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Legend:

Family Foundation	=
Trustee	=
Company	=
Company Foundation	=
New Foundation	=
Bequest	=
A	=
x	=
y	=
Year 1	=
Year 2	=
Year 3	=

Dear :

This letter responds to the letter, dated July 27, 2021, as supplemented by a letter dated November 23, 2021, requesting certain rulings under sections 507, 4940, 4941, 4942, 4944, and 4945 of the Internal Revenue Code[1].

Facts

[1] The Internal Revenue Code of 1986, as amended, to which all subsequent "section" references are made unless otherwise indicated.

According to representations made by the Taxpayer, Family Foundation is a grant-making charitable trust recognized as an exempt organization described in section 501(c)(3) and classified as a private non-operating foundation under section 509(a). Family Foundation's sole trustee is Trustee, a family trust company that provides fiduciary, financial, and personal services to family members and their designated charitable entities. Family members[2] comprise a majority of the board of Trustee. Family members are donors to Family Foundation. As of the end of Year 1, Family Foundation had assets of approximately x and had excess distributions of over y. Family Foundation is a calendar year taxpayer.

Company, a business corporation and public company, is controlled by family members through their ownership of all of the control shares of Company while unrelated persons own some of the non-controlling shares.

Company Foundation is a non-profit corporation recognized as an exempt organization described in section 501(c)(3) and classified as a non-operating private foundation under section 509(a). Company Foundation makes grants and supports educational programs in geographic areas in which Company has a business presence. In addition, Company Foundation makes grants to support college programs training students in the industry in which Company does business. Company Foundation is funded through annual investment income from its current endowment assets, as well as from gifts from family members and other donors.

New Foundation is a grant-making charitable trust that has been recognized as an exempt organization described in section 501(c)(3) and classified as a non-operating private foundation under section 509(a). The dispositive terms of the trust agreement creating New Foundation are substantially identical to those of the trust agreement creating Family Foundation.

Family members own all of the control shares of Company. Company controls Company Foundation. Family members also comprise a majority of the persons serving on the board of Trustee. Trustee is the sole trustee of both Family Foundation and New Foundation. Taxpayer represents that Family Foundation, Company Foundation, and New Foundation are all effectively controlled by the same persons within the meaning of Treas. Reg. § 1.507-3(a)(2)(ii).

Family Foundation expects to receive a large bequest (Bequest) from A who died several years ago and left all of his assets for charitable purposes to Family Foundation under his estate plan. Family Foundation expects to receive the Bequest through multiple distributions from A's estate in Year 2 based on the anticipated estate settlement timeline. In anticipation of the settlement of the estate and receipt of the Bequest, New Foundation was established.

[2] The term "family members" throughout this document denotes the members of the same family.

After the receipt of the Bequest, Family Foundation anticipates a series of transfers (Proposed Transfers) that will collectively transfer at least 80 percent of the assets of Family Foundation to Company Foundation and New Foundation in the subsequent calendar year, Year 3. The Proposed Transfers would better facilitate separate and distinct programmatic grantmaking between the two transferee foundations, increase transparency of the foundations' respective charitable activities, and allow a separate annual financial statement audit for New Foundation that covers the Bequest.

Family Foundation will transfer the Bequest to New Foundation as capital endowment grants. Trustee believes the transfers are necessary to better serve A's charitable intent, because transfers to New Foundation will allow the Bequest to be administered and invested within New Foundation, with its activities separated from the smaller-in-scale grant-making activities of Family Foundation. This will allow more flexibility in charitable programming and would not subject Family Foundation to additional costs likely to be incurred in managing the Bequest. New Foundation expects to have dedicated resources to enable it to more effectively carry out the charitable intentions of A by engaging in larger-scale programmatic grant-making, developing grantee outcome measurements, building partnerships with secondary educational institutions, and defining programs that meet A's charitable intentions.

Family Foundation also plans to provide capital endowment grants to Company Foundation from its existing assets which would be restricted so that only the annual income from the endowment may be expended in furtherance of Company Foundation's charitable purposes. Company Foundation has announced a new capital campaign to expand Company Foundation's mission to geographic areas Company has recently entered. This campaign is designed to build an endowment that will generate annual income, which income will in turn be used to fund increased grant-making.

Thus, Family Foundation's Proposed Transfers will provide New Foundation and Company Foundation with additions to their respective endowments, the income of which will be used for their respective charitable purposes. Family Foundation will exercise expenditure responsibility over all the capital endowment grants to New Foundation and Company Foundation for the taxable year in which they are made and for the immediately succeeding two taxable years. Family Foundation will enter into grant agreements with New Foundation and Company Foundation. These agreements will specify the permitted uses of the Proposed Transfers and require annual reporting on the use of the transfers and any income generated therefrom. The reporting will be for the year in which the Proposed Transfers are made and for a minimum of the two succeeding years on how the funds are being used. For each Proposed Transfer, Family Foundation will then review the reports received from the grant recipient as well as its overall operations and make a determination that neither the principal nor the income from the transfers has been used for any purpose which would result in liability for tax under section 4945(d). Family Foundation intends to

make this determination for each Proposed Transfer after receiving the report covering the second subsequent year after that transfer.

Because Family Foundation intends to treat the Proposed Transfers to New Foundation and Company Foundation as capital endowment grants rather than as qualifying distributions, Family Foundation represents that it will not seek to obtain records from New Foundation or Company Foundation showing that either foundation has made distributions out of corpus in connection with the transfers.

At no time during the proposed transactions will Family Foundation distribute all of its net assets. Transfers from Family Foundation to New Foundation will be made only after Family Foundation receives distributions of the Bequest from A's estate. Family Foundation has not and will not notify the IRS of an intent to terminate its status as a private foundation pursuant to section 507(a)(1). Family Foundation also represents that it has not engaged in willfully repeated acts (or failures to act) or committed a willful and flagrant act (or failure to act) which would give rise to tax under chapter 42, nor will it commit any such acts at the time of distribution.

Rulings Requested, Law, and Analysis

Requested Rulings 1, 2, 3, and 4:

1. The Proposed Transfers from Family Foundation to Company Foundation and New Foundation of at least 80 percent of the assets of Family Foundation will constitute a significant disposition of assets described in section 507(b)(2).
2. The Proposed Transfers constitute transfers described in section 507(b)(2).
3. Company Foundation will not be treated as a newly created organization following the Proposed Transfers.
4. New Foundation will not be treated as a newly created organization following the Proposed Transfers.

Law:

Section 507(b)(2) states that when one private foundation transfers assets 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. A transfer described in section 507(b)(2) is referred to as a "section 507(b)(2) transfer."

Treas. Reg. § 1.507-3(a)(1) states that, in the case of a significant disposition of assets to one or more private foundations pursuant to a transfer described in section 507(b)(2) and § 1.507-3(c), the transferee organization shall not be treated as a newly created organization, but shall succeed to those attributes and characteristics of the transferor organization which are described in § 1.507-3(a)(2), (3) and (4),

which includes its aggregate tax benefit, substantial contributors, and Chapter 42 tax and penalty liabilities.

Section 1.507-3(c)(1) states that for purposes of section 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.”

A significant disposition of assets may occur in a single taxable year or over the course of two or more taxable years. The determination whether a significant disposition has occurred through a series of related distributions will be made on the basis of all the facts and circumstances of the particular case.

Section 1.507-3(c)(2)(ii) defines “significant disposition of assets to one or more private foundations” to mean any disposition or series of dispositions where the cumulative total of dispositions is twenty-five percent (25%) or more of the fair market value of the net assets of the foundation at the beginning of the taxable year.

Section 1.507-3(c)(5) illustrates the above paragraph by the following examples:

Example (1).
M is a private foundation on the calendar year basis. It has net assets worth $100,000 as of January 1, 1971. In 1971, in addition to distributions out of current income, M transfers $10,000 to N, $10,000 to O, and $10,000 to P. N, O, and P are all private foundations. Under subparagraph (2)(i) of this paragraph, M has made a significant disposition of its assets in 1971 since M has disposed of more than 25 percent of its net assets (with respect to the fair market value of such assets as of January 1, 1971). M has therefore made section 507(b)(2) transfers within the meaning of this paragraph, and section 507(b)(2) applies to the transfers made to N, O, and P.

Example (2).
U, a tax-exempt private foundation on the calendar year basis, has net assets worth $100,000 as of January 1, 1971. As part of a series of related dispositions in 1971 and 1972, U transfers in 1971, in addition to distributions out of current income, $10,000 to private foundation X and $10,000 to private foundation Y, and in 1972, in addition to distributions out of current income, U transfers $10,000 to private foundation Z. Under subparagraph (2)(ii) of this paragraph, U is treated as having made a series of related dispositions in 1971 and 1972. The aggregate of the 1972 disposition (under subparagraph (2)(i) of this paragraph) and the series of related dispositions (under subparagraph (2)(ii) of this paragraph) is $30,000, which is more than 25 percent of the fair market value of U's net assets as of the beginning of 1971 ($100,000), the first year in which any such disposition was made. Thus, U has made a significant disposition of its assets and has made transfers described in section

507(b)(2). The provisions of paragraphs (a) and (b) of this section apply to each of the transferees as of the date on which it received assets from U.

Analysis:

Family Foundation had assets in Year 1 of approximately x. In Year 2, Family Foundation will receive the Bequest in a series of transactions from A. In Year 3, the year subsequent to Year 2, Family Foundation proposes to transfer at least eighty percent (80%) of its assets to two separate foundations, New Foundation and Company Foundation. Section 1.507-3(c)(2)(ii), as illustrated by the examples in § 1.507-3(c)(5), provides that the amount of the transfers is measured against a foundation's net assets at the beginning of the first taxable year in which any of the series of related dispositions is made. The Proposed Transfers will be made in Year 3. Because the Proposed Transfers to New Foundation and Company Foundation will occur in Year 3, and because Family Foundation is a calendar year taxpayer, the measure of the amount of the disposition can be taken with respect to Family Foundation's assets at the beginning of Year 3. Section 1.507-3(c)(2)(ii). Family Foundation's assets at the beginning of Year 3 will include the Bequest and (because at no time will Family Foundation distribute all of its assets) some or all of its assets, approximately x, as of Year 1. Because the Proposed Transfers will be at least eighty percent of Family Foundation's assets, including the Bequest, the Proposed Transfers will exceed twenty-five percent (25%) of Family Foundation's assets and thus will constitute a significant disposition of assets. Section 1.507-3(c)(1); § 1.507-3(c)(2)(ii). Thus, the Proposed Transfers are described in section 507(b)(2).

Transferee foundations are not treated as newly created foundations as a result of a section 507(b)(2) transfer of assets. Section 507(b)(2); § 1.507-3(a)(1). Because Family Foundation will be making section 507(b)(2) transfers to Company Foundation, Company Foundation will not be treated as a newly created organization following the Proposed Transfers. Also, because Family Foundation will be making section 507(b)(2) transfers to New Foundation, New Foundation will not be treated as a newly created organization following the Proposed Transfers.

Requested Ruling 5:

5. The Proposed Transfers will not cause Family Foundation's termination as a private foundation under section 507(a) and will not result in the imposition of any termination tax under section 507(c).

Law:

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(c) imposes an excise tax on an organization that voluntarily terminates its private foundation status equal to the lower of: (1) the aggregate tax benefit that has resulted from the private foundation's tax-exempt status under section 501(c)(3), or (2) the value of the net assets of the foundation.

Section 1.507-3(d) states that unless a private foundation voluntarily gives notice pursuant to section 507(a)(1), a transfer of assets described in section 507(b)(2) will not constitute a termination of the transferor's private foundation status under section 507(a)(1). Such transfer must, nevertheless, satisfy the requirements of any pertinent provisions of chapter 42.

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

Analysis:

Family Foundation has not and represents that it will not notify the IRS of an intent to terminate its status as a private foundation pursuant to section 507(a)(1). Family Foundation also represents that it has not willfully engaged in repeated acts (or failures to act) or committed a willful and flagrant act (or failure to act) which would give rise to tax under chapter 42, nor will it commit any such acts at the time of distribution. See section 507(a)(2). The Proposed Transfers themselves, as described above, will not constitute such acts. Therefore, the Proposed Transfers will not cause Family Foundation's termination as a private foundation under section 507(a) and will not result in the imposition of any termination tax under section 507(c). Section 1.507-3(d); § 1.507-4(b).

Requested Rulings 6 and 7:

6. Because the Proposed Transfers do not constitute a transfer of all of Family Foundation's net assets, § 1.507-3(a)(9)(i) will not apply and Company Foundation will not be treated as if it is Family Foundation with respect to the Proposed Transfers.
7. Because the Proposed Transfers do not constitute a transfer of all of Family Foundation's net assets, § 1.507-3(a)(9)(i) will not apply and New Foundation will not be treated as if it is Family Foundation with respect to the Proposed Transfers.

Law:

Section 1.507-3(a)(9)(i) states that if a private foundation transfers all of its net assets to one or more private foundations that are effectively controlled by the same person or persons that effectively controlled the transferor private foundation, for purposes of chapter 42 (section 4940 et. seq.) and part II of subchapter F of chapter 1 of the Code (sections 507 through 509) such a transferee private foundation shall be treated as if it were the transferor.

Aggregate Tax Benefit:

Section 507(d)(1) defines “aggregate tax benefit” as the sum of the following amounts:
(i) the aggregate increases in tax under chapters 1,11 and 12 of the Internal Revenue Code that would have been imposed on the substantial contributors to the private foundation if the charitable income, estate and gift tax deductions were disallowed for contributions made after February 28, 1913;
(ii) the aggregate increases in tax under chapter 1 that would have been imposed on the private foundation's income for taxable years beginning after December 31, 1912 if the foundation had not been exempt under section 501(c)(3) or if deductions under section 642(c) had been limited to 20 percent of taxable income (in the case of a trust); and
(iii) interest on the amounts described in items (i) and (ii) above from the first date each amount would have been due and payable until the date when the organization ceases to be a private foundation.

Section 1.507-3(a)(1) states that, in the case of a significant disposition of assets to one or more private foundations pursuant to a transfer described in section 507(b)(2) and § 1.507-3(c), the transferee organization shall not be treated as a newly created organization, but shall succeed to those attributes and characteristics of the transferor organization which are described in § 1.507-3(a)(2), (3) and (4), which includes its aggregate tax benefit, substantial contributors, and chapter 42 tax and penalty liabilities.

However, § 1.507-3(a)(2)(ii) provides that a transferee organization which is not effectively controlled (within the meaning of Treas. Reg. § 1.482-1(a)(3)), directly or indirectly, by the same person or persons who effectively control the transferor organization shall not succeed to an aggregate tax benefit in excess of the fair market value of the assets transferred at the time of transfer.

The examples in Treas. Reg. § 1.507-3(a)(2)(iii) illustrate that when the transferee and transferor organizations are effectively controlled by the same persons, the transferee organization succeeds to the aggregate tax benefit of the transferor in an amount equal to the amount of such aggregate tax benefit (within the meaning of

section 507(d)(1)), multiplied by a fraction the numerator of which is the fair market value of the assets (less encumbrances) transferred and the denominator of which is the fair market value of the assets of the transferor (less encumbrances) immediately before the transfer.

Section 1.507-3(a)(8)(ii) provides that certain provisions enumerated in that section (including section 4940(c)(4)(B) with respect to the basis of property and section 4942(f)(4) with respect to distributions of income) shall apply to the transferee foundation with respect to the assets transferred 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.

Treas. Reg. § 1.507-7(d) provides that for purposes of section 507 and the regulations thereunder, the term "net assets" shall mean the gross assets of a private foundation reduced by all liabilities of the foundation, including appropriate estimated and contingent liabilities.

Analysis:

Company Foundation, Family Foundation, and New Foundation are all effectively controlled by family members who control Company and Trustee. Trustee, Family Foundation, Company Foundation, and New Foundation stipulate that Family Foundation, Company Foundation, and New Foundation are all effectively controlled within the meaning of § 1.507-3(a)(2)(i) (and thus also § 1.507-3(a)(9)(i)).

Family Foundation anticipates a series of transfers (Proposed Transfers) that will collectively transfer at least 80 percent of the assets of Family Foundation to Company Foundation and New Foundation, as opposed to all of Family Foundation's assets. At no time during the proposed transactions will Family Foundation distribute all of its net assets. Transfers from Family Foundation to New Foundation will be made only after Family Foundation receives distributions of the Bequest from A's estate.

Despite the fact that the foundations are all effectively controlled, since Family Foundation is not transferring *all* of its net assets as part of the Proposed Transfers, but rather only a part of its net assets, neither Company Foundation nor New Foundation will be treated as Family Foundation and § 1.507-3(a)(9)(i) will not apply.

Aggregate Tax Benefit:

Under Treas. Reg. § 1.507-3(a)(1), in the case of a transfer of assets from one private foundation to another private foundation described in section 507(b)(2), the transferee organization is treated as possessing those attributes and characteristics of the transferor organization that are described in § 1.507-3(a)(2), (3), and (4). As discussed above, the Proposed Transfers are described in section 507(b)(2).

Therefore, § 1.507-3(a)(1) applies. At the time of the Proposed Transfers, Family Foundation, Company Foundation, and New Foundation will be controlled by the same persons. Therefore, Company Foundation and New Foundation will succeed to a fraction of Family Foundation's aggregate tax benefit, calculated as described in § 1.507-3(a)(2)(iii). As Family Foundation is not terminating under section 507 and will continue as a private non-operating foundation after the Proposed Transfers, Family Foundation will retain the portion of its aggregate tax benefit that is not passing to Company Foundation and New Foundation. See § 1.507-3(a)(2)(iii).

Furthermore, in the event of a transfer of assets described in section 507(b)(2), § 1.507-3(a)(3) provides that any person who is a "substantial contributor" (within the meaning of section 507(d)(2)) with respect to the transferor foundation will be treated as a "substantial contributor" with respect to the transferee foundation. Therefore, any person who is a disqualified person with respect Family Foundation at the time of the Transfer will be considered a "substantial contributor" with respect to Company Foundation and New Foundation as a result of the Transfer.

Finally, 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), in any case where transferee liability applies § 1.507-3(a)(4) provides that the transferee foundation will be treated as receiving the transferred assets subject to such liability to the extent the transferor foundation does not satisfy such liability. Therefore, should Family Foundation have incurred liability for any chapter 42 tax prior to, or as a result of, the Transfer, Company Foundation and New Foundation will be treated as receiving the Proposed Transfers subject to such liability to the extent that Family Foundation does not satisfy the liability where transferee liability applies.

Thus, each of Company Foundation and New Foundation will be treated as possessing Family Foundation's attributes and characteristics described in § 1.507-3(a)(2), (3), (4), and, to the extent applicable, (8)(ii). Given Family Foundation's representation that it is effectively controlled by the same persons that control Company Foundation and New Foundation, each will succeed to a portion of Family Foundation's aggregate tax benefit in proportion to the assets received. Section 1.507-3(a)(1) and (2)(ii) and (iii).

Requested Ruling 8(a):

8. The Proposed Transfers, whether or not constituting transfers described in section 507(b)(2), will not result in:
    a. Gross investment income or capital gain income within the meaning of section 4940 and the excise tax on net investment income;

Law:

Section 4940(a) 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 by section 4940(c)(3).

Section 4940(c)(2) provides, in part, that for purposes of section 4940, the term "gross investment income" means the gross amount of income from interest, dividends, rents, payments with respect to securities loans, and royalties.

Rev. Rul. 2002-28, 2002-1 C.B. 941, presents situations where a private foundation transfers all of its assets to transferee private foundations that are effectively controlled (within the meaning of the regulations under section 507), directly or indirectly by the same person who effectively controlled the transferor private foundations. The ruling concludes that the transfers do not constitute investments of the transferor for purposes of section 4940; therefore, the transfers do not give rise to net investment income subject to tax under section 4940(a).

Analysis:

Family Foundation expects to receive the Bequest through multiple distributions from A's estate in Year 2 based on the anticipated estate settlement timeline. After the receipt of the Bequest, Family Foundation will transfer the Bequest to New Foundation in the subsequent calendar year, Year 3. Family Foundation also plans to provide capital endowment grants to Company Foundation from its existing assets. The Proposed Transfers by Family Foundation to New Foundation and Company Foundation will lack consideration and, therefore, will not otherwise generate net investment income (including capital gains from the taxable sale or disposition of property) to Family Foundation subject to excise tax under section 4940. Sections 4940(a), (c)(1), and (c)(2). Similar to the transfers described in Rev. Rul. 2002-28, the transfers do not constitute investments of the transferor for purposes of section 4940. Even though the transfers in Rev. Rul. 2002-28 were complete transfers, the concept that a section 507(b)(2) transfer, even though partial, is not an investment remains applicable. Accordingly, none of the Proposed Transfers will result in the imposition of tax under section 4940(a) on Family Foundation.

Requested Ruling 8(b):

> 8. The Proposed Transfers, whether or not constituting transfers described in section 507(b)(2) will not result in:
>
> b. An act of self-dealing under section 4941 and the excise tax imposed on self-dealing.

Law:

Section 4941(a) imposes an excise tax on each act of self-dealing between a private foundation and a disqualified person, as defined in section 4946. 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.

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.

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

Rev. Rul. 2002-28, 2002-1 C.B. 941, presents situations where a private foundation transfers all of its assets to transferee private foundations that are effectively controlled (within the meaning of the regulations under section 507), directly or indirectly by the same person who effectively controlled the transferor private foundations. The ruling states that the transfers are to section 501(c)(3) organizations, which are not treated as disqualified persons for purposes of section 4941. See section 53.4946-1(a)(8). Thus, the transfers do not constitute self-dealing transactions and are not subject to tax under section 4941(a).

Analysis:

Company Foundation is recognized as tax exempt under section 501(c)(3). New Foundation also is recognized by the IRS as an organization exempt from tax under section 501(c)(3). Therefore, under § 53.4946-1(a)(8), the Proposed Transfers from Family Foundation to Company Foundation and New Foundation do not constitute transfers to disqualified persons because both Company Foundation and New Foundation are described in section 501(c)(3), and are not organizations described in section 509(a)(4). See sections 4941(a); 4941(d)(1)(E); and Rev. Rul. 2002-28. None of the Proposed Transfers to Company Foundation and New Foundation are acts of self-dealing with respect to Company Foundation or New Foundation, provided Company Foundation and New Foundation maintain their tax-exempt status under section 501(c)(3) and are recognized by the IRS as organizations exempt from tax under section 501(c)(3) at the dates of the Proposed Transfers. See § 53.4946-1(a)(8).

Requested Ruling 8(c):

> 8. The Proposed Transfers, whether or not constituting transfers described in section 507(b)(2) will not result in:
>
> c. a qualifying distribution under section 4942.

Law:

Section 4942(a) generally imposes a tax on the undistributed income of a private non-operating foundation for any 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) and § 53.4942(a)-3(a)(2)(i) provide, in part, that the term "qualifying distribution" means any amount paid to accomplish one or more purposes described in section 170(c)(1) or (2)(B), other than any contribution to (i) a private non-operating foundation, unless the amount paid satisfies the requirements of section 4942(g)(3); (ii) an organization controlled (directly or indirectly) by the private foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation; or (iii) a supporting organization described in section 4942(g)(4)(A)(i) or (ii), including a Type III functionally integrated supporting organization if a disqualified person of the private foundation directly or indirectly controls such organization or a supported organization (as defined in section 509(f)(3)) of such organization.

Section 4942(g)(3) and § 53.4942(a)-3(c)(1) provides that the term "qualifying distribution" includes a contribution to (i) another charitable organization controlled directly or indirectly by the transferor foundation or one or more disqualified persons with respect to the transferor or (ii) a private non-operating foundation if two requirements are satisfied. The first such requirement is that the transferee organization satisfy certain distribution requirements described in section 4942(g)(3)(A). The second requirement is that the transferor obtains adequate records or other sufficient evidence from the transferee organization(s) showing that the required pass-through distributions were made as described in section 4942(g)(3)(B). The distributions must be made no later than the close of the first taxable year after its taxable year in which such contribution is received and must be equal to the amount of the contribution.

Section 1.507-3(a)(5) states that, except as provided in § 1.507-3(a)(9), a private foundation is required to meet the distribution requirements of section 4942 for any taxable year in which it makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation.

Analysis:

A private foundation must meet the distribution requirements of section 4942 for any taxable year in which it makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation; thus, Family Foundation is required to meet the distribution requirements of section 4942. Section 1.507-3(a)(5). Under section 4942(g)(3) and § 53.4942(a)-3(c)(1), a grant by a private non-operating foundation to

another private non-operating foundation (or to another organization controlled by disqualified persons with respect to the transferor) is not treated as a qualifying distribution by the transferor foundation for purposes of section 4942 except to the extent that the transferee makes one or more distributions that would be qualifying distributions under section 4942(g) prior to the close of the transferee's first taxable year following the taxable year in which it received the transfer and the distributions are treated as being made out of corpus. Thus, under section 4942(g)(3), a transfer to another private foundation shall count toward an organization's distribution requirements only if the redistribution requirements are met. However, the Proposed Transfers are meant to be capital endowment grants, meaning that the corpus will remain undistributed and that only income from the grants will be used by New Foundation and Company Foundation for charitable purposes. Additionally, because Family Foundation does not intend to obtain records from New Foundation or Company Foundation showing that either foundation has made distributions out of corpus in connection with the transfers, the Proposed Transfers will not satisfy the requirements for qualifying distributions under section 4942(g)(3).

Requested Ruling 8(d):

> 8. The Proposed Transfers, whether or not constituting transfers described in section 507(b)(2), will not result in:
>
> d. an investment that jeopardizes charitable purposes under section 4944 and the excise tax imposed on jeopardizing investments.

Law:

Section 4944(a)(1) imposes a tax on any investments by a private foundation that jeopardize the carrying out of any of a private foundation's exempt purposes.

Section 4944(c) provides an exception for investments where the primary purpose of the investment is to accomplish exempt purposes and no significant purpose of which is the production of income or appreciation of property.

Rev. Rul. 2002-28, 2002-1 C.B. 941, presents situations where a private foundation transfers all of its assets to transferee private foundations that are effectively controlled (within the meaning of the regulations under section 507), directly or indirectly by the same person who effectively controlled the transferor private foundations. The ruling holds that the transfers do not constitute investments for purposes of section 4944. Therefore the transfers do not constitute investments jeopardizing the transferor foundation's exempt purposes and are not subject to tax under section 4944(a)(1).

Analysis:

Under section 4944(c), a transfer is not considered a jeopardizing investment for purposes of section 4944 if the transfer of assets was made for the purpose of accomplishing a charitable purpose and not for the production of income or appreciation of property. The Proposed Transfers are being made to Company Foundation and New Foundation as grants for capital endowments to fulfill the transferee foundations' charitable purposes and for no consideration. The grants are not investments, and Family Foundation expects no return on investment, nor a return of principal. Therefore, the Proposed Transfers do not constitute investments and will not result in the imposition of tax for a jeopardizing investment under section 4944. See also Rev. Rul. 2002-28.

Requested Ruling 8(e):

> 8. The Proposed Transfers, whether or not constituting transfers described in section 507(b)(2) will not result in:
>
> > e. taxable expenditures under section 4945 provided Family Foundation, New Foundation, and Company Foundation comply with the reporting and determination provisions of § 53.4945-5(c)(2).

Law:

Section 4945(a) imposes an excise tax on each taxable expenditure incurred by a private foundation.

Section 4945(d)(4) provides that the term "taxable expenditure" includes a grant paid to an organization unless (A) the grantee is either a public charity described in section 509(a)(1), (2), or (3) (other than certain supporting organizations described in section 4942(g)(4)(A)(i) or (ii)) or an exempt operating foundation described in section 4940(d)(2), or (B) unless the grantor exercises expenditure responsibility over the grant pursuant to section 4945(h).

Section 4945(d)(5) provides that the term "taxable expenditure" also includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(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." The purposes listed in section 170(c)(2)(B) generally are the same as the purposes listed in section 501(c)(3). Thus, a grant by a private foundation to another organization described in section 501(c)(3) ordinarily is an amount paid to accomplish a purpose described in section 170(c)(2)(B).

Section 4945(h) defines “expenditure responsibility” to mean that the grantor private foundation is responsible for exerting all reasonable efforts to establish adequate procedures to see that the grant is spent solely for the purpose for which it was made, obtain full and complete reports from the grantee on how the funds are spent, and make full and detailed reports with respect to such expenditures to the Secretary.

Section 53.4945-5(c)(2) provides that, with regard to capital endowment grants made to private foundations, if a private foundation makes a grant to another private foundation for endowment or for other capital purposes, the grantor foundation must require reports from the grantee foundation on the uses of the principal and income (if any) from the grant funds. The grantee must make such reports annually for the taxable year in which the grant was made and for the immediately succeeding two taxable years. The grantor may allow the grantee’s reports to be discontinued only if it is reasonably apparent to the grantor, before the end of such grantee’s second succeeding taxable year, that neither the principal nor the income from the grant funds has been used for any purpose that would result in liability for tax under section 4945(d).

Analysis:

Neither Company Foundation nor New Foundation is treated as Family Foundation under § 1.507-3(a)(9)(i), as discussed in Requested Ruling 6 and 7. Thus, each of the Proposed Transfers would be a taxable expenditure under section 4945(d)(4) unless the grants are made for section 170(c)(2)(B) purposes and Family Foundation exercises expenditure responsibility as required by section 4945(h). Family Foundation’s Proposed Transfers will provide New Foundation and Company Foundation with additions to their respective endowments, the income of which will be used for their respective charitable purposes. However, because Family Foundation is making capital expenditure grants to New Foundation and Company Foundation, it is required to follow the rules of section 4945(h) and § 53.4945-5(c)(2). Family Foundation represents that it will exercise expenditure responsibility over the Proposed Transfers for the year of the transfer and for a minimum of the two succeeding years until Family Foundation determines that neither the transferred funds nor the income therefrom have been used for any purpose that would result in liability for tax under section 4945(d). Thus, the Proposed Transfers will not be considered taxable expenditures as long as Family Foundation exercises expenditure responsibility over the transfers in accordance with section 4945(h) and § 53.4945-5(c)(2).

Requested Ruling 9

9. After the Proposed Transfers are completed, no part of Family Foundation’s excess qualifying distribution carryover will transfer to New Foundation or Company Foundation; Family Foundation will retain its excess qualifying distribution carryover.

Law:

Section 1.507-3(a)(5) states that, except as provided in § 1.507-3(a)(9), a private foundation is required to meet the distribution requirements of section 4942 for any taxable year in which it makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation.

Section 1.507-3(a)(9)(i) states that if a private foundation transfers all of its net assets to one or more private foundations that are effectively controlled by the same person or persons that effectively controlled the transferor private foundation, for purposes of chapter 42 and part II of subchapter F of chapter 1 of the Code such a transferee private foundation shall be treated as if it were the transferor.

Rev. Rul. 78–387, 1978–2 C.B. 270, held that in a transfer described in § 1.507-3(a)(9)(i) from one private foundation to another, the transferor's excess qualifying distributions carryover reduced the transferee's distributable amount.

Analysis:

The Proposed Transfers do not satisfy the requirements for qualifying distributions under section 4942(g)(3) and Family Foundation must satisfy the distribution requirements of section 4942, without considering the Proposed Transfers. As discussed in Rulings 6 and 7, Family Foundation is transferring less than all of its net assets; therefore, § 1.507-3(a)(9)(i) and Rev. Rul. 78-387 do not apply, and neither Company Foundation nor New Foundation is treated as Family Foundation for purposes of Chapter 42. As of Year 1, Family Foundation had excess distributions of y prior to the Proposed Transfers. Because neither Company Foundation nor New Foundation is treated as Family Foundation, no part of Family Foundation's excess qualifying distribution carryover prior to the Proposed Transfers will transfer to Company Foundation or New Foundation. Family Foundation will retain its excess qualifying distribution carryover.

Rulings:

Based on the foregoing, and assuming the accuracy of the facts and representations set forth herein, we rule as follows:

1) The Proposed Transfers from Family Foundation to Company Foundation and New Foundation of at least 80 percent of the assets of Family Foundation will constitute a significant disposition of assets described in section 507(b)(2).
2) The Proposed Transfers constitute transfers described in section 507(b)(2).
3) Company Foundation will not be treated as a newly created organization following the Proposed Transfers.

4) New Foundation will not be treated as a newly created organization following the Proposed Transfers.
5) The Proposed Transfers will not cause Family Foundation's termination as a private foundation under section 507(a) and will not result in the imposition of any termination tax under section 507(c).
6) Because the Proposed Transfers do not constitute a transfer of all of Family Foundation's net assets, section 1.507(a)(9)(i) will not apply and Company Foundation will not be treated as if it is Family Foundation with respect to the Proposed Transfers.
7) Because the Proposed Transfers do not constitute a transfer of all of Family Foundation's net assets, section 1.507(a)(9)(i) will not apply and New Foundation will not be treated as if it is Family Foundation with respect to the Proposed Transfers.
8) The Proposed Transfers will not result in:
    a. Gross investment income or capital gain net income within the meaning of section 4940 and the excise tax on net investment income;
    b. An act of self-dealing under section 4941 and the excise tax imposed on self-dealing;
    c. A qualifying distribution under section 4942;
    d. An investment that jeopardizes charitable purposes under section 4944 and the excise tax imposed on jeopardizing investments;
    e. Taxable expenditures under section 4945 provided Family Foundation, New Foundation, and Company Foundation comply with the expenditure responsibility provisions of section 4945(h) and the regulations thereunder with respect to the Proposed Transfers, including the reporting and determination provisions of § 53.4945-5(c)(2).
9) After the Proposed Transfers are complete, no part of Family Foundation's excess qualifying distribution carryover will transfer to New Foundation or Company Foundation; Family Foundation will retain its excess qualifying distribution carryover.

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

Except as specifically set forth above, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This letter 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 upon which rulings are granted. Neither does this letter constitute a determination that Family Foundation, New Foundation, and Company Foundation are exempt from tax under section 501(a) or are private foundations under section 509(a). Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

This letter will be made available for public inspection under section 6110 of the Code 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 with deletions that we intend to make available for public inspection is attached to the Notice 437. If you disagree with our proposed deletions, you should follow the instructions in the Notice 437.

The Associate Office (Employee Benefits, Exempt Organizations, and Employment Taxes) will revoke or modify a letter ruling and apply the revocation retroactively if: (1) there has been a misstatement or omission of controlling facts; (2) the facts at the time of the transaction are materially different from the controlling facts on which the ruling is based; or (3) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction. See Rev. Proc. 2022-1, 2022-1 IRB 1, § 11.05.

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

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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

Sincerely,

Virginia Richardson
Senior Tax Law Specialist
Office of the Chief Counsel
(Employee Benefits, Exempt Organizations, and Employment Taxes)

Cc: