200625044

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 3/27/06

Contact Person:

SE:T:EO:RA:T:2

Identification Number:

Telephone Number:

UIL: 501.00-00

Employer Identification Number:

Legend:

B =
C =
D =
E =
F =

507.00-00

Dear

C ("C Foundation)", a Section 501(c)(3) private non-operating foundation, requests a ruling on the proper treatment of the merger of B ("B Foundation"), a Section 501(c)(3) private non-operating foundation, which has the identical members and board of directors, into the C Foundation, under Sections 501, 507, 508, 509, 4940, 4941, 4942, 4943, 4944 and 4945.

In 1999, the Articles of Incorporation were filed to incorporate B Foundation. B was established by D and E, who, at the time, were married to each other. B Foundation received its approval from the Internal Revenue Service as a private operating foundation in 2000. However, in the year of the merger, B no longer qualifies as a private operating foundation; rather it is a private non-operating foundation.

In 1999, Articles of Incorporation were filed to incorporate C Foundation. C Foundation was established by D and E, who, at the time, were married as husband and wife. C Foundation received its approval from the Internal Revenue Service as a private non-operating foundation in 2000.

Both foundations were funded exclusively with contributions from D and E, who were the sole members, directors and officers of both foundations.

In 2003, D and E dissolved their marriage. Concurrently, E resigned as an officer and a member of both B Foundation and C Foundation, and F, daughter of D, became the Chief Financial Officer and Secretary of both B Foundation and C Foundation. F did not become a member of either foundation nor did she make any contributions to either foundation.

Soon after formation of B Foundation, B Foundation acquired a substantial piece of real estate. Subsequently, B Foundation hired employees, including a Camp Manager, to set up a youth camp. For three years, B Foundation ran a youth camp primarily for disadvantaged youth. The camp emphasized integration of technology and nature.

As a result of a number of factors, including the dissolution of the marriage of D and E, and the downturn of the economy, operating a full-fledged youth camp became increasingly difficult. Eventually, B Foundation ceased full-time camp operations and leased the real estate to another Section 501(c)(3) organization for the purpose of continuing the camp facilities. Ultimately, an unrelated large public charity purchased the real estate from B Foundation, on an installment basis, the final payment of which was received by B Foundation in 2005. At that time, the assets of B Foundation consisted entirely of liquid investment assets.

Contingent upon approval of the merger of B Foundation into C Foundation, by the Internal Revenue Service, C Foundation and B Foundation entered an Agreement of Merger in 2004 ("Merger Agreement").

In light of the identity of membership and officers, i.e. D, President and Chairman of both C Foundation and B Foundation and F, Officer and Secretary of both C Foundation and B Foundation, the Merger Agreement provided that D would remain the sole member and the President and Chairman and F would remain the Chief Financial Officer and Secretary. The Merger Agreement further provided that all remaining assets (after payment of the liabilities) of B Foundation would be turned over and delivered to C Foundation. By law and corporate resolution, the assets are to remain dedicated solely for the purposes as provided in Section 501(c)(3).

Rulings Requested:

1 The merger of B Foundation into C Foundation (a) will not result in a termination of B Foundation's status under Section 507; (b) will qualify as a transfer under Section 507(b)(2); and (c) will not cause C Foundation to be treated as a newly created organization.

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

3 C Foundation and B Foundation are controlled by the same persons within the meaning of Section 1.482-1A(a)(3) of the Treasury Regulations. Therefore, pursuant to Section 1.507-3(a)(9), for purposes of the excise taxes imposed in Sections 507-509, C Foundation will be treated as if it is B Foundation.

4 No tax will be imposed under Section 507(c) since the Service will not be notified of the termination of B Foundation's status prior to transfer of all of its remaining assets to C Foundation pursuant to the Merger Agreement.

5 C Foundation will be responsible for any of B Foundation's liabilities under Chapter 42 to the extent that B Foundation does not satisfy such liabilities.

6 The transfer of assets by B Foundation to C Foundation pursuant to the Merger Agreement will not give rise to any gross investment income or capital gain net income within the meaning of Section 4940.

7 The transfer of assets of B Foundation to C Foundation pursuant to the Merger Agreement will not constitute self-dealing under Section 4941. Consequently, such transfers will not subject B Foundation, C Foundation, D or F to tax under Section 4941.

8 Since C Foundation will be treated as if it were B Foundation under Treasury Regulation Section 1.507-3(a)(9)(i), for purposes of Section 4942, B Foundation will not be required to meet the qualifying distribution requirements of Section 4942 for the taxable year of the merger, provided that C Foundation's distributable amount for the year of the merger is increased by B Foundation's distributable amount for the year of the merger. Further, B Foundation's qualified distributions made during the taxable year of the merger, if any, will be carried over to C Foundation and may be used by C Foundation to meet its distribution requirements under Section 4942 for the year.

9 The transfer of assets by B Foundation to C Foundation pursuant to the Merger Agreement will not result in the application of Section 4943 with regard to excess business holdings because none of the assets will place C Foundation in the position of having excess business holdings.

10 The transfer of assets by B Foundation to C Foundation pursuant to the Merger Agreement will not constitute a jeopardy investment within the meaning of Section 4944.

11 The transfer of assets by B Foundation to C Foundation pursuant to the Merger Agreement will not constitute a taxable expenditure within the meaning of Section 4945 and B Foundation will not be required to exercise expenditure responsibility with respect to the assets transferred to C Foundation. C Foundation, as successor to B Foundation in the merger, will be required to exercise expenditure responsibility with respect to any expenditure responsibility grants of B Foundation.

12 The legal, accounting and other expenses incurred by C Foundation and B Foundation in connection with this Ruling Request and with effectuating the proposed transfer will be considered qualifying distributions under Section 4942 and will not constitute taxable expenditures pursuant to Section 4945.

Law:

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.

Section 507(b)(2) provides that the transfer of assets from one private foundation to another private foundation pursuant to merger and certain other corporate adjustments will not cause the transferee foundation to be a newly created organization.

The Internal Revenue Service, in Rev. Rul. 2002-28, 2002-1 C.B 942, 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.

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.

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 the surviving foundation in a merger will be responsible for any liabilities arising under Chapter 42 to the extent that the transferor foundation does not satisfy such liabilities.

Assuming the foundation has not has willfully or flagrantly violated certain requirements of Chapter 42, Rev. Rul. 2002-28 provides that the termination tax under Section 507(c) does not apply if the foundation does not notify the that it intends to terminate its status or if the foundation so notifies the only after its has no remaining assets.

Section 4940 imposes an excise tax on a foundation's net investment income. However, Rev. Rul. 2002-28 provides that transfers from one foundation to another pursuant to merger do not constitute a realizable event for purposes of determining net investment income under Section 4940.

With certain exceptions, Section 4941 imposes a penalty tax on self-dealing transactions, which are transactions between a foundation and a disqualified person. However, a Section 501(c)(3) organization is not considered a "disqualified person" unless it is also an organization described in Section 509(a)(4). A Section 509(a)(4) organization is one which is organized and operated exclusively for public safety.

Section 4942 imposes a tax for failure to make required distributions. Section 1.507-3(a)(9)(i) provides that if assets are transferred from one private foundation to another private foundation and both foundations are commonly controlled within the meaning of Section 1.482-1A(a)(3), then the transferee foundation shall be treated as if it were the transferor foundation.

Section 4943 imposes a tax on excess business holdings of a foundation. For purposes of Section 4943, excess business holdings represent holdings in an active business where the foundation has enough ownership interest to be able to exert some influence over the business. For instance, a mere two percent (2%) ownership interest in a for-profit corporation by a foundation (or multiple foundations which are controlled by the same persons) is not considered "excess".

Section 4944 prohibits, by way of a penalty tax, a foundation from making investments which are considered sufficiently risky so as to jeopardize the ability of the foundation to carry out its exempt purposes.

Section 4942 imposes a tax for failure to make required distributions and Section 4945 imposes a tax on taxable expenditures.

Analysis:

Our evaluation of the facts and circumstances in your ruling request indicates that the transfer of B Foundation assets to C Foundation is, in principle, similar to the facts and circumstances described in Situation Three of Rev. Rul. 2002-28. Under the facts described the foundations would not be subject to tax under section 507 and sections 4940-4945 of the Code.

Rulings:

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 B Foundation into C Foundation (a) will not result in a termination of B Foundation's status under Section 507; (b) will qualify as a transfer under Section 507(b)(2); and (c) will not cause C Foundation to be treated as a newly created organization.

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

3 C Foundation and B Foundation are controlled by the same persons within the meaning of Section 1.482-1A(a)(3) of the Treasury Regulations. Therefore, pursuant to Section 1.507-3(a)(9), for purposes of the excise taxes imposed in Sections 507-509, C Foundation will be treated as if it is B Foundation.

4 No tax will be imposed under Section 507(c) since the Service will not be notified of the termination of B Foundation's status prior to transfer of all of its remaining assets to C Foundation pursuant to the Merger Agreement.

5 C Foundation will be responsible for any of B Foundation's liabilities under Chapter 42 to the extent that B Foundation does not satisfy such liabilities.

6 The transfer of assets by B Foundation to C Foundation pursuant to the Merger Agreement will not give rise to any gross investment income or capital gain net income within the meaning of Section 4940.

7 The transfer of assets of B Foundation to C Foundation pursuant to the Merger Agreement will not constitute self-dealing under Section 4941. Consequently, such transfers will not subject B Foundation, C Foundation, D or F to tax under Section 4941.

8 Since C Foundation will be treated as if it were B Foundation under Treasury Regulation Section 1.507-3(a)(9)(i), for purposes of Section 4942, B Foundation will not be required to meet the qualifying distribution requirements of Section 4942 for the taxable year of the merger, provided that C Foundation's distributable amount for the year of the merger is increased by B Foundation's distributable amount for the year of the merger. Further, B Foundation's qualified distributions made during the taxable year of the merger, if any, will be carried over to C Foundation and may be used by C Foundation to meet its distribution requirements under Section 4942 for the year.

9 The transfer of assets by B Foundation to C Foundation pursuant to the Merger Agreement will not result in the application of Section 4943 with regard to excess business holdings because none of the assets will place C Foundation in the position of having excess business holdings.

10 The transfer of assets by B Foundation to C Foundation pursuant to the Merger Agreement will not constitute a jeopardy investment within the meaning of Section 4944.

11 The transfer of assets by B Foundation to C Foundation pursuant to the Merger Agreement will not constitute a taxable expenditure within the meaning of Section 4945 and B Foundation will not be required to exercise expenditure responsibility with respect to the assets transferred to C Foundation. C Foundation, as successor to B Foundation in the merger, will be required to exercise expenditure responsibility with respect to any expenditure responsibility grants of B Foundation.

12 The legal, accounting and other expenses incurred by C Foundation and B Foundation in connection with this Ruling Request and with effectuating the proposed transfer will be considered qualifying distributions under Section 4942 and will not constitute taxable expenditures pursuant to Section 4945.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Service. 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.

Please keep a copy of this ruling in your organization's permanent records.

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.

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.

Because this letter could help to resolve future questions about your federal tax responsibility, please keep a copy of this ruling in your permanent records.

Sincerely,

Debra J. Kawecki
Manager,, Exempt Organizations
Technical Group 2

Enclosure: Notice 437