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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

SE:T:EO:RA:T:3

Legend:

Transferor Foundation =
Recipient Foundation I =
Recipient Foundation II =
Recipient Foundation III =
Recipient Foundation IV =

A =
B =
C =
D =
E =
F =
G =
H =

Dear ′

We have considered your ruling request dated September 18, 2007, concerning the federal income and excise tax consequences under sections 507, 4941, 4942, 4944, and 4945 of the Internal Revenue Code of 1986, as amended (hereafter "Code"), related to a proposed transfer of assets, in the manner and for the purposes described below.

Facts:

Transferor Foundation is a tax-exempt organization recognized as a private foundation under sections 501(c)(3) and 509(a) of the Code. Transferor Foundation is managed by eight individuals, A, B, C, D, E, F, G and H. Individuals B, C, D, and E are all children of A. Since its inception, Transferor Foundation's mission has been to improve the city within which it is located and the quality of life of its citizens. Because of A's advanced age, A anticipates that her children, if they succeed to the management of Transferor Foundation, would have diverse charitable interests and objectives because

of the differences in their geographic residences and backgrounds. As such, A's children have formed Recipient Foundation I, Recipient Foundation II, Recipient Foundation III and Recipient Foundation IV (hereafter referred to as "Recipient Foundations"), to further their separate charitable interests and goals.

Recipient Foundations I, II, III, and IV are all tax-exempt organizations recognized as private foundations under sections 501(c)(3) and 509(a) of the Code. Recipient Foundation I is managed by B, and two other directors who are not members of A's family. Recipient Foundation II is managed by C, and two other directors who are not members of A's family. Recipient Foundation III is managed by B, D, and E, who are all members of A's family. Recipient Foundation IV is managed by E and D, who are members of A's family, and a third director F who is not a member of A's family.

Representations have been made that Transferor Foundation has approved a plan with Recipient Foundations, whereby the assets of Transferor Foundation will be distributed 20 percent to each of the Recipient Foundations to enable the children of A, who manage the Recipient Foundations, to pursue their own separate charitable goals through the charities they respectively manage. Representations have been further made that subsequent to the transfer, Transferor Foundation and the Recipient Foundations will continue to operate and maintain their tax-exempt status as private foundations under sections 501(c)(3) and 509(a) of the Code. Furthermore, Transferor Foundation represents that it will ensure expenditure responsibility.

You have requested the following rulings:

1. The distribution by Transferor Foundation of approximately 20 percent (20%) of its assets to each of the Recipient Foundations will be a sufficient disposition of assets to one or more private foundations as described in section 1.507-3(c) of the Regulations made pursuant to an adjustment or reorganization, and will be a transfer of assets by a private foundation to other private foundations described in section 507(b)(2) of the Code.

2. The distribution by Transferor Foundation of approximately 20 percent (20%) of its assets to each of the Recipient Foundations will not result in the termination of Transferor Foundation's private foundation status, and will not result in Transferor Foundation being subject to the tax imposed by section 507(c) of the Code in the year of the distributions.

3. Pursuant to section 1.507-3(a)(1) of the Regulations, each Recipient Foundation will not be treated as a newly created organization.

4. Pursuant to section 1.507-3(a)(2)(i) of the Regulations, each of the Recipient Foundations will succeed to the aggregate tax benefits of Transferor Foundation in proportion to the net fair market value of the assets distributed to them.

5. Pursuant to section 1.507-3(a)(4) of the Regulations, each of the Recipient Foundations will be treated as having received the distributed assets subject to the proportionate amount of any liability Transferor Foundation may have incurred under Chapter 42 of the Code, to the extent not satisfied by Transferor Foundation.

6. The provisions of section 1.507-3(a)(8)(ii)(a) through (g) of the Regulations will apply to each of the Recipient Foundations with respect to the assets distributed to them from Transferor Foundation.

7. Assuming each of the Recipient Foundations and Transferor Foundation are effectively controlled, within the meaning of section 1.482-1(a)(3) of the Regulations, directly or indirectly, by the same persons, and because Transferor Foundation will have transferred approximately 20 percent (20%) of its assets to each of the Recipient Foundations, each Recipient Foundation will be treated under section 1.507-3(a)(9) of the Regulations as if they were Transferor Foundation for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code. Each Recipient Foundation will be treated as if they were Transferor Foundation in the proportion which the fair market value of the assets (less encumbrances) transferred to the respective Recipient Foundation bears to the fair market value of the assets (less encumbrances) of Transferor Foundation immediately before the transfer.

8. Following the distributions, Transferor Foundation will be liable for the tax imposed by section 4940 of the Code on assets held until the date of the distributions. After the distributions have occurred, each of the Recipient Foundations and Transferor Foundation will be liable for the tax imposed under section 4940 with respect to their respective shares of assets as of the date of the distributions.

9. The distribution of a portion of the assets of Transferor Foundation to a Recipient Foundation will not constitute an act of self-dealing under section 4941 of the Code.

10. Pursuant to section 1.507-3(a)(9)(i) of the Regulations and Revenue Ruling 78-387, each Recipient Foundation may reduce the amount of the Recipient Foundation's required distribution under section 4942 of the Code by the amount of Transferor Foundation's excess qualifying distribution carryover for prior years in proportion to the net fair market value of the assets distributed to it.

11. The distribution of a portion of the assets of Transferor Foundation to a Recipient Foundation will not constitute a jeopardizing investment within the meaning of section 4944 of the Code.

12. The distribution of a portion of the assets of Transferor Foundation to a Recipient Foundation will constitute a "grant" as described in section 4945(d)(4) of the Code, and thus, will not constitute a taxable expenditure within the meaning of section 4945 provided that Transferor Foundation exercises expenditures responsibility over the distributed assets, as set forth in section 53.4945-5(c)(2) of the Regulations, for the year in which the proposed distribution of assets takes place and for the two succeeding taxable years. Only if it is reasonably apparent to the Transferor Foundation that, before the end of such second succeeding taxable year, neither the principal, the income from the grant funds, nor any equipment purchased with the grant funds has been used for any purpose which would result in liability for tax under section 4945(d), the Transferor Foundation may then allow such reports to be discontinued after the second succeeding taxable year. Otherwise, the Transferor Foundation must continue to exercise expenditure responsibility until the grant funds are fully expended or the grant is terminated.

13. The distribution by Transferor Foundation of approximately 20 percent (20%) of its assets to each of the Recipient Foundations will neither affect the status of Transferor Foundation as an organization described in section 501(c)(3) of the Code, nor will it affect the status of any of the Recipient Foundations as organizations described in section 501(c)(3), or as private foundations described in section 509(a).

Law:

Section 507(a) of the Code states that, except as provided in section 507(b), an exempt organization which is a private foundation can terminate its private foundation status only if it notifies the Service of its intent to terminate, or if it commits acts or failures to act giving rise to tax under Chapter 42 and if it pays the termination tax imposed by section 507(c) or has the tax abated.

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 the adjustment, organization or reorganization, the transferee foundation shall not be treated as a newly created organization.

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

Chapter 42 of the Code imposes excise taxes on private foundations for net investment income under section 4940(a), acts of self-dealing under section 4941, undistributed income under section 4942(a), excess business holdings under section 4943(a), jeopardy investments under section 4944(a) and taxable expenditures under section 4945(a).

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

Section 4941 of the Code provides for the imposition of tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(E) of the Code 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 4944(a) of the Code imposes a tax on a private foundation if it invests any amount in a manner as to jeopardize the carrying out of any of its exempt purposes.

Section 4945(a) of the Code imposes a tax on the taxable expenditures of a private foundation.

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 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) of the Code 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) of the Code provides that the expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and 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.

Section 4946(a)(1) of the Code provides, in part, that the term "disqualified person" shall not include any organization, which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Section 1.482-1A(a)(3) of the Federal Income Tax Regulations (hereafter "Regulations") defines control for purposes of Section 482 of the Code as any kind of control, direct or indirect, whether legally enforceable or not, and however exercisable or exercised.

Section 1.507-1(b)(6) of the Regulations provides that a transfer of all or part of a private foundation's assets to one or more private foundations pursuant to a transfer described in section 507(b)(2) of the Code and section 1.507-3(c), such transferor foundation will not be deemed to 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 the assets of a private foundation nor a significant disposition of assets by a private foundation shall be deemed to result in a termination of the transferor private foundation under section 507(a) of the Code unless the transferor private foundation elects to terminate pursuant to sections 507(a)(1) or 507(a)(2).

Section 1.507-3(c)(1) of the Regulations provides that for purposes of section 507(b)(2) of the Code, 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 the dispositions to one or more private foundations for the taxable year, is twenty-five percent (25%) or more of the fair market value of the net assets of the foundation at the beginning of the taxable year.

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 organization.

Section 1.507-3(a)(2)(i) of the Regulations provides that a transferee organization to which section 507(b)(2) of the Code applies shall succeed to the aggregate tax benefit of the transferor organization in an amount equal to the amount of the aggregate tax benefit multiplied by a fraction of the numerator of which is the fair market value of the assets (less encumbrances) transferred to such transferee and the denominator of which is the fair market of the assets of the transferor (less encumbrances) immediately before the transfer. Fair market value shall be determined as of the time of

the transfer.

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.

Section 1.507-3(a)(8)(ii) of the Regulations provides that the provisions enumerated in subparagraphs (a) through (g) of this subdivision shall apply to the transferee private foundation with respect to the assets transferred to the same extent and in the same manner that they would have applied to the transferor private 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 or part of its net assets to one or more private foundations that are effectively controlled (within the meaning of section 1.482-1(a)(3)), directly or indirectly by the same persons who effectively control the transferor private foundation, for purposes of Chapter 42 and sections 507-509 of the Code, such a transferee private foundation shall be treated as if it were the transferor in the proportion which the fair market value of the assets (less encumbrances) transferred to the transferee foundation bears to the fair market value of the assets (less encumbrances) of the transferor foundation immediately before the transfer.

Section 1.507-3(d) of the Regulations provides that unless a private foundation gives notice pursuant to 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 under section 507(a)(1).

Section 1.507-4(b) of the Regulations provides that private foundations that make transfers described in section 507(b)(1)(A) or (2) of the Code are not subject to the termination tax imposed under section 507(c) with respect to such transfers.

Section 53.4945-5(c)(2) of the Foundation and Similar Excise Tax Regulations (hereafter "Foundation Regulations") provides that if a private foundation makes a grant described in section 4945(d)(4) of the Code 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 53.4946-1(a)(8) of the Foundation Regulations provides that for purposes of section 4941 of the Code, the term "disqualified person" does not include any organization described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Rev. Rul. 78-387, 1978-2 C.B. 270, holds that when a transferee foundation is treated as the transferor under section 1.507-3(a)(9) of the Regulations, the transferee is entitled to reduce its

distributable amount under section 4942 of the Code by the amount of the transferor's excess qualifying distribution carryover.

Analysis:

Ruling 1:

The issue of whether Transferor Foundation's disposition to Recipient Foundations is a "significant disposition" of assets and thus not subject to the termination tax under section 507(c) of the Code, is governed by section 507(b)(2). A section 507(b)(2) transfer includes a transfer by a private foundation of all or part of its assets to another private foundation "pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization..." See section 507(b)(2). "For purposes of section 507(b)(2), the terms other adjustment, organization, or reorganization shall include any partial liquidation or any other significant dispositions..." See section 1.507-3(c)(1) of the Regulations. The term "significant dispositions" means a distribution where the aggregate value transferred is "25 percent or more of the fair market value of the net assets of the foundation..." See section 1.507-3(c)(2). Here, the Recipient Foundations and Transferor Foundation are all private foundations. Through the proposed transaction, Transferor Foundation intends to transfer to each of the four Recipient Foundations approximately 20 percent (20%) of the fair market value of its net assets. As the aggregate amount expected to be transferred exceeds twenty-five percent (25%), the distribution by Transferor Foundation qualifies as a transfer under section 507(b)(2).

Ruling 2:

Regarding the termination of Transferor Foundation's private foundation status, section 507(a) of the Code provides that an exempt organization which is a private foundation can terminate its private foundation status only if it notifies the Service of its intent to terminate or if it commits acts or failures to act giving rise to tax under Chapter 42, and if it pays the termination tax imposed by section 507(c) or has the tax abated. As Transferor Foundation has represented that it has neither notified the Service of any intent to terminate its private foundation status, nor has it committed acts or failures to act giving rise to a tax under Chapter 42, its disposition of assets under section 507(b)(2) does not terminate its private foundation status and does not result in a termination tax imposed by section 507(c).

Ruling 3:

Under section 507(b)(2) of the Code and section 1.507-3(a)(1) of the Regulations, a transfer of assets by any private foundation to another private foundation pursuant to a section 507(b)(2) disposition will not result in the transferee foundation being treated as a newly created organization. Because the Transferor Foundation and Recipient Foundations are all private foundations, and the transfer qualifies under section 507(b)(2), Recipient Foundations will not be treated as newly created organizations.

Ruling 4:

For Recipient Foundations to succeed to the aggregate tax benefits of Transferor Foundation in the property transferred, section 1.507-3(a)(2) of the Regulations require that the transferees are all "effectively controlled" (within the meaning of section 1.482-1(a)(3) of the Regulations, [now effectively retitled section1.482-1A(a)(3)]), directly or indirectly by the same person or persons who effectively

control the transferor organization. It is assumed for purposes of this Ruling that Recipient Foundations are all "effectively controlled" under section 1.482-1A(a)(3) by the same persons who "effectively control" Transferor Foundation. Therefore, after the transfer of assets by Transferor Foundation to the Recipient Foundations, the Recipient Foundations will succeed to the aggregate tax benefits of Transferor Foundation in proportion to the net fair market value of the assets distributed under section 1.507-3(a)(2).

Ruling 5:

Under section 1.507-3(a)(4) of the Regulations, the recipient of a transfer under section 507(b)(2) of the Code, will be treated as receiving the transferred assets subject to any outstanding tax liability incurred by the transferor under Chapter 42, in proportion to the assets received and to the extent the liability had not been previously satisfied. Here, Recipient Foundations are the recipients of a transfer under section 507(b)(2). Therefore, Recipient Foundations shall be treated as receiving the assets of Transferor Foundation subject to any outstanding liability not previously satisfied by Transferor Foundation in proportion to the assets received.

Ruling 6:

Pursuant to section 1.507-3(a)(8)(ii)(a) through (g) of the Regulations, each transferee of a section 507(b)(2) of the Code transfer will succeed to the property attributes enumerated under subsections (a) through (g) therein, with respect to the assets transferred, and to the same extent and in the same manner that would have applied to the transferor had the transfer not occurred.

As enumerated under section 1.507(a)(8)(ii)(a) of the Regulations, and as referenced to section 4940(c)(4)(B) of the Code, transferees will succeed to the basis of the property transferred by transferor to the same extent and in the same manner that would have applied to the transferor had the transfer not occurred. As the transfer of assets from Transferor Foundation to Recipient Foundations qualifies under section 507(b)(2), Recipient Foundations succeed to the basis, under section 4940(c)(4)(B), of the property transferred to the same extend as if the property was still held by Transferor Foundation.

Under section 1.507(a)(8)(ii)(b) of the Regulations, and as referenced to section 4942(f)(4) of the Code, transferees will succeed to the attributes related to the transferred property with respect to distributions of income, to the same extent and in the same manner that would have applied to the transferor had the transfer not occurred. As the transfer of assets from Transferor Foundation to Recipient Foundations qualifies as a section 507(b)(2) transfer, Recipient Foundations succeed to the attributes related to the transferred property, with respect to distributions of income, as if the property was still held by Transferor Foundation.

Under section 1.507(a)(8)(ii)(c) of the Regulations, and as referenced to section 101(l)(2) of the Tax Reform Act of 1969, as amended by sections 1301 and 1309 of the Tax Reform Act of 1976, with respect to the provisions of section 4941 of the Code, a qualifying transfer under section 507(b)(2) does not constitute a self-dealing transaction subject to tax under section 4941 because the transfer is not between "disqualified persons." Under section 53.4946(a)(8) of the Foundation Regulations, only for purposes of section 4941, the term "disqualified persons" shall not include any organization described in section 501(c)(3) (other than an organization described in section 509(a)(4)). Private foundations are described under section 501(c)(3) and are therefore not disqualified persons for section 4941 purpose. Therefore, because Transferor Foundation and Recipient Foundations are private foundations in a

qualifying 507(b)(2) transfer, the transfer does not constitute a self-dealing transaction subject to tax under section 4941(a)(1).

Under section 1.507(a)(8)(ii)(d) of the Regulations, and as referenced to section 101(l)(3)(A) of the Tax Reform Act of 1969, with respect to the provisions of section 4942 of the Code, transferees will succeed to the attributes related to the transferred property under section 4942 to the same extent and in the same manner that would have applied to the transferor had the transfer not occurred, provided that the transferor qualified for the application of this section immediately before the transfer, and at least eight-five percent (85%) of the fair market value of the net assets of the transferee, immediately after the transfer, were received pursuant to the transfer. Representations have been made by Transferor Foundation to the affect of its qualification for the application of this section, and representations have been made by Recipient Foundations that at least eight-five percent (85%) of their net assets were received via the transfer. Therefore, Recipient Foundations will succeed to the attributes related to the transferred property under section 4942, to the same extent and in the same manner that would have applied to Transferor Foundation had the transfer not occurred.

Under section 1.507(a)(8)(ii)(e) of the Regulations, and as referenced to section 101(l)(3)(B) through (E) of the Tax Reform Act of 1969, with respect to the provisions of section 4942 of the Code, the distribution from one private foundation to another under a section 507(b) transaction will be deemed a qualifying distribution pursuant to section 4942. As the transference of assets between Transferor Foundation and Recipient Foundations qualifies as a section 507(b) transaction, the transaction is a deemed qualifying distribution under section 4942.

Under section 1.507(a)(8)(ii)(f) of the Regulations, and as referenced to section 101(l)(5) of the Tax Reform Act of 1969, with respect to the provisions of section 4945 of the Code, the distribution from one private foundation to another under a section 507(b) transaction will not be deemed a taxable expenditure pursuant to section 4945. As the transference of assets between Transferor Foundation and Recipient Foundations qualifies as a section 507(b) transaction, the transaction is not a taxable expenditure under section 4945, with section 4945 applying to the Recipient Foundations, with respect to the assets transferred, to the same extent and in the same manner as applied to the Transferor Foundation.

Under section 1.507(a)(8)(ii)(g) of the Regulations, and as referenced to section 101(l)(6) of the Tax Reform Act of 1969, with respect to the provisions of section 508(e) of the Code, the distribution from one private foundation to another under a section 507(b) transference will subject the transferee to the same requirements of section 508(e). Therefore, Recipient Foundations are subject to the same requirements of section 508(e) as it would apply to Transferor Foundation as if the transfer had not occurred.

Ruling 7:

The issue of whether Recipient Foundations will also be treated as if they were Transferor Foundation with respect to Chapter 42 and sections 507 through 509 of the Code, in proportion to the assets each foundation receives, is governed by section 1.507-3(a)(9)(i) of the Regulations. Under section 1.507-3(a)(9)(i), if a private foundation transfers all or part of its net assets to one or more private foundations that are effectively controlled (within the meaning of section 1.482-1(a)(3) [now effectively retitled section 1.482-1A(a)(3)], directly or indirectly by the same persons who effectively control the transferor private foundation, for purposes of Chapter 42 and sections 507-509, such a transferee private foundation shall be treated as if it were the transferor in proportion to which the fair

market value of the assets (less encumbrances) transferred bears to the fair market value of the assets (less encumbrances) of the transferor immediately before the transfer. Assuming each Recipient Foundation is effectively controlled by Transferor Foundation, because Transferor Foundation made a section 507(b)(2) transfer of 20 percent (20%) of its net assets to each Recipient Foundation, each Recipient Foundation will be treated as if they were Transferor Foundation for purposes of Chapter 42 and sections 507 through 509 in proportion to the assets transferred.

Ruling 8:

The degree of tax liability imposed upon Recipient Foundations and Transferor Foundation, in relation to the transferred assets held by each after the transference, is governed under section 1.507-3(a) of the Regulations and section 4940 of the Code. Because the Recipient Foundations will be treated as if they were Transferor Foundation in respect to Chapter 42 and under section 1.507-3(a)(9)(i) described above, the Recipient Foundations will be liable for the tax imposed under section 4940 in proportion to their share of assets received as of the date of the section 507(b)(2) transfer.

Ruling 9:

Whether the distribution of a portion of the assets of Transferor Foundation to Recipient Foundations in a section 507(b) of the Code transaction will constitute an act of self-dealing, is governed under section 1.507-3(a) of the Regulations and section 4941. The excise tax on self-dealing is imposed where a private foundation and a disqualified person engage in prohibited transactions, such as the sale or exchange of property. Under section 4946 and section 53.4946-1(a)(8) of the Foundation Regulations, a "disqualified person" does not include an organization under section 501(c)(3). Therefore, the transfer of assets by Transferor Foundation to the Recipient Foundations is not an act of self-dealing because each foundation has received a determination letter stating that it is a tax-exempt organization under section 501(c)(3).

Ruling 10:

Under section 1.507-3(a)(9)(i) of the Regulations and Rev. Rul. 78-387, 1978-2 C.B. 270, a transferee in a section 507(b) of the Code transaction may reduce their minimum distribution requirements under section 4942 by any carryover of excess qualifying distributions of the transferor to the extent that the transferee is treated as transferor under section 1.507-3(a)(9). Because the transfer of assets herein from Transferor Foundation to Recipient Foundations qualifies as a section 507(b) transaction and Recipient Foundations are treated as Transferor Foundation under section 1.507-3(a)(9) in proportion to the assets transferred, each Recipient Foundation may reduce their minimum distribution requirements under section 4942 by any carryover of excess qualifying distributions of the transferor to the extent of the assets received.

Ruling 11:

Section 4944 of the Code imposes a tax on investments by private foundations which jeopardize their charitable purposes. Under Section 4944(c), a transfer pursuant to section 507(b)(2) is not considered an investment for purposes of section 4944 if the transfer of assets was made for the purpose of accomplishing a charitable purpose. Because Transferor Foundation will distribute approximately 20 percent (20%) of its assets to each of the four Recipient Foundations with the goal of enabling each Recipient Foundation to pursue separate charitable goals, the transfer will not result in

the imposition of tax for a jeopardy investment under section 4944.

Ruling 12:

The transfer of assets by Transferor Foundation to the Recipient Foundations does not result in the imposition of tax for a taxable expenditure under section 4945 of the Code, because Transferor Foundation will exercise its capital endowment grant expenditure responsibility required by section 4945(h) and section 53.4945-5(c)(2) of the Foundation Regulations.

Ruling 13:

The distribution by Transferor Foundation of approximately 20 percent (20%) of its assets to each of the Recipient Foundations will not affect the status of Transferor Foundation and the Recipient Foundations as tax-exempt organizations described in section 501(c)(3) of the Code and as private foundations described in section 509(a). The tax-exempt status of these foundations is not adversely affected because the transfer qualifies under section 507(b)(2) and is made to a section 501(c)(3) organization.

Accordingly, based on the information submitted in your ruling request, we rule as follows:

1. The distribution by Transferor Foundation of approximately 20 percent (20%) of its assets to each of the Recipient Foundations will be a sufficient disposition of assets to one or more private foundations as described in section 1.507-3(c) of the Regulations made pursuant to an adjustment or reorganization, and will be a transfer of assets by a private foundation to other private foundations described in section 507(b)(2) of the Code.

2. The distribution by Transferor Foundation of approximately 20 percent (20%) of its assets to each of the Recipient Foundations will not result in the termination of Transferor Foundation's private foundation status, and will not result in Transferor Foundation being subject to the tax imposed by section 507(c) of the Code in the year of the distributions.

3. Pursuant to section 1.507-3(a)(1) of the Regulations, each Recipient Foundation will not be treated as a newly created organization.

4. Pursuant to section 1.507-3(a)(2)(i) of the Regulations, each of the Recipient Foundations will succeed to the aggregate tax benefits of Transferor Foundation in proportion to the net fair market value of the assets distributed to them.

5. Pursuant to section 1.507-3(a)(4) of the Regulations, each of the Recipient Foundations will be treated as having received the distributed assets subject to the proportionate amount of any liability Transferor Foundation may have incurred under Chapter 42 of the Code, to the extent not satisfied by Transferor Foundation.

6. The provisions of section 1.507-3(a)(8)(ii)(a) through (g) of the Regulations will apply to each of the Recipient Foundations with respect to the assets distributed to them from Transferor Foundation.

7. Assuming each of the Recipient Foundations and Transferor Foundation are effectively controlled, within the meaning of section 1.482-1(a)(3) of the Regulations, directly or indirectly, by the same persons, and because Transferor Foundation will have transferred approximately 20 percent (20%) of its assets to each of the Recipient Foundations, each Recipient Foundation will be treated under section 1.507-3(a)(9) of the Regulations as if they were Transferor Foundation for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code. Each Recipient Foundation will be treated as if they were Transferor Foundation in the proportion which the fair market value of the assets (less encumbrances) transferred to the respective Recipient Foundation bears to the fair market value of the assets (less encumbrances) of Transferor Foundation immediately before the transfer.

8. Following the distributions, Transferor Foundation will be liable for the tax imposed by section 4940 of the Code on assets held until the date of the distributions. After the distributions have occurred, each of the Recipient Foundations and Transferor Foundation will be liable for the tax imposed under section 4940 with respect to their respective shares of assets as of the date of the distributions.

9. The distribution of a portion of the assets of Transferor Foundation to a Recipient Foundation will not constitute an act of self-dealing under section 4941 of the Code.

10. Pursuant to section 1.507-3(a)(9)(i) of the Regulations and Revenue Ruling 78-387, each Recipient Foundation may reduce the amount of the Recipient Foundation's required distribution under section 4942 of the Code by the amount of Transferor Foundation's excess qualifying distribution carryover for prior years in proportion to the net fair market value of the assets distributed to it.

11. The distribution of a portion of the assets of Transferor Foundation to a Recipient Foundation will not constitute a jeopardizing investment within the meaning of section 4944 of the Code.

12. The distribution of a portion of the assets of Transferor Foundation to a Recipient Foundation will constitute a "grant" as described in section 4945(d)(4) of the Code, and thus, will not constitute a taxable expenditure within the meaning of section 4945 provided that Transferor Foundation exercises expenditures responsibility over the distributed assets, as set forth in section 53.4945-5(c)(2) of the Regulations, for the year in which the proposed distribution of assets takes place and for the two succeeding taxable years. Only if it is reasonably apparent to the Transferor Foundation that, before the end of such second succeeding taxable year, neither the principal, the income from the grant funds, nor any equipment purchased with the grant funds has been used for any purpose which would result in liability for tax under section 4945(d), the Transferor Foundation may then allow such reports to be discontinued after the second succeeding taxable year. Otherwise, the Transferor Foundation must continue to exercise expenditure responsibility until the grant funds are fully expended or the grant is terminated.

13. The distribution by Transferor Foundation of approximately 20 percent (20%) of its assets to each of the Recipient Foundations will neither affect the status of Transferor Foundation as an organization described in section 501(c)(3) of the Code, nor will it affect the status of any of the Recipient Foundations as organizations described in section 501(c)(3), or as private foundations described in section 509(a).

For purposes of this Ruling, we are presuming that Recipient Foundations are effectively controlled under section 482 of the Code. All parts of this Ruling that rely upon Recipient Foundations being effectively controlled will no longer apply should it be determined that Recipient Foundations are not all effectively controlled under section 1.482-1A(a)(3) of the Regulations by the same persons that "effectively control" Transferor Foundation.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose.* A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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 by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. 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. Because it could help resolved questions concerning your federal income tax status, this ruling should be kept 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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

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

Enclosure
Notice 437