

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202535005**

Release Date: 8/29/2025

Index Number: 507.00-00, 4940.00-00,
4941.00-00, 4944.00-00,
4945.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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Refer Reply To:
CC:EEE:EOET:EO1
PLR-121715-24

Date:
June 02, 2025

LEGEND

Foundation =
Founder =
A =
B =
C =
D =
E =

Dear :

This letter responds to a letter dated December 4, 2024, and subsequent correspondence, in which the Foundation's authorized representatives requested on behalf of the Foundation rulings under sections 507, 4940, 4941, 4944, and 4945 of the Internal Revenue Code (Code).¹

Background

The Foundation is recognized as described in section 501(c)(3) and classified as a private foundation under section 509(a). The Foundation was funded by distributions from Founder, deceased, who was a substantial contributor to the Foundation within the meaning of section 507(d)(2).

The Foundation has a A-person board of directors composed of grandchildren, great-grandchildren, and spouses of grandchildren of Founder. Because of differing beliefs among the directors regarding the Foundation's programs, distributions, and

¹ Unless otherwise noted, all references in this letter ruling to "section" refer to the Internal Revenue Code of 1986, as amended.

governance, a decision has been reached that two additional foundations will be formed of which one class of Founder's descendants and their spouses will serve as trustees of one of the new foundations, and another class of Founder's descendants and their spouses will serve as trustees of the other (collectively, the "New Foundations"). The New Foundations are charitable trusts, have applied for recognition as tax-exempt organizations described in section 501(c)(3), and will be classified as private foundations within the meaning of section 509(a) (but not as operating foundations as defined in section 4942(j)(3)).

The Foundation will distribute approximately B percent of the fair market value of its assets to one of the New Foundations and will distribute approximately C percent of the fair market value of its assets to the other New Foundation. The Foundation will retain approximately D percent of the assets that it will own immediately before the transfers to the New Foundations. The Foundation represents that the aggregate fair market value of the assets transferred by the Foundation on the date of transfer(s) to the New Foundations will constitute more than 25 percent of the fair market value of the Foundation's assets on the first day of the taxable year in which the proposed transfers occur.

Once the transfers described above have occurred, the Founder's descendants and their spouses associated with forming the New Foundations will cease to serve as directors and members of the Foundation. The Foundation will receive no consideration for the amounts transferred to the New Foundations, and none of the amounts transferred will be out of current income of the Foundation.

All of the directors of the Foundation and trustees of the New Foundations are disqualified persons with respect to the Foundation and the New Foundations because they are all descendants of Founder (down to great-grandchildren) or spouses of such descendants.

The Foundation will not pay any expenses related to the creation of the New Foundations but intends to pay all reasonable expenses related to the transfer of assets to the New Foundations, including the reasonable expenses incurred in connection with this ruling request. The Foundation has represented that the legal, accounting, and other expenses paid or incurred by the Foundation in connection with the Ruling Request will be reasonable in amount, and that the Foundation will exercise ordinary business care and prudence in paying and incurring such expenses. The Foundation has also represented that it will exercise expenditure responsibility in accordance with section 4945(h) and Treas. Reg. § 53.4945-5(b) with respect to the proposed transfers to the New Foundations.

The Foundation has not given, and does not intend to give, notice to the Service of intention to terminate its private foundation status, nor has the Foundation received from the Service notice that its private foundation status has been terminated. Further, the

Foundation represents that it has not committed any willful repeated acts or any willful and flagrant act giving rise to liability for tax under Chapter 42.

Rulings Requested, Law, and Analysis

Requested Rulings 1 and 2:

- 1.) The proposed transfers of approximately E percent of the fair market value of the Foundation's assets to the New Foundations will qualify as transfers of assets described in section 507(b)(2) and will not be described in section 507(a).*
- 2.) The New Foundations will not be treated as newly created organizations as a result of the transfers.*

Section 507(a) provides that, except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if (1) it notifies the Secretary of its intent to accomplish such a termination, or (2) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under Chapter 42, and the Secretary notifies such organization that it is liable for the tax imposed by section 507(c), and either such organization pays the tax (or any portion not abated under section 507(g)) or the entire amount of such tax is abated under section 507(g).

Section 507(b)(2) provides that in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization. See *also* Treas. Reg. § 1.507-3(a)(1). A transfer described in section 507(b)(2) is referred to as a "section 507(b)(2) transfer."

Treas. Reg. § 1.507-3(c)(1) describes the terms "other adjustment, organization, or reorganization" as including any significant distribution of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income. The term "significant disposition of assets to one or more private foundations" is defined by Treas. Reg. § 1.507-3(c)(2) as including any disposition or series of dispositions where the aggregate value transferred is 25 percent or more of the fair market value of the net assets of the transferor foundation at the beginning of the taxable year.

The Foundation will transfer to the New Foundations approximately E percent of the fair market value of the assets that it will own immediately before the transfers to the New Foundations (approximately B percent of assets to one of the New Foundations and C percent to the other). The Foundation has represented that the aggregate fair market value of the assets transferred to the New Foundations will constitute more than 25 percent of the fair market value of the Foundation's assets at the beginning of the taxable year in which the proposed transfers occur. The Foundation will not receive any consideration for the amounts transferred, and none of the amounts will be out of

current income. Accordingly, the Foundation's proposed transfers to the New Foundations will constitute a significant disposition of assets that will qualify as section 507(b)(2) transfers.

Treas. Reg. § 1.507-4(b) provides, in part, that a private foundation that makes transfers described in section 507(b)(2) is "not subject to the tax imposed under section 507(c) with respect to such transfers unless the provisions of section 507(a) become applicable." The Foundation has represented that it has not and will not notify the Secretary of any intent to terminate its status as a private foundation within the meaning of section 507(a)(1) before the transfers take place, and that it has not either committed willful repeated acts (or failures to act) or committed a willful and flagrant act (or failure to act) which gives rise to tax under Chapter 42 within the meaning of section 507(a)(2).

Therefore, because the proposed transfers will be described in section 507(b)(2) and because the Foundation will not give the notice described in section 507(a)(1) or be described in section 507(a)(2), the Foundation's proposed transfers to the New Foundations will not be described in section 507(a), and the New Foundations will not be treated as newly created organizations for this purpose.

The conclusion that the New Foundations will not be treated as newly created organizations is reached herein only for purposes of responding to the Foundation's request for the ruling that the proposed transfers will not subject the Foundation to the tax imposed by section 507(c) because the transfers will be described in section 507(b)(2). Section 6110(k)(3) provides, in part, that unless "the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent." For this purpose, section 6110(b)(1)(A) provides that a "written determination" generally means "a ruling, determination letter, technical advice memorandum, or Chief Counsel advice." The request for rulings to which this letter is directed was submitted by the Foundation, not by the New Foundations. Accordingly, the New Foundations may not use or cite this letter as precedent. See *also*, section 11.02 of Rev. Proc. 2024-1, 2024-1 I.R.B. 1.

Requested Ruling 3:

The transfers of assets will not give rise to net investment income (including capital gain net income) and will not result in the imposition of tax under section 4940.

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 under 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. Section 4940 does not comprehensively define the term “capital gain net income.”

In the context of applying sections 507(b)(2) and 4940 to a transfer of all of a private foundation’s assets to one or more other private foundations, Rev. Rul. 2002-28, 2002-1 C.B. 941, states that section 507(b)(2) transfers do not constitute investments of the transferor for purposes of section 4940, and therefore the transfers do not give rise to net investment income subject to tax under section 4940(a).

The Foundation has proposed to distribute an aggregate amount equal to approximately E percent of the fair market value of its assets to the New Foundations. The Foundation will not receive any form of consideration for the proposed transfers to the New Foundations, and none of the amounts transferred will be out of current income. Similar to the transfers described in Rev. Rul. 2002-28, the Foundation’s proposed transfers of assets to the New Foundations are transfers described in section 507(b)(2). Accordingly, the proposed transfers to the New Foundations will not give rise to net investment income (including capital gain net income) and will not result in the imposition of tax under section 4940 on the Foundation.

Requested Ruling 4:

The Foundation will not be deemed to have engaged in an act of self-dealing under section 4941 by effectuating the transfers of assets to the New Foundations and the transactions contemplated herein, including the formation of the New Foundations and the payment by the Foundation of reasonable expenses related to the transfer of assets to the New Foundations, including the reasonable expenses incurred in connection with this ruling request, provided that the New Foundations are recognized by the IRS as organizations described in section 501(c)(3).

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

Section 4941(d)(1)(E) provides that the term “self-dealing” includes any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation. Section 4946(a)(1) defines the term “disqualified person.” Treas. Reg. § 53.4946-1(a)(8) provides that, for purposes of section 4941, the term “disqualified person” does not include organizations described in section 501(c)(3) (other than an organization described in section 509(a)(4)). See also, Situation 1, Rev. Rul. 2002-28, *supra*.

The New Foundations have applied to the IRS for recognition as organizations described in section 501(c)(3) and exempt from tax under section 501(a). Section 501(c)(3) organizations are not treated as disqualified persons for purposes of section 4941. See Treas. Reg. § 53.4946-1(a)(8). Accordingly, the Foundation's proposed transfers of assets to the New Foundations, the formation of the New Foundations, and the Foundation's payment of reasonable expenses related to the transaction, including the reasonable expenses incurred in connection with this ruling request, will not constitute acts of self-dealing under section 4941, provided that the New Foundations are recognized by the IRS as organizations described in section 501(c)(3).

With respect to the request for a ruling, this letter is directed to the Foundation, and not to the New Foundations or to any disqualified persons with respect to the Foundation or the New Foundations. As previously stated, section 6110(k)(3) provides, in part, that unless "the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent." Accordingly, neither the New Foundations nor any disqualified persons with respect to the Foundation or the New Foundations may use or cite this letter as precedent. See section 11.02 of Rev. Proc. 2024-1, *supra*.

Requested Ruling 5:

The proposed transfers of assets by the Foundation to the New Foundations will not constitute an investment that jeopardizes the charitable purposes of the Foundation under section 4944.

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

Neither section 4944 nor the regulations thereunder define "invest" or "investment." However, in the context of applying sections 507(b)(2) and 4944 to a transfer of all of a private foundation's assets to one or more other private foundations, Rev. Rul. 2002-28, *supra*, states that section 507(b)(2) transfers do not constitute investments for purposes of section 4944.

Accordingly, the proposed transfers will not constitute investments that jeopardize the Foundation's exempt purposes and will not be subject to tax under section 4944(a)(1).

Requested Ruling 6:

The reasonable legal, accounting, and other expenses paid by the Foundation in connection with this ruling request and in effectuating the transfers of assets to the New Foundations will not constitute taxable expenditures pursuant to section 4945.

Section 4945(a) imposes an excise tax on each "taxable expenditure" made by a private foundation. Section 4945(d)(5) provides that the term "taxable expenditure" includes any

amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Treas. Reg. § 53.4945-6(b)(2) provides that with respect to any unreasonable administrative expenses, such expenses 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 of whether any expenditure is unreasonable depends upon the facts and circumstances of the particular case. By clear implication, reasonable administrative expenses are not taxable expenditures under section 4945(d)(5), and an administrative expense, even if later determined to have been unreasonable, is not a taxable expenditure provided that the foundation demonstrates that such expense was paid or incurred in the good faith belief that it was reasonable and that the payment or incurrence of such expense was consistent with ordinary business care and prudence.

The Foundation has represented that it intends to pay all reasonable expenses related to the transfer of assets to the New Foundations, including all reasonable expenses incurred in connection with this letter ruling request. The Foundation has further represented that the legal, accounting, and other expenses paid or incurred by the Foundation in connection with this ruling request will be reasonable in amount and that the Foundation will exercise ordinary business care and prudence in paying and incurring such expenses. Accordingly, the reasonable legal, accounting, and other expenses paid by the Foundation in connection with this ruling request and in effectuating the transfers of assets to the New Foundations will not constitute taxable expenditures under section 4945.

Requested Ruling 7:

The proposed transfers of the Foundation's assets to the New Foundations will constitute charitable grants to organizations described in section 4945(d)(4) and as such will not constitute taxable expenditures under section 4945, provided that the Foundation exercises expenditure responsibility with respect to the transfers in accordance with section 4945(h), and provided that the New Foundations are recognized by the IRS as described in section 501(c)(3).

Section 4945(a) imposes a tax on each "taxable expenditure" of a private foundation. Section 4945(d)(4) provides that the term "taxable expenditure" includes any amount paid or incurred by a private foundation (such as, in this case, the Foundation) as a grant to a private non-operating foundation (such as each of the New Foundations) unless the grantor foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Treas. Reg. § 53.4945-4(a)(2) provides that for purposes of section 4945, the term “grants” includes such expenditures as “payments to exempt organizations to be used in furtherance of such recipient organizations’ exempt purposes.” The Foundation has represented that the New Foundations have applied to the IRS for recognition as organizations described in section 501(c)(3) and classified as private foundations under section 509(a). The New Foundations will not be operating foundations as defined in section 4942(j)(3) and thus will not be exempt operating foundations under section 4940(d)(2) (which would be exempted from expenditure responsibility).

Treas. Reg. § 53.4945-6(c)(3) provides that if a private foundation makes a transfer of assets pursuant to section 507(b)(2), the transferred assets will not be considered used exclusively for purposes described in section 170(c)(2)(B) unless the assets are transferred to a fund or organization described in section 501(c)(3) (other than an organization described in section 509(a)(4)) or treated as so described under section 4947(a)(1). Thus, a private foundation is permitted to transfer its assets to exempt organizations described in section 501(c)(3), including private foundations, pursuant to section 507(b)(2), without the transfers being taxable expenditures under section 4945.

However, Treas. Reg. § 53.4945-6(c)(3) does not override the requirement under section 4945(d)(4) that grants to private, non-operating foundations be subject to the expenditure responsibility requirements of section 4945(h). Such an override is available under Treas. Reg. § 1.507-3(a)(9) when the transfer of assets is a section 507(b)(2) transfer of all of the transferor’s assets (and the other requirements of that regulation are satisfied), but it is not available when the transfer does not constitute a transfer of all of the transferor’s assets, as in this case. Consequently, the Foundation will have to exercise expenditure responsibility with respect to the distributions to the New Foundations to avoid liability for tax under section 4945.

Section 4945(h) and Treas. Reg. § 53.4945-5(b) provide that in order to exercise expenditure responsibility, a private foundation must exert all reasonable efforts and establish adequate procedures (1) to see that the grant is spent solely for the purpose for which it is 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 Service. The Foundation has represented that it will exercise expenditure responsibility in accordance with section 4945(h) and Treas. Reg. § 53.4945-5(b) with respect to the proposed transfers to the New Foundations. Provided that such expenditure responsibility is exercised and the New Foundations are recognized by the IRS as organizations described in section 501(c)(3) at the time of the transfers, the Foundation’s transfers to the New Foundations will be payments to exempt organizations in furtherance of such organizations’ exempt purposes (and in furtherance of the Foundation’s exempt purposes), and therefore will constitute charitable grants under section 4945(d) and will not constitute taxable expenditures under section 4945.

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 will qualify as transfers of assets described in section 507(b)(2) and will not be described in section 507(a).
- 2.) None of the New Foundations will be treated as newly created organizations as a result of the proposed transfers for purposes of applying section 507(b)(2) and Chapter 42 to the Foundation.
- 3.) The proposed transfers will not give rise to net investment income (including capital gain net income) and will not result in the imposition of tax under section 4940.
- 4.) The Foundation will not be deemed to have engaged in an act of self-dealing under section 4941 by effectuating the transfers of assets to the New Foundations and the transactions contemplated herein, including the formation of the New Foundations and the payment by the Foundation of reasonable expenses related to the transfer of assets to the New Foundations, including the reasonable expenses incurred in connection with this ruling request, provided that the New Foundations are recognized by the IRS as organizations described in section 501(c)(3).
- 5.) The proposed transfers of assets by the Foundation to the New Foundations will not constitute an investment that jeopardizes the charitable purposes of the Foundation under section 4944.
- 6.) The reasonable legal, accounting, and other expenses paid by the Foundation in connection with this ruling request and in effectuating the transfers of assets to the New Foundations will not constitute taxable expenditures pursuant to section 4945.
- 7.) The proposed transfers of the Foundation's assets to the New Foundations will constitute charitable grants to organizations described in section 4945(d)(4) and as such will not constitute taxable expenditures under section 4945, provided that the Foundation exercises expenditure responsibility with respect to the transfers in accordance with section 4945(h), and provided that the New Foundations are recognized by the IRS as organizations described in section 501(c)(3).

The rulings contained in this letter are based upon information and representations submitted by or on behalf of the Foundation and accompanied by a penalty of perjury statement executed by an individual with authority to bind the Foundation, and upon the understanding that there will be no material changes in the facts. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination. The Associate Office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts

change during the course of the transaction. See section 11.05 of Rev. Proc. 2024-1, *supra*.

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, except as expressly provided in this letter, no opinion is expressed or implied concerning the tax consequences of any aspects of any transaction or item of income discussed or referenced in this letter.

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

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if the Foundation files a return electronically, this requirement may be satisfied by attaching a statement to the 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 the Foundation's authorized representatives.

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

Sincerely,

Theodore R. Lieber
Senior Technician Reviewer
Exempt Organizations Branch 1
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

cc: