

200438041

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

Date: JUN 23 2004

Contact Person:

U/L 507.00-00

ID Number:

Telephone Number:

Employer Identification Number:

Legend:

A =

B =

C =

Dear :

This is in response to a letter from your authorized representative dated April 16, 2004, requesting a ruling on your behalf to confirm that no tax is due upon your termination and the distribution of your assets.

A was created as a trust and is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and is classified as a private nonoperating foundation under section 509(a). A was created to carry out the terms of a trust which provides, in part, the trustees in their sole discretion are empowered to direct moneys to be transferred to B. The trustees also have the power to dissolve the trust and may convey the balance to B or C or its successors. There are 5 directors on the Board of A.

B is exempt from federal income tax under section 501(c)(3) of the Code and is classified as a nonprivate foundation under sections 509(a)(1) and 170(b)(1)(A)(i) of the Code. B has been in existence and so described for a continuous period of more than 60 calendar months. The 10 Trustees of B are elected by the council members of B, as provided in B's bylaws. One of the Directors of A serves as a Trustee of B. None of the Trustees of B are selected by A or its directors. A will place no restrictions or conditions upon B's use of the transferred assets.

You have stated that the directors of A have agreed to exercise the discretion

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granted them and distribute the assets of A to B and terminate and dissolve A.

You have requested the following ruling:

If A distributes all of its assets to B and terminates its private foundation status pursuant to section 507(b)(1)(A) of the Code, A will not be required to file a Notice of Termination under section 507(a)(1) and is not liable for the tax imposed by sections 507(c), 4940, 4941, 4942, 4944 and 4945 of the Code.

Section 501(a) of the Code provides an exemption from federal income tax for organizations described in section 501(c)(3).

Section 507(a) provides that, except as provided in section 507(b), the status of any private foundation shall be terminated only if such organization notifies the Secretary of its intent to accomplish such termination or, with respect to such organization, there have been either willful or repeated acts or a willful and flagrant act, giving rise to liability for tax under Chapter 42, and the Secretary notifies the organization that because of such act the organization is liable for the tax imposed by section 507(c), and either the organization pays the tax or the entire amount of the tax is abated under section 507(g).

Section 507(c) imposes an excise tax on each terminating private foundation equal to the lower of the aggregate tax benefit resulting from the section 501(c)(3) status of the foundation or the value of its net assets.

Section 507(b)(1)(A) 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 a continuous 60 calendar months immediately preceding such distribution. A private foundation which makes such a termination is not subject to section 507(a) and is therefore not required to give the notification described in section 507(a)(1), does not incur tax under section 507(c) and therefore no abatement of the tax is required under section 507(g).

Section 4940 provides for the imposition of a tax on the net investment income of private foundations.

Section 4941(d)(1)(E) states that the term "self dealing" means 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) imposes an excise tax on the undistributed income (as defined in paragraph (a) of section 53.4942(a)-(2) of the regulations) of a private foundation 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 (if such first day falls within the taxable period as defined in paragraph (c)(1) of this section). For purposes of section 4942, the term "distributed" means distributed as qualifying distributions under section 4942(g).

Section 4942(g)(1)(A) defines the term "qualifying distribution" as any amount (including the portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B) of the Code, other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or (B) any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 4944(a)(1) imposes a tax on a private foundation that invests any amount in such manner as to jeopardize the carrying out of any of its exempt purposes.

Section 4945(d)(4) provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an organization unless such organization is described in paragraph (1), (2) or (3) of section 509(a) or is an exempt operating foundation, or the private foundation exercises expenditure responsibility with respect to such grant.

Section 4945(d)(5) provides that the term "taxable expenditure" does not include amounts paid or incurred by a private foundation as a grant to another organization for purposes specified in section 170(c)(2)(B).

Section 4945(h) provides that the expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts to establish adequate procedures to see that the grant is spent solely for the purpose for which made, to obtain full and complete reports from the grantee on how the funds are spent, and to make full and detailed reports with respect to such expenditures to the Secretary, unless the grantee is an organization exempt from tax under section 509(a)(1), (2) or (3).

Section 4946(a)(1) provides, in part, that the term "disqualified person" shall not

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include any organization which is described in section 501(c)(3), other than an organization described in section 509(a)(4).

Section 4946(a)(1)(B) defines a disqualified person to include with respect to a private foundation a foundation manager.

Section 4946(b)(1) states that the term "foundation manager" includes a trustee of a foundation having the authority or responsibility over the activities of the foundation.

The trustees will distribute all of A's net assets to B, a section 501(c)(3) organization described in section 170(b)(1)(A)(i) that has been in existence for a continuous period of more than 60 calendar months. A will not impose any material restrictions or conditions on B from freely and effectively employing the transferred assets or the income derived therefrom in furtherance of B's exempt purposes. B and its governing body is independent of A.

Accordingly, the distribution is subject to the rules of section 507(b)(1)(A), rather than the rules of section 507(a).

Because the distribution is described in section 507(b)(1)(A), A's status as a private foundation is terminated upon the distribution and A is not subject to the tax described in section 507(c). A is not required to give notice under section 507(a)(1) to terminate its private foundation status.

Under section 4941 the transfer of these assets will not be an act of self-dealing as the transfer is being made to further exempt purposes within the meaning of section 501(c)(3) to an organization exempt under section 501(c)(3) and which is classified as a nonprivate foundation, which is not a disqualified person under section 4946 for this purpose.

The distribution is made to accomplish one or more purposes described in section 170(c)(2)(b) of the Code and is not made to an organization controlled directly or indirectly by A or by one or more disqualified persons with respect to A. Thus, the distributions are qualifying distributions for purposes of section 4942(g)(1)(A).

The transfer will be a grant to further exempt purposes and will therefore not be subject to tax under section 4940.

The transfer is not an investment and thus will not be subject to tax under section 4944.

The transfer will not be subject to tax under section 4945 as it is being made to an

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organization exempt under section 501(c)(3) which has been classified as a nonprivate foundation. In addition, the expenses associated with the transfer, if reasonable in amount, will not be taxable expenditures within the meaning of section 4945. Thus, A will not be required to exercise expenditure responsibility with respect to the distribution under section 4945(d)(4) or (h).

Accordingly, based on all the facts and circumstances described above, we rule:

If A distributes all of its assets to B and terminates its private foundation status pursuant to section 507(b)(1)(A), A will not be required to file a Notice of Termination under section 507(a)(1) and is not liable for the tax imposed by sections 507(c), 4940, 4941, 4942, 4944 and 4945 of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the IRS.

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.

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.

Please keep a copy of this ruling in your permanent records. 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,



Michael Seto
Manager, Exempt Organizations
Technical Group 1

cc:

/SE:T:EO:RA:T