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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200843040**
Release Date: 10/24/2008

Date: July 30, 2008

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

SE:T:EO:RA:T:3

UIL: 507.00-00
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4943.00-00
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4945.00-00

Legend:

X =
Y =
Date 1 =

Dear :

We have considered your ruling request dated September 6, 2007, and supplemental correspondences, concerning the federal income and excise tax consequences under sections 501(c)(3), 507, 508, 509, 4940, 4941, 4942, 4943, 4944, and 4945 of the Internal Revenue Code of 1986, as amended (hereafter "Code"), related to a proposed merger in the manner and for the purposes described below. You are hereafter referred to as "X".

Facts:

Y is an organization described in sections 501(c)(3) and 509(a) of the Code and recognized as a private operating foundation. Y's primary charitable purpose is to provide, through its operating unit, chaplains for the religious and spiritual needs of (i) patients (and their families) of hospitals and nursing homes; and of (ii) policemen, law enforcement officials, firemen, emergency service personnel and employees of governmental agencies and their families. Y's charitable purpose also includes providing grants for health care and medical related purposes. Y's sole member is X. X is an organization described in sections 501(c)(3) and 509(a) of the Code and recognized as a private non-operating foundation. X's primary purpose is to engage in charitable grant-making activities. You represent that the same fourteen individuals who comprise Y's Board of Trustees also comprise the Board of Trustees of X. Furthermore, you represent that the same persons who serve as Y's officers also serve in the same positions as X's officers. In order for X and Y to simplify their governance structure

and to reduce administrative expenses, they propose through a Joint Merger Agreement to engage in a statutory merger of X into Y pursuant to local state law. Y will be the surviving organization, and after the merger, Y will change its name to X. Y represents that after the merger, Y will continue to engage in the charitable activities for which Y's tax-exempt status was granted and Y will also undertake the charitable grant-making activities for which X's tax-exempt status was granted. Furthermore, X and Y each report that neither organization has excess business holdings before the proposed merger.

Y proposes to amend and restate its Articles of Incorporation and Bylaws to reflect the following changes as a result of the merger:

1. Y and X will become one corporation, which shall be Y, and which shall survive the merger;
2. X's separate existence shall cease;
3. Y shall possess all of its own and all of X's rights, privileges and franchises;
4. All of X's property and assets shall be transferred to and vest in Y; and
5. Y shall be responsible for all obligations and liabilities of X, including X's obligation to exercise expenditure responsibility under section 4945(h) of the Code for grants made by X prior to the merger.

Y states that after the consummation of the merger of X into Y, Y will convert from a private operating foundation to a private non-operating foundation for its fiscal year ending on Date 1.

You have requested the following rulings:

1. The merger and resulting transfer of X's assets and liabilities to Y will not adversely affect the section 501(c)(3) of the Code tax-exempt status of either X or Y.

2. From and after the effective date of the merger and the amendment and restatement of Y's Articles of Incorporation, Y will continue to exist as an organization that is exempt from taxation under section 501(c)(3) of the Code.

3. The merger of X into Y and the resulting transfer of X's assets and liabilities to Y: (a) will not result in termination of X's status under section 507 of the Code; (b) will qualify as a transfer under section 507(b)(2); and (c) will not cause Y to be treated as a newly created organization.

4. X and Y are controlled by the same persons and for purposes of the excise taxes imposed in sections 507-509 of the Code, Y will be treated as if it is X.

5. No tax will be imposed under section 507(c) of the Code because the Internal Revenue Service will not be notified of the termination of X's status as a private foundation prior to the transfer of all of X's assets and liabilities to Y pursuant to the Joint Merger Agreement.

6. If X (through Y as the surviving entity under the applicable local state nonprofit corporation law) does give notice to the Manager, Exempt Organization Determinations (TE/GE) of its intent to terminate its status as a private foundation, the tax under section 507(c) of the Code applies on the date that the notice is given and if X (through Y as the

surviving entity under the applicable local state nonprofit corporation law) provides such notice at least one day after it transfers its assets and liabilities to Y, the tax imposed by section 501(c) of the Code will be zero.

7. Y will be responsible for any of X's liabilities under Chapter 42 to the extent that X does not satisfy such liabilities.

8. The transfer of assets and liabilities by X to Y pursuant to the Joint Merger Agreement will not give rise to any gross investment income or capital gain net income within the meaning of section 4940 of the Code.

9. The transfer of assets and liabilities by X to Y pursuant to the Joint Merger Agreement will not constitute self-dealing under section 4941 of the Code and such transfers will not subject X, Y, X's Board of Trustees and Officers or Y's Board of Trustees and Officers to tax under section 4941.

10. Because Y will be treated as if it were X for purposes of section 4942 of the Code, X will not be required to meet the qualifying distribution requirements of section 4942 for the taxable year of the merger, provided that Y's distributable amount for the year of the merger is increased by X's distributable amount for the year of the merger and X's qualifying distributions made during the taxable year of the merger, if any, will be carried over to Y and be used by Y to meet its minimum distribution requirements under section 4942 for the year.

11. The transfer of assets and liabilities of X to Y pursuant to the Joint Merger Agreement will not result in the application of section 4943 of the Code with regard to excess business holdings because none of the assets will place Y in the position of having excess holdings.

12. The transfer of assets and liabilities by X to Y pursuant to the Joint Merger Agreement will not constitute a jeopardizing investment within the meaning of section 4944 of the Code.

13. The transfer of assets and liabilities by X to Y pursuant to the Joint Merger Agreement will not constitute a taxable expenditure within the meaning of section 4945 of the Code and X will not be required to exercise expenditure responsibility with respect to the assets transferred to Y, and Y as successor to X in the merger, will be required to exercise expenditure responsibility with respect to any expenditure responsibility grants of X.

14. The legal, accounting and other expenses incurred by X and Y in connection with this Ruling Request and with effectuating the proposed transfer will be considered qualifying distributions under section 4942 of the Code and will not constitute taxable expenditures pursuant to section 4945.

Law:

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations that are organized and operated exclusively for charitable and/or other exempt purposes described within the section.

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.

Section 507(e) of the Code provides that for purposes of section 507(c), the value of the net assets shall be determined at whichever time such value is higher: (1) the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation, or (2) the date on which it ceases to be a private foundation.

Section 509(a) of the Code provides that certain organizations exempt from federal income tax under section 501(c)(3) are further classified as private foundations so that they are thus subject to the private foundation provisions of Chapter 42 of the Code.

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), jeopardizing 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 4940(c)(1) of the Code defines "net investment income" as the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the deductions allowed by section 4940(c)(3). Except to the extent inconsistent with the provisions of this section, net investment income shall be determined under the principles of subtitle A.

Section 4940(c)(2) of the Code defines "gross investment income" as the gross amount of income from interest, dividends, rents, payments with respect to securities loans (as defined in section 512(a) (5)), and royalties, but not including any such income to the extent included in computing the tax imposed by section 511. Such term shall also include income from sources similar to those in the preceding sentence.

Section 4941(a) 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 4942 of the Code imposes on the undistributed income 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), a tax equal to 30 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year.

Section 4942(d) of the Code defines "distributable amount", with respect to any foundation for any taxable year, as an amount equal to (1) the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by (2) the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

Section 4942(g)(1) of the Code defines "qualifying distributions" as (A) 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), 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 4942(g)(3) of the Code defines "qualifying distributions" to include a contribution to a section 501(c)(3) organization described in paragraph (1)(A)(i) or (ii) of this section 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 (within the meaning of paragraph (1) or (2), without regard to this paragraph) which is treated under subsection (h) as a distribution out of corpus (or would be so treated if such section 501(c)(3) organization were a private foundation which is not an operating foundation), 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 4942(i) of the Code permits excess qualifying distributions paid out by a private foundation to be carried forward.

Section 4943(a) of the Code imposes on the excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period a tax equal to 10 percent of the value of such holdings.

Section 4943(c) of the Code defines "excess business holdings" to mean, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be 20 percent.

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 4944(c) of the Code provides that an exception to the jeopardizing investment

rule are any transfers, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property, shall not be considered as investments which jeopardize the carrying out of 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 section 4945(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 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(a) of the regulations provides that except as provided in section 1.507-2, the status of any organization as a private foundation shall be terminated only if: (1) Such organization notifies the district director of its intent to accomplish such termination, or (2) (i) 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 (ii) The Commissioner notifies such organization that, by reason of subdivision (i) of this subparagraph, such organization is liable for the tax imposed by section 507(c) of the Code, and either such organization pays the tax imposed by section 507(c) (or any portion not abated under section 507(g)) or the entire amount of such tax is abated under section 507(g).

Section 1.507-1(b)(1) of the regulations provides that in order for a private foundation to terminate its private foundation status under section 1.507-1(a)(1), an organization must submit a statement to the district director of its intent to terminate its private foundation status under section 507(a)(1) of the Code. Such statement must set forth in detail the computation and amount of tax imposed under section 507(c). Unless the organization requests abatement of such tax pursuant to section 507(g), full payment of such tax must be made at the time the statement is filed under section 507(a)(1). An organization may request the abatement of all of the tax imposed under section 507(c), or may pay any part thereof and request abatement of

the unpaid portion of the amount of tax assessed. If the organization requests abatement of the tax imposed under section 507(c) and such request is denied, the organization must pay such tax in full upon notification by the Internal Revenue Service that such tax will not be abated. For purposes of subtitle F of the Code, the statement described in this subparagraph, once filed, shall be treated as a return.

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(a)(1) of the regulations provides that in 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 organization shall not be treated as a newly created organization. Thus, in the case of a significant disposition of assets to one or more private foundations within the meaning of 1.507-3(c), 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 which are described in subparagraphs (2), (3), and (4) of this section.

Section 1.507-3(a)(2)(i) of the regulations provides that a transferee organization to which this paragraph applies shall succeed to the aggregate tax benefit of the transferor organization in an amount determined as follows: Such amount shall be an amount equal to the amount of such aggregate tax benefit multiplied by a fraction 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 value 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)(4) of the regulations provides that if a private foundation incurs liability for one or more of the taxes imposed under Chapter 42 (or any penalty resulting there from) prior to, or as a result of, making a transfer of assets described in section 507(b)(2) of the Code to one or more private foundations, in any case where transferee liability applies each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

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) of the Code not been effected.

Section 1.507-3(a)(9)(i) of the regulations provides if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled (within the meaning of section 1.482-1A(a)(3)), directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of Chapter 42 (section 4940 of the Code et seq.) and part II of subchapter F of chapter 1 of the Code (sections 507 through 509) such a transferee private foundation shall be treated as if it were the transferor. However, where proportionality is appropriate, 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 such transferee bears to the fair market value of the assets (less encumbrances) of the transferor immediately before the transfer.

Section 1.507-3(c)(1) of the regulations provides that a section 507(b)(2) of the Code transfer is a transfer of assets by a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization. This shall include any organization or reorganization described in subchapter C of Chapter 1. For purposes of section 507(b)(2), 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(d) of the regulations provides that unless a private foundation voluntarily 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 1.507-3(d) provides that unless a private foundation gives notice pursuant to section 507(a)(1), 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 53.4940-1(f)(1) Foundation and Similar Excise Tax Regulations (hereafter "foundation regulations") provides that in determining capital gain net income (net capital gain for taxable years beginning before January 1, 1977) for purposes of the tax imposed by section 4940 of the Code, there shall be taken into account only capital gains and losses from the sale or other disposition of property held by a private foundation for investment purposes (other than program-related investments, as defined in section 4944(c)), and property used for the production of income included in computing the tax imposed by section 511 except to the extent gain or loss from the sale or other disposition of such property is taken into account for purposes of such tax. For taxable years beginning after December 31, 1972, property shall be

treated as held for investment purposes even though such property is disposed of by the foundation immediately upon its receipt, if it is property of a type which generally produces interest, dividends, rents, royalties, or capital gains through appreciation (for example, rental real estate, stock, bonds, mineral interests, mortgages, and securities). Under this subparagraph, gains and losses from the sale or other disposition of property used for the exempt purposes of the private foundation are excluded.

Section 53.4942(a)-2(c)(3) of the foundation regulations defines assets used (or held for use) in carrying out the exempt purpose as an asset that is "used (or held for use) directly in carrying out the foundation's exempt purpose" but only if the asset is actually used by the foundation in the carrying out of the charitable, educational, or other similar purpose which gives rise to the exempt status of the foundation, or if the foundation owns the asset and establishes to the satisfaction of the Commissioner that its immediate use for such exempt purpose is not practical (based on the facts and circumstances of the particular case) and that definite plans exist to commence such use within a reasonable period of time. Consequently, assets which are held for the production of income or for investment (for example, stocks, bonds, interest-bearing notes, endowment funds, or, generally, leased real estate) are not being used (or held for use) directly in carrying out the foundation's exempt purpose, even though the income from such assets is used to carry out such exempt purpose. Whether an asset is held for the production of income or for investment rather than used (or held for use) directly by the foundation to carry out its exempt purpose is a question of fact.

Section 53.4942(a)-3(e)(1) of the foundation regulations provide that in any taxable year for which an organization is subject to the initial excise tax imposed by section 4942(a) of the Code there is created an excess of qualifying distributions (as determined under section 53.4942(a)-3(e)(2)), such excess may be used to reduce distributable amounts in any taxable year of the adjustment period (as defined in subparagraph (3) of this paragraph). For purposes of section 4942, including paragraph (d) of this section, the distributable amount for a taxable year in the adjustment period shall be reduced to the extent of the lesser of (i) the excess of qualifying distributions made in prior taxable years to which such adjustment period applies or (ii) the remaining undistributed income at the close of such taxable year after applying any qualifying distributions made in such taxable year to the distributable amount for such taxable year (determined without regard to this paragraph). If during any taxable year of the adjustment period there is created another excess of qualifying distributions, such excess shall not be taken into account until any earlier excess of qualifying distributions has been completely applied against distributable amounts during its adjustment period.

Section 53.4943-1 of the foundation regulations provides that under section 4943 of the Code, the combined holdings of a private foundation and all disqualified persons (as defined in section 4946(a)) in any corporation conducting a business which is not substantially related (aside from the need of the foundation for income or funds or the use it makes of the profits derived) to the exempt purposes of the foundation are limited to 20 percent of the voting stock in such corporation. In addition, the combined holdings of a private foundation and all disqualified persons in any unincorporated business (other than a sole proprietorship) which is not substantially related (aside from the need of the foundation for income or funds or the use it makes of the profits derived) to the exempt purposes of such foundation are limited to 20 percent of the beneficial or profits interest in such business. In the case of a sole proprietorship which is not substantially related (within the meaning of the preceding sentence), section 4943 provides that a private foundation shall have no permitted holdings. These general provisions are subject to a number of exceptions and special provisions which will be described in following

sections.

Section 53.4945-5(c)(2) of the 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 53.4945-6(b)(2) of the foundation regulations provides that any expenditures for unreasonable administrative expenses, including compensation, consultant fees, and other fees for services rendered, will ordinarily be taxable expenditures under section 4945(d)(5) of the Code unless the foundation can demonstrate that such expenses were paid or incurred in the good faith belief that they were reasonable and that the payment or incurrence of such expenses in such amounts was consistent with ordinary business care and prudence. The determination whether an expenditure is unreasonable shall depend upon the facts and circumstances of the particular case.

Section 53.4946-1(a)(8) of the foundation regulations provides that for purposes of section 4941 of the Code, only 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)).

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.

Rev. Rul. 2002-28, 2002-1 C.B. 941, holds that the transfer from one foundation to another foundation pursuant to a section 507(b)(2) of the Code transfer does not constitute a realizable event for purposes of determining net investment income under section 4940. It also holds that because a transferor private foundation transferred all of its assets to a private foundation effectively controlled by the same persons that effectively control the transferor, the transferee foundation is treated as though it were the transferor for purposes of section 4943 and 4946.

Analysis:

Ruling 1:

The issue is whether the proposed merger of X's assets and liabilities into Y will adversely affect either X's or Y's tax-exempt status under section 501(c)(3) of the Code.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations that are organized and operated exclusively for charitable and/or other

exempt purposes described within the section.

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 subsequently pays the termination tax imposed by section 507(c) or has the tax abated. A transfer of assets from one private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization is considered a section 507(b)(2) transfer. A section 507(b)(2) transfer will neither terminate the transferor's private foundation status nor will it terminate the transferee's private foundation status. See sections 1.507-1(b)(7) and 1.507-3(a)(1) of the regulations.

As described fully in the facts section, X and Y propose to engage in a statutory merger pursuant to local state law of X's assets and liabilities into Y. Both X and Y are organizations described in sections 501(c)(3) and 509(a) of the Code and recognized as private foundations. The proposed merger of X into Y qualifies as a section 507(b)(2) transfer because it is a transfer from one private foundation to another private foundation pursuant to a "liquidation, merger, redemption..." See section 507(b)(2) and section 1.507-3(c)(1) of the regulations. As the merger is a section 507(b)(2) transfer, neither X's nor Y's private foundation status will be terminated as a result of the merger. See sections 1.507-1(b)(7) and 1.507-3(a)(1). Rather, to terminate either X's or Y's tax-exempt status as private foundations, the terminating party must either notify the Service of its intent to terminate or it must commits acts or failures to act resulting in excise tax liability under Chapter 42. See section 507(a).

Y represents that after the merger Y will continue engaging in the same charitable activities for which its tax-exempt status under section 501(c)(3) of the Code was granted. Y also represents that it will take over the charitable grant-making activities formerly conducted by X. Furthermore, Y represents that neither it nor X have notified the Service of any intent to terminate private foundation status or committed acts or failures to act giving rise to a tax under Chapter 42. Therefore, the resulting merger of X's assets and liabilities into Y will not adversely affect either X's or Y's tax-exempt status as private foundations under sections 501(c)(3) and 509(a).

Ruling 2:

The issue is whether Y will continue to exist as an organization that is exempt from taxation under sections 501(c)(3) and 509(a) of the Code after the effective date of the merger and the amendment and restatement of its Articles of Incorporation.

Prior to the merger, X has been recognized as a tax-exempt private non-operating foundation under sections 501(c)(3) and 509(a) of the Code. Prior to the merger, Y has been recognized as a tax-exempt private operating foundation under sections 501(c)(3) and 509(a). As stated fully in Ruling 1, the proposed merger of X into Y qualifies as a section 507(b)(2) transfer. Absent either notifying the Service of any intent to terminate private foundation status, or committing acts or failures to act giving rise to an excise tax under Chapter 42, a section 507(b)(2) transfer will not result in the termination of either X's or Y's tax-exempt status. See sections 1.507-1(b)(7) and 1.507-3(a)(1) of the regulations. Y represents that after the merger, it will amend and restate its Articles of Incorporation to reflect both the transfer of assets and liabilities from X to Y and the assumption of X's assets and liabilities by Y. Y also represents that after the merger it will continue to engage in direct charitable activities for which its tax-

exempt status was granted and it will also undertake to perform the charitable grant-making activities for which X's tax-exempt status was granted. Y also represents that post merger it will convert from a private operating foundation to a private non-operating foundation for its fiscal year ending Date 1. Private non-operating foundations are required to make certain minimum qualifying distributions. See sections 4941(a), and 4941(j). It is assumed for purposes of this Ruling that after the effective date of the merger Y will meet the qualifying distribution requirements of section 4942. Because Y will continue to engage in qualifying charitable activities after the effective date of the merger and the amendment and restatement of its Articles of Incorporation, Y's tax-exempt status continues unchanged as an organization that is exempt from taxation under section 501(c)(3) and 509(a).

Ruling 3:

The issue is whether the merger of X into Y and the resulting transfer of X's assets and liabilities to Y will: (a) terminate X's status under section 507 of the Code; (b) qualify as a transfer under section 507(b)(2); and (c) cause Y to be treated as a newly created organization.

As to issue (a) listed above, under section 507(a) of the Code, 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 representations have been made that X 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, X's disposition of assets and liabilities pursuant to a merger as a section 507(b)(2) transfer does not terminate its private foundation status.

As to issue (b) listed above, and as described fully in Ruling 1, the transfer of assets and liabilities from X to Y pursuant to a statutory merger under local state law, qualifies as a section 507(b)(2) of the Code transfer because it is a transfer of assets pursuant to a merger from one private foundation to another.

As to issue (c) listed above, under section 507(b)(2) of the Code and section 1.507-3(a)(1) of the regulations, a transfer of assets by a private foundation to another private foundation pursuant to a section 507(b)(2) transfer will not result in the recipient foundation being treated as a newly created organization. Because X and Y are both private foundations, and the transfer qualifies under section 507(b)(2), Y will not be treated as a newly created organization post merger.

Ruling 4:

The issue is whether X and Y are "effectively controlled" by the same persons for purposes of sections 507-509 of the Code, and whether Y will be treated as if it is X.

Pursuant to section 1.507-3(a)(9)(i) of the regulations, if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled (within the meaning of section 1.482-1A(a)(3)), directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of sections 507 through 509 of the Code, such a transferee private foundation shall be treated as if it were the transferor. X and Y represented that the same 14 individuals who comprise X's board of trustees are the same individuals who comprise the board of trustees of Y and that the same persons who serve

as X's officers also serve in the same positions as officers in Y. We are presuming for purposes of this Ruling that X is "effectively controlled" under section 1.482-1A(a)(3) by the same persons who "effectively control" Y. Therefore, after the merger Y shall be treated as if it is X for purposes of sections 507 through 509.

Ruling 5:

The issue is whether the termination tax described under section 507(c) of the Code will be imposed upon X as a result of the merger of X's assets and liabilities into Y prior to X giving the Service any notice of its intent to terminate its private foundation status.

Section 507(a) of the Code provides that 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. A termination tax is imposed under section 507(c) on the value of the lower of the organization's net assets or its aggregate tax benefit from its section 501(c)(3) status at the time the organization terminates its private foundation status. As described fully in Ruling 2, the merger of X into Y qualifies as a section 507(b)(2) transfer and said transfer will not terminate X's private foundation status. See also sections 1.507-1(b)(7) and 1.507-3(a)(1) of the regulations. As X has represented that it has neither notified the Service of its intent to terminate its private foundation status, nor has it committed acts or failed to act giving rise to tax under Chapter 42, a section 507(c) termination tax will not be imposed on X prior to X giving the Service any Notice of its intent to terminate its private foundation status.

Ruling 6:

The issue is whether the termination tax under section 507(c) of the Code will apply on the date that notice by Y, as the surviving entity of the statutory merger, is given to the Manager, Exempt Organization Determinations (TE/GE) of X's intent to terminate its private foundation status, and whether the termination tax will be zero provided that Y gives such notice at least one day after the merger of X into Y.

A private foundation may voluntarily terminate its private foundation status upon giving appropriate notice to the Secretary of its intent to terminate. See section 507(a)(1) of the Code and sections 1.507-1(a), 1.507-1(b)(1) of the regulations. Under section 1.507-3(d), "[u]nless a private foundation voluntarily 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)." If a termination tax under section 507(c) applies to a private foundation, said tax is equal to the lower of either the aggregate tax benefit resulting from the section 501(c)(3) status of the foundation or the value of the net assets of the foundation. See section 507(c). Under section 507(e), the date of determining the value of a private foundation's net assets for 507(c) termination tax purpose is made on either "(1) the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation, or (2) the date on which it ceases to be a private foundation," which ever time such value is higher.

As described fully in Ruling 1, the complete merger of X into Y qualifies as a section 507(b)(2) of the Code transfer and X's private foundation status is not terminated as a result of the merger. Y represents that subsequent to the merger, it will be the surviving entity of all of X's rights and liabilities, with X's net assets after the merger being zero. If Y tenders section

507(a)(1) notice after the merger and the value of X's net assets are zero, then the termination tax imposed under section 507(c) will also be zero. See section 507(e). Therefore, X's termination will be effective on the date Y tenders section 507(a)(1) notice, and if X's net assets are zero on this date, X's termination tax will also be zero.

Ruling 7:

The issue is whether under Chapter 42 Y will be liable for any of X's tax liabilities associated with the transferred assets to the extent that X has not satisfied such liabilities.

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, Y is the recipient of a transfer under section 507(b)(2). Therefore, Y shall be treated as receiving the X's assets subject to any outstanding tax liability not previously satisfied by X.

Ruling 8:

The issue is whether the transfer of assets and liabilities by X to Y, pursuant to the merger, will give rise to gross investment income or capital gain net income within the meaning of 4940 of the Code.

Section 4940 of the Code imposes an excise tax upon the net investment income of a private foundation. Net investment income is defined as the sum of gross investment income and capital gain net income less applicable deductions. See section 4940(c)(1). In determining gross investment income, only the gross amount of income earned from interest, dividends, rent, payments with respect to securities loans, and royalties (but excluding any income subject to the tax on unrelated business income) is considered. See section 4940(c)(2). In determining capital gain net income, only capital gains and losses from the sale or other disposition of property used for the production of income subject to the investment income tax (e.g., interest, dividends, rents, payments with respect to securities loans and royalties) is considered. See section 53.4940-1(f)(1) of the regulations.

The transfer of X's assets and liabilities into Y pursuant to a section 507(b)(2) of the Code transfer will not result in the application of the excise tax under section 4940. Because X and Y are deemed, pursuant to Ruling 4, to be "effectively controlled" by the same persons and the transferred assets, pursuant to section 1.507-3(a)(9)(i) of the regulations, maintain their same tax character after the transfer to Y, the transferred assets will not fall within the definition of gross investment income or capital gain net income under sections 4940(c)(1), (2), and will therefore will not give rise to tax under section 4940. See also Rev. Rul. 2002-28.

Ruling 9:

The issue is whether the merger of X's assets and liabilities into Y will result in excise tax liability as an act of self-dealing under section 4941 of the Code for X, Y , X's Board of Trustees and Officers or Y's Board of Trustees and Officers.

Under section 4941 of the Code, an act of self-dealing is defined as any prohibited sale or exchange or leasing of property between a private foundation and a disqualified person.

Under section 4946 and section 53.4946-1(a)(8) of the foundation regulations, a "disqualified person" does not include an organization recognized under section 501(c)(3). Because both X and Y are organizations recognized under section 501(c)(3), the transfer of X's assets and liabilities to Y pursuant to a statutory merger is not an act of self-dealing under section 4941(a)(1) for X, Y , X's Board of Trustees and Officers or Y's Board of Trustees and Officers.

Ruling 10:

The issue is whether X, for the taxable year of the merger, will be required to meet the qualifying distribution requirements of section 4942 of the Code if Y is treated as X, Y's distributable amount (as defined in 4942(d)) is increased by X's distributable amount, and if X's qualifying distributions (as defined in 4942(g)), if any, are carried over to Y and used by Y to meet the qualifying distribution requirements of section 4942.

Section 4942 of the Code imposes an excise tax on a private non-operating foundation's failure to distribute its required amount of income/principal, therein defined as "distributable amount." Under section 4942(g)(1), only "qualifying distributions" are considered in the determination of whether the amount distributed by the private foundation satisfies its "distributable amount" requirement. The definition of "qualifying distributions" includes any distributions paid to accomplish a purpose described in section 170(c)(2)(B), "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)..." See section 4942(g)(1). Section 4942(g)(3) permits a private non-operating foundation to make "qualifying distributions" to a recipient organization described under section 501(c)(3), provided that the recipient organization in turn makes "qualifying distributions" equal to the amount received from the private foundation. Any excess "qualifying distributions" made by a private non-operating foundation are carried over to and usable in the next taxable year. See section 4942(i), section 53.4942(a)-3(e) of the foundation regulations. Under section 1.507-3(a)(9)(i) of the regulations, if a transferor private foundation transfers all of its net assets to a recipient private foundation that is "effectively controlled" (within the meaning of section 1.482-1A(a)(3)), by the same persons, the transferee shall be treated as the transferor for purposes of section 4940 through 4948 and 507 through 509. In Rev. Rul. 78-387, 1978-2 C.B. 270, the Service held that in a qualifying transfer under section 1.507-3(a)(9)(i), the recipient private foundation succeeded to the excess "qualifying distributions" of the transferor private foundation and was permitted to reduce its minimum distribution requirements under section 4942 by the carryover of the excess qualifying distributions of the transferor to the extent that the recipient is treated as the transferor under section 1.507-3(a)(9).

As described fully in Ruling 4, it is assumed that X and Y are "effectively controlled" by the same persons. As described fully in Ruling 1, the merger of X into Y qualifies as a section 507(b)(2) of the Code transfer. Under section 1.507-3(a)(9)(i) of the regulations, the complete transfer of assets from X (a private non-operating foundation) to Y (a private operating foundation) will result in Y being treated as X and X not having any "qualifying distribution" requirements in the year of the merger. Y represents that post merger, it will convert from a private operating foundation to a private non-operating foundation for its fiscal year ending Date 1. As such, post merger Y will have a distributable amount requirement under section 4942, and the amount Y is required to distribute will be increased by X's distributable amount requirement. See section 4942(g). Because the merger results in Y being treated as X under section 1.507-3(a)(9)(i) of the regulations, Y may reduce its minimum distribution requirements under section 4942(g) by the amount of X's excess qualifying distributions which carried over as

a result of the merger under section 1.507-3(a)(9)(i) of the regulations. See also Rev. Rul. 78-387.

In conclusion, during the taxable year of the merger, X will not be required to meet the qualifying distribution requirements of section 4942 of the Code. The complete merger of X into Y will result in Y's "qualifying distribution" requirements increased by any of X's outstanding "qualifying distribution" requirements at the time of the merger. Furthermore, post merger, Y will be permitted to carry-over any excess qualifying distributions made by X, to be used by Y to meet its qualifying distribution requirements under section 4942.

Ruling 11:

The issue is whether the transfer of assets and liabilities from X to Y, pursuant to the merger, will result in the application of Section 4943 of the Code with regard to excess business holdings, where none of the assets will place Y in the position of having excess business holdings.

Section 4943 of the Code imposes an excise tax on a private foundation maintaining business holdings in excess of the threshold limits enumerated in subsection (c). Under section 4943(c), the combined business holdings of a private foundation and all "disqualified persons", as that term is defined in section 4946(a), in any corporation conducting a business which is not substantially related to the exempt purpose of the foundation are limited to 20% of the voting stock in such corporation. See section 53.4943-1 of the foundation regulations. In a section 507(b)(2) transfer where the transferor and recipient private foundations are effectively controlled by the same persons, the recipient foundation will be treated as if it was the transferor for purposes of sections 4943 and 4946. See section 1.507-3(a)(9)(i) of the regulations, Rev. Rul. 2002-28.

As described fully in Ruling 4, X and Y are presumed to be "effectively controlled" by the same persons. The merger of X into Y will result in Y being treated as if it was X for purposes of section 4943. See section 1.507-3(a)(9)(i) of the regulations. Because neither X nor Y report any excess business holdings before the merger in any entity conducting a business which is not substantially related to either X's or Y's exempt purpose, the merger of X into Y will not result in the application of section 4943.

Ruling 12:

The issue is whether the transfer of X's assets and liabilities to Y pursuant to the merger will constitute a jeopardizing investment within the meaning of section 4944 of the Code.

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 Y represents that X will transfer its assets and liabilities to Y with the goal of enabling Y to continue to engage in the various charitable activities described in the facts above, the transfer will not result in the imposition of tax for a jeopardizing investment under section 4944.

Ruling 13:

The issues are whether the transfer of X's assets and liabilities to Y pursuant to the merger will constitute a taxable expenditure under section 4945 of the Code, whether X will be required to exercise expenditure responsibility with respect to the assets transferred to Y, and whether Y as successor to X will be required to exercise expenditure responsibility with respect to any expenditure responsibility grants made by X.

Section 4945 of the Code imposes an excise tax upon any taxable expenditure, which is defined under subsection (d) as certain non-qualifying amounts paid or incurred by a private foundation. An exception to the taxable expenditure definition includes any transfer from a private foundation, in the form of a grant, to another organization other than a public charity, provided that the private foundation exercises expenditure responsibility with respect to such grant. See section 4945(d)(4). Under 1.507-3(a)(9)(i) of the regulations, a private foundation that transfers all of its net assets to a recipient private foundation which is effectively controlled (within the meaning of section 1.482-1A(a)(3)) by the same persons who effectively control the transferor for purposes of chapter 42, the transferee private foundation shall be treated as if it were the transferor private foundation. Because the recipient foundation will be treated as the transferor foundation in reference to the assets transferred under sections 4945(d)(4), (h), there are no expenditure responsibility requirements that must be exercised by the transferor private foundation. See also section 1.507-3(a)(9)(iii)(example 2).

The merger of all of X's assets and liabilities into Y will not result in a taxable expenditure to X and will not result in X's requirement to exercise expenditure responsibility over the transferred asset to Y because the merger is a qualifying section 507(b)(2) of the Code transfer within which Y will be treated as X. See section 1.507-3(a)(9)(i) of the regulations. Because Y will be treated as X, Y will be required to exercise expenditure responsibility over the grants made by X. See sections 1.507-3(a)(9)(i), (iii)(example 2). Furthermore, Y represent's that post merger it will amend its Articles of Incorporation and Bylaws to reflect that it assumes all responsibility for all obligations and liabilities of X, including X's obligation to exercise expenditure responsibility under section 4945(h) for grants made by X prior to the merger.

Therefore, X's transfer of assets and liabilities to Y will not constitute a taxable expenditure under section 4945 of the Code, X will not be required to exercise expenditure responsibility with respect to assets transferred to Y in the merger, and Y as successor to X will be required to exercise expenditure responsibility with respect to any expenditure responsibility grants made by X.

Ruling 14:

The issue is whether the legal, accounting and other expenses incurred by X and Y in connection with this Ruling Request and with effectuating the merger will be considered as qualifying distributions under Section 4942 of the Code and not considered taxable expenditures under Section 4945.

Section 4942 of the Code imposes an excise tax on a private foundation's failure to distribute its required amount of income/principal, therein defined as "distributable amount." Under section 4942(g), only "qualifying distributions" are considered in the determination of whether the amount distributed by the private foundation satisfies its distributable amount requirement. The definition of qualifying distributions includes "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). See section 4942(g)(1)(B). An asset is deemed used or held for use "only if the

asset is actually used by the foundation in carrying out the charitable, educational, or other similar purpose which gives rise to the exempt status of the foundation..." See section 53.4942(a)-2(c)(3) of the foundation regulations. Assets which are held for the production of income or for investment (such as stocks, bonds, and endowment funds) are not deemed to be used or held for use directly by the foundation in carrying out its charitable purpose. See section 53.4942(a)-2(c)(3). However, whether an asset is held for the production of income/ investment, or whether it is used directly by the foundation in carrying out its exempt purpose is a question of fact. The issue of whether the assets acquired by Y in the merger will be used by Y in carrying out its charitable purpose, as opposed to being held for the production of income as defined in section 53.4942(a)-2(c)(3), is extremely factual and beyond the facts presented in this ruling request; therefore, we decline to answer the question of whether the expenses related to the acquisition of these assets will be considered as qualifying distributions under Section 4942.

Under section 53.4945-6(b)(2) of the foundation regulations, legal, accounting, administrative and other expenses incurred by a private foundation in a good faith belief that they are reasonable and consistent with ordinary care and prudence, will not constitute taxable expenditures under section 4945 of the Code. Therefore, if the legal, accounting and other expenses incurred by X and Y pursuant to the merger were incurred in a good faith belief that they are reasonable and consistent with ordinary care and prudence, the expenditures will not constitute taxable expenditures under section 4945.

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

1. The merger and resulting transfer of X's assets and liabilities to Y will not adversely affect the section 501(c)(3) of the Code tax-exempt status of either X or Y.

2. From the effective date of the merger and the amendment and restatement of Y's Articles of Incorporation, Y will continue to exist as an organization that is exempt from taxation under section 501(c)(3) of the Code.

3. The merger of X into Y and the resulting transfer of X's assets and liabilities to Y: (a) will not result in termination of X's status under section 507 of the Code; (b) will qualify as a transfer under section 507(b)(2); and (c) will not cause Y to be treated as a newly created organization.

4. Assuming that both X and Y are effectively controlled by the same person within the meaning of section 1.482-1A(a)(3) of the regulations, then post merger Y will be treated as if it is X under sections 507 through 509 of the Code.

5. No tax will be imposed under section 507(c) of the Code because the Internal Revenue Service will not be notified of the termination of X's status as a private foundation prior to the transfer of all of X's assets and liabilities to Y pursuant to the Joint Merger Agreement.

6. If X (through Y as the surviving entity under the applicable local state nonprofit corporation law) does give notice to the Manager, Exempt Organization Determinations (TE/GE) of its intent to terminate its status as a private foundation, the tax under section 507(c) of the Code applies on the date that the notice is given and if X (through Y as the surviving entity under the applicable local state nonprofit corporation law) provides such

notice at least one day after X transfers all of its assets and liabilities to Y, the tax imposed by section 501(c) will be zero if X's net assets are also zero.

7. Y will be responsible for any of X's liabilities under Chapter 42 to the extent that X does not satisfy such liabilities.

8. The transfer of assets and liabilities by X to Y pursuant to the Joint Merger Agreement will not give rise to any gross investment income or capital gain net income within the meaning of section 4940 of the Code.

9. The transfer of assets and liabilities by X to Y pursuant to the Joint Merger Agreement will not constitute self-dealing under section 4941 of the Code and such transfer will not subject X, Y, X's Board of Trustees and Officers or Y 's Board of Trustees and Officers to tax under section 4941.

10. Because Y will be treated as if it were X for purposes of section 4942 of the Code, X will not be required to meet the qualifying distribution requirements of Section 4942 for the taxable year of the merger, provided that Y's distributable amount for the year of the merger is increased by X's distributable amount for the year of the merger and X's qualifying distributions made during the taxable year of the merger, if any, will be carried over to Y and be used by Y to meet its minimum distribution requirements under section 4942 for the year.

11. The transfer of assets and liabilities of X to Y pursuant to the Joint Merger Agreement will not result in the application of section 4943 of the Code with regard to excess business holdings because none of the assets will place Y in the position of having excess holdings.

12. The transfer of assets and liabilities by X to Y pursuant to the Joint Merger Agreement will not constitute a jeopardizing investment within the meaning of section 4944 of the Code.

13. The transfer of assets and liabilities by X to Y pursuant to the Joint Merger Agreement will not constitute a taxable expenditure within the meaning of section 4945 of the Code and X will not be required to exercise expenditure responsibility with respect to the assets transferred to Y, and Y as successor to X in the merger, will be required to exercise expenditure responsibility with respect to any expenditure responsibility grants of X.

14. The legal, accounting and other expenses incurred by X and Y in connection with this Ruling Request and with effectuating the proposed transfer will not constitute taxable expenditures pursuant to section 4945 of the Code provided that the incurred expenses are incurred in good faith and are reasonable.

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

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