-dealing because no funds will be disbursed either to the managers or for their use. Therefore, the proposed transfer of one-third of the assets of B to C will not result in the imposition of tax under section 4941.

156

Because the proposed transfer of assets from B to C does not involve or result in "excess business holdings" within the meaning of section 4943 of the Code, the asset transfer will not give rise to tax under section 4943.

Because the proposed transfer of assets to C will be made to accomplish the exempt purposes of B and C, the transfer will not constitute "investments" for purposes of section 4944 of the Code. Thus, the excise taxes imposed on jeopardizing investments under section 4944(a) of the Code will not apply to the transfer of assets from B to C.

The transfer of one-third of the assets of B to C will be a grant for the endowment of C. Accordingly, the transfer will not be a taxable expenditure within the meaning of section 4945(d) of the Code as long as B exercises expenditure responsibility over the grant as described in section 4945(h) of the Code and section 53.4945-5(c)(2) of the regulations.

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

1. The proposed transfer of one-third of B's net assets to C will qualify as a transfer described in section 507(b)(2) of the Code and will not constitute a termination of B's status as a private foundation under section 507(a).

2. The proposed transfer of one-third of B's net assets to C will not result in any tax under section 507(c) of the Code.

3. The transfer of one-third of the net assets of B to C will not be treated as a transfer to a newly created organization.

4. C will succeed to one-third of the aggregate tax benefit of B, determined as the amount of such aggregate tax benefit multiplied by the portion of B's assets, based upon the fair market value of such assets, which will be transferred to C.

5. The proposed transfer of one-third of B's net assets to C will not give rise to net investment income to B or C and, therefore, will not result in the imposition of tax under section 4940 of the Code.

6. The proposed transfer of one-third of B's net assets to C will not constitute an act of self-dealing and will not subject B or C or foundation managers and disqualified persons with respect to B and C to any tax under section 4941(a)(1) or (2) of the Code.

7. The proposed transfer of one-third of B's net assets to C will not involve or result in any excess business holdings and will not result in the imposition of any tax under section 4943 of the Code.

8. The proposed transfer of one-third of B's net assets to C will not constitute a jeopardizing investment and will not result in the imposition of any tax under section 4944

157

of the Code.

9. The proposed transfer of one-third of B's net assets to C will not constitute a taxable expenditure under section 4945 of the Code as long as B exercises the capital endowment expenditure responsibility required by section 4945(h) of the Code and section 53.4945-5(c)(2) of the regulations with respect to the transferred amount.

We are informing the Ohio TE/GE office of this action. Please keep a copy of this ruling in 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.

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,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4

158