



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

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SIN# 507.01.00 507.03-00
4942.01-00 4942.03-05
4944.00-00 4945.00-00
4946.00-00

A =
B =
C =

Dear Sir or Madam:

This is in reply to a ruling request dated November 22, 2002, submitted on behalf of A and B concerning a proposed transfer of assets by A to C and subsequent termination of A's foundation status.

A is a community trust fund recognized as a private foundation under section 509(a) of the Internal Revenue Code. A coordinates the charitable grants made by a variety of trusts that incorporate the terms of the Declaration of Trust that created A.

B is an organization recognized as exempt from federal income tax under section 501(c)(3) of the Code and classified as a publicly supported organization under section 170(b)(1)(A)(vi) of the Code. B operates as a public community foundation to meet the needs of the local community. A and B have entered into a memorandum of understanding whereby both entities will share administrative resources.

C is an organization recognized as exempt from federal income tax under section 501(c)(3) of the Code and classified as other than a private foundation under section 509(a)(3).

A has determined that it can better serve its community and those individuals wishing to make charitable gifts through the auspices of A in the corporate form, with the concomitant structural flexibility and liability protection. Upon receipt of a letter ruling from the Service in response to this request and upon receipt of approval from courts and the Attorney General, A will transfer all its assets to C. Thereafter, any Subtrust referring to A will be interpreted to refer to C. One day after such transfer of assets, A will send a notice of termination pursuant to section 507(a)(1) to the Service. A will thereafter dissolve.

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: (1) such organization notifies the Secretary of its intent to accomplish such termination, or (2)(A) 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 a liability for tax under Chapter 42, and (B) the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for the tax imposed by subsection (c), and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g)) or is liable for the entire amount of such tax abated under subsection (g).

Section 507(b)(1)(A) of the Code provides that the status as a private foundation of any organization, with respect to which there have not 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 shall be terminated if such organization distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii) each of which has been in existence and so described for continuous period of at least 60 calendar months immediately preceding such distribution.

Section 507(c) of the Code imposes on each organization which is referred to in subsection (a) a tax equal to the lower of (1) 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 (2) the value of the net assets of such foundation.

Section 4940(a) of the Code provides for the imposition on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on its activities, a tax equal to 2 percent of the net investment income of such foundation.

Section 4941(a)(1) of the Code provides that there is hereby imposed a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period.

Section 4942(a) of the Code imposes a tax on the undistributed income of a private foundation (other than on operating foundation under section 4942(j)(3)) for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year.

Section 4942(g)(1)(A) of the Code defines the term "qualifying distribution" as any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes describe in section 170(c)(2)(B) other than a contribution to: (i) an organization controlled directly or indirectly by the foundation or by one or more disqualified persons with respect to the foundation, unless certain requirements are satisfied, or (ii) any private foundation which is not an operating foundation under section 4942(j)(3), unless certain requirements are satisfied.

Section 4944 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 the foundation's exempt purposes.

Section 4945 of the Code imposes a tax on any "taxable expenditure" (as defined in section 4945(d)) made by a private foundation. Section 4945(d) defines a taxable expenditure to include, among other things, a grant to another organization, unless such organization is not a private foundation, or unless the donor private foundation exercises "expenditure responsibility" with respect to such grant in accordance with section 4945(h).

4945(d)(4) of the Code provides that the term "taxable expenditure" includes any amount paid or incurred 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 53.4946-1(a)(8) of the Foundation and Similar Excise Taxes Regulations provides that for purposes of section 4941 only, the term "disqualified person" shall not include an organization which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Revenue Ruling 2003-13, 2003-4 I.R.B. 305, discusses four fact patterns in which a private foundation distributes all of its net assets to one or more public charities described in section 509(a)(1), 509(a)(2) or 509(a)(3) of the Internal Revenue Code and the underlying tax consequences of such transfer under section 507(c) and sections 4940 through 4945.

Under section 507(b)(1)(A) of the Code, an organization's status as a private foundation is terminated if it distributes all its net assets to one or more organizations described in section 509(a)(1) (i.e., organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding the distribution. An organization that terminates its private foundation status under section 507(b)(1)(A) is not required to give notice under section 507(a)(1) of the Code and is not subject to the tax described in section 507(c).

If a private foundation distributes all its net assets to a public charity not described in section 509(a)(1) of the Code or is described in section 509(a)(2) or (3), then the rules of section 507(b)(1)(A) do not apply.

In this case, A's distribution to C is not described in section 507(b)(1)(A) of the Code because C is an organization described in section 509(a)(3) of the Code. Thus, A's private foundation status is not terminated unless it gives notice under section 507(a)(1) of the Code. Since A will have no assets on the date it provides notice, the tax imposed by section 507(c) will be zero. See Rev. Rul. 2003-13.

Based on the information furnished and assuming that your organization and B will operate as described above, we rule as follows:

1. A's proposed transfer of all of its assets to C is not a voluntary or involuntary private foundation status termination described within section 507(a)(1) or 507(a)(2). Thus, A's transfer will not result in any private foundation status termination tax under section 507(c) of the Code;
2. A's termination of its private foundation status at a time when it will have no assets will not result in any private foundation status termination tax under section 507(c) of the Code;
3. The proposed transfer of A's assets to C will not give rise to net investment income subject to tax under section 4940 of the Code;
4. The proposed transfer of A's assets to C does not constitute an act of self-dealing and is not subject to tax under section 4941(a)(1) of the Code;
5. The proposed transfer of A's assets to C constitutes a qualifying distribution such that A will not be subject to tax under section 4942 of the Code;
6. The proposed transfer of A's assets to C does not constitute investments that will jeopardize A's exempt purposes and will not be subject to tax under section 4944(a)(1) of the Code; and
7. The proposed transfer of A's assets to C does not constitute a taxable expenditure and is not subject to tax under section 4945 of the Code.

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, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Robert C. Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3