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

200103079

SIN – 507.00-00

Date: OCT 25 2000

Contact Person:

ID Number:

Telephone Number:

T:EO:B3

<u>Legend</u>:

A =
B =

Dear Taxpayer:

This is in response to your letter dated March 17, 2000, wherein you requested certain rulings concerning the federal tax consequences of the proposed transaction described below.

You are a non-profit corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (Code). You are classified as a private foundation within the meaning of section 509(a). Your primary purpose is to receive contributions and make donations to organizations described in section 501(c)(3). You are governed by a eight-member board of directors, five of whom are also board members of B.

Your original and subsequent financial support came from A, a national banking institution. You also received financial support from B, the parent holding company of A. B has agreed to merge with another national banking institution (Bank), and after the merger you expect that A will be merged into a subsidiary of that Bank.

You represent that in view of the pending merger it is in your best interests for you to distribute all your assets to domestic organizations described in section 501(c)(3) of the Code. You plan to terminate your private foundation status thereafter. You represent that all your assets will be distributed to 238 domestic exempt organizations described in section 501(c)(3), 213 of which are described in IRC 509(a)(1) or (2) (i.e. "public charities"). The remaining 25 are private foundations. You represent that you will investigate and determine that these 238 domestic organizations are in fact recognized as exempt from Federal income tax under section 501(c)(3). All but five of the recipients were selected by the shareholders of B. Your board of directors selected the remaining five recipients. You represent that you will require an acknowledgement from any section 501(c)(3) transferee organization which is a private foundation and is deemed "controlled" by "disqualified persons" of your organization that a pro rata share of your "tax attributes" will carry over to such section 501(c)(3) transferee organization.

The amount you will donate to a particular section 501(c)(3) organization will be determined on a basis proportional to the number of shares owned by a particular shareholder divided by the total number of issued and outstanding shares. For example, an individual holding 5% of B's stock will be permitted to direct the distribution of 5% of your assets. You represent that you will obtain from each of the 238 IRC 501(c)(3) organizations commitments that it will use your distributions for charitable purposes.

You plan to complete the distribution during the calendar year 2000 but will not file a notice of termination during that year. Once all assets are distributed, you will notify the Service of your intention to voluntarily terminate your status as a private foundation pursuant to section 507(a)(1) of the Code in 2001. You represent that you will make the required amount of qualifying distributions in 2000 so that you will have no undistributed income under section 4942 of the Code. You also represent that you have made no grants to private foundations over which you are required to exercise expenditure responsibility under section 4945 of the Code.

Law:

Section 501(c)(3) of the Internal Revenue Code (Code) provides for the exemption from federal income tax of non-profit organizations organized and operated exclusively for religious, charitable, educational and other exempt purposes.

Section 507(a) of the Code provides that, except as provided in section 507(b), the status of any organization as a private foundation shall be terminated only if it notifies the Secretary of its intent to terminate, or, 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 the Secretary notifies such organization that it is liable for tax imposed by section 507(c).

Section 507(b)(2) of the Code provides that 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.

Section 507(c) of the Code imposes on each organization a tax equal to the lower of 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 the value of the net assets of such foundation.

Section 1.507-1(b)(6) of the Income Tax Regulations (regulations) provides that if a private foundation transfers all or part of its assets to one or more 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 1.507-1(b)(7) of the regulations provides that neither a transfer of all of the assets of the a private foundation nor a significant disposition of assets by a private foundation (whether or not any portion of such significant 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) 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)(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 section, the transferee organization shall not be treated as a newly created organization. A transferee organization to which this paragraph applies shall be treated as possessing those attributes and characteristics of the transferor organizations which are described in subparagraphs (2), (3), and (4) of this paragraph.

Section 1.507-3(a)(5) of the regulations provides that (except as provided in subparagraph (9) of section 1.507-3(a)) 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 the amount transferred meets the requirements of section 4942(g). However, where the transferor has disposed of all of its assets, the recordkeeping requirements of section 4942(g)(3)(B) shall not apply during any period in which it has no assets. Such requirements are applicable for any taxable year other than a taxable year during which the transferor has no assets.

Section 1.507-3(a)(7) of the regulations provides that, except as provided in section 1.507-3(a)(9), where the transferor foundation has disposed of all of its assets, during any period in which the transferor has no assets, sections 4945(d)(4) and (h) of the Code shall not apply to the transferee or the transferor with respect to any "expenditure responsibility" grants made by the transferor. However, this exception does not apply with respect to any information reporting requirements imposed by section 4945 and the regulations thereunder for any year in which any transfer is made.

Section 1.507-3(a)(8)(ii)(f) of the regulations provides that the provisions of section 4945 shall apply to a transferee foundation to the same extent and in the same manner that they would have applied to the transferor foundation had the transfer described in section 507(b)(2) not been effected.

Section 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled, directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of chapter 42 and part II of subchapter F of chapter 1 of the Code, such a transferee private foundation shall be treated as if it were the transferor.

Section 1.507-3(c) of the regulations provides that a transfer under section 507(b)(2) of the Code includes a transfer of assets from one private foundation to one or more private foundations pursuant to any reorganization, partial liquidation, or any other significant disposition of assets. The term "significant disposition" includes any disposition of 25 percent or more of the transferor private foundation's assets.

Section 1.507-3(d) of the regulations provides that unless a private foundation voluntarily gives notice under section 507(a)(1) of the Code, a transfer of assets described in section 507(b)(2) will not constitute a termination of the transferor's private foundation status.

Section 1.507-4(b) of the regulations provides that private foundations which make transfers described in section 507(b)(1)(A), or (2) of the Code are not subject to the tax imposed under section 507(c) with respect to such transfers unless the provisions of section 507(a) become applicable.

Section 4941(a) 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 provides that the term "self-dealing" includes any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

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

Section 4942(c) of the Code provides that the term "undistributed income" means, with respect to any private foundation for any taxable year as of any time, the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made before such time out of such distributable amount.

Section 53.4942(a)-3(a)(2)(i)(a) of the Foundation and Similar Excise Taxes Regulations (regulations) provides, in pertinent part, that the term "qualifying distribution" means any amount (including program-related investments, as defined in section 4944(c), and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(1) or (2)(B), other than any contribution to a private foundation which is not an operating foundation (as defined in section 4942(j)(3)).

Section 4942(g)(1)(A) of the Code provides, in pertinent part, that the term "qualifying distribution" means 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) or for assets to be used for these purposes. Such distributions include payments to public charities and operating foundations but not payments made to organizations controlled by the foundation (or disqualified persons) or to private foundations unless the requirements of section 4942(g)(3) are met.

Section 4942(g)(3) of the Code provides, in pertinent part, that the term "qualifying distribution" includes a contribution to a section 501(c)(3) organization described in sections 4942(g)(1)(A)(i) or (ii) if

(A) not later than the close of the first taxable year after its taxable year in which such contribution is received, such organization makes a distribution equal to the amount of such contribution and such distribution is a qualifying distribution which is treated under section 4945(h) as a distribution out of corpus, and
(B) the private foundation making the contribution obtains adequate records or other sufficient evidence from such organization showing that the qualifying distribution described in subparagraph (A) has been made by such organization.

Section 4944(a) of the Code imposes a tax on any amount invested by a private foundation in a manner that jeopardizes the carrying out of any of its exempt purposes.

Section 4945 of the Code imposes a tax on any taxable expenditure made by a private foundation as defined, in pertinent part, by section 4945(d)(4).

Section 4945(d)(4) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to another 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 53.4945-5(a) of the regulations provides, in pertinent part, that the term "taxable expenditure" includes any amount paid or incurred by a private foundation as a

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grant to an organization (other than an organization described in section 509(a)(1), (2) or (3)), unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Section 4945(h) of the Code provides that expenditure responsibility 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 are spent, and
(3) to make full and detailed reports with respect to such expenditures to the Secretary.

Section 53.4945-5(b)(7) of the regulations provides that sections 1.507-3(a)(7), 1.507-3(a)(8)(ii)(f) and 1.507-3(a)(9) of the regulations will determine the extent to which the expenditure rules described in section 4945(d)(4) and (h) shall apply to the transfer of assets under section 507(b)(2) of the Code.

Section 53.4945-6(b)(1)(v) of the regulations provides that any payment which constitutes a qualifying distribution under section 4942(g) or an allowable deduction under section 4940 will not be treated as a taxable expenditure under section 4945(d).

Discussion:

You indicate that all your assets will be donated to domestic organizations that are described in section 501(c)(3) of the Code. You also indicate that these section 501(c)(3) organizations will be private foundations or publicly supported charities. Accordingly, the proposed transfers are described in section 507(b)(2) and will not be subject to tax under section 507(c). Inasmuch as your proposed transfers of all your assets to section 501(c)(3) organizations are made pursuant to section 507(b)(2), the proposed transfers will not result in the termination of your private foundation status under section 509(a). See section 1.507-1(b)(6) of the regulations. They also will not result in the imposition of the foundation status termination tax under section 507(c). See section 1.507-4(b) of the regulations.

Since the proposed transfers are donations, they will not be treated as net investment income under section 4940(a) of the Code. The proposed transfers will not constitute acts of self-dealing within the meaning of section 4941 of the Code because the assets will be donated to section 501(c)(3) organizations and be used for exempt purposes within the meaning of section 501(c)(3) of the Code. You must continue to meet the requirements of section 4942 of the Code. Specifically, section 1.507-3(a)(5) of the regulations provides that a private foundation is required to meet the distribution requirements of section 4942 of any taxable year in which it makes a section 507(b)(2)

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transfer of all or part of its net assets to another private foundation. We note that the record-keeping requirements of section 4942(g)(3)(B) must be complied with for the tax year of this proposed transaction. This provision will not apply for the subsequent tax year where you will have disposed all your assets. See section 1.507-3(a)(5) of the regulations.

The proposed transfers will not constitute jeopardizing investments because the funds will be donated to section 501(c)(3) organizations and be used for purposes described in section 170(c)(2)(B) of the Code. The proposed transfers will not constitute taxable expenditures where the assets are donated to section 501(c)(3) organizations that are described in section 509(a)(1), (2) or (3) of the Code. See section 4945(d)(4)(A) of the Code. The proposed transfers of assets to private foundations will not constitute taxable expenditures because the transfers will be done pursuant to section 507(b)(2) of the Code. Hence, no expenditure responsibility is required. See section 1.507-3(a)(7) of the regulations. You represent that you currently have no outstanding grants for which expenditure responsibility is being exercised.

Based upon the foregoing, we rule as follows:

1. The proposed transfers will constitute a significant disposition of assets within the meaning of section 507(b)(2) of the Code and will not result in the termination of your private foundation status within the meaning of section 507(a). Hence, the tax imposed by section 507(c) will not apply upon the distribution of your assets to section 501(c)(3) organizations;

2. Once all your assets are donated to the section 501(c)(3) organizations and you notify the Service of your intention to terminate your private foundation status pursuant to section 507(a)(1) of the Code, the amount of the tax will be zero;

3. The proposed transfers will not subject you to any excise tax on net investment income under section 4940 of the Code;

4. The proposed transfers will not be acts of self-dealing within the meaning of section 4941 of the Code;

5. You will be subject to the distribution requirements of section 4942 of the Code for the tax year of the proposed transfers. This distribution requirements will not apply in the subsequent tax year, the year of your dissolution;

6. You will be subject to the record-keeping requirements of section 4942(g)(3)(B) of the Code with respect to the proposed transfers of assets for the tax year of these transfers. The record-keeping requirements will not be applicable in the

subsequent tax year;

7. The proposed transfers will not constitute jeopardizing investments within the meaning of section 4944 of the Code;

8. The proposed transfers will not constitute taxable expenditures within meaning of section 4945 of the Code;

9. You will not be required to exercise expenditure responsibility under sections 4945(d)(4) and 4945(h) of the Code with respect to the transferred assets. You will be subject to the information reporting requirements of section 4945 for the tax year in which the proposed transfers occurred.

This ruling is conditioned on the understanding that there will be no material change in the facts upon which it is based. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described above. You should keep a copy for your permanent records.

The ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent.

Sincerely,

(signed) Robert C Harper, Jr.

Robert C. Harper, Jr.
ID# 50-03055
Manager, Exempt Organizations
Technical Group 3

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