



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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4940.02-00

4941.04-00

4942.03-05

4944.05-00

507.00-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

B=

C=

D=

E=

F=

Dear :

We have considered your ruling request involving a proposed transfer of all of the assets of B to C, D, E and F.

B is exempt under section 501(c)(3) of the Internal Revenue Code and is classified as a private foundation under section 509(a). C, D, E and F are also exempt under section 501(c)(3) of the Code and classified as private foundations under section 509(a).

A difference of opinion developed among the directors of B as to the making of grants (identity of grantees and the amount of grants) and the investment of the assets of B. In order to accomplish the philanthropic and investment goals of B, the members and directors of B have adopted a liquidation plan to divide the assets of B into four separate

shares (hereinafter referred to as "Share 1", "Share 2", "Share 3" and "Share 4". Share 1 will consist of an agreed upon dollar amount, plus one-third of the balance of the assets of B. Share 2 will consist of one-third of the balance of the assets of B. Share 3 and Share 4 will consist of one-sixth of the balance of the assets of B.

Share 1 will be distributed to C. Share 2 will be distributed to D. Share 3 will be distributed to E and Share 4 will be distributed to F.

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 states it 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.

Neither B, C, D, E or F is an operating foundation within the meaning of section 4942(j)(3) of the Code.

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 I.R.B. 941 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 revenue ruling 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 revenue ruling, the Service holds 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 has no assets on the day it provides notice, the section 507(c) tax will be zero.

The revenue ruling 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, 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 the ruling request indicates that the transfer of B's assets to C, D, E and F would be similar to the facts and circumstances described in Situation One of the revenue ruling. 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, we rule as follows:

1. The distribution of Share 1, Share 2, Share 3 and Share 4 to C, D, E, and F, respectively, (i) will qualify as transfers under section 507(b)(2) of the Code and accordingly, (ii) will not effect a termination of B's status as a private foundation, and (iii) will not subject B to tax under section 507(c) of the Code.
2. C,D,E and F will be treated under section 1.507-3(a)(9) of the regulations as if they were B in the proportion that the fair market value of each of Share 1, Share 2, Share 3 and Share 4, respectively, bears to the aggregate fair market value of B's net assets immediately before the transfers.
3. The distribution of Share 1, Share 2, Share 3 and Share 4 to C, D, E and F, respectively, will not constitute 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 of the Code.
4. The distribution of Share 1, Share 2, Share 3 and Share 4, to C, D, E and F, respectively, will not give rise to net investment income and therefore, will not give rise to the imposition of tax under section 4940 of the Code.
5. The distribution of Share 1, Share 2, Share 3 and Share 4, to C, D, E and F, respectively, will not constitute an act of self-dealing which will give rise to the imposition of tax under section 4941 of the Code.
6. The distribution of Share 1, Share 2, Share 3 and Share 4, to C, D, E and F, respectively, do not constitute qualifying distributions by B under section 4942 of

the Code, and (ii) C, D, E and F each assume their proportionate share of B's undistributed income under section 4942 and reduce their own distributable amount for purposes of section 4942 by their proportionate share of B's excess qualifying distributions under section 4942(i).

7. The distribution of Share 1, Share 2, Share 3 and Share 4, to C, D, E, and F, respectively, do not constitute investments jeopardizing B's exempt purpose and are not subject to tax under section 4944 of the Code.
8. The distribution of Share 1, Share 2, Share 3 and Share 4, to C, D, E and F, respectively, will not constitute a taxable expenditure within the meaning of section 4945 of the Code and B will not be required to exercise expenditure responsibility with respect to such distribution of assets.
9. The distribution of Share 1, Share 2, Share 3 and Share 4 to C, D, E and F respectively, will not affect their or B's tax exempt status under section 501(c)(3) of the Code.
10. If B elects to terminate its private foundation status after it has transferred all of its assets to C, D, E and F, no tax will be due by B under section 507(c), provided B complies with the notification requirement under section 507(a)(1) 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 about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 4