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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

S.I.N. 0507.00-00
S.I.N. 4940.00-00
S.I.N. 4941.00-00
S.I.N. 4942.00-00
S.I.N. 4944.00-00 NO THIRD PARTY
S.I.N. 4945.00-00 CONTACT
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Contact Person:

Telephone Number:

In Reference to: XXXXXXXXXXXXXXXXX
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XXXXXXXXXXXXXXX
XXXXXXXXXXXXX

Date: JUL 1 1999

OP:E:EO:T:3

Legend:

T= XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
P= XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
A= XXXXXXXXXXXXXXX
B= XXXXXXXXXXXXXXX
D= XXXXXXXXXXXXXXXXXXXXXXXXXXX
X= XXXXXXXXXXXXXXXXXXXXXXXX

Dear Applicant:

By letter dated April 7, 1999, P requested certain rulings under sections 507, 4940, 4941, 4942, 4944 and 4945 of the Internal Revenue Code, in connection with a proposed transaction. More specifically P requested us to rule that:

1. The proposed grants from T to P will not be considered a transfer of assets pursuant to a reorganization of T under section 507(b)(2), and will not cause the imposition of the termination tax under section 507(c). The transferee (P) will not be treated as if it were the transferor (T).

2. T's grants to P will not be acts of self-dealing or result in tax under section 4941. Any benefit received by the directors and officers of P will be merely incidental to T's grants and P's use of its funds for charitable and educational purposes.

3. The assets to be received by P as the proposed endowment grant from T will not be investment income within the meaning of section 4940(c), and will not be investments that jeopardize P's purposes, and will not be subject to tax under section 4944.

4. The proposed endowment grant from T to P will be a capital endowment grant under section 53.4945-5(c)(2) of the regulations.

5. T must exercise expenditure responsibility for the assets transfered to P and must require P to make reports annually to T for the year of the endowment grant and the two succeeding years, but not

249

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thereafter, if it is apparent to T that, before the end of the second succeeding taxable year, neither the principal, income from the endowment grant funds, nor equipment purchased with the grant funds has been used for any purpose that would result in tax liabilities under section 4945(d).

6. T's grants to P for general support may be counted by T as qualifying distributions under section 4942(g)(3) of the Code to the extent that P makes qualifying distributions out of corpus equal to the amount received before the of P's first taxable year after the tax year in which one or more grants are received, and provides to T adequate records or other sufficient evidence showing that the qualifying distributions have been made as required by section 4942(g) and section 53.4945-5 of the regulations.

7. T's payment of the reasonable and necessary legal, accounting and other expenses for the requested rulings and the proposed grants to P from T will be qualifying distributions by T under section 4942(g)(1)(A) to the extent that section 4942(g)(3) is met by T and P. Payment of such expenses by either T or P will not be taxable expenditures under section 4945.

8. The proposed grants by T to P will not adversely affect T's status or P's status as an organization described in section 501(c)(3) of the Code.

Facts:

P was established by D in 1987 as a non-profit public benefit corporation. D is the son of A and B. A and B were substantial contributors to P. P was recognized as exempt from federal income tax under section 501(c)(3) of the Code in 1987. P has been classified as a private operating foundation within the meaning of section 4942(j)(3) of the Code.

Currently P is governed by a nine-person Board of Directors. Two members of the Board of Directors are children of A and B. One grandchild of A and B also serves on the Board of Directors. The remaining six members of P's Board of Directors are unrelated to A and B.

P was originally created to produce tools for basic research in the humanities, such as computer databases. In addition, P was formed to foster interest in history, literature and music of the past. P concentrated its efforts in four major areas, which included Latin literature, Greek papyri and inscriptions, and American founding fathers (hereafter

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traditional projects). These traditional projects required sustained attention by experts for a number of years.

In 1998 P received Service approval to expand its purposes to include film preservation, archival conservation, archaeology, education, and renovation of historic buildings. To continue P's operations, in June of 1998, T made a grant to P, subject to expenditure responsibility.

T was organized as a non-profit public benefit corporation. It is organized and operated exclusively for charitable, scientific and educational purposes. T was recognized as exempt from federal income tax under section 501(c)(3) of the Code in 1964. T has been classified as a private foundation.

A and B, who were husband and wife, founded T and were substantial contributors to it. Both are deceased. T was formed to make grants to qualified tax-exempt charitable organizations. During its years of operation T developed programs of special interest, which included science, conservation, education, children's health, the arts, archaeology, and film preservation among others. On the death of both A and B, T received major bequests, thus requiring an increased level of grant making.

T is currently governed by a nine-person Board of Trustees. Four members of the Board of Trustees are children of A and B. The remaining five members of the Board of Trustees are unrelated to A and B. Upon completion of the proposed transaction, T's Board will be increased to 13 members, consisting of five Family Trustees, seven General Trustees and one ex officio Trustee.

Proposed Transaction:

Before P existed, T made grants to other organizations in support of projects similar to P's traditional projects. In the past T made numerous grants in areas in which P proposes to engage, such as film preservation, archival conservation, archaeology, reading and literary programs in elementary schools, education, and theater renovation (hereafter new projects).

T has decided to continue to support projects in such specialized areas. However, T will discontinue making direct grants to multiple grantees, but, instead, will make a one-time endowment grant to P. The proposed endowment grant will provide indirect support for the new project areas, as well as direct support for P's traditional projects areas.

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T will discontinue the making of grants to other grantees in these specialized areas and P will either expand or initiate new programs in such areas. Further, P will have complete control of the selection of potential grantees, the timing and amounts of grants in the specialized areas, and for other projects consistent with P's tax-exempt purposes.

In 1998 P requested grants from T for capital endowment and 1999 general support. T conditionally approved the making of such grants to P, subject to expenditure responsibility. The general support grant for 1999 was made, subject to expenditure responsibility. If P makes qualifying distributions out of its corpus in 1999 or 2000 and provides T with the necessary reports and documentation, T may count the 1999 general support grants as qualifying distributions.

The capital endowment grant is contingent on a favorable ruling from the Service. Further, the capital endowment grant will not be treated as a qualifying distribution under section 4942(g) of the Code.

The proposed grants to P for capital endowment and 1999 general support represent approximately 11.4% of the aggregate fair market value of T's investment assets. The grants to P will be made by transferring securities and cash and cash equivalents to P without consideration. None of the officers, directors, or foundation managers of either T or P will receive any impermissible private benefit from, or any private use of the grant funds or assets, nor will any income from the proposed grant inure to the benefit of any private individual.

Law:

Section 501(c)(3) of the Code describes in relevant part, corporations organized and operated exclusively for charitable or other exempt purposes stated in that section.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes.

Section 507 of the Code provides that a section 501(c)(3) exempt organization's classification as a private foundation may be terminated in the ways described respectively in sections 507(a)(1), 507(a)(2), 507(b)(1)(A), and 507(b)(1)(B).

Section 507(b)(2) of the Code provides that, in the transfer of assets by one private foundation to one or more other private foundations as part of a reorganization, the

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transferee private foundations shall not be treated as newly created organizations.

Section 1.507-3(c)(1) of the regulations provides that for purposes of section 507(b)(2), the terms "other adjustment, organization, or reorganization" shall include any partial liquidation or any other significant disposition of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income.

Section 1.507-3(c)(2) of the regulations provides 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 during prior taxable 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 this subparagraph).

Section 4940(a) of the Code imposes an annual tax equal to two percent (2%) of the net investment income of a private foundation for the taxable year.

Section 4940(c) of the code generally defines "net investment income" for purposes of section 4940(a) as the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the deductions allowed by section 4940(c)(3).

Section 53.4940-1(f)(1) of the Foundation and Similar Excise Tax Regulations provides that a distribution of property for purposes described in section 170(c)(1) or section 170(2)(B) which is a qualifying distribution under section 4942 shall not be treated as a sale or other disposition of property.

Section 4941 of the Code imposes a tax upon any act of self-dealing between a private foundation and any of its disqualified persons as defined in section 4946.

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Section 53.4941(d)-2(f)(2) of the regulations provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Moreover, this section provides in an example that a grant by a private foundation to a section 509(a)(1), (2), or (3) organization will not be an act of self-dealing merely because one of the grantee organization's officers, directors, or trustees is also a manager of or a substantial contributor to the grantor foundation.

Section 4942(a) of the Code imposes a tax on the undistributed income of private foundations.

Section 4942(c) of the Code defines "undistributed income" as the amount by which the foundation's distributable amount exceeds its qualifying distributions.

Section 4942(g) of the Code defines qualifying distributions.

Section 4942(g)(1)(A) provides that a private foundation does not make a qualifying distribution under section 4942(g) where its distribution is a contribution to either: (i) an organization controlled (directly or indirectly) by the grantor or by one or more of the grantor's disqualified persons (as defined in section 4946), or (ii) a private foundation which is not an operating foundation under section 4942(j)(3), except as provided in section 4942(g)(3).

Sections 4942(g)(3)(A) and (B) require a grantor private foundation, to treat as a qualifying distribution its grant to a controlled organization or another private foundation, to obtain adequate records or other sufficient evidence from a grantee showing that the grantee in fact subsequently made a qualifying distribution that is equal to the amount of the grant received and that is paid out of the grantee's corpus within the meaning of section 4942(h). The grantee's qualifying distribution must be made not later than the close of the grantee's first taxable year after its taxable year in which it received the grant.

Section 4944(a)(1) of the Code imposes a tax upon the making by any private foundation of any investment that jeopardizes the carrying out of its exempt purposes.

Section 4944(c) of the Code provides an exception for program-related investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property.

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Section 53.4944-1(a)(2)(ii)(a) of the regulations provides that the jeopardy investment rule shall not apply to an investment made by any person which is later gratuitously transferred to a private foundation.

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

Section 4945(d)(4) of the Code provides that for purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an organization unless --

(A) such organization is described in paragraph (1), (2), or (3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or

(B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Section 4945(d)(5) of the Code provides that a taxable expenditure includes any amount expended by a private foundation for purposes other than exempt purposes under section 170(c)(2)(B).

Section 4945(h) of the Code provides that expenditure responsibility referred to in section 4945(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 complete reports from the grantee on how the funds were spent, and

(3) to make full and detailed reports with respect to such expenditures to the Secretary.

Section 53.4945-4 and section 53.4945-5(a)(3) of the regulations provide that, for purposes of section 4945, the term "grants" includes payments to exempt organizations to be used in furtherance of the grantee's exempt purposes whether or not such payments are solicited by the grantee. The term "grant" also includes amounts contributed for the grantee's capital endowment, for the purchase of capital equipment, or for general support.

Section 53.4945-5(b)(2)(i) of the regulations provides, in part, that before making a grant to an organization with

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respect to which expenditure responsibility must be exercised under this section, a private foundation should conduct a limited inquiry concerning the potential grantee. Such inquiry must be complete enough to give a reasonable person assurance that the grantee will use the grant for the proper purposes. The inquiry should concern itself with matters such as: (a) the identity, prior history and experience (if any) of the grantee organization and its managers; and (b) any knowledge which the private foundation has (based on prior experience or otherwise) of, or other information which is readily available concerning, the management, activities, and practices of the grantee organization. The scope of the inquiry might be expected to vary from case to case depending upon the size and purpose of the grant, the period over which it is to be paid, and the prior experience which the grantor has had with respect to the capacity of the grantee to use the grant for the proper purposes. For example, if the grantee has made proper use of all prior grants to it by the grantor and filed the required reports substantiating such use, no further pre-grant inquiry will ordinarily be necessary.

Section 53.4945-5(b)(3) of the regulations provides that, as part of expenditure responsibility, the grantor foundation must require that the grant be made subject to a written commitment signed by an appropriate officer, director, or trustee of the grantee organization. The commitment must include an agreement by the grantee --

(i) To repay any portion of the amount granted which is not used for the purposes of the grant,

(ii) To submit full and complete annual reports on the manner in which the funds are spent and the progress made in accomplishing the purposes of the grant, except as provided in paragraph (c)(2) of this section [see below],

(iii) To maintain records of receipts and expenditures and to make its books and records available to the grantor at reasonable times, and

(iv) Not to use any of the funds --

(a) To carry on propaganda, or otherwise to attempt, to influence legislation (within the meaning of section 4945(d)(1)),

(b) To influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of section 4945(d)(2)),

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(c) To make any grant which does not comply with the requirements of section 4945(d)(3) or (4), or

(d) To undertake any activity for any purpose other than one specified in section 170(c)(2)(B).

Section 53.4945-5(c)(1) of the regulations provides, in general, for grants described in section 4945(d)(4), that the granting private foundation shall require reports on the use of the funds, compliance with the terms of the grant, and the progress made by the grantee toward achieving the purposes for which the grant was made. The grantee shall make such reports as of the end of its annual accounting period within which the grant or any portion thereof is received and all such subsequent periods until the grant funds are expended in full or the grant is otherwise terminated. Such reports shall be furnished to the grantor within a reasonable period of time after the close of the annual accounting period of the grantee for which such reports are made. Within a reasonable period of time after the close of its annual accounting period during which the use of the grant funds is completed, the grantee must make a final report with respect to all expenditures made from such funds (including salaries, travel, and supplies) and indicating the progress made toward the goals of the grant. The grantor need not conduct any independent verification of such reports unless it has reason to doubt their accuracy or reliability.

Section 53.4945-5(c)(2) of the regulations provides that "[i]f 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 the 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 2 taxable years. Only if it is reasonably apparent to the grantor that, before the end of such second succeeding taxable year, neither the principal, the income from the grant funds, nor the equipment purchased with the grant funds has been used for any purpose which would result in liability for tax under section 4945(d), the grantor may then allow such reports to be discontinued."

Section 53.4945-5(c)(3) does not require a private foundation grantee exempt from taxation under section 501(a) to segregate grant funds physically nor separately account for such funds on its books unless the grantor requires such treatment of the grant funds. If such a grantee neither

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physically segregates grant funds nor establishes separate accounts on its books, grants received with a given taxable year shall be deemed, for purposes of section 4945, to be expended before grants received in a succeeding taxable year. In such case expenditures of grants received within any such taxable year shall be prorated among all such grants. In accounting for grant expenditures, private foundations may make the necessary computations on a cumulative annual basis (or, where appropriate, as of the date for which the computations are made). The rules set forth in the preceding three sentences shall apply to the extent they are consistent with the available records of the grantee and with the grantee's treatment of qualifying distributions under section 4942(h) and the regulations thereunder.

Section 53.4945-5(c)(3) provides that the grantee's records of expenditures, as well as copies of the reports submitted to the grantor, must be kept for at least 4 years after completion of the use of the grant funds.

Section 53.4945-5(c)(4) provides that a private foundation exercising expenditure responsibility with respect to its grants may rely on adequate records or other sufficient evidence supplied by the grantee organization (such as a statement by an appropriate officer, director or trustee of such grantee organization) showing, to the extent applicable, the information which the grantor must report to the Internal Revenue Service in accordance with section 53.4945-5(d)(2).

Section 53.4945-5(d)(1) of the regulations provides, in part, that to satisfy the report-making requirements of section 4945(h)(3), a granting foundation must provide the required information on its annual information return for each taxable year with respect to each grant made during the taxable year which is subject to the expenditure responsibility requirements of section 4945(h). Such information must also be provided on such return with respect to each grant subject to such requirements upon which any amount or any report is outstanding at any time during the taxable year. However, with respect to any grant made for endowment or other capital purposes, the grantor must provide the required information only for any taxable year for which the grantor must require a report from the grantee under section 53.4945-5(c)(2), generally for the taxable year in which the grant was made and the immediately succeeding two taxable years.

Section 53.4945-6(b)(2) of the regulations provides that a private foundation's payment of administrative expenses, including compensation, consultant fees and other fees for services rendered is not a taxable expenditure depending upon whether such expenses are reasonable.

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Section 53.4946-1(a)(8) of the regulations provide that, for purposes of self-dealing under section 4941 of the Code, an exempt organization under section 501(c)(3) is not a disqualified person.

Revenue Ruling 67-149, 1967-1 C.B. 133, provides that a charitable organization may further its exempt purposes by giving assets to another charitable organization.

Revenue Ruling 82-136, 1982-2 C.B. 300, held that a grant by one private foundation to another private foundation did not constitute an act of self-dealing even though a single banking institution was the sole trustee of both foundations and consequently a disqualified person. Any benefit received by the trustee was merely incidental to the granting foundation's use of its funds for charitable purposes. Rev. Rul. 82-136, 1982-2 C.B. 300 (clarifying Rev. Rul. 75-42, 1975-1 C.B. 359 (grant authorized by private foundation to exempt hospital was not self-dealing even though two individuals were trustees of both organizations; any benefit received by the common trustees was considered tenuous and incidental).

Rationale and Conclusions:

The threshold for a section 507(b)(2) transfer is twenty-five percent (25%) of a private foundation's assets. The proposed grants to P of approximately eleven and four-tenths percent (11.4%) of T's assets are well under this limit. Therefore T's grants to P will not be a significant disposition of T's assets within the meaning of section 507(b)(2) and section 1.507-3(c)(2) of the regulations.

T and P both satisfy the organizational and operational tests. T's and P's Articles of Incorporation provide that they are organized and operated exclusively for charitable, scientific, and educational purposes within the meaning of section 501(c)(3) of the Code, and prohibit any activities not in furtherance of exempt purposes, except to an insubstantial degree. T and P engage primarily in activities which accomplish one or more of the exempt purposes specified in their Articles and section 501(c)(3). T and P represent that their activities are operated for the benefit of the general public, and qualify as charitable, scientific, or educational.

Both T and P are charitable organizations exempt under section 501(c)(3). T is classified as private foundation under section 509(a). P is classified as an operating foundation under section 4942(j)(3) of the Code.

T represents that the proposed grants are being made by it to P to further T's exempt purposes as well as to provide

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general support or capital endowment to be used for P's exempt purposes.

The proposed grants to P are not being made pursuant to any reorganization plan of T. T and P are separate, independent entities, each of which has been in existence for several years. The entities have and are likely to continue to have a close relationship. The Boards of the two entities have an overlap that is less than a majority of either organization. T and P are not under common control. Also, P is not effectively controlled by the same persons who control T.

Because T's proposed grants are not a reorganization or significant disposition of its assets under section 507(b)(2), T's grants will not result in P's being treated under that section as possessing any of the tax attributes or characteristics of T.

Because the transfers constitute gifts or grants to P, the tax bases and holding periods of the assets transferred by T will carry over to P. Further, because T is making grants, and not making investments in P, the assets received by P will not be "net investment income" to P within the meaning of section 4940(c).

A and B's contributions to T and to P result in their being "substantial contributors" to both organizations. Consequently, their children, spouses of children, grandchildren, etc. are "members of the family" of substantial contributors and are considered to be "disqualified persons" with respect to both organizations. A and B's children and spouses of children who are officers, directors or trustees of either or both organizations are considered to be "foundation managers" because of their responsibilities and are disqualified persons" with respect to the organization in which they hold such office. Currently three members of T's board of directors and three members of P's board of directors are disqualified persons" with respect to each organization. You represent that none of P's directors, officers, or other foundation managers has received or will receive any direct or indirect private or personal benefit from the grants.

There will be no acts of self-dealing under section 4941 of the Code. The transfers of assets are not acts of self-dealing because they are transfers of funds for exempt purposes to an exempt section 501(c)(3) organization, and, even if controlled by the same persons, the transferee is not considered a disqualified person pursuant to section 53.4946-1(a)(8) of the regulations.

T is responsible for meeting its qualifying distribution requirements under section 4942 of the Code. Under section

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1.507-3(a)(5) of the regulations, even if a transferor transfers all of its assets to other private foundations, the transferor's obligation to expend for exempt purposes, as required by section 4942(g) of the Code, must still be met.

There will be no jeopardizing investments under section 4944 of the Code because section 4944(c) indicates that there are no jeopardizing investments involved where a foundation donates its funds for exempt purposes to other organizations exempt under section 501(c)(3).

The majority of T's investment assets are held in X Company common stock which was transferred to T by its founders as lifetime donations and bequests. The majority of the proposed endowment grant to P will consist of shares of X Company common stock, which is publicly traded. The information furnished establishes that after the transfer of X Company stock to P, T, P, and all disqualified persons to T and P together will hold less than twenty percent of all outstanding shares.

Because T and P are private foundations, any grant T makes to P will be considered a taxable expenditure under section 4945 unless T exercises expenditure responsibility over the grant in accordance with section 4945(h) of the Code. To satisfy the expenditure responsibility requirements for 1998 and 1999 general support grants and the proposed endowment grant to P, T must satisfy all the criteria set out in section 4945(h).

The amount of each grant for general support is expected to be entirely expended by P for its charitable purposes within the year of the grant or no later than by the end of the following year. Under section 4942(g)(3), T may count the 1998 general support grant as qualifying distributions for 1998, if P uses such amount for purposes described in section 170(c)(2)(B) or redistributes that amount to other public charities by the end of 1999. Moreover, T may count as much of the 1999 general support grants as qualifying distributions for 1999 as P redistributes or uses directly by the end of 2000.

T represents that (i) it has conducted a limited pre-grant inquiry, (ii) obtained signed written agreements for each grant, which include all of the provisions set forth in section 53.4945-5(b)(3) of the regulations, and (iii) that P has agreed to make annual reports on the use of each grant. T states that it will report such information on the annual information returns it files with the Service. Form 990-PF. Moreover, it is represented that T and P will retain records regarding the grants for at least four years after the general support grant funds are used, and the final report on the endowment grant is

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submitted. Thus, there will be no taxable expenditures under section 4945 of the Code.

Section 4942(g)(1)(A) of the Code provides that a qualifying distribution by a private foundation for exempt purposes includes any reasonable and necessary administrative expenses. That section further states, where a transferee is a private foundation which is not an operating foundation under section 4942(j) or is controlled by one or more of the transferor's disqualified persons, a transfer, including the reasonable and necessary administrative expenses, will be a qualifying distribution only to the extent that the further requirements of section 4942(g)(3) are met. Thus, T's transfer, and the legal, accounting and other expenses of this ruling and transfer to P, if reasonable in amount, will be qualifying distributions under section 4942(g)(1)(A) to the extent that T meets section 4942(g)(3), including having adequate records required under section 4942(g)(3)(B) to show that its transferee P has timely met the distribution out of corpus requirements of section 4942(g)(3).

Accordingly, based upon the representations submitted, we rule that:

1. The proposed grants from T to P will not be considered a transfer of assets pursuant to a reorganization of T under section 507(b)(2), and will not cause the imposition of the termination tax under section 507(c). The transferee (P) will not be treated as if it were the transferor (T).

2. T's grants to P will not be acts of self-dealing or result in tax under section 4941. Any benefit received by the directors and officers of P will be merely incidental to T's grants and P's use of its funds for charitable and educational purposes.

3. The assets to be received by P as the proposed endowment grant from T will not be investment income within the meaning of section 4940(c), and will not be investments that jeopardize P's purposes, and will not be subject to tax under section 4944.

4. The proposed endowment grant from T to P will be a capital endowment grant under section 53.4945-5(c)(2) of the regulations.

5. T must exercise expenditure responsibility for the assets transfered to P and must require P to make reports annually to T for the year of the endowment grant and the two succeeding years, but not thereafter, if it is apparent to T that, before the

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end of the second succeeding taxable year, neither the principal, income from the endowment grant funds, nor equipment purchased with the grant funds has been used for any purpose that would result in tax liabilities under section 4945(d).

6. T's grants to P for general support may be counted by T as qualifying distributions under section 4942(g)(3) of the Code to the extent that P makes qualifying distributions out of corpus equal to the amount received before the of P's first taxable year after the tax year in which one or more grants are received, and provides to T adequate records or other sufficient evidence showing that the qualifying distributions have been made as required by section 4942(g) and section 53.4945-5 of the regulations.

7. T's payment of the reasonable and necessary legal, accounting and other expenses for the requested rulings and the proposed grants to P from T will be qualifying distributions by T under section 4942(g)(1)(A) to the extent that section 4942(g)(3) is met by T and P. Payment of such expenses by either T or P will not be taxable expenditures under section 4945.

8. The proposed grants by T to P will not adversely affect T's status or P's status as an organization described in section 501(c)(3) of the Code.

This ruling letter is directed only to the organization that requested it. Section 6110 of the Code provides that it may not be used or cited as precedent. We are sending a copy of this ruling letter to your key District Director and to your attorney.

Sincerely yours,

Robert C. Harper
Chief, Exempt Organizations
Technical Branch 3