



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 507.00-00, 4940.00-00, 4941.00-00, 4945.00-00, 4946.00-00

Legend:

Date	=
Grantor	=
Museum	=
Operating Foundation	=
x	=
y	=

Dear :

This is in response to your ruling request regarding the proper treatment of a transfer of part of your assets to another private foundation and remainder to a public charity under §§ 507, 4940, 4941, 4945, and 4946 of the Internal Revenue Code (I.R.C.).

Facts:

You are an organization described in § 501(c)(3) and classified as a private operating foundation under § 509(a) and described in § 4942(j)(3). Your purposes are charitable and educational as defined in § 501(c)(3). Your mission is to support the activities of Museum; to commission, create, acquire, and sell Grantor's art medium to promote the public appreciation and knowledge of art and advance the public placement and view of Grantor's art medium; lend art to businesses, individuals, charitable organizations, and government entities for public exhibition, support the values of an open society, healthy community, and creative expression through the public placement of Grantor's art medium; and build and revitalize communities through the public placement of art.

Museum is a nonprofit corporation that is a § 501(c)(3) organization classified as a § 509(a)(2) public charity. Museum has been in existence for a continuous period of more than 60 calendar months immediately preceding the transfers described below. It displays many works by renowned artists including Grantor.

Operating Foundation is a nonprofit corporation described in § 501(c)(3) and classified as a private operating foundation under § 509(a) and described in § 4942(j)(3). Its purposes are charitable and educational, and its mission is to promote the appreciation of, and education about, Grantor's art medium specifically and public art generally, primarily through the creation, maintenance, and public placement of artwork created by Grantor.

Your Board of Trustees consists of one Class A Trustee and three Class B Trustees. The Class A Trustee is entitled to eight votes, and each Class B Trustee is entitled to one vote. Grantor currently serves as the Class A Trustee and as a Class B Trustee. Grantor's son and nephew, each currently serve as Class B Trustees. Grantor, Grantor's son, and Grantor's nephew are each a disqualified person as defined in § 4946 with respect to you and to Operating Foundation. You are not a membership corporation but your trustees maintain control and oversight similar to that of members of a nonprofit corporation, including the power to nominate and elect directors, amend the Bylaws and Certificate of Incorporation, and approve fundamental changes such as merger, dissolution, or transfer of substantial assets.

You also have a Board of Directors, which manages the general business and affairs of the corporation. Each director is entitled to one vote. Grantor, son, and nephew all serve on the Board of Directors, along with two additional unrelated directors. Grantor serves as the Chair of the Board, and with son and nephew also serve as your officers.

You currently own a significant amount of Grantor created artworks ("Artwork"). You also own many of Grantor's completed works and all of Grantor's incomplete works, preliminary works, future works, and copyrights to all of Grantor's works. In addition, Grantor's family members own several of Grantor's completed works, as do hundreds of unrelated private parties. More than 10 years ago, Grantor assigned to you all existing works (with the exception of completed pieces owned by Grantor family members and other private parties), future works, and the copyrights to all Grantor created works (the "Collection"). You also own a substantial collection of artwork created by other artists (the "Artist Collection"), and have additional assets including, without limitation, cash, marketable securities, commissioned works in progress, and property and equipment (the "Additional Assets").

You propose to make two asset transfers. First, you will transfer the Collection (less 16 completed pieces that will be transferred to Museum, the "Museum Pieces") and the Additional Assets to Operating Foundation for no consideration. You represent that the combined value of these assets is y%, which will be more than 25% of the value of your total assets at the time of the transfer.

Second, you will transfer the Museum Pieces and the Artist Collection to Museum on or before Date, and immediately thereafter terminate your private foundation status with the IRS. You represent that you will continue to qualify as an operating foundation through the date of your termination, and will not have any outstanding grants, other than your prior grants to Operating Foundation, which require expenditure responsibility at the time of its termination.

The Museum Pieces and Artists Collection will be transferred to Museum with the restriction that all future decisions by Museum regarding the siting, re-siting, and any de-accession of certain iconic Museum Pieces and Artists Collection works will be subject to the sole written approval of the Operating Foundation Class A Trustee (currently Grantor). You state that these artworks are permanently displayed and have become associated with the Museum exhibition space, and are

integral to the established artistic and aesthetic setting presented there, similar to the way in which other iconic pieces are associated with various museums, such as the Mona Lisa permanently displayed at the Musee du Louve in Paris, and the Rosetta Stone displayed at The British Museum.

You state that you have not and will not notify the IRS of your intent to terminate your status pursuant to § 507(a)(1) until at least one day after final distribution of all of your assets. You further state that you have never either willfully 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. You also state that currently and at the time of the proposed distribution of assets from you to Operating Foundation, there are not and will not be any willful repeated act (or failure to act) or willful flagrant act (or failure to act) which would give rise to liability for taxes under chapter 42. You also represent that you have no expenditure responsibility grants outstanding under § 4945(h), other than your prior grants to Operating Foundation. You will transfer all right, title, and interests in your assets without consideration and do not expect any repayment or retain any right of repossession.

Rulings Requested:

You have requested the following rulings:

1. Your proposed transfer of assets to Operating Foundation will constitute a transfer of assets pursuant to a reorganization as described in § 507(b)(2), and Operating Foundation shall not be treated as a newly created organization following such transfer.
2. Your status as a private foundation will not be terminated as a result of the proposed asset transfer to Operating Foundation, and such asset transfer will not result in the imposition of termination taxes under § 507(c)(2).
3. If you notify the IRS, at least one day after your remaining net assets are transferred to Museum, that you intend to terminate your private foundation status, that notice will be effective to terminate your private foundation status under § 507(a)(1), and you will owe no termination tax because you will have no assets upon such termination.
4. Operating Foundation will succeed to your aggregate tax benefit in proportion to the amount of the fair market value of the assets it receives from you.
5. Your proposed asset transfers to Operating Foundation will not give rise to any net investment income or constitute any other taxable sale or disposition under § 4940.
6. Your proposed asset transfers to Operating Foundation will not constitute any act of self-dealing under § 4941.
7. Operating Foundation's applicable holding period in the transferred assets for purposes of § 4943(c)(4), (5) and (6) includes both the period during which you held such assets and the period during which Operating Foundation holds such assets.

8. You are required to exercise expenditure responsibility over your grant to Operating Foundation until such time as you dispose of all of your assets, and must satisfy the § 4945(h) reporting requirements for the taxable year in which the final transfers are made.
9. You will not be transferring all of your net assets to a private foundation that is effectively controlled, directly or indirectly, by the same person or persons that effectively controlled you. Therefore, Operating Foundation should not be treated as if it were you for purposes of Chapter 42 and §§ 507 through 509.
10. Your proposed asset transfers to Operating Foundation do not constitute an investment that jeopardizes your exempt purposes and will not result in tax under § 4944.
11. Any person who is a substantial contributor within the meaning of § 507(d)(2) with respect to you will be treated as a substantial contributor with respect to Operating Foundation, regardless of whether such person meets the \$5,000/two percent test with respect to Operating Foundation at any time.
12. Operating Foundation will receive the transferred assets subject to your prior excise tax liabilities under Chapter 42 (and any penalty resulting therefrom), if any, to the extent you did not previously satisfy those liabilities.

Law:

I.R.C. § 501(c)(3) provides an exemption from federal tax for organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

I.R.C. § 507(a)(1) states that a private foundation may voluntarily terminate its private foundation status by submitting to the Internal Revenue Service a statement of its intention to voluntarily terminate its private foundation status pursuant to § 507(a)(1) and by paying any termination tax under § 507(c).

I.R.C. § 507(b)(2) states that 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 private foundation shall not be treated as a newly created organization.

I.R.C. § 507(c) imposes an excise tax equal to the lower of: (1) the aggregate tax benefits that have resulted from the private foundation's exempt status under § 501(c)(3), or (2) the value of the net assets of the private foundation on an organization that voluntarily terminates its private foundation status.

I.R.C. § 4940(a) imposes an annual tax on the net investment income of private foundations.

I.R.C. § 4940(c) 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 paragraph (3).

I.R.C. § 4941(a) imposes an excise tax on acts of self-dealing between a private foundation and any of its disqualified persons as defined in § 4946.

I.R.C. § 4945(a) imposes a tax on the taxable expenditures of a private foundation.

I.R.C. § 4945(d)(4) states, in part, 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 such organization is described in paragraph (1) or (2) of § 509(a), is an organization described in § 509(a)(3), or is an exempt operating foundation, or the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h).

I.R.C. § 4945(h) defines the term "expenditure responsibility" to mean that a private foundation is responsible to exert all reasonable efforts and to establish adequate procedures to see that the grant is spent solely for the purpose for which made, to obtain full and complete reports from the grantee on how the funds are spent, and to make full and detailed reports with respect to such expenditures to the Secretary.

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

Treas. Reg. § 1.507-3(a)(2) states, in part, that a transferee organization to which this paragraph applies shall succeed to the aggregate tax benefit of the transferor organization.

Treas. Reg. § 1.507-3(a)(3) states that, for purposes of § 507(d)(2), in the event of a transfer of assets described in § 507(b)(2), any person who is a "substantial contributor" (within the meaning of § 507(d)(2)) with respect to the transferor foundation will be treated as a "substantial contributor" with respect to the transferee foundation, regardless of whether such person meets the \$5,000-two percent test with respect to the transferee organization at any time.

Treas. Reg. § 1.507-3(a)(4) states that if a private foundation incurs a 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 § 507(b)(2) to one or more private foundations, 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.

Treas. Reg. § 1.507-3(a)(6) provides that when a private foundation makes a § 507(b)(2) transfer of all or part of its net assets to another private foundation, the applicable period of time described in § 4943(c)(4), (5), or (6) shall include both the period during which the transferor foundation held such assets and the period during which the transferee foundation holds such assets.

Treas. Reg. § 1.507-3(a)(8)(ii) sets forth certain rules that apply to the transferee foundation with respect to the assets transferred in a § 507(b)(2) transfer to the same extent and in the same manner that they would have applied to the transferor foundation had the § 507(b)(2) transfer not been effected, mostly in the nature of transitional rules of limited scope for the Tax Reform Act of 1969.

Treas. Reg. § 1.507-3(a)(9)(i) provides that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled (within the meaning of Treas. Reg. § 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 (§ 4940 et seq.) and part II of subchapter F of chapter 1 of the Code (§§ 507 through 509) such a transferee private foundation shall be treated as if it were the transferor.

Treas. Reg. § 1.507-3(c)(1) states that a transfer of assets is described in § 507(b)(2) if it is made by a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization.

Treas. Reg. § 1.507-3(c)(2) defines the term "significant disposition of assets to one or more private foundations" as any disposition or series of dispositions where the cumulative total of dispositions is 25 percent or more of the fair market value of the net assets of the foundation at the beginning of the taxable year.

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

Treas. Reg. § 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 the income (if any) from the grant funds. The grantee must make such reports annually for the tax year in which the grant was made and for the immediately succeeding two tax years. Only if it is reasonably apparent to the grantor, before the end of such grantee's second succeeding tax year, that neither the principal nor the income from the grant funds has been used for any purpose which would result in liability for tax under § 4945(d), may the grantor then allow the grantee's reports to be discontinued.

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

Analysis:

Ruling 1:

Section 507(b)(2) states that a transfer of assets from one private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, will not treat the transferee foundation as a newly created organization. Treas. Reg. § 1.507-3(c)(1) describes the terms "other adjustment,

organization, or reorganization" as including any partial liquidation or any other 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 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 foundation at the beginning of the taxable year. Since you are transferring all right, title, and interest in more than 25 percent of the fair market value of your net assets to Operating Foundation, a private foundation, for no consideration, your proposed transfer is a significant disposition of assets that qualifies as a transfer pursuant to a reorganization under § 507(b)(2).

When a private foundation makes a transfer described in § 507(b)(2), the transferee foundation is not treated as a newly created organization under Treas. Reg. § 1.507-3(a)(1). Because your transfer is described in § 507(b)(2), as discussed above, Operating Foundation will not be treated as a newly created organization.

Rulings 2 and 3:

Pursuant to Treas. Reg. § 1.507-4(b), a private foundation that makes a transfer described in § 507(b)(2) is not subject to the tax imposed under § 507(c) with respect to such transfer unless the provisions of § 507(a) become applicable. As discussed in Ruling 1 above, your transfer to Operating Foundation will constitute a significant distribution of assets described in § 507(b)(2). You have stated that you have not and will not notify the Secretary of your intent to terminate your status as a private foundation and that you have not ever 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. Therefore, your proposed transfer of assets to Operating Foundation under § 507(b)(2) will not terminate your private foundation status under § 507(a) and does not result in a termination tax imposed by § 507(c).

After your transfer of assets to Operating Foundation, you will transfer the remainder of your assets to Museum, a § 509(a)(2) public charity. However, with a transfer of assets to an organization described in § 509(a)(2), the automatic termination of private foundation status under § 507(b)(1)(A) does not apply. See Treas. Reg. § 1.507-1(b)(7). Therefore, your private foundation status will not terminate immediately after the transfer of your assets to Museum. You must notify the IRS, at least one day after all of your net assets are transferred to Museum, that you intend to terminate your private foundation status. That notice will be effective to terminate your private foundation status under § 507(a)(1), and you will owe no termination tax because you will have no assets upon such termination. See §§ 507(a)(1) and 507(c) and Treas. Reg. § 1.507-1(b)(1).

Ruling 4:

In the case of a significant disposition of assets to one or more private foundations within the meaning of § 507(b)(2), the transferee organization shall be treated as possessing those attributes and characteristics of the transferor organization which are described in subparagraphs (2), (3), and (4) of Treas. Reg. § 1.507-3(a). As discussed in Ruling 1 above, your transfer is described in § 507(b)(2). Accordingly, Operating Foundation will be treated as possessing your attributes and characteristics as described in Treas. Reg. §§ 1.507-3(a)(2), (3), and (4), including that a transferee organization shall succeed to the aggregate tax benefit of the transferor organization in

proportion to the amount of the fair market value of the assets the transferee receives from the transferor.

Ruling 5:

Section 4940(c) imposes an excise tax on investment income received by private foundations. Investment income includes capital gains from the sale or other disposition of property. Your transfer of all rights, title, and interests in assets to Operating Foundation, which lacks consideration, does not constitute a "sale or other disposition of property" that would generate capital gains subject to excise tax under § 4940. Therefore, the transfer will not be treated as a taxable sale or disposition of property within the meaning of § 4940.

Ruling 6:

Section 4941(a) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Sections 4941 and Treas. Reg. § 1.507-3(a) determine whether the proposed transfer of part of your assets to Operating Foundation will constitute an act of self-dealing between a private foundation and its disqualified persons, as defined in § 4946. Under Treas. Reg. § 53.4946-1(a)(8), a "disqualified person" does not include organizations that are exempt under § 501(c)(3). Therefore, your transfer of assets to Operating Foundation is not an act of self-dealing because Operating Foundation is recognized by the Service as an organization exempt from tax under § 501(c)(3).

Ruling 7:

Section 4943 imposes an excise tax on the excess business holdings of a private foundation during any taxable year that ends in the taxable period. Excess business holdings are generally the amount of interests in the business enterprise greater than the permitted holdings. Where disqualified persons also have business holdings in the same business enterprise then the private foundation's otherwise permitted holdings are reduced by those amounts. A private foundation is allowed a five year period to dispose of certain large gifts and bequests without incurring the excise tax. Treas. Reg. § 1.507-3(a)(6) provides that whenever a private foundation makes a § 507(b)(2) transfer of all or part of its net assets to another private foundation, the applicable period of time described in § 4943(c)(4), (5) or (6) shall include both the period during which the transferor foundation held such assets and the period during which the transferee foundation holds such assets. As discussed above, you intend to transfer a significant portion of your assets, but not all of your assets, to Operating Foundation which will constitute a transfer of assets pursuant to a reorganization plan as described in § 507(b)(2). Therefore, Operating Foundation's applicable period of time in the transferred assets described in § 4943(c)(4), (5) and (6) will include both the period during which you held such assets and the period during which Operating Foundation holds such assets.

Ruling 8:

Your § 507(b)(2) transfer of assets to Operating Foundation is a grant to Operating Foundation for capital endowment purposes. Because you are not transferring all of your assets to private foundations then Operating Foundation is not treated as you under Treas. Reg. § 1.507-3(a)(9), and the transfer to Operating Foundation is a taxable expenditure under § 4945(d)(4) unless

you comply with the expenditure responsibility requirements of § 4945(h). Your transfer to Operating Foundation will not be considered a taxable expenditure as long as you exercise expenditure responsibility over the transfer in accordance with § 4945(h) and Treas. Reg. § 53.4945-5(c)(2). Treas. Reg. § 53.4945-5(c)(2) requires the grantee to make annual reports for the year in which the grant is made and the immediately succeeding two years.

Rulings 9:

Under Treas. Reg. § 1.507-3(a)(9)(i), if a private foundation transfers all of its net assets to another private foundation which is effectively controlled by the same person or persons which effectively controlled the transferor private foundation, the transferee private foundation is treated as if it were the transferor. Here, you are transferring less than all of your net assets, so Operating Foundation is not treated as you for all private foundation purposes. Instead, Operating Foundation will be treated as possessing your attributes and characteristics which are described in Treas. Reg. §§ 1.507-3(a)(2), (3), (4), and, to the extent applicable, (6) and (8)(ii).

Ruling 10:

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. The term investment is not defined. However, there is an exception in § 4944(c) for program related investments defined as "investments the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property." If transfers of assets do not constitute investments for purposes of § 4944 then such transfers do not constitute investments jeopardizing the transferor foundation's exempt purposes and are not subject to tax under § 4944(a)(1). See Rev. Rul. 2002-28, 2002-1 C.B. 941. Because you are transferring all right, title, and interest in your assets to Operating Foundation and Museum without consideration and lack any expectation of repayment (much less the production of income or the appreciation of property) then they are not investments within the meaning of § 4944. Accordingly, these transfers are not amounts invested in a manner that jeopardizes the carrying out of any of your exempt purposes and are not subject to tax under § 4944(a)(1).

Ruling 11:

In calculating the aggregate tax benefit of a transferor private foundation, § 507(d)(1) accounts for the aggregate increases in tax under chapters 1, 11, and 12 (or the corresponding provisions of prior law) which would have been imposed with respect to all substantial contributors to the foundation if deductions for all contributions made by such contributors to the foundation after February 28, 1913, had been disallowed. For purposes of paragraph (d)(1), § 507(d)(2) defines the term "substantial contributor" to mean any person who contributed or bequeathed an aggregate amount of more than \$5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. In the case of a trust, the term "substantial contributor" also means the creator of the trust. Treas. Reg. § 1.507-3(a)(3) provides that for purposes of § 507(d)(2), in the event of a transfer of assets described in § 507(b)(2), any person who is a substantial contributor (within the meaning of § 507(d)(2)) with respect to the transferor foundation shall be treated as a substantial contributor

with respect to the transferee foundation, regardless of whether such person meets the \$5,000—two percent test with respect to the transferee organization at any time. If a private foundation makes a transfer described in § 507(b)(2) to two or more transferee private foundations, any person who is a substantial contributor with respect to the transferor foundation prior to such transfer shall be considered a substantial contributor with respect to each transferee private foundation.

Your transfers to Operating Foundation are § 507(b)(2) transfers as discussed above. Grantor is a substantial contributor to you. In addition, Grantor and any other persons who are substantial contributors to you are also substantial contributors to Operating Foundation without regard to whether each person meets the \$5,000-two percent test with respect to Operating Foundation.

Ruling 12:

As part of a § 507(b)(2) transfer of assets pursuant to a reorganization plan, you intend to transfer a significant portion of your assets, but not all of your assets, to Operating Foundation. Treas. Reg. § 1.507-3(a)(1) provides that, in a § 507(b)(2) transfer, a transferee organization will not be treated as a newly created organization. The transferee organization is treated as possessing those attributes and characteristics of the transferor organization which are described in Treas. Reg. § 1.507-3(a)(2), (3) and (4). Treas. Reg. § 1.507-3(a)(4) provides that 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 § 507(b)(2) to one or more private foundations, 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. Therefore, Operating Foundation will receive the transferred assets subject to your prior excise tax liabilities under Chapter 42 (and any penalty resulting therefrom), if any, to the extent you did not previously satisfy those liabilities.

Conclusion:

Based on the foregoing, we rule as follows:

1. Your proposed transfer of assets to Operating Foundation will constitute a transfer of assets pursuant to a reorganization as described in § 507(b)(2), and Operating Foundation shall not be treated as a newly created organization following such transfer.
2. Your status as a private foundation will not be terminated as a result of the proposed asset transfer to Operating Foundation, and such asset transfer will not result in the imposition of termination taxes under § 507(c)(2).
3. If you notify the IRS, at least one day after the remainder of your net assets are transferred to Museum, that you intend to terminate your private foundation status, that notice will be effective to terminate your private foundation status under § 507(a)(1), and you will owe no termination tax because you will have no assets upon such termination.
4. Operating Foundation will succeed to your aggregate tax benefit in proportion to the amount of the fair market value of the assets it receives from you.

5. Your proposed asset transfers to Operating Foundation will not give rise to any net investment income or constitute any other taxable sale or disposition under § 4940.
6. Your proposed asset transfers to Operating Foundation will not constitute any act of self-dealing under § 4941.
7. Operating Foundation's applicable holding period in the transferred assets for purposes of § 4943(c)(4), (5) and (6) includes both the period during which you held such assets and the period during which Operating Foundation holds such assets.
8. You are required to exercise expenditure responsibility over your grant to Operating Foundation until such time as you dispose of all of your assets, and must satisfy the § 4945(h) reporting requirements for the taxable year in which the final transfers are made.
9. You will not be transferring all of your net assets to a private foundation that is effectively controlled, directly or indirectly, by the same person or persons that effectively controlled you. Therefore, Operating Foundation should not be treated as if it were you for purposes of Chapter 42 and §§ 507 through 509.
10. Your proposed asset transfers to Operating Foundation do not constitute an investment that jeopardizes your exempt purposes and will not result in tax under § 4944.
11. Any person who is a substantial contributor within the meaning of § 507(d)(2) with respect to you will be treated as a substantial contributor with respect to Operating Foundation, regardless of whether such person meets the \$5,000/two percent test with respect to Operating Foundation at any time.
12. Operating Foundation will receive the transferred assets subject to your prior excise tax liabilities under Chapter 42 (and any penalty resulting therefrom), if any, to the extent you did not previously satisfy those liabilities.

This ruling will be made available for public inspection under § 6110 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.

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

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. 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. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Michael Seto
Manager, Exempt Organizations
Technical

Enclosure
Notice 437