S/N: 507.00-00

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

200238049

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: JUNE 25, 2002

Contact Person:

Identification Number:

Telepnone Number:
(202) 283-8954

T:EO:B4

Employer Identification Number:

Legend:
B=
C=

Dear Sir or Madam:

This is in response to your letter dated April 26, 2002, in which you requested certain rulings with respect to a proposed transfer of all of the assets of C to B.

B is exempt under section 501(c)(3) of the Internal Revenue Code and is classified as private foundation under section 509(a). C is exempt under section 501(c)(3) of the Internal Revenue Code and is classified as a private operating foundation under section 4942(j)(3).

The Board of Directors for B and C intend to approve a plan of merger under which C would merge with B. Under the plan B would be the surviving entity. The directors have concluded that the proposed merger would eliminate the overlap in objective and operational structures between B and C, and believe that their consolidation into a single entity will streamline the conduct of their common charitable objectives. On the effective date of merger, all of the assets and liabilities of C would become and be deemed to be a part of the assets and liabilities of B. C, as a consequence of the merger, would cease to exist as a legal entity as of the effective time of the merger. B and C are effectively controlled by the same Board of Directors.

C has never notified the Service in the past that it intends to terminate its private foundation status, nor has C ever received notification that its status as a private foundation has been terminated. Furthermore, C has not committed 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.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 507 of the Code and the regulations to section 507 sets forth rules applicable *to* terminating foundations.

The Internal Revenue Service, in Rev. Rul. 2002-28, 2002-20 IRB 941 (copy attached), has issued guidance on the filing obligations and tax issues that arise when a private foundation transfers all of its assets to one or more other private foundations under section 507(b)(2) of the Code.

The Rev. Rul. presents three situations in which a private foundation transfers all of its assets to one or more other effectively controlled private foundations. In Situation One, the foundation, under a plan of dissolution, distributes all of its remaining assets in equal shares to three other private foundations. In Situation Two, the trustees of a private foundation trust create a not-for-profit corporation to carry on the trust's charitable activities, which the trustees have determined can be more effectively accomplished by operating in corporate form. All of the trust's assets and liabilities are transferred to the not-for-profit corporation. In Situation Three, two private foundations transfer all of their assets and liabilities to a newly formed private foundation.

Rev. Rul. 2002-28 provides that a private foundation that transfers all of its assets to one or more private foundations in a transfer described in section 507(b)(2) is not required to notify the Manager, Exempt Organizations Determinations (Tax Exempt/Government Entities) that it plans to terminate its private foundation status under section 507(a)(1). The ruling further states that if the private foundation does not provide notice that it plans terminate, then it is not subject to the termination tax under section 507(c). If the private foundation provides notice of termination, then it is subject to the tax. However, if the private foundation has no assets on the day it provides notice, the section 507(c) tax will be zero.

The Rev. Rul. gives detailed information as to the applicability of the excise taxes imposed by sections 4940-4945 of the Code. The ruling further provides that a private foundation that has disposed of all its assets and terminates its private foundation status must file a Form 990-PF for the tax year of the disposition and must comply with any expenditure responsibility reporting obligations on the return. A private foundation that has disposed of all its assets and does not terminate its private foundation status must file a Form 990-PF for the tax year of the disposition and must comply with any expenditure responsibility reporting obligations on the return, but does not need to file returns in the following tax years if it has no assets and does not engage in any activities. If the private foundation receives additional assets or resumes activities in later years, it must resume filing Form 990-PF for those years.

Our evaluation of the facts and circumstances in your ruling request indicates that the transfer of C's assets to B would be similar to the facts and circumstances described in Situation Three of the Rev. Rul. Under the facts described the foundations would not be subject to tax under section 507 and sections 4940-4945 of the Code.

Accordingly, based on the information furnished, and the Code and regulations, as interpreted in Rev. Rul. 2002-28, we rule as follows:

1. The merger of C with and into B qualifies as a transfer under section 507(b)(2) and as such: (a) will not result in a termination of C's private foundation status under section 507(a); (b) will not cause the imposition of the termination tax described in section 507(c); (c) will not cause B to be treated as a newly created organization; and (d) will not constitute a willful and flagrant act (or failure to act) giving rise to liability for tax under Chapter 42.

2. The merger and the resulting transfer of all of C's assets to B and the assumption by B of all of the liabilities of C will not adversely affect the section 501(c)(3) tax exempt status of either B or C. From and after the effective date of the merger, B will continue to exist as an organization which is exempt from taxation under section 501(c)(3).

3. B and C are effectively controlled, within the meaning of section 1.482-1A(a)(3) of the Income Tax Regulations, directly or indirectly, by the same persons. Therefore, pursuant to section 1.507-3(a)(9)of the regulations, for purposes of the excise taxes imposed under Chapter 42 and sections 507 through 509 of the Code, B will be treated as if it is C.

4. Upon the transfer of assets by C to B pursuant to the merger, B will possess the attributes and characteristics of C specified in section 1.507-3(a)(2)(4) of the regulations: (a) B will succeed to the entire aggregate tax benefit of C under section 507(d); (b) substantial contributors to C under section 507(d)(2) will be treated as substantial contributors to B; and (c) **B** will be responsible for any liabilities of C under Chapter 42 to the extent that C does not satisfy such liabilities.

5. The transfer of assets by C to B pursuant to the merger will not give rise to gross investment income or capital gain net income within the meaning of section 4940 because the transfer will not constitute a "sale or other disposition of property or other realizable event" within the meaning of section 4940. Because B will be treated as if it is C under section 1.507-3(a)(9)(i), for purposes of section 4940, any investment income of C for the taxable year of the transfer will be includible in the computation of the net investment income of **B** for the taxable year of the transfer.

6. The transfer of assets by C to B pursuant to the merger will not constitute self-dealing under section 4941 because, for purposes of section 4941, the term "disqualified person" does not include an organization described in section 501(c)(3) other than an organization described in section 509(a)(4). Consequently, such transfer will not subject B or C to tax under section 4941.

7. Because B will be treated as if it were C under section 1.507-3(a)(9)(i) of the regulations, for purposes of section 4942, C will not be required to meet the qualifying distribution requirements of section 4942 for the taxable year of the transfer, provided that **B s** distributable amount for the year of the transfer, if any, is increased by *C's* distributable amount for the year of transfer. Further, *C s* qualifying distributions made during the taxable year of the transfer and the excess qualifying distribution carryover of C under

section **4942(i),** if any, will be carried over to B and may be used by B to meet its distribution requirements under section **4942.**

8. The transfer *of* assets by *C* to B pursuant to the merger will not result in the application of section **4943** with regard to excess business holdings, because none of the assets transferred will place B in the position of having excess business holdings.

9. The transfer of assets by *C* to B pursuant to the merger will not constitute a jeopardizing investment within the meaning of section **4944.**

10. The transfer of assets by *C* to B pursuant to the merger will not constitute a taxable expenditure within the meaning of section **4945,** and *C* will not be required to exercise expenditure responsibility with respect to the assets transferred to B. B, as the successor to *C* in the merger, will be required to exercise expenditure responsibility with respect to any expenditure responsibility grants of ***C.*** B will be entitled to rely on the approvals given C by the Internal Revenue Service prior to the effective date of the merger respecting grant-making procedures under section **4945(g)**.

11. The legal, accounting and other expenses incurred by B and *C* in connection with this ruling request and effectuating the proposed transfer will be considered qualifying distributions under section **4942** and will not constitute taxable expenditures pursuant to section **4945.**

12. B will be entitled to the benefit of the savings provisions and provisional rules applicable to C with respect to the assets transferred in the merger as set forth in section 1.507-3(a)(8) of the regulations.

We are informing the TE/GE office of this action. Please keep a copy of this ruling in your organization's permanent records.

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 as precedent.

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

Sincerely,

Gerald V. Sack

Gerald **V.** Sack
Manager, Exempt Organizations
Technical Group **4**