



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

B =
C =
D =
M =

Dear _____ :

This responds to your letter dated May 31, 2012, in which you requested rulings on the application of Parts I and II of Subchapter F of Chapter 1, I.R.C. §§ 501-509, and Subchapter A of Chapter 42, Subtitle D, §§ 4940-4948, to the transaction described below.

Facts

M is a trust organized exclusively for charitable purposes, and has been recognized exempt from federal income taxation as an organization described in § 501(c)(3). M is classified as a private non-operating foundation within the meaning of § 509(a). M was created by, and originally funded with a contribution from, B. B and her husband, C, (jointly, the "Founders"), are M's sole trustees. You stipulate that B is a substantial contributor to M within the meaning of § 507(d)(2)(A), that C is a substantial contributor to M within the meaning of § 507(d)(2)(B)(iii), that B and C are M's foundation managers within the meaning of § 4946(b), and, consequently, that B and C are disqualified persons with respect to M within the meaning of § 4946(a)(1)(A) and (B).

You are organized as a not-for-profit corporation under state law. You have been recognized exempt from federal income taxation as an organization described in § 501(c)(3), and are classified as a private operating foundation described in § 4942(j)(3). M and you do not share the same tax year. Your officers and directors are B, C, and D. D is an unrelated person who has provided legal services to you, B, C, and M. You stipulate that B is a substantial contributor to you within the meaning of § 507(d)(2)(A), that C is a substantial contributor to you within the meaning of § 507(d)(2)(B)(iii), that B, C, and D are foundation managers with respect to you within the meaning of § 4946(b), that B and C are disqualified persons with respect to you within the meaning of § 4946(a)(1)(A) and (B), and that D is a disqualified person with respect to you within the meaning of § 4946(a)(1)(B).

You represent that the Founders, as M's sole Trustees and as two of your three directors, effectively control both M and you (collectively, "the Foundations") within the meaning of §§ 1.482-1(a)(3) and 1.507-3(a)(9)(i).

You represent that both of the Foundations have made timely tax filings on their respective Returns of Organizations Exempt from Income Tax, Forms 990-PF, for all applicable years, and that both have complied with all applicable state filing obligations throughout their respective terms of existence. Neither of the Foundations has undertaken any activities that would be inconsistent with tax-exempt status as a § 501(c)(3) organization, nor made any changes to their respective governing documents since the filing of their Applications for Tax-Exempt Status, Form 1023. There have been no willful repeated acts (or failures to act), nor any willful and flagrant act (or failure to act), within the meaning of § 507(a)(2)(A), with respect to either of the Foundations that would give rise to liability for tax under Chapter 42 of the Code, and neither Foundation has received a notification from the Secretary of the Treasury described in § 507(a)(2)(B). Neither Foundation has previously terminated its status as a private foundation. M has made qualifying distributions in sufficient amount to avoid imposition of excise tax under § 4942. You have made qualifying distributions in connection with the conduct of your exempt mission to qualify as a private operating foundation under § 4942(j)(3).

You represent that all grants made, or to be made, by M prior to the transfer of its remaining assets to you, as described below, have been grants to public charities. You have not made grants to other organizations. Neither Foundation has incurred any "taxable expenditure" within the meaning of § 4945(d), and neither Foundation has previously made any grant or other disposition of funds that would require the exercise of expenditure responsibility within the meaning of § 4945(d)(4)(B).

Under the Declaration of Trust that serves as M's governing instrument, M's trustees are empowered to make distributions in their discretion from Trust income and principal to "Qualified Charitable Recipients" ("QCRs"). QCRs are defined as organizations described in § 170(c)(1) or (2) which are exempt from tax under § 501(c)(3). The Trust instrument makes reference to suggested types of QCR donees, but the Trustees are empowered to make distributions to any charitable organization qualifying as a QCR, without regard to its mission or purposes. You, as an organization described in §§ 170(c)(2) and 501(c)(3), are a QCR within the meaning of M's Trust instrument, and, as such, are eligible under the Trust instrument to receive grants from M.

Prior to, and except for, the transfer of its remaining assets to you as described below, all of M's grants have been made or will have been made to unrelated grantees that are treated as public charities under the Code.

Your corporate purposes are described in your Articles of Organization as including "the provision of educational, vocational, social, psychological, and financial assistance to homeless individuals and families," as well as making distributions to other § 501(c)(3) organizations. Since you were first organized, you have provided education and practical job-skills training to disadvantaged persons and those who have suffered displacement from recent economic upheavals with the objective of equipping them to survive in the current economy, to enter or re-enter the work-force, and to lead productive and satisfying lives. You have provided free career development services to unemployed and underemployed individuals, and have offered such individuals skill assessment, career planning, computer training, interview and resume help, financial planning, job search planning, and other assistance.

Over the past several years, the Founders have concluded that the services you provide have been increasingly needed, in part because of the large number of people displaced by recent economic upheaval and recession. The population in need of such services has been underserved by other organizations and the need and demand for the services you provide have increased. At the same time, economic circumstances have made fundraising from third parties more difficult. The Founders have determined that the exempt purposes of both Foundations will be best served by concentrating their efforts and charitable resources on your work and mission, and by eliminating the duplication and administrative burden of operating two separate private foundations.

M's only activities have consisted of grants made to unrelated QCRs, the missions of most of which are unrelated to your mission. The Trustees have determined that the best use of M's remaining charitable funds, in furtherance of its exempt purpose, would be to provide assistance to you in carrying out the activities which form the basis of your exempt purposes. Therefore, the Founders, as Trustees of M and as your Directors, with the concurrence of your third director, have determined that it is in the best interests of both Foundations to contribute all of M's remaining net funds to you, to discontinue any of M's further activities or grants, and to continue to operate you in furtherance of your exempt purposes.

After making some final grants to unrelated public charities, M will transfer all of its remaining assets to you. M's Trustees will reserve a final amount for estimated debts and expenses, including taxes due, if any, under § 4940, and, thereafter, transfer the balance of M's remaining net assets to you (the "Transfer"). The Transfer will involve substantially all of M's net assets, including all accumulated income and undistributed trust principal. Any amounts remaining after the final payment of taxes, expenses, and fees, will also be transferred to you. Following these transfers, M will retain no assets and will cease to operate.

M will file a Form 990-PF for the year of the disposition of its assets. No sooner than at least one day after the Transfer, M's Trustees will provide notice pursuant to § 507(a)(1) to the Manager, Exempt Organizations Determinations, TE/GE, of M's intent to terminate its private foundation status, in the form and manner prescribed by § 1.507-1(b) and other applicable

regulations.

Following the Transfer, you will continue to operate as a private operating foundation engaged in the active conduct of activities in furtherance of your exempt purposes. You expect to use the transferred funds as well as your other assets exclusively in furtherance of your exempt purposes. The Founders expect that your qualifying distributions, substantially all in the form of expenditures incurred in carrying out your exempt activities, will continue to exceed your net income and minimum investment returns. You will also take responsibility for all liabilities, if any, under Chapter 42 that may be imposed or in effect with respect to either M or you after the Transfer date.

While you will continue to provide services free of charge, your management has determined that your exempt purposes can be further served by expanding your services to include fee-based training and certification programs in widely-used computer programs. These services have been identified as particularly valuable to your core mission, which is helping displaced and disadvantaged persons acquire the skills needed to obtain meaningful and lasting employment. The fees paid for such services will help you recover the costs of those programs as well as provide a source of revenue to support your ongoing operations and pro bono services.

The legal services with respect to the Transfer will be provided by a law firm in which D is a partner with a profits interest of less than 35%. D, as one of your directors, is a disqualified person with respect to you. You represent that the law firm will charge reasonable fees for the legal services provided in connection with the Transfer, the termination of M and its status as a private foundation, and the application for a private letter ruling. The services provided by the law firm will be limited solely to such services as are reasonably necessary to carrying out the exempt purposes of the Foundations, and shall not be excessive.

Rulings Requested

You have requested the following rulings:

1. The transfer of substantially all of M's net assets to you (the "Transfer") will not adversely affect the status of M or you as tax-exempt organizations described in § 501(c)(3).
2. The Transfer will be a transfer described in § 507(b)(2).
3. The Transfer will not terminate M's private foundation status and will not cause M to incur any liability for the § 507(c) termination tax.
4. Following the Transfer, M will be eligible to terminate its private foundation status through the "voluntary termination" procedures of § 507(a)(1).
5. Pursuant to § 1.507-7(b)(1), the date for determining the value of M's assets, for purposes of calculating the termination tax under § 507(c), shall be the date proper notification is given, in the manner prescribed in the regulations, of M's intention voluntarily to terminate its private foundations status (hereinafter, "Notice").
6. Provided that such Notice is given at least one day after the Transfer, and at a time when M's net remaining assets are valued at zero dollars (\$0.00), then the amount of

- termination tax due under § 507(c)(2) upon the termination of M's status as a private foundation shall be zero dollars (\$0.00).
7. Pursuant to § 507(b)(2), you will not be treated as a newly created organization as a result of the Transfer.
 8. You, as transferee of substantially all of M's net assets, shall be treated as possessing those attributes and characteristics of M described in subparagraphs (2), (3), and (4) of § 1.507-3(a).
 9. The Founders, as the only Trustees of M, and as two of your three Directors, and as foundation managers and substantial contributors of both Foundations, effectively control both Foundations within the meaning of §§ 1.482-1(a)(3) and 1.507-3(a)(9). Accordingly, for purposes of Chapter 42, you, the transferee Foundation, will be treated as though you were M, the transferor Foundation.
 10. The Transfer will not be a realization event for M, and will not give rise to any gross investment income or capital gain net income, within the meaning of § 4940, with respect to either M or you.
 11. You, as transferee, may use any excess § 4940 tax paid by M, the transferor, to offset your § 4940 tax liability.
 12. The Transfer will not constitute self-dealing and will not subject either of the Foundations, or any of their respective officers, directors, or Trustees, as the case may be, to tax under § 4941.
 13. The providing of reasonable and necessary legal services with respect to the Transfer by a law firm in which D is a partner, and the payment of reasonable compensation for such services by the Foundations, will not be an act of self-dealing within the meaning of § 4941(d), notwithstanding the status of D as a disqualified person with respect to you.
 14. M will not be required to meet the qualifying distribution requirements of § 4942 for the taxable year of the Transfer provided that your distributable amount for the year of the Transfer is increased by M's distributable amount for the year of the Transfer, and M's qualifying distributions made during the taxable year of the Transfer, if any, will be carried over to you, and may be used by you to meet your minimum distribution requirements under § 4942 for the year.
 15. The Transfer will not constitute a jeopardizing investment within the meaning of § 4944.
 16. The Transfer will not be a taxable expenditure within the meaning of § 4945(d), and there will be no expenditure responsibility requirements that must be exercised under § 4945(d)(4) or (h) with respect to the Transfer.
 17. The payment of reasonable legal fees to the attorneys for M and you for services with respect to the Transfer, and the IRS fee for this Private Letter Ruling will not be treated as taxable expenditures within the meaning of § 4945(d)(5).
 18. Your operation of state licensed postsecondary career training programs for a fee will not adversely affect your tax-exempt status under § 501(c)(3) or your status as a private operating foundation under § 4942(j)(3).
 19. The fees you receive from payments by users for your certification classes will not be considered gross income derived from an unrelated trade or business for purposes of § 512(a)(1).
 20. From and after the effective date of the Transfer, you will continue to exist as an organization that is exempt from taxation under § 501(c)(3) and which will qualify as a private operating foundation under § 4942(j)(3).

Law

I.R.C. § 501(a) exempts from federal income taxation organizations described in § 501(c).

I.R.C. § 501(c)(3) describes organizations organized and operated exclusively for charitable, educational, and other designated exempt purposes.

Treas. Reg. § 1.501(c)(3)-1(d)(3)(i) provides that the term "educational," as used in § 501(c)(3), includes the instruction and training of the individual for the purpose of improving or developing his capabilities.

I.R.C. § 509(a) provides that an organization described in § 501(c)(3) is a private foundation unless it is described in § 509(a)(1), (2), (3), or (4).

I.R.C. § 507(a) provides that, except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if (1) it notifies the Secretary of its intent to accomplish such termination, or (2) 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 the Secretary notifies such organization that it is liable for the tax imposed by subsection (c), and either such organization pays the tax (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

Treas. Reg. § 1.507-1(b)(1) provides that in order for a private foundation to terminate its private foundation status under § 507(a)(1), an organization must submit a statement to the Internal Revenue Service ("Service") of its intent to terminate its private foundation status under § 507(a)(1). Such statement must set forth in detail the computation and amount of tax imposed under § 507(c). Unless the organization requests abatement of such tax pursuant to § 507(g), full payment of such tax must be made at the time the statement is filed under § 507(a)(1).

I.R.C. § 507(c) imposes an excise tax on each terminating private foundation equal to the lower of the aggregate tax benefit resulting from the § 501(c)(3) status of such foundation, or the value of the net assets of such foundation.

I.R.C. § 507(e) and Treas. Reg. § 1.507-7(a) provide that, for purposes of § 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.

Treas. Reg. § 1.507-7(b)(1) provides that, in the case of a termination under § 507(a)(1), the date for determining the value of the foundation's assets for purposes of calculating the termination tax under § 507(c) shall be the date on which the foundation gives the notification

described in § 507(a)(1).

I.R.C. § 507(b)(2) provides that, in the case of a transfer of assets of a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

Treas. Reg. § 1.507-3(c)(1) provides that, for purposes of § 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.

Treas. Reg. § 1.507-3(c)(2) provides that the term "significant disposition of assets to one or more private foundations" includes any disposition (or series of related dispositions) by a private foundation to one or more private foundations of 25 percent or more of the fair market value of the net assets of the transferor foundation at the beginning of the taxable year in which the transfers occur.

Treas. Reg. § 1.507-1(b)(6) provides that when a foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in § 507(b)(2) and § 1.507-3(c), such transferor foundation will not have terminated its private foundation status under § 507(a)(1).

Treas. Reg. § 1.507-1(b)(7) 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 § 507(a) unless the transferor private foundation elects to terminate pursuant to § 507(a)(1) or § 507(a)(2) is applicable.

Treas. Reg. § 1.507-3(d) provides that unless a private foundation voluntarily gives notice pursuant to § 507(a)(1), a transfer of assets described in § 507(b)(2) will not constitute a termination of the transferor's private foundation status under § 507(a)(1).

Treas. Reg. § 1.507-4(b) provides that private foundations which make transfers described in § 507(b)(2) are not subject to the tax imposed under § 507(c) with respect to such transfers unless the provisions of § 507(a) become applicable.

Treas. Reg. § 1.507-3(a)(1) provides that, in the case of a transfer of assets of a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, including 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. Rather, the transferee organization shall be treated as possessing those attributes and characteristics of the transferor organization which are described in subparagraphs (2), (3), and (4) of this paragraph.

Treas. Reg. § 1.507-3(a)(2)(i) provides that a transferee organization to which this § 1.507-3(a) applies shall succeed to the aggregate tax benefit of the transferor organization in 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 at the time of the transfer.

Treas. Reg. § 1.507-3(a)(3) provides that, for purposes of § 507(d)(2), in the event of a transfer of assets described in § 507(b)(2), any person who is a "substantial contributor" (within the meaning of § 507(d)(2)) with respect to the transferor foundation shall be treated as a "substantial contributor" with respect to the transferee foundation, regardless of whether such person meets the \$5,000-two percent test with respect to the transferee organization at any time.

Treas. Reg. § 1.507-3(a)(4) provides that if a private foundation incurs liability for one or more of the taxes imposed under Chapter 42 (or any penalty resulting therefrom) prior to, or as a result of, making a transfer of assets described in § 507(b)(2) 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.

Treas. Reg. § 1.507-3(a)(5) provides that, except as provided in subparagraph (9) of this paragraph, a private foundation is required to meet the distribution requirements of § 4942 for any taxable year in which it makes a § 507(b)(2) transfer of all or part of its net assets to another private foundation. Such transfer shall itself be counted toward satisfaction of such requirements to the extent the amount transferred meets the requirements of § 4942(g). However, where the transferor has disposed of all of its assets, the recordkeeping requirements of § 4942(g)(3)(B) shall not apply during any period in which it has no assets. Such requirements are applicable for any taxable year other than a taxable year during which the transferor has no assets.

Treas. Reg. § 1.507-3(a)(9)(i) provides that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled (within the meaning of § 1.482-1A(a)(3)), directly or indirectly, by the same person or persons who effectively control the transferor private foundation, for purposes of Chapter 42 (§ 4940 *et seq.*) and part II of Subchapter F of Chapter 1 of the Code (§§ 507 through 509), such a transferee private foundation shall be treated as if it were the transferor.

I.R.C. § 511(a)(1) imposes a tax for each taxable year on the unrelated business taxable income (as defined in § 512) of organizations described in § 501(c).

I.R.C. § 512(a)(1) provides that the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in § 513) regularly carried on by it less certain deductions and subject to certain modifications.

I.R.C. § 513(a) provides that the term "unrelated trade or business" means, in the case of an organization subject to the tax imposed by § 511, any trade or business the conduct of which is

not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or functions constituting the basis for its exemption under § 501.

Treas. Reg. § 1.513-1(d)(2) provides that a trade or business is "related" to exempt purposes, in the relevant sense only where the conduct of the business activities bears a causal relationship to the achievement of exempt purposes (other than through the production of income); and the trade or business is "substantially related," for purposes of § 513, only if the causal relationship is a substantial one. Thus, for the conduct of a trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Whether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved.

I.R.C. § 4940(a) imposes on each private foundation which is exempt from taxation under § 501(a) for the taxable year a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

Rev. Rul. 2002-28, 2002-1 C.B. 941, holds that when a private foundation transfers all of its assets to one or more private foundations in a transfer described in § 507(b)(2) the transfers do not give rise to net investment income and are not subject to tax under § 4940(a). The transferee foundations may use their proportionate share of any excess § 4940 tax paid by the transferor to offset their own § 4940 tax liability.

I.R.C. § 4941(a)(1) imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

I.R.C. § 4946(a)(1) provides that the term "disqualified person," with respect to a private foundation, includes a person who is—

- (A) a substantial contributor to the foundation,
- (B) a foundation manager (within the meaning of subsection (b)(1)),
- (C) an owner of more than 20 percent of—
 - (i) the total combined voting power of a corporation,
 - (ii) the profits interest of a partnership, or
 - (iii) the beneficial interest of a trust or unincorporated enterprise,
 which is a substantial contributor to the foundation,
- (D) a member of the family of any individual described in subparagraph (A), (B), or (C),
- (E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the combined voting power,
- (F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest, and
- (G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest.

Treas. Reg. § 53.4946-1(a)(8) provides that, for purposes of § 4941, the term "disqualified person" shall not include any organization described in § 501(c)(3) other than an organization described in § 509(a)(4).

Treas. Reg. § 53.4941(d)-1(b)(4) provides that a transaction between a private foundation and an organization which is not controlled by the foundation (within the meaning of subparagraph (5) of this paragraph) and which is not described in § 4946(a)(1)(E), (F), or (G) because persons described in § 4946(a)(1)(A), (B), (C), or (D) own no more than 35 percent of the total combined voting power or profits or beneficial interest of such organization, shall not be treated as an indirect act of self-dealing between the foundation and such disqualified person solely because of the ownership interest of such persons in such organization.

I.R.C. § 4941(d)(1)(E) provides that the term "self-dealing" includes any direct or indirect payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person.

I.R.C. § 4941(d)(2)(E) and Treas. Reg. § 53.4941(d)-3(c)(1) provide that the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

Treas. Reg. § 53.4941(d)-3(c)(2) provides examples illustrating the provisions of § 4941(d)(2)(E). In Example (1), M, a partnership, is a firm of 10 lawyers engaged in the practice of law. A and B, partners in M, serve as trustees to private foundation W and, therefore, are disqualified persons. In addition, A and B own more than 35 percent of the profits interest in M, thereby making M a disqualified person. M performs various legal services for W from time to time as such services are requested. It is concluded that the payment of compensation by W to M shall not constitute an act of self-dealing if the services performed are reasonable and necessary for the carrying out of W's exempt purposes and the amount paid by W for such services is not excessive.

I.R.C. § 4942(a) imposes a tax on the undistributed income of a private foundation (other than an operating foundation under § 4942(j)(3)) 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.

I.R.C. § 4942(c) defines "undistributed income" for any taxable year as the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made out of such distributable amount for such taxable year.

I.R.C. § 4942(d) defines "distributable amount" as the amount equal to the sum of the minimum investment return, plus certain other amounts, reduced by the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and § 4940.

I.R.C. § 4942(g)(1)(A) provides that the term "qualifying distribution" means any amount

(including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in § 170(c)(2)(B), other than a contribution to (i) an organization controlled directly or indirectly by the foundation or by one or more disqualified persons with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation under § 4942(j)(3), except as provided in paragraph (3).

I.R.C. § 4942(g)(3) provides that the term "qualifying distribution" includes a contribution to a § 501(c)(3) organization described in paragraph (1)(A)(i) or (ii) 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 § 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.

I.R.C. § 4942(i) and Treas. Reg. § 53.4942(a)-3(e) provide for a carry-over of the amount by which qualifying distributions during the five preceding taxable years (other than amounts required to be distributed out of corpus under § 4942(g)(3)) have exceeded the distributable amounts for such years.

I.R.C. § 4942(j)(3) provides that, for purposes of § 4942, the term "operating foundation" means any organization—

- A. which makes qualifying distributions (within the meaning of paragraph (1) and (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of the lesser of—
 - i. its adjusted net income (as defined in subsection (f)), or
 - ii. its minimum investment return; (the "income test") and
- B.
 - i. substantially more than half of the assets of which are devoted directly to such activities or to functionally related businesses (as defined in paragraph (4)), or to both, or are stock of a corporation which is controlled by the foundation and substantially all of the assets of which are so devoted (the "assets test"),
 - ii. which normally makes qualifying distributions (within the meaning of paragraph (1) or (2) of subdivision (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated in an amount not less than two-thirds of its minimum investment return (as defined in subsection (e)) (the "endowment test"), or
 - iii. substantially all of the support (other than gross investment income as defined in § 509(e)) of which is normally received from the general public and from 5 or more exempt organizations which are not described in § 4946(a)(1)(H) with respect to each other or the recipient foundation, not more than 25 percent of the support (other than gross investment income) of which is normally received from

any one such exempt organization and not more than half of the support of which is normally received from gross investment income (the "support test").

Notwithstanding the provisions of subparagraph (A), if the qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) of an organization for the taxable year exceed the minimum investment return for the taxable year, clause (ii) of subparagraph (A) shall not apply unless substantially all of such qualifying distributions are made directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated.

Treas. Reg. § 53.4942(b)-1(b)(1) provides, generally, that qualifying distributions are not made by a foundation "directly for the active conduct of activities constituting its charitable, educational, or other similar exempt purpose" unless such qualifying distributions are used by the foundation itself, rather than by or through one or more grantee organizations which receive such qualifying distributions directly or indirectly from such foundation. However, administrative expenses (such as staff salaries and traveling expenses) and other operating costs necessary to conduct the foundation's exempt activities (regardless of whether they are "directly for the active conduct" of such activities) shall be treated as qualifying distributions expended directly for the active conduct of such exempt activities if such expenses and costs are reasonable in amount. Conversely, administrative expenses and operating costs which are not attributable to exempt activities, such as expenses in connection with the production of investment income, are not treated as qualifying distributions. Expenses attributable to both exempt and nonexempt activities shall be allocated to each such activity on a reasonable and consistently applied basis.

Treas. Reg. § 53.4942(a)-2(d)(4)(i) provides, in part, that where the deductions with respect to property used for a charitable, educational, or other similar exempt purpose exceed the income derived from such property, such excess shall not be allowed as a deduction, but may be treated as a qualifying distribution.

I.R.C. § 4942(j)(4)(A) provides that the term "functionally related business" includes a trade or business which is not an unrelated trade or business (as defined in § 513).

Rev. Rul. 2002-28, 2002-1 C.B. 941, provides that, when a private foundation transfers all of its assets to one or more private foundations in a transfer described in § 507(b)(2), the transfers do not constitute qualifying distributions for the transferor foundation under § 4942. The transferee foundations assume their proportionate share of the transferor foundation's undistributed income under § 4942 and reduce their own distributable amount for purposes of § 4942 by their proportion share of the transferor's excess qualifying distributions under § 4942(i).

I.R.C. § 4944(a)(1) imposes a tax on any amount invested by a private foundation in a manner that jeopardizes the carrying out of any of the foundation's exempt purposes.

Rev. Rul. 2002-28, 2002-1 C.B. 941, holds that, when a private foundation transfers all of its assets to one or more private foundations in a transfer described in § 507(b)(2), the transfers do not constitute investments jeopardizing the transferor foundation's exempt purposes and are not subject to tax under § 4944(a)(1).

I.R.C. § 4945(a)(1) imposes a tax on any “taxable expenditure” made by a private foundation.

I.R.C. § 4945(d)(4) provides that the term “taxable expenditure” includes any amount paid or incurred as a grant to a private non-operating foundation unless the grantor foundation exercises expenditure responsibility with respect to such grant in accordance with § 4945(h).

I.R.C. § 4945(d)(5) provides that the term “taxable expenditure” includes any amount paid or incurred by a private foundation for any purpose other than one specified in § 170(c)(2)(B).

I.R.C. § 4945(h) provides that the expenditure responsibility referred to in § 4945(d)(4) means that a private foundation is responsible to exert all reasonable efforts and to establish adequate procedures: (1) to see that the grant is spent solely for the purpose for which it was made; (2) to obtain full and complete reports from the grantee on how the funds are spent; and (3) to make full and detailed reports with respect to such expenditures to the Secretary.

Rev. Rul. 2002-28, 2001-1 C.B. 941, provides that, when a private foundation transfers all of its assets to one or more private foundations effectively controlled by the same persons that effectively control the transferor, the transferee foundation is treated as the transferor foundation rather than as the recipient of an expenditure responsibility grant. Therefore, there are no expenditure responsibility requirements that must be exercised under § 4945(d)(4) or (h) with respect to the transfers to the transferee foundation. The transferor foundation is required to exercise expenditure responsibility over the transferor’s outstanding grants until it disposes of all of its assets. Thereafter, during any period in which the transferor foundation has no assets, the transferor foundation is not required to exercise expenditure responsibility over any outstanding grants. However, the transferor foundation must still meet the § 4945(h) reporting requirements for the outstanding grants for the year in which the transfer was made.

Treas. Reg. § 53.4945-6(b)(1)(v) provides that any payment which constitutes a qualifying distribution under § 4942(g) ordinarily will not be treated as taxable expenditures under § 4945(d)(5).

Treas. Reg. § 53.4945-6(b)(2) provides that any expenditures for unreasonable administrative expenses, including compensation, consultant fees, and other fees for services rendered will ordinarily be taxable expenditures under § 4945(d)(5) 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.

Analysis

Issue 1

Whether the transfer of substantially all of M’s net assets to you (the “Transfer”) would adversely affect the status of either M or you as tax-exempt organizations described in § 501(c)(3).

Both M and you are currently recognized by the Service as organizations described in § 501(c)(3). Section 501(c)(3) describes organizations organized and operated exclusively for charitable, educational, and other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.

M's exempt purposes include the making of grants to QCRs, which M's trust instrument defines as organizations described in §§ 170(c)(1) and (2) that are entitled to exemption from tax under § 501(c)(3). Furthermore, Articles I.B and VI of M's trust instrument authorize the Trustees, in their discretion, to distribute up to the entire net income and principal of the Trust to such organizations in furtherance of your exempt purposes. You qualify as an organization described in § 170(c)(2) and are exempt from tax under § 501(c)(3). Therefore, you are a QCR and an eligible recipient of trust distributions under M's trust instrument, and the Transfer of all of M's remaining assets to an organization such as you is expressly permitted thereunder.

You are organized for charitable and educational purposes, including the provision of educational, vocational, social, psychological, and financial assistance to homeless individuals and families, and the making of distributions for such or similar purposes to organizations that qualify as exempt organizations under § 501(c)(3). Article IV, paragraph (a)(ii) of your Articles of Organization permits you to "receive contributions from any and all sources." Therefore, the receipt of the transferred funds from M is a permissible action by you under your governing instrument. You intend to utilize these funds in carrying out the activities which constitute the basis of your exempt purposes. No private inurement will result from the receipt of those funds. The founder, B, serves without compensation, and the only persons who will benefit from your activities will be those persons who fall within the charitable class that you were established to serve. Nor will the funds be used for legislative or political activities or for any other purpose that is not in conformity with your exempt purposes.

Since the Transfer is consistent with M's exempt purposes, and since the transferred funds will be used by you exclusively in furtherance of your exempt purposes, the Transfer will have no adverse effect on the qualification of either M or you as organizations described in § 501(c)(3).

Issue 2

Whether the Transfer would be a transfer described in § 507(b)(2).

I.R.C. § 507(b)(2) applies to the transfer of the assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization. Section 1.507-3(c)(1) provides that 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. The term "significant disposition of assets to one or more private foundations" is defined by § 1.507-3(c)(2) as any disposition or series of dispositions where the aggregate value transferred is 25 percent or more of the fair market value of the foundation at

the beginning of the taxable year.

M will transfer all of its net remaining assets to you after the payment of certain grants to unrelated QCR's and the payment of final taxes and expenses. After the Transfer is completed, the value of M's assets would be zero dollars (\$0.00). The assets transferred would constitute 100 percent of M's net assets remaining after the payment of its qualifying distributions, debts, expenses, and taxes, and not less than 93 percent of its total assets as of the beginning of the taxable year. Therefore, the Transfer would constitute a "significant disposition of assets" within the meaning of § 1.507-3(c)(2), and, thus, would qualify as an "other adjustment, organization, or reorganization" within the meaning of § 1.507-3(c)(1). Accordingly, the Transfer would be a transfer described in § 507(b)(2).

Issues 3, 4, 5, and 6

Whether the Transfer would not terminate M's private foundation status or cause it to incur any liability for the § 507(c) termination tax.

Whether, following the Transfer, M would be eligible to terminate its private foundation status by giving notice to the Service as provided in § 507(a)(1).

Whether, for purposes of calculating the termination tax under § 507(c), the date for determining the value of M's assets is the date on which it gives the notice described in § 507(a)(1) ("Notice").

Provided that Notice is given at least one day after the Transfer, and at a time when M's net remaining assets are valued at Zero Dollars (\$0.00), whether the amount of termination tax due under § 507(c)(2) upon termination of M's status as a private foundation would be Zero Dollars (\$0.00).

Section 1.507-1(b)(6) provides that when a foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in § 507(b)(2), such transferor foundation will not have terminated its private foundation status under § 507(a)(1). In addition, § 1.507-1(b)(7) 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 § 507(a) unless the transferor private foundation elects to terminate pursuant to § 507(a)(1). Furthermore § 1.507-3(d) provides that unless a private foundation voluntarily gives notice pursuant to § 507(a)(1), a transfer of assets described in § 507(b)(2) will not constitute termination of the transferor's private foundation status under § 507(a)(1). Finally, § 1.507-4(b) provides that a private foundation that makes a transfer described in § 507(b)(2) is not subject to the tax imposed under § 507(c) with respect to such transfer unless the provisions of § 507(a) become applicable.

As discussed under Issue 2, above, the Transfer will constitute a significant distribution of assets described in § 507(b)(2). Further, you have represented that the Secretary has not notified M of any tax imposed by § 507(c) due to any willful or flagrant acts or failures to act. Consequently, the Transfer would not, of itself, terminate M's private foundation status or

subject it to the tax imposed under § 507(c).

Section 507(a)(1) provides that the status of an organization as a private foundation shall be terminated only if such organization notifies the Secretary of its intent to accomplish such termination and such organization pays the tax imposed by § 507(c). Furthermore, § 1.507-1(b)(1) provides that in order for a private foundation to terminate its private foundation status under § 507(a)(1) it must submit a statement to the Internal Revenue Service of its intent to terminate its private foundation status under § 507(a)(1). In M's situation where there have been no willful repeated acts or failures to act, and no flagrant act or failure to act, which would give rise to taxes and penalties under Chapter 42, M may elect to terminate its private foundation status by notifying the Manager, Exempt Organizations Determinations (TE/GE), of its intent to accomplish such termination and paying any termination tax deemed to be due under § 507(c).

Section 507(c) imposes a tax on a terminating private foundation equal to the lesser of the aggregate tax benefit resulting from its § 501(c)(3) status and the value of its net assets. Section 507(e) and § 1.507-7(a) provide that, for purposes of § 507(c), the value of the net assets shall be determined at whichever time such value is greater: (1) the first day on which the organization takes action which culminates in its ceasing to be a private foundation, or (2) the date on which it ceases to be a private foundation. Finally, § 1.507-7(b)(1) provides that in the case of a voluntary termination under § 507(a)(1), the date for determining the value of the foundation's assets for purposes of calculating the termination tax under § 507(c) shall be the date on which the foundation gives the notification described in § 507(a)(1). The date for determining the value of M's assets for purposes of calculating its termination tax is the date it gives Notice. If M gives Notice after the Transfer, the value of its assets on the date of the Notice would be Zero Dollars (\$0.00), and, thus, the amount of the § 507(c) termination tax imposed on M would be Zero Dollars (\$0.00).

Issues 7, 8, and 9

Whether, for purposes of §§ 507 through 509, you would be treated as a newly created organization as a result of the Transfer, pursuant to § 507(b)(2).

Whether you, as transferee of substantially all of M's net assets, would be treated as possessing those attributes and characteristics of M, the transferor, described in § 1.507-3(a)(2), (3), and (4).

Since M and you are both effectively controlled by the same persons within the meaning of §§ 1.482-1(a)(3) and 1.507-3(a)(9), whether, for purposes of Chapter 42 (§ 4940 et seq.) and §§ 507 through 509, you, the transferee, would be treated as though you were M, the transferor.

Section 1.507-3(a)(1) provides that in the case of a significant distribution 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. Rather, it shall be treated as possessing those attributes and characteristics of the transferor organization which are described in § 1.507-3(a)(2), (3), and (4). Since, as discussed under Issue 2, above, the Transfer would qualify as a

“significant distribution of assets” within the meaning of § 1.507-3(c)(2), you would not be treated as a newly created organization as a result of the Transfer. Rather, you would be treated as possessing M's attributes and characteristics described in subparagraphs (2), (3), and (4) of § 1.507-3(a).

Treas. Reg. § 1.507-3(a)(9)(i) provides that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled by the same persons which effectively controlled the transferor private foundation, for purposes of Chapter 42 (§ 4940 *et seq.*), the transferee foundation shall be treated as if it were the transferor. Since you have represented that B and C effectively control both M and you, for purposes of Chapter 42, you would be treated as if you were M.

Issues 10 and 11

Whether the Transfer would give rise to any gross investment income with respect to either M or you or will be subject to tax under § 4940(a).

Whether you, as transferee, may use any excess § 4940 tax paid by M to offset your § 4940 tax liability.

Section 4940(a) imposes an excise tax on a private foundation's net investment income for the taxable year. Rev. Rul. 2002-28 holds that when a private foundation transfers all of its assets to one or more private foundations in a transfer described in § 507(b)(2), the transfers do constitute investments of the transferor and, therefore, do not give rise to net investment income subject to tax under § 4940(a). Thus, the Transfer would not give rise to net investment income subject to tax under § 4940.

Furthermore, Rev. Rul. 2002-28 holds that if the transferor foundation transfers all of its assets to private foundations effectively controlled by the same persons that effectively control the transferor, any excess § 4940 tax paid by the transferor may be used by the transferee to offset its § 4940 tax liability. As you represent that the Foundations are effectively controlled by the same persons, any excess § 4940 tax paid by M may be used by you to offset your § 4940 tax liability.

Issues 12 and 13

Whether the Transfer would constitute an act of self-dealing within the meaning of § 4941(d), or would subject any disqualified person or foundation manager with respect to M or you to the tax imposed under § 4941(a).

Whether the provision by a law firm of reasonable and necessary legal services with respect to the Transfer, or the payment of reasonable compensation for such services by M or you, would constitute acts of self-dealing within the meaning of § 4941(d), notwithstanding the status of D, a disqualified person with respect to you, as a partner in that law firm.

Section 4941(a) imposes an excise tax on each act of self-dealing between a disqualified

person and a private foundation. Section 4941 and § 1.507-3(a) determine whether the proposed Transfer of all of M's assets to you would constitute an act of self-dealing between a private foundation and its disqualified persons as defined in § 4946. Under § 53.4946-1(a)(8), a "disqualified person" does not include organizations that are exempt under § 501(c)(3). Therefore, the Transfer of M's assets to you would not be an act of self-dealing because you are recognized by the Service as an organization exempt from tax under § 501(c)(3).

Furthermore, while the payment of compensation, or the payment or reimbursement of expenses by a private foundation to a disqualified person is, generally, an act of self-dealing under § 4941(d)(1)(E), § 4941(d)(2)(E) and § 53.4941(d)-3(c)(1) provide that a payment or reimbursement to a disqualified person for personal services which are reasonable and necessary to carry out the exempt purposes of the private foundation is not an act of self-dealing provided the compensation, payment, or reimbursement is not excessive.

In this case, the law firm is not a disqualified person, so the payment to the law firm for legal services will not be a direct act of self-dealing. Under § 4946(a)(1)(F) a "disqualified person" includes a partnership in which disqualified persons hold more than 35 percent of the profits interests. D is a disqualified person and is a partner of the law firm but holds less than a 35 percent profits interest in the law firm.

The payment will not otherwise be treated as an indirect act of self-dealing benefitting D. Under § 53.4941(d)-1(b)(4) indirect self-dealing will not occur solely as a result of a transaction between a private foundation and an entity in which a disqualified person holds an interest where the entity is not a disqualified person by operation of § 4946(a)(1)(F). Moreover, as Example (1) of § 53.4941(d)-3(c)(2) demonstrates, the payment of compensation by a foundation for legal services does not constitute an act of self-dealing if the services performed are reasonable and necessary for carrying out of the foundation's exempt purposes and the amount paid for such services is not excessive, and you have represented that these requirements will be met.

Issue 14

Whether the Transfer will be a qualifying distribution by M under § 4942.

Whether you will assume M's "undistributed income" (if any) or succeed to M's excess distributions (if any).

Section 4942(a) generally imposes a tax on the undistributed income of a private foundation (other than an operating foundation under § 4942(j)(3)) 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. Section 4942(c) defines "undistributed income" for any taxable year as the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made out of such distributable amount for such taxable year. Section 4942(g)(1)(A) defines "qualifying distribution" generally as any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in § 170(c)(2)(B), but a qualifying distribution does not include a contribution to an

organization controlled directly or indirectly by the foundation or by one or more disqualified persons with respect to the foundation

Section 1.507-3(a)(5) provides that, except as provided in section 1.507-3(a)(9), a private foundation making a transfer described in § 507(b)(2) must satisfy its distribution requirements under § 4942 for the taxable year in which the transfer is made. Section 1.507-3(a)(5) further provides that the transfer will count as a distribution in satisfaction of the transferor foundation's distribution requirement under § 4942 subject to the provisions of § 4942(g). Section 4942(g) provides that a distribution from one private foundation to another private foundation, where both foundations are effectively controlled by the same persons, will not be treated as a qualifying distribution by the transferor foundation for the purposes of § 4942 except to the extent that the transferee foundation makes one or more distributions that would be qualifying distributions under § 4942(g) (other than a distribution to a controlled foundation) prior to the close of the transferee's first tax year following the tax year in which it received the transfer and the distributions are treated as being made out of corpus (as if the transferee foundation were not an operating foundation).

Rev. Rul. 2002-28 holds that where, by reason of § 1.507-3(a)(9)(i), a transferee private foundation is treated as though it were the transferor for purposes of § 4942, a transfer to the transferee foundation is not treated as a qualifying distribution of the transferor foundation. Rather, the transferee foundation assumes all obligations with respect to the transferor's "undistributed income" within the meaning of § 4942(c), if any, and reduces its own distributable amount under § 4942 by the transferor foundation's excess qualifying distributions under § 4942(i). None of the three situations in Rev. Rul. 2002-28, however, involved an operating foundation.

As discussed under Issues 7, 8, and 9, above, by reason of § 1.507-3(a)(9)(i), you would be treated as if you were M for purposes of Chapter 42, including § 4942. Accordingly, the Transfer to you would not be treated as a qualifying distribution of M. Rather, you would assume M's obligations with respect to its undistributed income within the meaning of § 4942(c), if any (after taking into account any excess qualifying distribution carryovers that M may have), and M would not be required to meet its qualifying distribution requirements under § 4942 for the taxable year of the Transfer prior to the Transfer. M must file a final Form 990-PF return for the short tax year of its termination. If M has undistributed income for such tax year, you will owe § 4942 tax if you fail, by the end of your tax year following the tax year in which you receive the Transfer, to make qualifying distributions of such amount that would be treated as out of corpus if you were a non-operating foundation. You should provide an attachment to your Form 990-PF showing how you have met this requirement.

If M has excess qualifying distributions that carry over to you, they will be forfeited if you are an operating foundation in the year of the Transfer. Section 53.4942(a)-3(e)(4) (*Example (3)*) explains that excess qualifying distributions carried forward lapse in their entirety in any year that the private foundation is treated as an operating foundation. Accordingly, if M has any unused excess qualifying distributions that it could have carried forward to a taxable year after the Transfer, and if you are an operating foundation in that year, M's unused excess qualifying distributions will lapse and will not be available for your use in any taxable year after the year of

the Transfer if you were to cease to be an operating foundation.

Issue 15

Whether the Transfer would constitute a investment jeopardizing M's exempt purposes, or would be subject to tax under § 4944(a)(1).

Section 4944 imposes a tax on any investment that jeopardizes an exempt organization's charitable purposes. Rev. Rul, 2002-28 holds that where a private foundation transfers all of its assets and liabilities to another private foundation, the transfer does not constitute an investment for purposes of § 4944 and, therefore, the transfer does not constitute an investment jeopardizing the transferor foundation's exempt purposes and is not subject to tax under § 4944(a)(1). Therefore, the Transfer would not constitute a jeopardizing investment or subject M to tax under § 4944(a)(1).

Issues 16 and 17

Whether the Transfer would be a taxable expenditure within the meaning of § 4945(d) or would require the exercise of expenditure responsibility under § 4945(d)(4) or (h).

Whether the payment of the IRS fee for this private letter ruling would be treated as a taxable expenditure within the meaning of § 4945(d), or whether payment of reasonable legal fees to the attorneys for M and you to obtain this private letter ruling with respect to the Transfer would be treated a taxable expenditures within the meaning of § 4945(d)(5).

Section 4945 imposes a tax on any "taxable expenditure" made by a private foundation. Section 4945(d)(4) provides that the term "taxable expenditure" includes any amount paid or incurred as a grant to a private non-operating foundation unless the grantor foundation exercises expenditure responsibility with respect to such grant in accordance with § 4945(h).

Rev. Rul. 2002-28 holds that where, by reason of § 1.507-3(a)(9)(i), a transferee foundation is treated as though it were the transferor foundation for purposes of § 4945, the transferee foundation is not treated as the recipient of an expenditure responsibility grant, and no expenditure responsibility requirements must be exercise under § 4945(d)(4) or (h) with respect to the transfer to the transferee foundation.

As discussed under Issues 7, 8, and 9, above, by reason of § 1.507-3(a)(9)(i), you would be treated as if you were M for purposes of Chapter 42, including § 4945. Consequently, the Transfer would not be considered a taxable expenditure under § 4945, and there would be no expenditure responsibility requirements to be exercised under § 4945(d)(4) or (h) with respect to the Transfer.

Section 53.4945-6(b)(1)(v) provides that any payment which constitutes a qualifying distribution under § 4942(g) will not be treated as a taxable expenditure under § 4945(d)(5). Section 4942(g)(1)(A) and § 53.4942(a)-3(a)(2)(i) provide that a qualifying distribution under § 4942(g) includes reasonable and necessary administrative expenses paid to accomplish one or more

purposes described in § 170(c)(1) or (2)(B). Administrative expenses incurred in obtaining a ruling from the Service or for legal fees relating to a foundation's exempt purposes are qualifying distributions. On the other hand, § 53.4945-6(b)(2) provides that expenditures for unreasonable administrative expenses, including consultant fees and other fees for services rendered, will ordinarily be taxable expenditures under § 4945(d)(5). The payment of legal fees to the attorneys for M or you and the payment of the IRS fee for this private letter ruling are administrative expenses necessary to the accomplishment of the Foundations' exempt purposes. So long as such payments are reasonable, the legal fees paid to the attorneys for M and you to obtain a private letter ruling with respect to the Transfer, and the IRS fee paid for this private letter ruling, would not be treated as taxable expenditures within the meaning of § 4945(d)(5).

Issues 18 and 19

Whether the operation by you of state licensed postsecondary career training programs for a fee would adversely affect your tax exempt status under § 501(c)(3) or your status as an operating foundation under § 4942(j)(3).

Whether the fees received by you from the operation of the state licensed postsecondary career training programs would be considered gross income derived from an unrelated trade or business for purposes of § 512(a)(1).

Your exempt purposes, as described in your Articles of Organization, include "the provision of educational, vocational, social, psychological, and financial assistance to homeless individuals and families." From your beginning, you have provided education and practical job-skills training to disadvantaged persons and those who have suffered displacement from economic upheavals so that they may be better equipped to obtain employment and to lead productive and satisfying lives. You now wish to provide training in software programs widely used by the business community to help displaced persons whose existing skills do not correspond to the current needs of the marketplace.

Providing such training is educational within the meaning of § 1.501(c)(3)-1(d)(3)(a), and contributes importantly to the accomplishment of your exempt purposes of providing educational and vocational assistance to homeless and displaced persons. Thus, such activities amount to a trade or business that is substantially related to the accomplishment of your exempt purposes within the meaning of § 1.513-1(d)(2), and are, therefore, not unrelated trade or business within the meaning of § 513(a). Insofar as the term "functionally related business" under § 4942(j)(4)(A) includes a trade or business which is not an unrelated trade or business, as defined in § 513, the providing of such state-licensed postsecondary career training programs by you would constitute a "functionally related business," and deductible expenses related thereto in excess of the income from such business would constitute qualifying distributions made directly for the active conduct of activities constituting your exempt function for purposes of qualifying as a private operating foundation under § 4942(j)(3), as provided in § 53.4942(a)-2(d)(4) and § 53.4942(b)-1(b)(1). The operation of state licensed postsecondary career training programs for a fee will not adversely affect your status as an organization described in § 501(c)(3) or your status as a private operating foundation under § 4942(j)(3). Furthermore,

since the income derived from such activities would constitute income from a related trade or business, such income would not constitute gross income derived from an unrelated trade or business for purposes of § 512(a)(1).

Issue 20

Whether, following the Transfer, if your qualifying distributions (within the meaning of § 4942(g)(1) or (2)) made directly for the active conduct of the activities constituting your exempt purpose or function were to exceed both your net investment income and your minimum investment return, you will continue to qualify as a private operating foundation within the meaning of § 4942(j)(3).

To qualify as a private operating foundation under § 4942(j)(3), an organization must meet the income test under § 4942(j)(3)(A) and any one of three alternative tests—the assets test under § 4942(j)(3)(B)(i), the endowment test under § 4942(j)(3)(B)(ii), or the support test under § 4942(j)(3)(B)(iii). The income test requires that the organization make qualifying distributions directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of the lesser of (i) its adjusted net income or (ii) its minimum investment return. The endowment test requires qualifying direct distributions of at least two-thirds of the foundation's minimum investment return.

You anticipate, and represent, that, notwithstanding an increase in your assets and income as a result of the Transfer, you will continue to make qualifying direct distributions in excess of both your minimum investment return and your adjusted net income. So long as your qualifying direct distributions continue to exceed both your net investment income and your minimum investment return, you would continue to qualify as a private operating foundation under § 4942(j)(3).

Conclusion

In light of the foregoing, we rule as follows:

1. The transfer of substantially all of M's net assets to you (the "Transfer") would not adversely affect the status of either M or you as organizations described in § 501(c)(3).
2. The Transfer would be a transfer described in § 507(b)(2).
3. The Transfer would not terminate M's private foundation status or cause M to incur any liability for the § 507(c) termination tax.
4. Following the Transfer, M would be eligible to terminate its private foundation status by giving notice to the Service as provided in § 507(a)(1).
5. For purposes of calculating the termination tax under § 507(c), the date for determining the value of M's assets would be the date on which it gives the notice described in § 507(a)(1) ("Notice").
6. Provided that Notice is given at least one day after the Transfer, and at a time when M's net remaining assets are valued at Zero Dollars (\$0.00), the amount of termination tax due under § 507(c)(2) upon termination of M's status as a private foundation would be Zero Dollars (\$0.00).

7. For purposes of §§ 507 through 509, you would be treated as a newly created organization as a result of the Transfer, pursuant to § 507(b)(2).
8. You, as transferee of substantially all of M's net assets, would be treated as possessing those attributes and characteristics of M described in § 1.507-3(a)(2), (3), and (4).
9. Since M and you are both effectively controlled by the same persons within the meaning of §§ 1.482-1(a)(3) and 1.507-3(a)(9), for purposes of Chapter 42 (§ 4940 et seq.) and §§ 507 through 509, you, the transferee, would be treated as though you were M, the transferor.
10. The Transfer would not give rise to net investment income and would not be subject to tax under § 4940(a).
11. You, as transferee, may use any excess § 4940 tax paid by M, the transferor, to offset your § 4940 tax liability.
12. The Transfer would not constitute an act of self-dealing within the meaning of § 4941(d), and would not subject any disqualified person or foundation manager with respect to M or you to the tax imposed under § 4941(a).
13. The provision by a law firm of reasonable and necessary legal services with respect to the Transfer, and the payment of reasonable compensation for such services by M or you, would not constitute acts of self-dealing within the meaning of § 4941(d), notwithstanding the status of D, a disqualified person with respect to you, as a partner in that law firm.
14. The Transfer would not constitute a qualifying distribution by M under § 4942. You would assume M's undistributed income under § 4942 (if any) and be required to make qualifying distributions of such amount treated as distributed out of corpus by the end of your tax year after the tax year in which you receive the Transfer, but excess distributions by M (if any) will not carry over to you, but will lapse in the first year after the Transfer that you qualify as an operating foundation.
15. The Transfer would not constitute an investment jeopardizing M's exempt purposes, and would not be subject to tax under § 4944(a)(1).
16. The Transfer would not be a taxable expenditure within the meaning of § 4945(d); consequently there would be no expenditure responsibility requirements to be exercised under § 4945(d)(4) or (h).
17. The payment of the IRS fee for this private letter ruling would not be treated as a taxable expenditure within the meaning of § 4945(d), and payments of reasonable legal fees to the attorneys for M and you to obtain this private letter ruling with respect to the Transfer would not be treated as taxable expenditures within the meaning of § 4945(d) so long as such payments were reasonable.
18. The operation by you of state licensed postsecondary career training programs for a fee would not adversely affect your tax-exempt status under § 501(c)(3) or your status as an operating foundation under § 4942(j)(3).
19. The fees received by you from the operation of state licensed postsecondary career training programs would not be considered gross income derived from an unrelated trade or business for purposes of § 512(a)(1).
20. Following the Transfer, if your qualifying distributions (within the meaning of § 4942(g)(1) or (2)) made directly for the active conduct of the activities constituting your exempt purpose or function were to exceed both your net investment income and your minimum

investment return, you would continue to qualify as a private operating foundation under § 4942(j)(3).

This ruling will be made available for public inspection under § 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. I.R.C. § 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 resolve 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,

Peter A. Holiat
Acting Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437