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

Date: APR 10 2001

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Legend:
B=
C=

Dear Sir or Madam:

This is in response to your letter dated December 12, 2000, in which you requested certain rulings with respect to a proposed transfer of all of the assets of B to C.

B and C are exempt under section 501(c)(3) of the Internal Revenue Code and are classified as private foundations under section 509(a).

B is a charitable trust. B's trustees have determined that its charitable purposes can be more economically and effectively accomplished by operating in corporate form rather than in trust form. Thus B will transfer all of its assets, primarily consisting of cash and investments, to C, a corporation.

C is directly controlled by the same persons who control B. C will continue the charitable mission of B.

In the taxable year following the distribution of all of B's assets to C, it is anticipated that B will notify the Service of its intention to voluntarily terminate its status as a private foundation pursuant to section 507(a)(1).

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.

Section 507(b)(2) of the Code provides that when a private foundation transfers assets to

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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)(6) of the Income Tax Regulations provides, in part, that when a private foundatin transfers all or part of its assets to one or more private foundations pursuant to a transfer described in section 507(b)(2) of the Code and section 1.507-3 of the regulations, such transferor foundation will not terminate its private foundation status under section 507(a)(1) of the Code.

Section 1.507-3(a)(1) of the regulations provides that in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of this subsection, the transferee organization shall not be treated as a newly created organization.

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 1.507-3(a)(7) of the regulations provides that where the transferor has disposed of all of its assets (and effective control remains the same) during any period in which the transferor has not assets, section 4945(d)(4) and (h) shall not apply to the transferee or transferor with respect to any "expenditure responsibility" grants made by the transferor.

Section 1.507-3(a)(9)(i) of the regulations provides that, if a transferor private foundation transfers assets to a private foundation effectively controlled, directly or indirectly, by the same person or persons who effectively control the transferor private foundation, the transferee foundation will be treated as if it were the transferor foundation, for purposes of sections 4940 through 4948 and sections 507 through 509 of the Code. The transferee is treated as the transferor in the proportion which the fair market value of the transferor's assets that were transferred bears to the fair market value of all of the assets of the transferor immediately before the transfer.

Section 1.507-3(b) of the regulations provides that in order for a transfer of assets, pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, 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 1.507-4(b) of the regulations provides that the tax on termination of private foundation status under section 507(c) of the Code does not apply to a transfer of assets pursuant to section 507(b)(2) of the Code.

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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)(A) of the Code provides that the term self-dealing includes any direct or indirect sale or exchange, or leasing, of property between a private foundation and disqualified person.

Section 4942 of the Code requires a private foundation to make specified distributions of income for each taxable year, including the year in which it transfers substantial assets to another private foundation under section 507(b)(2).

Section 4942(g)(1)(A) of the Code defines a qualifying distribution as any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons or (ii) a private foundation which is not an operating foundation, except as otherwise provided; or (B) any amount paid to acquire an asset used directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 4943 of the Code imposes a tax on the excess business holdings of a private foundation.

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 of the Code imposes tax upon a private foundation's making of any taxable expenditure under section 4945(d).

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. The exercise of expenditure responsibility requires the foundation that makes the transfer to keep detailed records of the way the payment is spent by the recipient foundation.

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)(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).

Because B intends to transfer more than 25 percent of the fair market value of its assets to C, the transfer will constitute a significant disposition of B's assets. The transfer will thus be a transfer between private foundations within the meaning of section 507(b)(2) of the Code.

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 from B to C will not terminate B's status as a private foundation under section 507(b)(1).

Under section 507(e) of the Code, the value of B's assets after it has transferred all of its assets to C will be zero. Thus, B's voluntary notice of termination of its private foundation status pursuant to section 507(a)(1) will not result in tax under section 507(c) of the Code.

C, in its corporate form, is a continuation of B. Thus, for purposes of Chapter 42 and sections 507-509 of the Code, C should be treated as if it were B.

Because C is controlled by B, for purposes of Chapter 42 of the Code and sections 507-509 of the Code, C will be treated subsequent to the transfer of B's assets, as if it were B, in the proportion which the fair market value of B's assets (less encumbrances) transferred bears to the fair market value of B's assets (less encumbrances) immediately before the transfer. Thus, C can succeed to B's qualifying distributions carryover for purposes of section 4942 of the Code, and in proportions determined in accordance with section 1.507-3(a)(9)(i) of the regulations (consistent with succeeding to B's tax attributes).

Under section 4940(c)(4) of the Code, capital gains and losses are defined as gains and losses from the sale or other disposition of certain property. Because the asset transfer, from B to C, will lack consideration, no sale or other disposition will have occurred, thus, there will be no gain and the asset transfer will not give rise to tax under section 4940 of the Code.

Because this transfer will not result in assets being transferred to or for the use of disqualified persons, the transfer of assets to C will not constitute an act of self-dealing within the meaning of section 4941 of the Code.

Under section 1.507-3(a)(5) of the regulations, 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. Assuming that B meets its distribution requirements under section 4942 of the Code, for the year in which the transfer is made, the transfer of assets will not give rise to tax under section 4942 of the Code.

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

Because the proposed transfer of assets to C will be made to accomplish the exempt purposes of B, 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.

Because B is transferring all of its assets to C pursuant to a reorganization and B and C are controlled by the same persons, C will be treated as B. The transfer will be treated as not having taken place for expenditure responsibility purposes under section 4945(d)(4). Thus, the transfer will not be a taxable expenditure under section 4945(d)(4). Therefore, B need not exercise expenditure responsibility with regard to the transfer.

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

1. The transfer of all of B's assets to C will constitute a transfer pursuant to a reorganization under section 507(b)(2) of the Code.

2. The proposed transfer will not terminate B's status as a private foundation under section 507(a) and will not result in any termination tax imposed by section 507(c) of the Code.

3. As a result of the proposed transfer, C will be treated as if it were B for purposes of Chapter 42 and sections 507-509 of the Code.

4. C will succeed to any excess qualifying distribution carryover of B under section 4942 of the Code.

5. The voluntary termination of B's status as a private foundation after the transfer of assets to C will be a taxable termination under section 507(a)(1) of the Code, but no tax will be imposed under section 507(c) of the Code because B will not have any assets at the time of such termination.

6. The transfer of assets from B to C will not constitute: (a) gross investment income or capital gain net income within the meaning of section 4940; (b) an act of self-dealing under section 4941; (c) undistributed income under section 4942; (d) excess business holdings under section 4943; (e) an investment that jeopardizes charitable purposes under section 4944; or (f) a taxable expenditure under section4945. The asset transfer will not cause B, or any disqualified persons, as defined under section 4946, with respect to B or C, to be subject to any tax under sections 4940 through 4945.

7. B will not have to exercise expenditure responsibility under section 4945(h) as a result of the transfer of assets to C.

8. The proposed transfer of assets from B to C will not be treated as a sale or exchange of property subject to tax. The tax basis and holding period of the transferred assets will be determined in the same manner as if such assets were to be held continuously by B.

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