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DEPARMENT OF TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: FEB 29 2000

Contact Person:

ID Number:

OP:E:EO:T3

Telephone Number:

SIN# 507.01-00 4945.00-00 4947.00-00
507.02-00 4945.04-00

A =

B =

C =

County A =

County B =

X =

Employer Identification Number:

Dear Sir or Madam:

This is in reply to a ruling request dated May 20, 1999, with respect to a proposed transfer by A of more than 50% of its assets to B.

A is a non-exempt charitable trust described in section 4947(a)(1) of the Internal Revenue Code. Pursuant to the Trust Agreement, A is required to distribute all of its assets during the one year period beginning 5 years after the death of the Grantor, which distribution must be completed no later than X.

B has applied for and received exemption under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a). B proposes to make contributions to various public charities. A major portion of A's charitable distributions have been made to synagogues and other charities to foster an interest in Jewish and Israeli matters in teenagers and young adults, mostly through educational endeavors,

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including encouragement in receiving Hebrew instruction. This program has been administered under the independent supervision of the participating synagogues, which control the format of the programs selection of the individuals participating independently of A. The needs of each participating synagogue in connection with this program change materially from year to year and additional synagogues become interested in the program, creating new and changing needs for funding.

A has one trustee. A's charitable committee, which makes all decisions as to charitable distributions has four members. Three of the members of the charitable committee are the original members appointed by the Grantors in the Trust Agreement and the fourth member is a replacement appointed by the charitable committee pursuant to the provisions of the Trust Agreement.

In interpreting the Grantors' intent, the members of the charitable committee had the benefit of knowledge of the trustee, who served as trustee of the Trust from the beginning and was the the Grantors' accountant and one of their trusted personal and financial confidants for many years, and an original member of the charitable committee who knew the Grantors for a substantial number of years during which time he served as their stockholder and as a trusted personal and financial confidant.

The Trust Agreement provides that 25% each year's income (and upon termination, its principal) is to be distributed within the United States for which the Grantors' expressed a desire (but no a requirement) subject to the sole and absolute discretion of the charitable committee, the 2/5 of he 25% (i.e. 10% of the total) be distributed to two designated charities and the that remaining 3/5 of such 25% (i.e. 15% of the total) be distributed among charities operating primarily within County A and County B, including some "suggested" charities, plus other charities having similar charitable purposes. The other 75% of each year's income and (upon termination, its principal) is to be distributed among charities whose principal beneficiaries are within the state of C, for which the Grantors again expressed a desire (but not a requirement) as subject to the sole and absolute discretion of the charitable committee, that certain specified charities be considered for selection as recipients, as well as other charities in C.

A's charitable committee believes that the continuation of these programs will substantially accomplish the Grantor's intent and the formation of B to receive a distribution of A's assets will be the best manner to achieve this goal. A proposes to transfer more than 50% of its assets to B.

Section 509(a) of the Code provides that exempt organizations under section 501(c)(3) and nonexempt charitable trusts under section 4947(a)(1) can be classified as private foundations under section 509(a) and if so, are subject to the private foundation provisions of Chapter 42 of the Code.

Section 507(a) of the Code provides that except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if-

(1) such organization notifies the Secretary (at such time and in such manner as the Secretary may by regulations prescribed) of its interest to accomplish such termination, or

(2) (A) 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

(B) the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for tax imposed by subsection (c), and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

Section 507(b)(2) of the Code provides that for purposes of this part, in case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

Section 507(c) of the Code provides that there is imposed on each organization which is referred to in subsection (a) a tax equal to the lower of (1) the amount which the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from the section 501(c)(3) status of such foundation, or (2) the value of the net assets of such foundation.

Section 1.507-1(b)(6) of the Income Tax Regulations provides that if a private foundation transfers all or part of its assets to one or more other private foundations (or one or more private foundations and one or more section 509(a)(1), (2), (3), or (4) organizations) pursuant to a transfer described in section 507(b)(2) and section 1.507-3(c), such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Section 1.507-1(b)(9) of the regulations provides that a private foundation which transfers all of its assets is required to file the annual information return required by section 6033, and the foundation managers are required to file the annual report of a private foundation required by section 6056, for the taxable year in which such transfer occurs. However, neither such foundation nor its foundation managers will be required to file such returns for any taxable year following the taxable year in which the last of any such transfers occurred, it at no time during the subsequent taxable years in question the foundation has either legal or equitable title to any assets or engages in any activity.

Section 1.507-3(a)(1) of the regulations provides that for purposes of Part II, subchapter F, Chapter 1 of the Code, in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee organization shall not be treated as a newly created organization. Thus, in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of this section, the transferee organization shall not be treated as a newly created organization.

Section 1.507-3(a)(2) of the regulations provides that a transferee private foundation succeeds to that percentage of the transferor "aggregate tax benefit" equal to the fair market value of the assets transferred divided by the fair market value of the assets held by the transferor immediately before the transfer. The fair market value of the assets held and transferred are determined at the time of transfer.

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Section 1.507-3(a)(4) of the regulations provides that if a private foundation incurs liability for one or more of the taxes imposed under Chapter 42 of the Code (or any penalty resulting therefrom) prior to, or as a result of, making a transfer of assets described in section 507(b)(2) to one or more private foundations, then in any case where transferee liability applies, each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

Section 1.507-3(a)(5) of the regulations provides that, except as provided in section 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. Such transfer shall itself be counted toward satisfaction of the requirements to the extent the amount transferred meets the requirements of section 4942(g).

Section 1.507-3(a)(7) of the regulations provides that, except as provided in section 1.507-3(a)(9), where the transferor has disposed of all of its assets, during any period in which the transferor has no assets, section 4945(d) and (h) shall not apply to the transferee or the transferor with respect to any "expenditure responsibility" grants made by the transferor. The exception does not apply to information reporting requirements imposed by section 4945 and the regulations thereunder for the year in which the transfer is made.

Section 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its assets to one or more private foundations which are effectively controlled (within the meaning of section 1.482-1(a)(3)), directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of Chapter 42 of the Code and section 507 through section 509, the transferee private foundation shall be treated as if it were the transferor.

Section 1.507-3(c)(1) of the regulations provides, in part, 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.

Section 1.507-3(c)(2) of the regulations provides, in relevant part, that the term "significant disposition of assets to one or more private foundations" shall include any disposition for a taxable year where the aggregate of the dispositions to one or more private foundations for the taxable year is 25 percent 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(d) of the regulations provides that a transfer of assets under section 507(b)(2) of the Code will not constitute a termination of the transferor's private foundation status.

Section 4940(a) of the Code provides for the imposition on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to 2 percent of the net investment income of

such foundation for the taxable year.

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period.

Section 4941(d)(1)(E) of the Code defines the term self-dealing to include any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets or a private foundation.

Section 53.4941(d)-2(f)(2) of the Foundation and Similar Excise Tax Regulations provides, in part, that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing.

Section 4942(a) of the Code provides for the imposition of a tax on the undistributed income of a private foundation.

Section 4942(c) of the Code defines "undistributed income" as the amount by which the distributable amount exceeds the qualifying distributions of the foundation.

Section 53.4942(a)-3(e) of the regulations provides that any excess qualifying distributions may be carried over and used to reduce the private foundation's minimum distributions requirement for any subsequent taxable year within the specified five year adjustment period.

Section 53.4942(a)-3(a)(2)(i) of the regulations provides that reasonable and necessary administrative expenses paid to accomplish a purpose specified in section 170(c)(1) or section 170(c)(2)(B) are generally treated as "qualifying distributions" within the meaning of section 4942.

Section 4943 of the Code imposes on the excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period, a tax equal to 5 percent of the value of such holdings.

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

Section 4945(a) of the Code imposes a tax on each "taxable expenditure" of a private foundation as defined in section 4945(d).

Section 4945(d)(4) of the Code provides that for purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an organization unless (A) such organization is described in paragraph (1), (2), or (3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or (B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h).

Section 4945(d)(5) of the Code provides that a taxable expenditure includes any amount expended by a private foundation for purposes other than exempt purposes under section 170(c)(2)(B).

Section 4945(h) of the Code provides that expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures (1) to see that the grant is spent solely for the purpose for which 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 Secretary.

Section 53.4945-6(b) of the regulations provides that, in general, unreasonable administrative expenditures will ordinarily be regarded as taxable expenditures unless the foundation can demonstrate that they were paid or incurred in the good faith belief that they were reasonable and that their payment was consistent with ordinary business care and prudence. In addition, under section 4945(d)(5), expenditure for any purpose other than one specified in section 170(c)(2)(B) is a taxable expenditure.

Section 4947(a)(1) of the Code and section 53.4947-1(b)(1)(i) of the regulations provide, in part, that a trust which is not exempt from taxation under section 501(a), all of the unexpired interests of which are devoted to one or more of the purposes in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), 2022, shall be treated as an organization described in section 501(c)(1). Such trust is subject to Subtitle A, Chapter 1, Subchapter F, Part II, of the Code, including sections 507 and 509, and if such trust is a private foundation under section 509, it is subject to the private foundation provisions of Chapter 42 of the Code, including sections 4940-4947.

Section 6033 of the Code provides, in part, every organization exempt from taxation under section 501(a) shall file an annual return of information specifically stating its items of gross income, receipts and disbursements, and such other information as may be prescribed in the instructions issued with respect to the return.

Based on the information submitted in this case, the proposed transfer of more than 50% of A's assets to B will not terminate A's status as a private foundation under section 509(a) of the Code. Since A is a nonexempt charitable trust under section 4947(a)(1) of the Code, it will be a transfer under section 507(b)(2) and subject to the same section 507 rules as a private foundation exempt under section 501(c)(3). In addition, A does not intend to notify the Internal Revenue Service of its intention to accomplish a termination on or before the proposed transfer. Because A has neither been notified of any involuntary termination nor has committed any acts which could trigger an involuntary termination, the proposed transfer of more than 50% of its assets to B will not cause the imposition of the termination tax under section 507(c).

The transfer of A's assets to B is intended to further the charitable purposes of both A and B. Therefore, it will not adversely affect the status of A as a charitable trust or the tax exempt status of B.

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Because the proposed transfer is described in section 507(b)(2) of the Code and section 1.507-2(c) of the regulations, B as transferee, will not be treated as a newly created organization and shall be treated as possessing those attributes and characteristics of the transferor, A, in proportion to the assets transferred to it within the meaning of section 1.507-3(a)(1).

The proposed transfer to B is not net investment income as described in under section 53.4940-1(c)(1) of the regulations because there is no realizing event. Therefore, the assets transferred will not give rise to the tax under section 4940 of the Code. Moreover, since there is no realizable event, B will be treated as the transferor and succeed to A's tax basis and holding period of the transferred assets.

Assuming that, as represented in the ruling request, A has no excess business holdings, the transfer of A's assets to B will not result in excess business holdings in the hands of B.

The proposed transfer to B will not constitute a jeopardizing investment under section 4944(a) of the Code because the purpose of the transfer is not the production of income. It is therefore not an investment.

The proposed transfer of assets is not a taxable expenditure under section 4945(d)(4) of the Code because A proposes to exercise expenditure responsibility with respect to the transfer to B until such time A has disposed of all of its assets as provided in section 1.507-3(a)(7) of the regulations.

Pursuant to section 1.507-1(b)(9) of the regulations, A will not be required to comply with the periodic reporting, return and notice provisions of section 6033 and section 6104 or former section 6056 for any taxable year subsequent to that in which all of its assets are distributed. This is true so long as A at no time during the subsequent taxable years has either legal or equitable title to any assets or engages in any activity.

The legal, accounting and other expenses incurred by A and B in connection with the proposed transfer are within the definition of section 170(c)(2) of the Code. Thus, such expenses will not constitute taxable expenditures pursuant to section 4945 of the Code and will be considered qualifying distributions under section 4942.

The proposed transfer to B will not constitute an act of self-dealing under section 4941 of the Code because such transfer is to an organization described in section 501(c)(3). Even if A and B are controlled by the same persons, the transferee is not considered a disqualified person pursuant to section 53.4946-1(a)(8) of the regulations.

B, as transferor, will be entitled to benefit from the savings provisions and other provisional rules that apply to A with respect to the transferred assets as set forth in section 1.507-3(a)(8) of the regulations.

Based on the facts submitted, we rule as follows:

1. The proposed transfer of more than 50% of A's assets to B will constitute a transfer as described in section 507(b)(2);

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2. As a transfer described in section 507(b)(2) of the Code, the proposed transaction will not result in a termination of A's private foundation status under section 507(a) and will not cause the imposition of the termination tax described in section 507(c);

3. The proposed transfer from A to B will not adversely affect the status of A as a charitable trust or the tax exempt status of B;

4. The proposed transfer will not constitute a willful and flagrant act (or failure to act) giving rise to liability for tax under Chapter 42 of the Code;

5. B will not be treated as a newly created organization;

6. B will succeed to the aggregate tax benefit of A in proportion to the assets transferred to it as provided for in section 1.507-3(a)(2) of the regulations;

7. The proposed transfer to B will not be a realizable event giving rise to net investment income pursuant to section 53.4940-1(c)(1) and therefore, such transfer will not itself give rise to tax to either A or B under section 4940 of the Code;

8. The proposed transfer of A's assets to B will not result in any liability for tax under section 4940 since the transfer will not constitute a "sale or other disposition of property or other realizable event" within the meaning of section 4940 and the tax basis and holding period of the transferred assets the hands of B shall be the same as if in the hands of A;

9. The proposed transfer of A's assets to B will not constitute self-dealing under section 4941 of the Code in that, 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) and therefore, since neither A nor B is described in section 509(a)(4), such transfer will not subject A or to B to tax under section 4941;

10. The proposed transfer does not involve the application of section 4943 of the Code concerning excess business holdings provided that none of the assets transferred would place B in the position of having excess business holdings;

11. The proposed transfer of A's assets to B will not constitute a jeopardizing investment within the meaning of section 4944;

12. The proposed transfer of A's assets to B will not constitute taxable expenditures within the meaning of section 4945;

13. A must initially exercise expenditure responsibility (as that term is defined in section 4945(h)) with respect to the transfers; however, after the taxable year in which A disposes of all of its assets and as long as A has no assets, A will not be required to exercise expenditure responsibility with respect to the transferred assets;

14. Provided A has no assets, it will not be required to comply with the periodic reporting, return and notice provisions of section 6033 and section 6104 or former section 6056 for any taxable year subsequent to that in which all of its assets are distributed;

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

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

17. The proposed transfer from A to B will not cause A or B, or any disqualified person with respect to A or B as defined under section 4946 of the Code, to be subject to any tax under sections 4940 through 4945.

We are informing your key District Director of this ruling. Because this ruling could help resolve future questions about your federal income tax status, you should keep it in your permanent records.

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

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

Sincerely,

(signed) Robert C Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Branch 3