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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Number: **201448026**
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Identification Number:

Telephone Number:

UIL: 501.03-00, 507.06-00, 4940.02-01, 4941.04-00, 4942.03-05, 4945.04-00

Employer Identification Number:

Dear :

This is in response to your letter dated March 23, 2012 in which you requested certain rulings with respect to I.R.C. §§ 501(c)(3), 507, 4940, 4941, 4942, and 4945.

Background:

You are a trust that has been recognized as exempt as a trust described in § 501(c)(3), and you have been classified as a private foundation under § 509(a). Your purposes are encouraging and rewarding excellence in scientific, health and public safety, literary, fine arts, and educational purposes. Your assets consist entirely of liquid, or nearly liquid, assets that were granted to you at your founding and upon your founder's death. You will also receive additional assets in the future upon the death of your founder's wife. You are seeking to transfer, without consideration, all of your assets to a new private foundation. At the death of your founder's wife, upon the receipt of further assets, you will transfer all of those assets to this same new private foundation.

The new foundation was formed by your trustees and is currently seeking recognition of exemption as an organization described in § 501(c)(3). The new foundation's purposes are the same as your purposes. You have provided that the new foundation will be effectively controlled by the same people who effectively control you. After transferring all of your assets to the new foundation, but prior to the death of your founder's wife, you will continue to exist with no assets. You will continue to file a Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation* for all years in which you exist. Upon the death of your founder's wife you will again transfer all of your assets to the new foundation. After the second transfer you will seek to terminate your private foundation status and your existence as a trust. You will notify the Service of your termination no earlier than one day after your second transfer of all of your assets. You have stated that you have not and will not notify the Secretary of your intent to terminate your status as a private foundation and that you have not ever 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.

Rulings Requested:

1. The transfer of all of your assets will not adversely affect your status as a § 501(c)(3) organization, and you may continue in existence as a dormant shell and still maintain your § 501(c)(3) status.

2. The transfer will qualify as a transfer under § 507(b)(2) and will not result in a termination of your foundation status or cause the imposition of the termination tax under § 507(c).

3. The new foundation will not be treated as a newly created organization as a result of the transfers.

4. Following the transfers, you will be eligible to terminate your private foundation status through the voluntary termination procedures pursuant to § 507(a)(1).

5. Pursuant to § 1.507-7(b)(1), the date for determining the value of your assets, for purposes of calculating the termination tax pursuant to § 507(c), shall be the date proper notification is given and provided that such notice is given at least one day after the second transfer of all of your assets, then the amount of termination tax due shall be zero dollars.

6. After each transfer, the new foundation will be treated as if it were you for purposes of §§ 4940 through 4948 and §§ 507 through 509, and the new foundation will be responsible for any of your excise tax liabilities under Chapter 42 to the extent that you do not satisfy such liabilities.

7. The transfers will not give rise to any gross investment income or capital gain net income within the meaning of § 4940 and any excess § 4940 tax paid by you may be used by the new foundation to offset its § 4940 tax liability.

8. The transfers will not constitute self-dealing under § 4941.

9. You will not be required to meet the qualifying distribution requirements of § 4942 for either taxable year of transfers provided that the new foundation's distributable amount for the year of each transfer is increased by your distributable amount. In addition, the new foundation's own distributable amount under § 4942 shall be reduced by your excess qualifying distributions under § 4942(i), if any.

10. The transfers will not constitute taxable expenditures within the meaning of § 4945, and you will not be required to exercise expenditure responsibility with respect to the assets transferred to the new foundation. The new foundation, as successor to you, will be required to exercise expenditure responsibility with respect to any of your expenditure responsibility grants.

11. If reasonable in amount, the legal, accounting, and other expenses incurred by you and new foundation in connection with this ruling request and with effectuating the transfers will be considered qualifying distributions under § 4942 and will not constitute taxable expenditures pursuant to § 4945.

Law:

I.R.C. § 501(c)(3) provides that organizations may be exempted from tax if they are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and "no part of the net earnings of which inures to the benefit of any private shareholder or individual."
I.R.C. § 507(a) provides that the status of any organization as a private foundation shall be terminated only if such organization notifies the Secretary of its intent to accomplish such termination, or there have been willful and repeated acts, or a willful and flagrant act, giving rise to liability for tax under chapter 42, and the Secretary notifies such organization that it is liable for such tax.

I.R.C. § 507(b)(2) provides that for purposes of §§ 507, 508, and 509 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 foundation shall not be treated as a newly created organization.

I.R.C. § 4940(a) imposes a tax 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 2 percent of the net investment income of such foundation for the taxable year.

I.R.C. § 4940(c)(1) defines net investment income as the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the deductions allowed by paragraph (3).

I.R.C. § 4940(c)(3) allows as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications set forth in subparagraph (B).

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

I.R.C. § 4941(d)(1) defines self-dealing as the furnishing of goods, services, or facilities between a disqualified person and a private foundation as well as the payment of compensation by a private foundation to a disqualified person.

I.R.C. § 4942(a) imposes a tax on undistributed income of a private foundation for any taxable year, which has not been distributed by the first day of the second taxable year following such taxable year.

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

I.R.C. §§ 4942(d) and (e) define distributable amount as an amount equal to five percent of the excess of the fair market value of all assets of the foundation over its acquisition indebtedness for such assets minus the sum of the taxes imposed on such foundation for the taxable year under § 4940.

I.R.C. § 4942(g)(1) defines qualifying distribution as any amount (including that portion or reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to an organization controlled by the foundation or one or more disqualified person with respect to the foundation, except as provided in § 4942(g)(3).

I.R.C. § 4942(i) provides that if, for the taxable years in the adjustment period for which an organization is a private foundation-- (A) the aggregate qualifying distributions treated (under subsection (h)) as made out of the undistributed income for such taxable year or as made out of corpus (except to the extent subsection (g)(3) with respect to the recipient private foundation or § 170(b)(1)(F)(ii) applies) during such taxable years, exceed (B) the distributable amounts for such taxable years (determined without regard to this subsection), then, for purposes of this section (other than subsection (h)), the distributable amount for the taxable year shall be reduced by an amount equal to such excess.

I.R.C. § 4945(a) imposes a twenty percent tax on each taxable expenditure of a private foundation.

I.R.C. § 4945(d) defines taxable expenditure as 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) or an amount paid for any purpose other than one specified in § 170(c)(2)(B).

I.R.C. § 4945(h) defines expenditure responsibility as the private foundation will assert all reasonable efforts and establish adequate procedures to see that the grant is spent solely for the purpose for which it was made, to obtain full and complete reports from the grantee on how the funds are spent, and to make full and detailed reports with respect to such expenditures to the Secretary.

I.R.C. § 4946(a)(1) provides that a "disqualified person," with respect to a private foundation, includes a substantial contributor, as defined under § 507(d)(2), a foundation director or officer, and any spouse, ancestor, child, grandchild, great grandchild, of that contributor, director, or officer.

Treas. Reg. § 1.501(c)(3)-1(c)(1) states an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 1.507-1(b)(1) provides that in order to terminate its private foundation status under paragraph (a)(1) of this section, an organization must submit a statement to the district director of its intent to terminate its private foundation status under § 507(a)(1).

Treas. Reg. § 1.507-3(a)(2) provides that a transferee organization to which § 507(b)(2) 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 faction the numerator of which is the fair market value of the assets transferred to such transferee and the denominator of which is the fair market value of the assets of the transferor immediately before the transfer.

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 prior to, or as a result of, making a § 507(b)(2) transfer to one or more private foundations, each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor does not satisfy such liability.

Treas. Reg. § 1.507-3(a)(5) provides that 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).

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 person or persons which effectively controlled the transferor private foundation such a transferee foundation shall be treated as if it were the transferor.

Treas. Reg. § 1.507-3(c) provides that for the 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. The term significant disposition of assets" shall include any disposition for a taxable year where the aggregate of the dispositions to one or more private foundations is twenty-five percent or more of the fair market value of the net assets of the foundation at the beginning of the taxably 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).

Treas. Reg. § 1.507-4(b) provides that if a private foundation makes a transfer makes a transfer described in § 507(b)(1)(A) or (2), then it is not subject to the tax imposed under § 507(c) with respect to such transfer unless the provisions of § 507(a) become applicable.

Treas. Reg. § 1.507-7(b)(1) provides that in the case of a termination under § 507(a)(1), the date referred to in paragraph (a)(1) of this section shall be the date on which the terminating foundation gives the notification described in § 507(a)(1).

Treas. Reg. § 53.4941(d)-2(f)(2) provides that the fact that a disqualified person receives an

incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Thus, the public recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous. For example, a grant by a private foundation to a section 509(a)(1), (2), or (3) organization will not be an act of self-dealing merely because one of the section 509(a)(1), (2), or (3) organization's officers, directors, or trustees is also a manager of or a substantial contributor to the foundation.

Treas. Reg. § 43-4942(a)-3(a)(2) provides that any amount (including program-related investments, as defined in § 4944(c), and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in § 170(c)(1) or (2)(B)

Treas. Reg. § 53.4945-5(c)(2) provides that if a private foundation makes a grant to a private foundation for endowment, for the purchase of capital equipment, or for other capital purposes the grantor foundation shall require reports from the grantee on the use of the principal and the income from the grant funds. The grantee shall make such reports annually for its taxable year in which the grant was made and the immediately succeeding two taxable years.

Treas. Reg. § 53.4945-6(b)(1)(v) provides that any payment which constitutes a qualifying distribution under § 4942(g) or an allowable deduction under § 4940 will not ordinarily be treated as taxable expenditures under § 4945(d)(5).

Treas. Reg. § 53.4945-6(c)(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 section 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.

Treas. Reg. § 53.4945-6(c)(3) provides that if a private foundation transfers assets as described in § 507(b)(2), the transferred assets will not be considered used exclusively for purposes described in § 170(c)(2)(B) unless the assets are transferred to a fund or organization described in § 501(c)(3).

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

Revenue Ruling 64-182, 1964-1 C.B. 186, provides that corporation organized exclusively for charitable purposes derives its income principally from the rental of space in a large commercial office building which it owns, maintains, and operates. The charitable purposes of the corporation are carried out by aiding other charitable organizations, selected in the discretion of its governing body, through contributions and grants to such organizations for charitable purposes. The ruling holds that the corporation is deemed to meet the primary purpose test of § 1.501(c)(3)-1(e)(1) of the regulations, and to be entitled to exemption under § 501(c)(3), where it

is shown to be carrying on through such contributions and grants a charitable program commensurate in scope with its financial resources.

Revenue Ruling 78-387, 1978-2 C.B. 270, provides that a private foundation that had a carryover of excess qualifying distributions as described in § 4942(i) transferred all its assets to another private foundation that was controlled by the same persons who controlled the first foundation. The transferee foundation may reduce its distributable amount under § 4942(d) by such carryover.

Revenue Ruling 2002-28, 2002-1 C.B. 241, provides, "A transfer of assets described in § 507(b)(2) does not constitute a termination of the transferor's private foundation status under § 507(a)(1) unless the transferor voluntarily gives notice pursuant to § 507(a)(1). *See* §§ 1.507-1(b)(6) and 1.507-3(d). The transferor foundation is not required to provide such notice. In Situation 1, *P*'s dissolution under state law has no effect on whether *P* has terminated its private foundation status for federal tax purposes." The ruling also goes on to state that the distributions are made to § 501(c)(3) organizations, which cannot be disqualified persons for § 4941 purposes, therefore there is no self-dealing. The ruling also commented on § 4945 stating that, "because each transferor 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 foundations are treated as though they were the transferor for purposes of § 4945. *See* § 1.507–3(a)(9)(i). Because the transferee foundations are treated as the transferor foundation rather than as recipients of expenditure responsibility grants, there are no expenditure responsibility requirements that must be exercised under § 4945(d)(4) or (h) with respect to the transfers to the transferee foundations. *See* § 1.507–3(a)(9)(i) and (iii)(example 2)."

Analysis:

RULING 1: The transfer of all of your assets will not adversely affect your status as a § 501(c)(3) organization, and you may continue in existence as a dormant shell and still maintain your § 501(c)(3) status.

In order to be exempt under § 501(c)(3) an organization must be operated exclusively for an exempt purpose. Section 1.501(c)(3)-1(c)(1). Rev. Rul. 64-182, supra, provides that the provision of grants to exempt organizations is a charitable purpose under § 501(c)(3). Here, you are providing a grant to an organization that is expected to be recognized as exempt under § 501(c)(3). The provision of grants to such an organization is in furtherance of your exempt purpose, therefore it does not create a substantial non-exempt purpose. The transfer of assets described by you does not affect your exempt status under § 501(c)(3). Additionally, you will continue to operate for an exempt purpose following your distribution since you will continue to operate charitable activities commensurate in scope with your financial resources, see Rev. Rul. 64-182, and you have a specific plan to continue such charitable distributions upon the receipt of funds for which you have an identifiable legal right in the future. Your proposed transactions do not jeopardize your tax exemption. You will also continue to file Form 990-PFs in the intervening years avoiding the effects of § 6033(j).

RULINGS 2, 3, and 6: The transfer will qualify as a transfer under § 507(b)(2) and will not result in a termination of your foundation status or cause the imposition of the termination tax under §

507(c); the new foundation will not be treated as a newly created organization as a result of the transfers; and after each transfer, the new foundation will be treated as if it were you for purposes of §§ 4940 through 4948 and §§ 507 through 509, and the new foundation will be responsible for any of your excise tax liabilities under Chapter 42 to the extent that you do not satisfy such liabilities.

Section 507(b)(2) describes a transfer from one private foundation to another private foundation according to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization. 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 more than 25 percent of the fair market value of your net assets to the new foundation, a private foundation, for no consideration, your proposed transfer is a significant disposition of assets that qualifies as a transfer under section 507(b)(2). Therefore, the new foundation will not be considered a new organization, and it will assume your aggregate tax benefit and liabilities in proportion to the fair market value of the real and personal property it receives over your total net asset value prior to the transfer. See Section 1.507-3(a)(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. Your transfer will constitute a significant distribution of assets described in § 507(b)(2). You have stated that you have not and will not notify the Secretary of your intent to terminate your status as a private foundation and that you have not ever 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. Therefore, your proposed transfer of assets to the new foundation 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).

Section 1.507-3(a)(1) provides that in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c), supra, the transferee organization shall not be treated as a newly created organization. Under § 1.507-3(a)(9)(i) if a private foundation transfers all of its net assets to another private foundation which is effectively controlled by the same person or persons which effectively controlled the transferor private foundation, the transferee private foundation is treated as if it were the transferor. Here, you are transferring all of your net assets, so, assuming that the new foundation is effectively controlled by the same persons that control you as you have stipulated, the new foundation is not treated as a newly created organization. Instead it will be treated as you for all private foundation purposes, including §§ 4940 through 4948 and §§ 507 through 509.

RULINGS 4 and 5: Following the transfers, you will be eligible to terminate your private foundation status through the voluntary termination procedures pursuant to § 507(a)(1): and pursuant to § 1.507-7(b)(1), the date for determining the value of your assets, for purposes of calculating the termination tax pursuant to § 507(c), shall be the date proper notification is given

and provided that such notice is given at least one day after the second transfer of all of your assets, then the amount of termination tax due shall be zero dollars.

Section 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 Service of its intent to terminate its private foundation status under § 507(a)(1). 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, a taxpayer may elect to terminate its private foundation status by notifying the Manager, Exempt Organizations Determinations of its intent to accomplish such termination and paying any termination tax deemed to be due under § 507(c). Since you have committed 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, you are eligible to terminate your private foundation status through a voluntary termination.

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 1.507-7(b)(1) provides that in the case of a voluntary termination, the date for determining the value of the foundation's assets for purposes of the termination tax shall be the date on which the foundation gives the notification described in § 507(a)(1). You state that you will provide notification no earlier than one day after the full transfer of all of your assets following the death of your founder's wife. At this point you will have no assets. Your situation is substantially similar to that found in Rev. Rul. 2002-28, supra, where the organizations in all three situations provide notice at least one day after transferring all of their assets. The ruling determined that in this case the organizations would owe zero dollars under § 507(c). Similar to the organizations in Rev. Rul. 2002-28, you will owe zero dollars in termination taxes under § 507(c) if you provide notice of termination no earlier than one day after the transfer of all of your assets.

RULING 7: The transfers will not give rise to any gross investment income or capital gain net income within the meaning of § 4940 and any excess § 4940 tax paid by you may be used by the new foundation to offset its § 4940 tax liability.

Section 4940(a) generally imposes an excise tax on a private foundation's net investment income for the taxable year. Section 4940(c)(1) defines net investment income as the amount by which the sum of the gross investment income and the capital gain net income exceeds the deductions allowed under § 4940(c)(3).

Rev. Rul. 2002-28, supra, holds that transfers from a private foundation to one or more private foundations which are transfers described in § 507(b)(2), do not constitute investments of the transferor for purposes of § 4940, thus the transfers do not give rise to net investment income subject to tax under § 4940(a). In addition, because the transferor foundation transfers all of its assets to one or more 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 the transferees' § 4940 tax liability.

Your transfer to the new foundation is similar to those found in Rev. Rul. 2002-28 in that it is a transfer described in § 507(b)(2), supra, that is made to another private foundation that is effectively controlled by the same persons that effectively control you. Since your transfer is the

same as that found in Rev. Rul. 2002-28 your transfer is not an investment thus does not give rise to tax under § 4940. Additionally, any excess § 4940 taxes paid by you may be used by the new foundation to offset its own § 4940 tax liability.

RULING 8: The transfers will not constitute self-dealing under § 4941.

Section 4941(a) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Sections 4941 and 1.507-3(a) determine whether the proposed transfer of your assets to the new foundation will 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). Rev. Rul., 2002-28, supra, also discusses the distribution from a private foundation to another § 501(c)(3) organization stating that such a distribution is not subject to § 4941 due to the exception for § 501(c)(3) organizations. Any benefit to your foundation managers is incidental and tenuous under the circumstances. Therefore, your transfer of assets to the new foundation is not an act of self-dealing assuming that the new foundation is recognized by the Service as an organization exempt from tax under § 501(c)(3).

RULING 9: You will not be required to meet the qualifying distribution requirements of § 4942 for either taxable year of transfers provided that the new foundation's distributable amount for the year of each transfer is increased by your distributable amount. In addition, the new foundation's own distributable amount under § 4942 shall be reduced by your excess qualifying distributions under § 4942(i), if any

Section 1.507-3(a)(9)(i) provides that if the same persons control the both the transferee and transferring organization then they will be treated as the same organization for purposes of §§ 4940 through 4948. Rev. Rul. 2002-28, supra, states that the transfers to the transferee foundations are not treated as qualifying distributions because, in the situations described in the revenue ruling, the transferee foundations are treated as though they were the transferor foundations for purposes of section 4942. Furthermore, Rev. Rul. 2002-28 provides that 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). Additionally, Rev. Rul. 78-387, supra, provides that when a private foundation transfers all of its assets to another private foundation that is controlled by the same persons as the transferring organization, then the transferee foundation may reduce its distributable amount under § 4942(d) by the amount of the transferor's excess qualifying distributions as described in § 4942(i). Thus, your transfer to the new foundation will not be a qualifying distribution and the new foundation will assume your obligations for qualifying distributions, if any, or reduce its own qualifying distribution requirements by any excess distributions you may have as described in § 4942(i).

RULING 10: The transfers will not constitute taxable expenditures within the meaning of § 4945, and you will not be required to exercise expenditure responsibility with respect to the assets transferred to the new foundation. The new foundation, as successor to you, will be required to exercise expenditure responsibility with respect to any of your expenditure responsibility grants.

With a § 507(b)(2) transfer, if all of the assets of a private foundation are transferred to another private foundation effectively controlled by the same person(s) the transferee foundation will be treated as if it were the transferor organization and would be subject to any liabilities not paid by the transferor. Sections 1.507-3(a)(4) and (9)(i). Since the transferee organization in such a transaction is treated as the transferor there are no expenditure responsibility requirements with respect to such transactions. Section 1.507-3(a)(9)(iii), *Example(2)*; Rev. Rul. 2002-28, supra. You have represented that the same persons effectively control both you and the new foundation. Given your representations of effective control, the new foundation will be treated as you for § 4945 purposes. Since the new foundation is treated as you there are no expenditure responsibility requirements that must be exercised under §§ 4945(d)(4) and (h) with respect to your transfer of assets to the new foundation. Any expenditure responsibilities remaining after the transfer of all of your assets to the new foundation will be assumed by the new foundation.

RULING 11: If reasonable in amount, the legal, accounting, and other expenses incurred by you and new foundation in connection with this ruling request and with effectuating the transfers will be considered qualifying distributions under § 4942 and will not constitute taxable expenditures pursuant to § 4945.

Section 53.4942(a)-3(a)(2)(i) defines the term qualifying distribution as any amount (including reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in § 170(c)(2)(B). Since your legal, accounting, and other expenses incurred in connection with this ruling request and with effectuating the transfers will be reasonable and consistent with ordinary business care and prudence and paid to accomplish one or more purposes described in § 170(c)(2)(B), the granting of assets to an organization described in § 501(c)(3), such expenses are considered qualifying distributions under § 4942.

Under section 53.4945-6(b)(2) of the regulations, legal, administrative and other expenses incurred by a private foundation are not taxable expenditures if 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 reasonable depends upon the facts and circumstances of a particular case. Thus, your payment of such reasonable expenses, assuming that you can demonstrate ordinary care and prudence, will not constitute a taxable expenditure under § 4945.

Rulings:

1. The transfer of all of your assets will not adversely affect your status as a § 501(c)(3) organization, and you may continue in existence and still maintain your § 501(c)(3) status.

2. The transfer will qualify as a transfer under § 507(b)(2) and will not result in a termination of your foundation status or cause the imposition of the termination tax under § 507(c).

3. The new foundation will not be treated as a newly created organization as a result of the transfers.

4. Following the transfers, you will be eligible to terminate your private foundation status through the voluntary termination procedures pursuant to § 507(a)(1).

5. Pursuant to § 1.507-7(b)(1), the date for determining the value of your assets, for purposes of calculating the termination tax pursuant to § 507(c), shall be the date proper notification is given and provided that such notice is given at least one day after the second transfer of all of your assets, then the amount of termination tax due shall be zero dollars.

6. After each transfer, the new foundation will be treated as if it were you for purposes of §§ 4940 through 4948 and §§ 507 through 509, and the new foundation will be responsible for any of your excise tax liabilities under Chapter 42 to the extent that you do not satisfy such liabilities.

7. The transfers will not give rise to any gross investment income or capital gain net income within the meaning of § 4940 and any excess § 4940 tax paid by you may be used by the new foundation to offset its § 4940 tax liability.

8. The transfers will not constitute self-dealing under § 4941.

9. Your transfer to the new foundation will not be a qualifying distribution and the new foundation will assume your obligations for qualifying distributions, if any, or reduce its own qualifying distribution requirements by any excess distributions you may have as described in § 4942(i).

10. The transfers will not constitute taxable expenditures within the meaning of § 4945, and you will not be required to exercise expenditure responsibility under § 4945(h) with respect to the assets transferred to the new foundation. The new foundation, as successor to you, will be required to exercise expenditure responsibility with respect to any of your expenditure responsibility grants.

11. If reasonable in amount, the legal, accounting, and other expenses incurred by you and new foundation in connection with this ruling request and with effectuating the transfers will be considered qualifying distributions under § 4942 and will not constitute taxable expenditures pursuant to § 4945.

This ruling is contingent upon the new foundation receiving a favorable determination letter from the Internal Revenue Service stating that the new foundation has been recognized as an organization described in § 501(c)(3).

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

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

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Specifically, this ruling does not reach any conclusion as to the qualifying distribution status of your proposed transfer under § 4942(g)(3). 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,

Michael Seto
Manager, Exempt Organizations

Enclosure
Notice 437