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

TAX EXEMPT AND

GOVERNMENT ENTITIES

Release Number: **201417021**
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Date: January 31, 2014

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 507.01-00, 4940.00-00, 4941.00-00, 4942.00-00, 4944.00-00, 4945.00-00

Legend:

Director A =
Director B =
State =
Transferee =

Dear :

This is in response to your ruling request regarding the proper treatment of a transfer of 50% of your net assets to another private foundation under Internal Revenue Code (I.R.C.) §§ 507, 4940, 4941, 4942, 4944, and 4945.

Facts:

You and Transferee are existing State corporations that are recognized as exempt from federal tax under § 501(c)(3) and are classified as private foundations under § 509(a). Director A and Director B are siblings and are directors of and substantial contributors of you. Director A and Director B have developed divergent charitable goals, and believe that their charitable endeavors will be more efficiently managed separately. To accomplish this objective, you propose to transfer half of your assets to Transferee. Transferee was created by Director B and is controlled by him, his spouse, and their children. The transfers will be for no consideration and not out of current income. You and the Transferee are not, and will not be, operating foundations within the meaning of § 4942(j)(3). You have not and do not intend to provide notice to the Secretary of your intention to terminate your private foundation status under § 507(a)(1). In connection with the transfers, Director B will resign as your officer and director. Thereafter, Director A will control you and Director B and his family will control Transferee.

You have made the following representations. You have not notified the Secretary of your intention to terminate your status as a private foundation. You and Transferee have identical exempt purposes.

You, the Transferee, and your respective foundation managers have each represented that they have (i) made a full disclosure of the factual situation to the Service, (ii) made reasonable attempts to ascertain whether the transfers are a violation of Chapter 42, (iii) concluded that, to the best of

their knowledge and information, the transfers are not violations of Chapter 42, and (iv) at the time of the proposed transfer will not have 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. You have represented that the Transferee is effectively controlled, directly or indirectly, by the same person or persons who effectively control you within the meaning of Treas. Reg. § 1.507-3(a)(9). You do not currently have any outstanding grants that require the exercise of expenditure responsibility within the meaning of § 4945(h) nor do you intend to make any such grants. You do not have any outstanding pledges and will allocate, pro rata, any charitable pledges made prior to your distributions to Transferee.

Rulings Requested:

You have requested the following rulings:

1. The proposed transfer of assets from you to Transferee will constitute an adjustment described in § 507(b)(2); therefore Transferee will not be treated as a newly created organization.
2. The proposed transaction will not terminate your status as a private foundation under § 507(a) and, therefore, will not result in the imposition of the termination tax under §507(c).
3. The proposed transaction will not adversely affect your tax-exempt status under § 501(c)(3).
4. Your proposed transfer will not constitute any willful and flagrant act or failure to act which would result in tax under Chapter 42 of the Code.
5. Transferee will be treated as possessing your tax attributes and characteristics as described in § 1.507-3(a)(2), (3), and (4). The tax basis and the holding period of each asset transferred to Transferee will be carried over to Transferee as if each asset had continued to be held by you.
6. The proposed transfer will not constitute investment income or any taxable sale or disposition of property and, thus, will not result in the imposition of any additional tax under § 4940 on you.
7. The proposed transfer will not constitute an act of self-dealing with respect to you under § 4941.
8. The proposed transfer will not constitute an investment that jeopardizes your exempt purposes and will not result in tax under § 4944.
9. The proposed transaction will not constitute a taxable expenditure under § 4945(d)(4), provided that you exercise expenditure responsibility to the extent required by § 4945(h) with respect to the transfer to Transferee and will not result in tax under § 4945.
10. All your legal, accounting and other expenses related to this rulings request and the associated asset transfers, if reasonable in amount, will be qualifying distributions for purposes of § 4942(g)(1)(A), and will not be taxable expenditures for purposes of §4945.

Law:

I.R.C. § 501(c)(3) provides an exemption from federal tax for organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

I.R.C. § 507(a)(1) states that a private foundation may voluntarily terminate its private foundation status by notifying the Secretary of its intention to voluntarily terminate its private foundation status pursuant to § 507(a)(1) and by paying any termination tax under § 507(c).

I.R.C. § 507(a)(2) states that an organization's private foundation status may be involuntarily terminated by the Secretary if 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, by reason of these acts, such organization is liable for the tax imposed by subsection 507(c), and either such organization pays the tax imposed by subsection 507(c) (or any portion not abated under subsection 507(g)) or the entire amount of such tax is abated under subsection 507(g).

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

I.R.C. § 507(c) imposes on an organization that voluntarily terminates its private foundation status an excise tax equal to the lower of (1) the aggregate tax benefits that have resulted from the private foundation's exempt status under § 501(c)(3), or (2) the value of the net assets of the private foundation.

I.R.C. § 507(d)(1) states that, for purposes of subchapter (c), the aggregate tax benefit resulting from the § 501(c)(3) status of any private foundation is the sum of (A) the aggregate increases in tax under chapters 1, 11, and 12 which would have been imposed with respect to all substantial contributors to the foundation if deductions for all contributions made by such contributors to the foundation after February 28, 1913, had been disallowed, and (B) the aggregate increases in tax under Chapter 1 which would have been imposed with respect to the income of the private foundation for taxable years beginning after December 31, 1912, if (i) it had not been exempt from tax under § 501(a), and (ii) in the case of a trust, deductions under § 642(c) had been limited to 20 percent of the taxable income of the trust (computed without the benefit of § 642(c) but with the benefit of § 170(b)(1)(A)), and (C) interest on the increases in tax determined under subparagraphs (A) and (B) from the first date on which each such increase would have been due and payable to the date on which the organization ceases to be a private foundation.

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

I.R.C. § 4940(e) provides for a reduction in the excise tax on net investment income to one percent where a private foundation meets certain distribution requirements.

I.R.C. § 4941(a) imposes an excise tax on acts of self-dealing between a private foundation and any of its disqualified persons as defined in § 4946. Section 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)).

I.R.C. § 4942(g)(1)(A) defines "qualifying distribution" 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) 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, unless certain requirements are satisfied, or (ii) any private foundation which is not an operating foundation under § 4942(j)(3), unless certain requirements are satisfied.

I.R.C. § 4944(a) imposes a tax on any investment that jeopardizes any exempt purpose of a § 501(c)(3) private foundation.

I.R.C. § 4945(a) imposes a tax on each taxable expenditure, payable by the private foundation. In addition, § 4945(a)(2) imposes a tax on each foundation manager who agrees to make a taxable expenditure unless that agreement is not willful and is due to reasonable cause.

I.R.C. § 4945(d)(4) defines, in part, the term "taxable expenditure" to mean any amount paid or incurred by a private foundation as a grant to an organization unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h).

I.R.C. § 4945(h) states that the term "expenditure responsibility" means that a private foundation is responsible to exert all reasonable efforts and to establish adequate procedures--(1) to see that a grant is spent solely for the purpose for which 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.

Treas. Reg. § 1.507-3(a)(9)(i) states 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 § 1.482-1(a)(3)), directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of Chapter 42 (§ 4940 *et seq.*) and part II of subchapter F of Chapter 1 (§§ 507 through 509), such a transferee private foundation shall be treated as if it were the transferor. However, where proportionality is appropriate, such a transferee private foundation shall be treated as if it were the transferor in the proportion which the fair market value of the assets (less encumbrances) transferred to such transferee bears to the fair market value of the assets (less encumbrances) of the transferor immediately before the transfer. Subdivision (ii) states that subdivision (i) of this subparagraph shall not apply to the requirements under §§ 6033 and 6104, which must be complied with by the transferor private foundation, nor to the requirement under § 6043 that the transferor file a return with respect to its liquidation, dissolution, or termination.

Treas. Reg. § 1.507-3(c)(1) states that a transfer of assets is described in § 507(b)(2) if it is made by a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, which includes any other significant disposition of assets to one or more private foundations.

Treas. Reg. § 1.507-3(c)(2) defines the term "significant disposition of assets to one or more private foundations" as any disposition or series of dispositions where the cumulative total of the

dispositions is 25 percent or more of the fair market value of the net assets of the foundation at the beginning of the taxable year.

Treas. Reg. § 1.507-3(d) states 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). Such a transfer must, nevertheless, satisfy the requirements of any pertinent provisions of Chapter 42. See subparagraphs (5) through (7) of § 1.507-3(a). However, if such transfer constitutes an act or failure to act which is described in § 507(a)(2)(A), then such transfer will be subject to the provisions of § 507(a)(2) rather than § 507(b)(2).

Treas. Reg. § 1.507-4(b) states that private foundations that 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. § 53.4940-1(d) states that, for purposes of paragraph (c) of that section, "gross investment income" means the gross amounts of income from interest, dividends, rents, and royalties received by a private foundation from all sources.

Treas. Reg. § 53.4940-1(f) provides rules for determining capital gain net income (net capital gain for taxable years beginning before January 1, 1977) for purposes of the tax imposed by § 4940.

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

Analysis:

Director B has a differing charitable philosophy and divergent charitable goals from Director A. Accordingly, the proposed transfers from you to Transferee, are so that each sibling can direct the respective investment and exempt uses of those assets independent of the other.

Ruling 1:

Section 507(b)(2) provides that in the case of a transfer from one private foundation to another private foundation according to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, the transferee organization shall not be treated as a newly created organization. Section 1.507-3(c)(1) describes the terms "other adjustment, organization, or reorganization" as including any partial liquidation or any other 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 § 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 foundation at the beginning of the taxable year. Since you are transferring 50% of your assets to Transferee whom is a private foundation, for no consideration and not out of current income, your proposed transfers will qualify as a significant disposition of assets under

§ 507(b)(2), and Transferee shall not be treated as a newly created organization.

Ruling 2:

Pursuant to § 1.507-4(b), 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. Section 507(a) applies to terminate the status of any organization as a private foundation only if the organization notifies the Secretary of its intent to accomplish such termination or, with respect to the 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, by reason of § 507(a)(2)(A), such organization is liable for the tax imposed by § 507(c). Therefore, your proposed transfer of assets to Transferee under § 507(b)(2) will not terminate your private foundation status under § 507(a) and does not result in a termination tax imposed by § 507(c).

Ruling 3:

You and the Transferee are both described in § 501(c)(3), have identical exempt purposes, and as discussed in above, the transfer is a § 507(b)(2) transfer that will not terminate your status as a private foundation, the proposed transfer will not adversely affect your tax exemption under § 501(c)(3).

Ruling 4:

As discussed above, your proposed transfers will be § 507(b)(2) transfers. You have not and will not notify the Secretary of your intent to terminate your status as a private foundation, and you have not committed and will not as of the time of the transfer commit 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. Therefore, your proposed transfers of assets to Transferee under § 507(b)(2) will not constitute any willful and flagrant act or failure to act which would result in tax under Chapter 42.

Ruling 5:

In the case of a significant disposition of assets to one or more private foundations within the meaning of § 507(b)(2), the transferee organization shall be treated as possessing those attributes and characteristics of the transferor organization as described in § 1.507-3(a)(2), (3), and (4). As discussed in Ruling 1 above, your transfer is described in § 507(b)(2). The proposed transfers will not cause the Transferee to be treated as a newly created organization. Accordingly, Transferee will be treated as possessing your tax attributes and characteristics as described in § 1.507-3(a)(2), (3), and (4).

As discussed in above, your proposed transfer is described in § 507(b)(2). Accordingly, Transferee will be treated as possessing your tax attributes and characteristics including § 1.507-3(a)(2), the tax basis and the holding period of each asset transferred to Transferee will be carried over to Transferee as if each asset had continued to be held by you.

Ruling 6:

Section 4940 imposes a two-percent excise tax on the investment income of a private foundation. Sections 53.4940-1(d) and (f) state that gross investment income includes interest, dividends, rents, royalties, and capital gains from the sale or other disposition of property held for investment purposes. Your transfers to Transferee, which lack consideration and are not out of current income, will not constitute investments or sales or other dispositions of investment property, that would generate investment income subject to excise tax under § 4940. Therefore, the transfers will not give rise to net investment income subject to tax under § 4940(a).

Ruling 7:

Section 4941(a) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Under § 53.4946-1(a)(8), a § 501(c)(3) exempt organization is not a "disqualified person." Accordingly, because Transferee is recognized by the Service as a § 501(c)(3) exempt organization, your transfers to Transferee will not be acts of self-dealing and will not be subject to the excise tax under § 4941.

Ruling 8:

Section 4944 imposes an excise tax on investments that jeopardize a private foundation's exempt purposes. Section 4944 requires an investment. If a foundation furnishes consideration to the transferor, however, the foundation will be considered as having made an investment in the amount of consideration. In Ruling 6 above, we determined that because your proposed transfers to the Transferee will lack consideration and will not be out of current income then they will not constitute investments or sales or other dispositions of investment property. Likewise the proposed transfers do not constitute investments for purposes of § 4944; therefore the transfers do not constitute investments jeopardizing your exempt purposes and are not subject to tax under § 4944(a)(1).

Ruling 9:

Section 4945(d) imposes an excise tax on taxable expenditures, such as grants made by a private foundation to an organization that is not an is an exempt operating foundation (as defined in § 4940(d)(2)), unless the private foundation exercises expenditure responsibility with respect to the grant in accordance with subsection (h). Expenditure responsibility means that the private foundation is required to exert all reasonable efforts and to establish adequate procedures: (1) to see that the grant is spent solely for the purpose for which 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. Your transfer to Transferee will not be considered a taxable expenditure as long as you exercise expenditure responsibility over the transfer in accordance with § 4945(h) and § 53.4945-5(c)(2).

Ruling 10:

Section 4942(g)(1)(A) defines the term "qualifying distribution" to include, "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" certain private foundations. Under § 53.4945-6(c)(3), a § 507(b)(2) transfer is not a taxable expenditure because it accomplishes § 170(c)(2)(B) purposes. Your proposed transfers are § 507(b)(2) transfers and therefore accomplish § 170(c)(2)(B) purposes. The portion of necessary administrative expenses including accounting, legal, and other expenses, attributable to the transfers are treated as qualified distributions for purposes of § 4942(g)(1)(A) and will not be taxable expenditures for purposes of § 4945.

Conclusion:

Based on the foregoing, we rule as follows:

1. The proposed transfer of assets from you to Transferee will constitute an adjustment described in § 507(b)(2); therefore Transferee will not be treated as a newly created organization.
2. The proposed transaction will not terminate your status as a private foundation under § 507(a) and, therefore, will not result in the imposition of the termination tax under § 507(c).
3. The proposed transaction will not adversely affect your tax-exempt status under § 501(c)(3).
4. Your proposed transfer will not constitute any willful and flagrant act or failure to act which would result in tax under Chapter 42 of the Code.
5. Transferee will be treated as possessing your tax attributes and characteristics as described in § 1.507-3(a)(2), (3), and (4). The tax basis and the holding period of each asset transferred to Transferee will be carried over to Transferee as if each asset had continued to be held by you.
6. The proposed transfer will not constitute investment income or any taxable sale or disposition of property and, thus, will not result in the imposition of any additional tax under § 4940 on you.
7. The proposed transfer will not constitute an act of self-dealing with respect to you under § 4941.
8. The proposed transfer will not constitute an investment that jeopardizes your exempt purposes and will not result in tax under § 4944.
9. The proposed transaction will not constitute a taxable expenditure under § 4945(d)(4), provided that you exercise expenditure responsibility to the extent required by § 4945(h) with respect to the transfer to Transferee and will not result in tax under § 4945.
10. The portion of reasonable and necessary legal, accounting and other expenses related to the proposed asset transfers, will be qualifying distributions for purposes of § 4942(g)(1)(A), and will not be taxable expenditures for purposes of § 4945.

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

This ruling is directed only to the organization that requested it. Section 6110(k)(3) provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolved questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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

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

Sincerely,

Theodore R. Lieber
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437