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Person To Contact: \_\_\_\_\_, ID No

Telephone Number:

Refer Reply To:  
CC:TEGE:EOEG:EO3  
PLR-T-103447-15

Date:  
October 14, 2015

EIN:

Legend:

Foundation =  
Transferee =

TY: Ending

Dear \_\_\_\_\_:

This is in response to the letter dated October 28, 2014, and additional submissions dated January 12, 2015, October 8, 2015, and October 14, 2015, in which Transferee's counsel requested on behalf of Transferee rulings under sections 507, 4940, 4941, and 4942 of the Internal Revenue Code.<sup>1</sup>

**BACKGROUND**

Based on the documents and representations submitted on behalf of Transferee, the relevant facts on which Transferee's request for rulings is based are as follows:

Prior to the enactment of the Tax Reform Act of 1969, the Internal Revenue Service (IRS) recognized Foundation as an organization described in section 501(c)(3). Subsequently, the IRS classified Foundation as a private foundation under section 509(a). Foundation was established to assist in a family tradition of charitable giving. Foundation has eight directors. They no longer agree on how to carry out Foundation's exempt purposes. Foundation's directors propose to transfer approximately 78 percent of Foundation's net assets to Transferee for capital endowment purposes to enable Transferee to engage in charitable activities (the proposed transfer).

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<sup>1</sup> The Internal Revenue Code of 1986, as amended, to which all subsequent "section" references are made unless otherwise indicated.

The IRS has recognized Transferee as an organization described in section 501(c)(3) and classified it as a private foundation under section 509(a). After the proposed transfer, Foundation and Transferee will engage in broad charitable activities. Foundation will continue to have the same eight directors, but five of those directors will also constitute the directors of Transferee.

Under the proposed transfer, Foundation will transfer approximately 78 percent of its total assets, which consist of cash, money market funds, and publicly held securities, to Transferee for no consideration. Transferee represents that it is effectively controlled, directly or indirectly, by the same person or persons who effectively control Foundation as provided in Treas. Reg. Sec. 1.507-3(a)(2)(ii). Transferee also represents for purposes of its request for rulings that Foundation has not given the notice described in section 507(a)(1) and has not engaged in any of the acts or failures to act described in section 507(a)(2)(A).

### **RULINGS REQUESTED, LAW, and ANALYSIS**

*Requested Ruling 1: The proposed transfer from Foundation to Transferee will constitute a significant distribution of assets described in section 507(b)(2), and Transferee will not be treated as a newly created organization.*

Section 507(c) imposes the so-called "termination tax" on a private foundation if the foundation is "referred to" in section 507(a). Section 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 a 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 section 507(c), and either such organization pays the tax (or any portion not abated under section 507(g)) or the entire amount of such tax is abated under section 507(g).

Section 507(b)(2) provides that in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization. A transfer described in section 507(b)(2) is referred to as a "section 507(b)(2) transfer."

The exception in section 507(a) for what is "provided in subsection (b)" excludes section 507(b)(2) transfers from imposition of the termination tax. Accordingly, a transfer of assets described in section 507(b)(2) from one private foundation to another does not trigger the termination tax on the transferor private foundation if the transferee private foundation involved in the transfer "is not . . . treated as a newly created organization." This is explained in more detail in the applicable regulations.

Treas. Reg. Sec. 1.507-3(a)(1) states that in the case of a transfer of assets described in section 507(b)(2), including a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of Treas. Reg. Sec. 1.507-3, the transferee organization will not be treated as a newly created organization. Similarly, Treas. Reg. Sec. 1.507-1(b)(6) provides that if a private foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in section 507(b)(2) and Treas. Reg. Sec. 1.507-3(c), such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Treas. Reg. Sec. 1.507-3(c)(1) describes the terms "other adjustment, organization, or reorganization" as including any significant distribution of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income. The term "significant disposition of assets to one or more private foundations" is defined by Treas. Reg. Sec. 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 net assets of the transferor foundation at the beginning of the taxable year. Foundation will transfer approximately 78 percent of its net assets to Transferee. Foundation will receive no consideration for the amounts transferred, and none of the amounts will be out of current income. Accordingly, the proposed transfer will constitute a significant disposition of assets that will qualify as a section 507(b)(2) transfer.

Treas. Reg. Sec. 1.507-4(b) provides, in part, that a private foundation that makes transfers described in section 507(b)(2) is "not subject to the tax imposed under section 507(c) with respect to such transfers unless the provisions of section 507(a) become applicable." Transferee represents for purposes of this request for rulings that Foundation has not and will not notify the Secretary of any intent to terminate its status as a private foundation within the meaning of section 507(a)(1) and that Foundation has not either committed willful repeated acts (or failures to act) or committed a willful and flagrant act (or failure to act) which gives rise to tax under Chapter 42 within the meaning of section 507(a)(2). Therefore, because the proposed transfer will be described in section 507(b)(2) and because Foundation will not give the notice described in section 507(a)(1) or be described in section 507(a)(2), Transferee will not be treated as newly created organizations for this purpose.

The conclusion that the proposed transfer will be described in section 507(b)(2) is reached herein only for purposes of responding to Transferee's request for the ruling that Transferee will not be treated as a newly created organization. Section 6110(k)(3) provides, in part, that unless "the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent." For this purpose, section 6110(b)(1)(A) provides that a "written determination" generally means "a ruling, determination letter, technical advice memorandum, or Chief Counsel advice." The request for rulings to which this letter is directed was submitted by Transferee and not

Foundation. Accordingly, Foundation may not use or cite this letter as precedent. See also, section 11.02 of Rev. Proc. 2015-1, 2015-1 I.R.B. 1, 59.

Requested Ruling 2: *Transferee will be treated as possessing Foundation's tax attributes and characteristics as described in Treas. Reg. Sec. 1.507-3(a)(2), (3), (4), and, to the extent applicable, (6) and (8)(ii).*

Treas. Reg. Sec. 1.507-3(a) provides that a transferee private foundation shall be treated as possessing certain attributes and characteristics of the transferor organization described in paragraphs (2), (3), and (4), which are, respectively, aggregate tax benefit, substantial contributors, and unsatisfied chapter 42 liabilities. Subparagraphs (6) and (8)(ii) provide additional special rules with respect to treatment of excess business holding periods in section 4943(c)(4), (5), or (6), and property basis under sections 4940(c)(4)(B) and 4942(f)(4).

Treas. Reg. Sec. 1.507-3(a)(2)(i) provides that in a section 507(b)(2) transfer, a transferee organization succeeds to the aggregate tax benefit of the transferor organization in proportion to the fair market value of the assets transferred to the transferee organization.

Treas. Reg. Sec. 1.507-3(a)(3) provides that in the event of a section 507(b)(2) transfer, any person who is a substantial contributor (within the meaning of section 507(d)(2)) with respect to the transferor foundation shall be treated as a substantial contributor with respect to the transferee foundation.

Treas. Reg. Sec. 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 section 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. Sec. 1.507-3(a)(6) provides that for purposes of section 4943(c)(4), (5), and (6), whenever a private foundation makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation, the applicable periods described in section 4943(c)(4), (5), or (6) shall include both the period during which the transferor foundation held such assets and the period during which the transferee foundation holds such assets.

Treas. Reg. Sec. 1.507-3(a)(8)(ii) provides, in part, that the provisions enumerated in (a) through (g) of that subdivision (relating to the basis of property, distributions of income under section 4942, and certain transition rules under sections 101(l)(2), (3)(A), (3)(B), (5), and (6) of the Tax Reform Act of 1969 (83 Stat. 534)) shall apply to a transferee foundation with respect to the assets transferred to it in a section 507(b)(2) transfer to

the same extent and in the same manner that they would have applied to the transferor foundation had the transfer described in section 507(b)(2) not been effected.

We determined above that the proposed transfer to Transferee qualifies as a section 507(b)(2) transfer. Transferee has represented that it is an effectively controlled organization. A majority of Foundation's directors are also the only directors of Transferee. Accordingly, Transferee will succeed to Foundation's aggregate tax benefit in an amount computed as described in Treas. Reg. Sec. 1.507-3(a)(2)(i).

In addition, because the proposed transfer is a section 507(b)(2) transfer, Transferee also will possess the attributes and characteristics of Foundation that are described in Treas. Reg. Sec. 1.507-3(a)(3) and (4). Further, under subparagraph (6) and (8)(ii) of that regulation, respectively, the periods described in section 4943(c)(4), (5), or (6) applicable to excess business holdings shall include both the periods during which Foundation held such assets and the periods during which Transferee holds such assets, and the section 4940(c)(4)(B) and 4942(f)(4) basis rules will apply to the portion of the transferred assets described therein such that their bases in the hands of Foundation carries over to Transferee.

Requested Ruling 3: *The proposed transfer will not constitute an act of self-dealing by Transferee with respect to Foundation under section 4941.*

Section 4941(a)(1) imposes taxes on each act of self-dealing between a disqualified person and a private foundation. Taxes are imposed on both the self-dealers involved in an act of self-dealing and on any foundation managers who knowingly participate in an act of self-dealing. Even though section 4941 does not impose a tax on a private foundation when an act of self-dealing occurs, a foundation with respect to which there has been an act of self-dealing is required to report it to the IRS on its annual information return, which is the Form 990-PF in this case.

Section 4941(d)(1)(E) provides that the term "self-dealing" includes 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 4946(a)(1) defines the term "disqualified person." Treas. Reg. Sec. 53.4946-1(a)(8) provides that the term "disqualified person" does not include organizations that are exempt under section 501(c)(3). Thus, Transferee, by definition, will not be a "disqualified person" with respect to Foundation.

In Situation 1 in Rev. Rul. 2002-28, supra, P is recognized as exempt from federal income tax under section 501(c)(3) and is classified as a private foundation under section 509(a). Pursuant to a plan of dissolution, after satisfying all of its outstanding liabilities, P distributes all of its remaining assets in equal shares to X, Y, and Z. Rev. Rul. 2002-28, states, in part, that the transfers in question are to section 501(c)(3) organizations, which are not treated as disqualified persons for purposes of section 4941. Rev. Rul. 2002-28 concludes that the transfers do not constitute self-dealing

transactions and are not subject to tax under section 4941(a)(1).

The proposed transfer of assets to Transferee will not constitute an act of self-dealing, because Transferee is recognized by the IRS as an organization described in section 501(c)(3) and exempt from tax under sections 501(a).

With respect to the request for this ruling, this letter is directed to Transferee, and not to Foundation or any disqualified persons with respect to Transferee or Foundation. As previously stated, section 6110(k)(3) provides, in part, that unless "the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent." Accordingly, neither Foundation nor any disqualified persons with respect to Transferee or Foundation may use or cite this letter as precedent. See section 11.02 of Rev. Proc. 2015-1, supra, at 59.

*Request Ruling 4: All Transferee's legal, accounting and other expenses related to this request for rulings and the associated asset transfer, if reasonable in amount, will be qualifying distributions for purposes of section 4942(g)(1)(A).*

Section 4942(g)(1)(A) and Treas. Reg. Sec. 53.4942(a)-3(a)(2)(i) provide, in part, that the term "qualifying distribution" means any amount, including "reasonable and necessary administrative expenses," paid to accomplish one or more purposes described in section 170(c)(1) or (2)(B). Section 170(c)(2)(B) lists the following purposes: "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." These purposes are the same as the purposes listed in section 501(c)(3).

The IRS has recognized Transferee as an organization described in section 501(c)(3) and classified it as a private foundation under section 509(a). Transferee has represented that after the proposed transfer, Transferee will engage in broad charitable activities. Assuming that Transferee's legal, accounting, and other expenses incurred in connection with this ruling request and with effecting the proposed transfer will be reasonable and consistent with ordinary business care and prudence and paid to accomplish one or more purposes described in section 170(c)(2)(B), such expenses will be considered qualifying distributions under section 4942.

## **RULINGS**

1. The proposed transfer from Foundation to Transferee will constitute a significant distribution of assets described in section 507(b)(2), and Transferee will not be treated as a newly created organization.
2. Transferee will be treated as possessing Foundation's tax attributes and characteristics

described in Treas. Reg. Sec. 1.507-3(a)(2), (3), (4), and, to the extent applicable, (6) and (8)(ii).

3. The proposed transfer will not constitute an act of self-dealing by Transferee with respect to Foundation under section 4941.
4. All Transferee's legal, accounting, and other expenses related to this request for rulings and the associated asset transfer, if reasonable in amount, will be qualifying distributions for purposes of section 4942(g)(1)(A).

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Transferee (accompanied by a penalty of perjury statement executed by an individual with authority to bind Transferee) and upon the understanding that there will be no material changes in the facts. This office has not verified any of the material submitted in support of the request for rulings, and such material is subject to verification on examination.

No ruling is granted as to whether Transferee qualifies as an organization described in sections 501(c) or 509(a).

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 specifically described, and, except as expressly provided in this letter, no opinion is expressed or implied concerning the federal income tax consequences of any aspects of any transaction or item of income set forth above.

Because it could help resolve questions concerning federal income tax status, this ruling should be kept in Transferee's permanent records.

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if Transferee files its return electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and control number of this letter.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to each of Transferee's authorized representatives.

This letter is directed only to Transferee. Section 6110(k)(3) provides that it may not be used or cited as precedent by anyone else.

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

Sincerely,

Kenneth M. Griffin  
Chief  
Exempt Organizations Branch 3  
(Tax Exempt & Government Entities)

Encl.: Notice 437, Notice of Intention to Disclose  
Redacted copy of this letter

cc: