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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date:

Contact Person:

Identification Number:

SIN: 507.00-00

Telephone Number:

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EIN:

Legend:
B=
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x=

Dear Sir or Madam:

This is in response to a letter dated September 19, 2002, which requested certain rulings with respect to a proposed transfer of all of the assets of B to C, D and E.

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). We have determined that D and E are tax-exempt under section 501(c)(3) of the Code and are classified as private foundations under section 509(a) in separate correspondence.

The charitable interests and management strategies of the trustees of B have diverged in recent years, and they currently are interested in supporting different charities and adopting different management strategies. In order to resolve these differences, the directors of B have proposed to reorganize by transferring 30 percent of its assets to C, 30 percent to D, and 30 percent to E. For the purpose of this ruling request, these proposed asset transfers are referred to as the "spin-off distributions".

B currently has outstanding pledges in the amount of x. These pledges will be paid by December 31, 2002. After the pledges have been paid, B will distribute its remaining assets in a final distribution to C, D and E, in equal shares, and undergo a voluntary termination of its private foundation status under section 507(a)(1) of the Code. For the purpose of this ruling

request, these distributions are referred to as the "final distributions". Following the transfer, C, D and E would be effectively controlled by the same trustees who controlled B.

B has never notified the Service in the past 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 liability for tax under Chapter 42.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 507 of the Code and the regulations to section 507 sets forth rules applicable to terminating foundations.

The Internal Revenue Service, in Rev. Rul. 2002-28, 2002-20 IRB 941 (copy attached), has issued guidance on the filing obligations and tax issues that arise when a private foundation transfers all of its assets to one or more other private foundations under section 507(b)(2) of the Code.

The Rev. Rul. presents three situations in which a private foundation transfers all of its assets to one or more private foundations. In Situation One, the foundation, under a plan of dissolution, distributes all of its remaining assets in equal shares to three other private foundations. In Situation Two, the trustees of a private foundation trust create a not-for-profit corporation to carry on the trust's charitable activities, which the trustees have determined can be more effectively accomplished by operating in corporate form. All of the trust's assets and liabilities are transferred to the not-for-profit corporation. In Situation Three, two private foundations transfer all of their assets and liabilities to a newly formed private foundation.

In the Rev. Rul., the Service has ruled that a private foundation that transfers all of its assets to one or more private foundations in a transfer described in section 507(b)(2) is not required to notify the Manager, Exempt Organizations Determinations (Tax Exempt/Government Entities) that it plans to terminate its private foundation status under section 507(a)(1). The ruling further states that if the private foundation does not provide notice and does not terminate, it is not subject to termination tax under section 507(c). If the private foundation provides notice and terminates, then it is subject to the tax. However, if the private foundation has no assets on the day it provides notice, the section 507(c) tax will be zero.

The Rev. Rul. gives detailed information as to the applicability of the excise taxes imposed by sections 4940-4945 of the Code. The ruling further provides that a private foundation that has disposed of all its assets and terminates its private foundation status must file a Form 990-PF for the tax year of the disposition and must comply with any expenditure responsibility reporting obligations on the return. A private foundation that has disposed of all its assets and does not terminate its private foundation status must file a Form 990-PF for the tax year of the disposition and must comply with any expenditure responsibility reporting obligations on the return, but does not need to file returns in the following tax years if it has no assets and does not

engage in any activities. If the private foundation receives additional assets or resumes activities in later years, it must resume filing Form 990-PF for those years.

Our evaluation of the facts and circumstances in your ruling request indicates that the transfer of B's assets to C, D and E would be similar to the facts and circumstances described in Situation One of the Rev. Rul. Under the facts described the foundations would not be subject to tax under section 507 and sections 4940-4945 of the Code.

Accordingly, based on the information furnished, and the Code and regulations, as interpreted in Rev. Rul. 2002-28, we rule as follows:

1. That both the spin-off distributions and final distributions will qualify, insofar as B is concerned, as transfers of assets described in section 507(b)(2) of the Code and will neither result in the termination of B's private foundation status under section 507(b)(1), nor subject B to the tax imposed by section 507(c).

2. That C, D and E will not be treated as newly created organizations, as a result of B's spin-off distributions or final distributions.

3. That neither the spin-off distributions, the final distributions, nor the combination of the spin-off distributions and the final distributions will constitute either a willful flagrant act (or failure to act) or one of a series of willful repeated acts (or failures to act) giving rise to liability for tax under Chapter 42 of the Code.

4. That neither the spin-off distributions nor the final distributions will be a taxable expenditure by B under section 4945(d) of the Code, and that B will not be required to exercise expenditure responsibility under sections 4945(d) and 4945(h) with respect to such transfers.

5. That B and its disqualified persons will neither be deemed to have engaged in an act of self-dealing under section 4941 of the Code, nor be subject to any tax under sections 4941 through 4945 of the Code as a result of the formation of D and E, and the spin-off distributions and the final distributions.

6. That the spin-off distributions and the final distributions may be counted toward satisfaction of B's minimum distribution requirements under section 4942 of the Code to the extent the transfers meet the requirements of section 4942(g).

7. That the legal, accounting, and other expenses incurred by B, C, D and E in connection with this ruling request and effectuating the spin-off distributions and the final distributions will not constitute taxable expenditures pursuant to section 4945 and will not be considered qualifying distributions under section 4942.

8. That the spin-off distributions and final distributions will not result in the imposition of any other taxes under the Code.

9. That the spin-off distributions and the final distributions will not affect the tax-exempt status under section 501(c)(3) of the Code of B, C, D and E.

10. That at such time as B makes its final distributions and notifies the Service (at least one day after the final distributions) that it intends to terminate its private foundation status under section 507(a)(1) of the Code, B's status as a private foundation will be terminated, and no tax will be due pursuant to section 507(c) of the Code or any other provision of the Code, because B will have no assets as of its notice of termination.

11. That at such time as B makes its final distributions and notifies the Service that it intends to terminate its private foundation status under section 507(a)(1) of the Code, neither the preparation and/or filing of any final accounting or other documents required by state law in winding up, dissolution, and termination of B will result in imposition of tax under section 507(c) of the Code or any other provision of the Code.

We are informing the 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