



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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501.00-00
507.01-00
4940.02-00
4941.04-00
4942.03-05
4945.04-05
4958.00-00

Contact Person:
Identification Number:
Telephone Number:
Employer Identification Number:

LEGEND:

Supported Charity =
B =
X =
Year 1 =
Year 2 =

Dear

We have considered your ruling request dated June 5, 2009 and as amended on September 23, 2009 and April 22, 2011 concerning the federal income and excise tax consequences under certain sections of the Internal Revenue Code ("Code").

FACTS:

You have been recognized as an organization exempt from federal income tax under section 501(c)(3) of the Code and are classified as a supporting organization under section 509(a)(3), by virtue of your relationship with the Supported Charity. You file your return on a calendar year basis. The Supported Charity has been recognized as an organization exempt from federal income tax under section 501(c)(3) and is classified as other than a private foundation pursuant to sections 509(a)(1) and 170(b)(1)(A)(vi).

You are organized as a "Type I" supporting organization. The Supported Charity appoints a majority of the seven of your directors serving at any given time. All your actions and activities are decided by at least a majority vote of your board of directors.

As part of the B founding family's overall commitment to charitable works, you were created as a means to continuously support the efforts of, and work together with, the Supported Charity in providing humanitarian, educational, and cultural services and programs. Since that time, you have provided significant financial support to the Supported Charity, and also engaged directly

in funding local and international programs consistent with the overall goals of the Supported Charity.

You desire to forgo your status as a public charity and supporting organization and to become a private foundation as described in section 509(a) of the Code. Following this proposed conversion from supporting organization status to private foundation status, you will no longer be required to support the Supported Charity. The B family has for many years managed several other family-funded private foundations and trusts, and thus you will be well-equipped to comply with the heightened compliance burdens of private foundation status.

The conversion will be accomplished through a series of interrelated steps. You and the Supported Charity have entered into a written agreement ("Agreement"), pursuant to which you pledged to make the following payments:

- A \$ x payment to the Supported Charity's capital campaign, payable by the calendar year's end of Year 1;
- A \$ x payment to the capital campaign, payable within thirty (30) days following the conversion's effective date;
- A \$ x payment to the capital campaign, payable over a three year period following the effective date, to be completed on or before November 30, Year 2; and
- Fifteen annual payments of \$ x each to the Supported Charity's Annual Campaign, commencing with the first calendar year following the effective date.

Pursuant to the terms of the Agreement, you are scheduled to make a series of payments to the Supported Charity that, in aggregate, exceed 25 percent of your total assets. You do not wish to terminate your private foundation status in tandem with your grants to the Supported Charity and have not indicated any contrary intent to the Secretary.

The grants made by you to the Supported Charity will not be designated or used for lobbying, influencing the outcome of elections, for grants to individuals, or for non-charitable purposes.

Pursuant to the terms of the Agreement, in consideration of these payments totaling \$ x, the Supported Charity agrees to relinquish its rights as the public member of you. Under Amended Articles of Incorporation, you will no longer be organized as a membership organization, and the Supported Charity will retain no rights to appoint any of your directors. Your corporate purposes will reflect an expanded charitable mission and contain no requirement that you support the Supported Charity. All of your current directors previously appointed by the Supported Charity will resign, and only members of the B family will serve as your directors. You will likewise adopt Amended and Restated Bylaws that will govern your operations consistent with its changed organizational structure. As a condition of the Agreement you have also requested and obtained written approval of the conversion from the Attorney General of its state of incorporation.

With the exception of the initial \$ x grant already paid, no additional payments by you to the Supported Charity, as mandated in the Agreement, will occur prior to the effective date. The Agreement defines the effective date as the later to occur of: (i) the date on which both the

Attorney General of the state of incorporation and the Internal Revenue Service approve the Conversion or (ii) the date upon which you file the Amended Articles with appropriate state office. In this manner, the conversion will not become effective until all related steps have been completed.

It is represented that the conversion will benefit you by allowing you to support a wider range of charitable causes, and may reduce certain regulatory burdens. The conversion will benefit the Supported Charity by providing \$ x in guaranteed payments, and by generating very large matching contribution commitments from an unrelated charity. Moreover, the Supported Charity will still be able to apply to you for discretionary grants, in addition to the \$ x.

RULINGS REQUESTED:

1. The conversion and the transactions described herein do not negatively affect your section 501(c)(3) status.
2. The conversion and the transactions described herein will not give rise to excise taxes under section 4958 of the Code to you or any of your directors, officers or employees who were involved in the planning or the execution of your conversion to private foundation status.
3. Upon the effective date, your status as a supporting organization will terminate and you will be reclassified as a private foundation under section 509(a) of the Code.
4. Grants made by you to the Supported Charity after the effective date will not be deemed self-dealing under section 4941 of the Code.
5. Grants made by you to the Supported Charity after the effective date will be treated as qualifying distributions under section 4942(g) of the Code at such times as the grants are actually paid to the Supported Charity.
6. Grants made by you to the Supported Charity after the effective date will not constitute taxable expenditures under section 4945(d) of the Code.
7. Following the effective date, the agreed-upon grants from you to the Supported Charity will not result in a termination of private foundation status under section 507(a) of the Code. Similarly, making such grants will not subject you to any termination tax liability under section 507(c).
8. For the calendar year of the conversion your liability for the section 4940 of the Code excise tax will apply only to net investment income earned during the part of the conversion year during which you are classified as a private foundation, and your distributable amount under section 4942 will be computed on the basis of only that part of the conversion year during which you are classified as a private foundation.
9. For the conversion year, you will be required to file two separate information returns pursuant to section 6033 of the Code. You will be required to file Form 990 for the

period beginning on the first day of the conversion year and ending on the day before the effective date, during which time you have been classified as a supporting organization and a public charity; and you will be required to file Form 990-PF for the portion of the conversion year beginning on the effective date and ending on the last day of the conversion year, during which time you have been classified as a private foundation.

LAW:

Section 170(c)(2)(B) of the Code provides that the term "charitable contribution" means contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.

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.

Section 509(a)(3) of the Code excludes from the definition of a private foundation an organization which is operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a)(1) or 509(a)(2).

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 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 provides that there is imposed 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 15 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year. The tax imposed by this subsection shall not apply to the undistributed income of a private foundation (1) for any taxable year for which it is an operating foundation (as defined in subsection (j)(3)), or (2) to the extent that the foundation failed to distribute any amount solely because of an incorrect valuation of assets under section (e), if (A) the failure to value the assets properly was not willful and was reasonable cause, (B) such amount is distributed as qualifying distributions (within the meaning of subsection (g)) by the foundation during the allowable distribution period (as defined in subsection (j)(2)), (C) the foundation notifies the Secretary that such amount has been distributed (within the meaning of subparagraph (B)) to correct such failure, and (D) such distribution is treated under subsection (h)(2) as made out of the undistributed income for the taxable year for which a tax would (except for this paragraph) have been imposed under this subsection.

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 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 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 4958(a)(1) of the Code imposes on each excess benefit transaction a tax equal to 25 percent of the excess benefit (the “first tier tax”). This tax must be paid by any disqualified person with respect to such transaction.

Section 4958(a) (2) of the Code provides that if a tax is imposed by Section 4958(a)(1) of the Code, and there is knowing participation in the excess benefit transaction by an organization manager, there shall be imposed on such manager an excise tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause.

Section 4958(b) of the Code provides that where an initial tax is imposed, but the excess benefit involved in such transaction is not corrected within the taxable period, a tax equal to 200 percent of the excess benefit involved is imposed and must be paid by any disqualified person with respect to such transaction (the “second tier tax”).

Section 4958(c) of the Code, in part, defines “excess benefit transaction” as any transaction in which an economic benefit is provided by an “applicable tax-exempt organization” directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.

Section 4958(e) of the Code defines "applicable tax-exempt organization" as an organization described in either section 501(c)(3) or section 501(c)(4) of the Code or an organization which was so described at any time during the five-year period ending on the date of the excess benefit transaction. Such term shall not include a private foundation as defined in section 509(a).

Section 4958(f)(1) of the Code defines "disqualified person" as (A) any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, (B) a member of the family of a disqualified person, and (C) a 35-percent controlled entity.

Section 6001 of the Code provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

Section 6033(a)(1) of the Code provides, except as provided in section 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations ("regulations") provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes.

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)(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)(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 53.4942(a)-3(a)(1) of the foundation regulations states that the amount of a qualifying distribution of property is the fair market value of such property as of the date such qualifying distribution is made. The amount of an organization's qualifying distributions will be determined solely on the cash receipts and disbursements method of accounting described in section 446(c)(1) of the Code.

Section 53.4942(a)-3(a)(2) of the foundation regulations defines the term "qualifying distribution," in relevant part, to mean any amount (including program related investments and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(1) or (2)(B) of the Code, other than any contribution to a private foundation which is not an operating foundation or to an organization controlled (directly or indirectly) by the contributing private foundation or one or more disqualified persons with respect to such foundation.

Section 53.4942(a)-3(a)(3) of the foundation regulations defines "controlled by the foundation or by disqualified persons" as any time such persons can aggregate their power (voting or otherwise) in order to require an expenditure or to prevent one.

Section 53.4942(a)-3(a)(4)(i) of the foundation regulations provides generally, that "If a private foundation borrows money in a particular taxable year to make expenditures for a specific charitable, educational, or other similar purpose, a qualifying distribution out of such borrowed funds will, except as otherwise provided . . . be deemed to have been made only at the time that such borrowed funds are actually distributed for such exempt purposes.

Section 53.4946-1(a)(7) of the foundation regulations provides that for purposes of chapter 42 and certain other purposes, an organization described in sections 509(a)(1), (2), or (3) of the Code (or an organization wholly owned by such organization) is not a disqualified person.

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)).

Section 53.4958-1(e)(1) of the foundation regulations provides that except as otherwise provided, an excess benefit transaction occurs on the date on which the disqualified person

receives the economic benefit for federal income tax purposes. Section 53.4958-1(e)(2) provides that in the case of rights to future compensation, including benefits under a nonqualified deferred compensation plan, the excess benefit transaction occurs on the date the right to future compensation is not subject to a substantial risk of forfeiture. However, where a disqualified person elects under section 83(b) of the Code to include deferred compensation in gross income in a taxable year, any excess benefit transaction with respect to this deferred compensation occurs in that year.

Section 53-4958-3(d)(1) of the foundation regulations defines a disqualified person as any person who was in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization at any time during the five-year period ending on the date of the transaction.

Section 53-4958-3(d)(1) of the foundation regulations provides that a person is deemed not to be in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization if the organization is described in section 501(c)(3) of the code and exempt form tax under section 501(a).

Section 53.4958-4(a)(1) of the foundation regulations provides that an excess benefit transaction is any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to any disqualified person in addition, to determine whether an excess benefit transaction has occurred, all consideration and benefits exchanged between a disqualified person and the applicable tax-exempt organization and all entities it controls are taken into account.

ANALYSIS:

1. Continuation of Your Section 501(c)(3) Status

Following the conversion, you will operate as a private grant making foundation. You will devote your assets to the making of grants to organizations for charitable purposes and/or the performance of charitable activities directly. Similarly, following the conversion, the Supported Charity will continue pursuing its historic charitable mission. Accordingly, following the conversion, you will continue to be organized and operated exclusively for "charitable" purposes within the meaning of Section 501(c)(3). The conversion itself, and your continuing operation as described above following the conversion, will not confer any impermissible economic benefit on any insiders or private individuals. Rather, you will continue using your assets in furtherance of charitable purposes. All monies involved will remain in charitable solution.

2. Section 4958 Excess Benefit Transactions

Under section 4958 of the Code and section 53.4958-4(a)(1) of the foundation regulations, an excess benefit transaction occurs when a charity provides an "economic benefit" directly or indirectly to or for the use of any disqualified person, if the value of the benefit exceeds the value of the consideration received by the charity. After the conversion, you will continue to operate exclusively for charitable purposes within the meaning of section 1.501(c)(3)-1(c)(1) of the regulations. Any money conveyed by you to the Supported Charity, pursuant to the terms of

the conversion, will be utilized exclusively for the charitable purposes underlying the Supported Charity's tax-exempt status. Similarly, any increased flexibility gained by you to make grants for purposes other than supporting the Supported Charity will nevertheless be restricted by your continuing obligation to make grants solely for charitable purposes. Supported Charity has been recognized as an organization exempt from federal income tax under section 501(a) of the Code and described in section 501(c)(3), therefore Supported Charity is not a disqualified person within the meaning of sections 53.4958-3(a)(1) and (d)(1) of the foundation regulations. The conversion, in and of itself, does not involve any transfer of funds to a disqualified person. Therefore, the conversion should not give rise to any excise tax liability under Section 4958 of the Code.

3. Your Change to Private Foundation Status

Under Rev. Procs. 2011-4 and 2011-10, the EO Determinations Office issues determination letters on reclassification of foundation status. After your conversion occurs, you may request a determination letter regarding your current foundation status from EO Determinations. Therefore we decline to rule on this issue.

4. Grants Following the Conversion-- Self-Dealing

As a condition of the conversion, you pledge to make a series of grants to the Supported Charity. The Supported Charity is a public charity pursuant to Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Pursuant to Section 53.4946-1(a)(7) of the foundation regulations, the Supported Charity is not treated as a "disqualified person." No monetary benefits will accrue to the B family. Any payments from you to the Supported Charity, in furtherance of the charitable purposes of the Supported Charity, will not be self-dealing under Section 4941.

5. Grants Following the Conversion -- Qualifying Distributions

The Supported Charity is classified as a public charity pursuant to Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. After the effective date, neither you nor any of your disqualified persons will control the Supported Charity, within the meaning of section 53.4942(a)-3(a)(3) of the foundation regulations. As such, grants made by you to the Supported Charity, after the effective date, including those pledged as part of the conversion, will constitute qualifying distributions under Section 4942.

Under section 53.4942(a)-3(a)(1) of the foundation regulations, the amount of all qualifying distributions will be computed on the cash receipts and disbursements method of accounting. Therefore, you will be treated as making your grants to the Supported Charity when such amounts are actually paid to the Supported Charity (rather than at such time that you commit to making your payments). Since those payments (other than the initial \$ x paid by you to the Supported Charity in Year 1, before the conversion) will occur after the conversion, they will be treated as grants made by you when you are classified as a private foundation. The grants will be treated as qualifying distributions at such times as they are actually paid to the Supported Charity.

6. Grants Following the Conversion -- Not Taxable Expenditures

The grants made by you to the Supported Charity will not be designated or used for lobbying, influencing the outcome of elections, for grants to individuals, or for non-charitable purposes. Furthermore, the Supported Charity is classified as a public charity pursuant to sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Therefore, pursuant to section 4945(d)(4)(A)(i), all of the grants made by you to the Supported Charity fall outside the definition of “taxable expenditures.”

7. Grants by You — No Termination of Your Private Foundation Status

Pursuant to the terms of the Agreement, you are scheduled to make a series of payments to the Supported Charity that, in aggregate, exceed 25% of your total assets. The Supported Charity is a public charity described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Section 1.507-1(b)(7) of the foundation regulations indicates that unless an organization notifies the Secretary of its intent to the contrary, such a series of payments to a public charity, in and of itself, will not serve to terminate the private foundation status of the grantor organization. You have indicated that you do not wish to terminate your private foundation status in tandem with your grants to the Supported Charity and you have not indicated any contrary intent to the Secretary. As such, the grant payments by you to the Supported Charity will not terminate your private foundation status under section 509(a). Because your private foundation status will not terminate, you should not be liable for any termination tax under section 507(c).

8. In the Conversion Year: Portion When Private Foundation Requirements Apply

Under section 4940 of the Code, a private foundation must pay a 2 percent excise tax on its net investment income. Under section 4942 of the Code, a private foundation must make qualifying distributions equal to its distributable amount. The distributable amount is computed as a function of the private foundation’s investment assets. If a private foundation completes a tax year of less than 12 months, section 53.4942(a)-2(c)(5)(iii) of the foundation regulations provides a means by which the private foundation’s distributable amount is adjusted proportionately to reflect the amount of time during the tax year that it existed as a private foundation.

In the year following the conversion year, you will be required to pay a section 4940 excise tax on your net investment income earned during the conversion year. Such tax liability will be imposed exclusively on the net investment income earned (i.e., received or accrued, depending on your method of accounting) by you after the effective date. Any net investment income earned during the time that you remained classified as a public charity under section 509(a)(3) of the Code will not be subject to the section 4940 tax.

9. Two Returns for the Conversion Year

During the conversion year, you will be classified as a section 509(a)(3) supporting organization (and therefore, a public charity) for part of the year, and a private foundation for the other part of the year. Pursuant to the requirements set forth in section 6033 of the Code and the Treasury Regulations thereunder, public charities are required to annually file a Form 990; private foundations, by contrast, are required to annually file Form 990-PF. For the conversion year,

you should file (a) a Form 990 reflecting your activity for the portion of the conversion year during which you were treated as a public charity, and (b) a Form 990-PF reflecting your activity for the portion of the conversion year during which you were treated as a private foundation.

RULINGS:

Based on the information submitted, we rule as follows:

1. The conversion and the transactions described herein do not negatively affect your section 501(c)(3) status.
2. The conversion and the transactions described herein will not give rise to excise taxes under Section 4958 of the Code to you or any of your directors, officers, or employees who were involved in the planning or the execution of your conversion to private foundation status.
3. We decline to rule on your foundation reclassification.
4. Grants made by you to the Supported Charity after the effective date will not be deemed self-dealing under Section 4941 of the Code.
5. Grants made by you to the Supported Charity after the effective date will be treated as qualifying distributions under Section 4942(g) of the Code at such times as the grants are actually paid to the Supported Charity.
6. Grants made by you to the Supported Charity after the effective date will not constitute taxable expenditures under Section 4945(d) of the Code.
7. Following the effective date, the agreed-upon grants from you to the Supported Charity will not result in a termination of private foundation status under Section 507(a) of the Code. Similarly, making such grants will not subject you to any termination tax liability under Section 507(c) of the Code.
8. For the calendar year of the conversion (the "conversion year"), your liability for the section 4940 excise tax will apply only to net investment income earned during the part of the conversion year during which you are classified as a private foundation, and the distributable amount under section 4942 will be computed on the basis of only that part of the conversion year during which you are classified as a private foundation.
9. For the conversion year, you will be required to file two separate information returns pursuant to Section 6033. You will be required to file Form 990 for the period beginning on the first day of the conversion year and ending on the day before the effective date, during which time you will have been classified as a supporting organization and a public charity; and you will be required to file Form 990-PF for the portion of the conversion year beginning on the effective date and ending on the last day of the conversion year, during which time you will have been classified as a private 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 understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon your tax status should be reported to the Service. 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 this letter could help resolve any future questions about tax consequences of your activities, you should keep a copy of this ruling in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

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

Sincerely,

Ronald J. Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure:
Notice 437