**Internal Revenue Service**

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:EO3
PLR-T-103493-15

Date:
October 09, 2015

Legend

Foundation 1 =
Foundation 2 =
A =
B =
C =
D =
E =
Date 1 =
Date 2 =
Year 1 =

Dear :

This is in response to the letter dated December 2, 2014, and additional submissions in which Foundation 1's counsel requested on behalf of Foundation 1 rulings under section 501, 507, 4941, 4942, 4944, and 4945 of the Internal Revenue Code.[1]

**Background**

Based on the documents and representations submitted on behalf of Foundation 1, the relevant facts on which Foundation 1's request for rulings is based are as follows:

[1] The Internal Revenue Code of 1986, as amended, to which all subsequent "section" references are made unless otherwise indicated.

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Foundation 1 was recognized as an exempt organization described in section 501(c)(3) of the Code and classified as a private foundation under section 509(a) on Date 1. Foundation 1 was founded by A, who is now deceased. Foundation 1's directors are B, C, and D. B is A's niece, and C is A's nephew. B and C disagree on how to carry out Foundation 1's exempt purposes. Consequently, Foundation 1's directors propose to transfer one-half of Foundation 1's assets to Foundation 2. B created Foundation 2 on Date 2, and the IRS recognized it in Year 1 as an organization described in section 501(c)(3) of the Code and classified it as a private foundation under section 509(a). After the proposed transfer, Foundation 1's directors will be C, D, and E, and Foundation 2's directors will be B, D, and E.

Under the proposed transfer, Foundation 1 will transfer one-half of the fair market value of its total assets as of the date of the transfer, which consist of cash and publicly held securities, to Foundation 2 for no consideration. The proposed transfer will not be made out of Foundation 1's current income. Foundation 1 represents that it will exercise expenditure responsibility over all assets transferred to Foundation 2. Foundation 1 also represents that it will not seek to terminate its private foundation status under section 507 of the Code and will continue to operate with the remaining one-half share of its assets. Foundation 1 further represents that there have been neither any willfully repeated acts (or failures to act) nor a willful and flagrant act (or failure to act) giving rise to tax under Chapter 42 of the Code. Finally, Foundation 1 represents that any legal, accounting, and other expenditures incurred in connection with the proposed transfer will be reasonable, necessary, and consistent with ordinary business care.

**Rulings Requested, Law, and Analysis**

Requested Rulings 1:

1. *The proposed transfer will be in furtherance of Foundation 1's section 501(c)(3) purpose.*

Section 501(a) of the Code exempts from federal income tax organizations that are described in section 501(c). Section 501(c)(3) describes organizations that are organized and operated exclusively for charitable and other designated exempt purposes. Organizations described in section 501(c)(3) must operate exclusively for an exempt purpose.

Revenue Ruling 64-182, 1964-1 C.B. 186, provides that a corporation organized exclusively for charitable purposes is entitled to exemption under section 501(c)(3) where it is shown to be carrying on through contributions and grants a charitable program commensurate in scope with its financial resources.

Under the proposed transfer, Foundation 1 will transfer an amount equal to 50 percent of the fair market value of its assets to Foundation 2. Foundation 1 will continue to

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operate for exempt purposes following the proposed transfer of assets in a manner commensurate in scope with its remaining financial resources. Accordingly, Foundation 1's proposed transfer of assets will be in furtherance of Foundation 1's section 501(c)(3) purpose.

Requested Rulings 2 and 3:

2. *The proposed transfer will qualify as a transfer described in section 507(b)(2) of the Code, and Foundation 2 will not be treated as a newly created organization for purposes of Part II, Subchapter F, Chapter 1 of the Code.*

3. *The proposed transfer of Foundation 1's assets will not be described in section 507(a) of the Code.*

Section 507(a) says 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 failure to acts), 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) says 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. A transfer described in section 507(b)(2) is referred to as a "section 507(b)(2) transfer."

The exception in section 507(a) for what is "provided in subsection (b)" excludes section 507(b)(2) transfers from imposition of the termination tax. Accordingly, a transfer of assets described in section 507(b)(2) from one private foundation to another does not trigger the termination tax on the transferor private foundation if the transferee private foundation involved in the transfer "is not...treated as a newly created organization."

This is explained in more detail in the applicable regulations. Section 1.507-3(a)(1) of the Treasury Regulations states that in the case of a transfer of assets described in section 507(b)(2), including a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of Treas. Reg. section 1.507-3, the transferee organization will not be treated as a newly created organization. Similarly, Treas. Reg. section 1.507-1(b)(6) provides that if a private foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in section 507(b)(2) and Treas. Reg. section 1.507-3(c), such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

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Treas. Reg. section 1.507-3(c)(1) of the Regulations 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. section 1.507-3(c)(2) as any disposition or series of dispositions by a private foundation to one or more private foundations, 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. Foundation 1 will be transferring 50 percent of its assets to Foundation 2. Foundation 1 will not receive any consideration for the amounts transferred, and none of the amounts will be out of current income. Accordingly, Foundation 1's proposed transfer will constitute a significant disposition of assets that will qualify as a section 507(b)(2) transfer.

Treas. Reg. section 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." Foundation 1 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) 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 transfer will be described in section 507(b)(2) and because Foundation 1 will not give the notice described in section 507(a)(1) or be described in section 507(a)(2), Foundation 1's proposed transfer of assets to Foundation 2 will not be described in section 507(a), and Foundation 2 will not be treated as a newly created organization for this purpose.

The conclusion that Foundation 2 will not be treated as a newly created organization is reached herein only for purposes of responding to Foundation 1's request for the ruling that the proposed transfer will be described in section 507(b)(2). Section 6110(j)(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 Foundation 1, not by Foundation 2. Accordingly, Foundation 2 may not use or cite this letter as precedent. See also, section 11.02 of Rev. Proc. 2015-1, 2015-1 I.R.B. 1, 59.

Requested Ruling 4:

4. *The proposed transfer will not constitute a taxable expenditure within the meaning of section 4945 of the Code, provided Foundation 1 exercises the*

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*expenditure responsibility required by section 53.4945-5(c)(2) of the Treasury Regulations, with respect to the transfer.*

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, Foundation 1) as a grant to a private non-operating foundation (such as, in this case, Foundation 2) unless the grantor private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h)

Treas. Reg. section 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." Foundation 1 has represented that Foundation 2 received recognition as an organization described in section 501(c)(3) and as a private, non-operating foundation, prior to Foundation 1 making any transfers of assets to it, and that Foundation 2 will be responsible for maintaining its tax-exemption thereafter.

Treas. Reg. section 53.4945-6(c)(3) allows a private foundation 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. section 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. section 1.507-3(a)(9) when the transfer of assets is a section 507(b)(2) transfer of all of the transferor's assets, but it is not available when the transfer does not constitute a transfer of all of the transferor's assets, as is the case here. Consequently, Foundation 1 will have to exercise expenditure responsibility with respect to all grants to Foundation 2, including the proposed transfer of assets described in section 507(b)(2), to avoid liability for tax under section 4945.

Requested Ruling 5:

5. *The proposed transfer will not constitute acts of self-dealing prohibited by section 4941 of the Code as to Foundation 1's directors.*

Section 4941(a) of the Code imposes 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 IRS on its annual information return, which is the Form 990-PF in this case.

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Section 4941(d)(1) of the Code 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. section 53.4946-1(a)(8) provides that the term "disqualified person" does not include organizations that are exempt under section 501(c)(3). Thus, Foundation 2, by definition, will not be a "disqualified person" with respect to Foundation 1.

In Situation 1 in Rev. Rul. 2002-28, supra, P is recognized as exempt from federal tax under section 501(c)(3) and is classified as a private foundation under section 509(a). Pursuant to a plan of dissolution, after satisfying all of its outstanding liabilities, P distributes all of its remaining assets in equal shares to X, Y, and Z. Rev. Rul. 2002-28, states, in part, that the transfers in question are to section 501(c)(3) organizations, which are not treated as disqualified persons for purposes of section 4941. Rev. Rul. 2002-28 concludes that the transfers do not constitute self-dealing transactions and are not subject to tax under section 4941(a)(1).

Foundation 1's proposed transfer of assets to Foundation 2 will not constitute an act of self-dealing, assuming that Foundation 2 was recognized by the IRS as an organization described in section 501(c)(3) and exempt from tax under sections 501(a).

This letter is directed to Foundation 1, not to Foundation 2, B, C, D, E, or any other disqualified person with respect to Foundation 1. As previously stated, section 6110(j)(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 Foundation 2, B, C, D, E, nor any other disqualified persons with respect to Foundation 1 may use or cite this letter as precedent. See section 11.02 of Rev. Proc. 2015-1, supra, at 59.

Requested Ruling 6:

6. *The legal, accounting, and other expenditures incurred by Foundation 1 to effectuate the proposed transfer will not be treated as taxable expenditures under section 4945 of the Code, and to the extent that they are reasonable, they will be treated as qualifying distributions under section 4942 of the Code.*

Section 4942(a) of the Code generally imposes a tax on the undistributed income of a private foundation (other than an operating foundation under section 4942(j)(3)) for any taxable year, that has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year. Section 4942(c) defines undistributed income for any taxable year as the amount by which the distributable amount for such taxable year, exceeds the qualifying distributions made out of such distributable amount for such taxable year.

Section 4942(g)(1)(a) and Treas. Reg. section 53.4942(a)-3(a)(2)(i) provide, in part, that the term "qualifying distribution" means any amount, including reasonable and necessary

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administrative expenses, paid to accomplish one or more purposes described in section 170(c)(1) or (2)(B). Section 170(c)(2)(B) lists the following purposes: "religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals." These purposes are the same as the purposes listed in section 501(c)(3). Thus, a grant by a private foundation to another organization described in section 501(c)(3) ordinarily is an amount paid to accomplish a purpose described in section 170(c)(2)(B) and may be considered to be a qualifying distribution.

Assuming that Foundation1's legal, accounting, and other expenses incurred in connection with the proposed transfer will be reasonable and consistent with ordinary business care and prudence and paid to accomplish one or more purposes described in section 170(c)(2)(B), such expenses will be considered qualifying distributions under section 4942.

Section 4945(a) imposes a tax on "each expenditure" of 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. section 53.4945-6(b)(2) provides that legal, administrative, and other expenses incurred by a private foundation are not taxable expenditures if 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 whether an expenditure is reasonable depends upon the facts and circumstances of the particular case. Thus, Foundation 1's payment of reasonable legal, accounting, and other expenses relating to the proposed transfer, assuming that Foundation 1 can demonstrate ordinary business care and prudence, will not constitute taxable expenditures under section 4945.

Requested Ruling 7:

7. *The assets that will be transferred by Foundation 1 to Foundation 2 in the proposed transfer could be treated as a qualifying distribution for Foundation 1's distribution requirements under section 4942 of the Code.*

Treas. Reg. section 1.507-3(a)(5) provides that except as provided in Treas. Reg. section 1.507-3(a)(9), (relating to section 507(b)(2) transfers in which all of the transferor's assets are transferred to one or more effectively controlled transferee private foundations), a private foundation is required to meet the distribution requirements of section 4942 for any taxable year in which it makes a transfer described in section 507(b)(2) to another private foundation. Such a transfer itself will be counted

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toward satisfaction of those requirement to the extent the amount transferred meets the requirements of section 4942(g), including the recordkeeping requirements of section 4942(g)(3)(B).

Section 4942(g)(1)(A) states, in part, that a "qualifying distribution" includes any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or disqualified persons with respect to the foundation or (ii) any private foundation that is not an operating foundation under section 4942(j)(3), except as provided in section 4942(g)(3). Foundation 2 will not be an operating foundation.

Section 4942(g)(3) provides that the term "qualifying distribution" includes a contribution to (i) another charitable organization controlled directly or indirectly by the transferor foundation or one or more disqualified persons with respect to the transferor or (ii) a private non-operating foundation if two requirements are satisfied. The first such requirement is that the transferee organization satisfy certain "pass-through" requirements. See section 4942(g)(3)(A). The second requirement is that the transferor obtains adequate records or other sufficient evidence from the transferee organization(s) showing that the required pass-through distributions were made. See Section 4942(g)(3)(B).

Accordingly, if Foundation 2 makes qualifying distributions in the manner required by the pass-through rules of section 4942(g)(3)(A) and if Foundation 1 obtains sufficient records to satisfy the recordkeeping requirements of section 4942(g)(3)(B), then Foundation 1 may count as qualifying distributions those portions of the amounts distributed to Foundation 2 that satisfy the requirements of section 4942(g)(3)(A) and (B).

**Conclusion**

Based on the foregoing, and assuming the accuracy of the facts and representations set forth herein, we rule as follows:

1. The proposed transfer of 50 percent of Foundation 1's assets to Foundation 2 will be in furtherance of Foundation 1's section 501(c)(3) purpose, as described above.

2. The proposed transfer of assets will qualify as a transfer of assets described in section 507(b)(2) of the Code. Given this decision, for purposes of applying section 507(b)(2) and Chapter 42 to Foundation 1 only, Foundation 2 will not be treated as a newly created organization as a result of the proposed transfer of assets.

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3. The proposed transfer of Foundation 1's assets will not be described in section 507(a).

4. The proposed transfer of assets to Foundation 2 will not constitute a taxable expenditure under section 4945 of the Code, provided Foundation 1 exercises expenditure responsibility with respect to the transfers in accordance with section 4945(h).

5. Foundation 1 will not be deemed to have engaged in any acts of self-dealing under section 4941 by effectuating the proposed transfer of assets, including the formation of Foundation 2 and the payment by Foundation 1 of reasonable expenses necessary to effect such transactions.

6. The reasonable legal, accounting, and other expenditures incurred by Foundation 1 to effectuate the proposed transfer will not constitute taxable expenditures under section 4945, and all such reasonable expenses will be qualifying distributions under section 4942.

7. Foundation 1 may count the assets distributed in the proposed transfer toward the satisfaction of its minimum distribution requirement under section 4942 to the extent that Foundation 2 makes qualifying distributions described in section 4942(g)(3)(A) and Foundation 1 obtains sufficient records to satisfy the requirements of section 4942(g)(3)(B).

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. Neither does this letter constitute a determination that Foundation 1 is exempt from tax under section 501(a) or is a private foundation under section 509(a). Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

This letter will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see the 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 the Notice 437. If you disagree with our proposed deletions, you should follow the instructions in the Notice 437.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an individual with authority to bind the taxpayer and upon the understanding that there will be no material changes in the facts. This office has not verified any of the materials submitted in support of the request for rulings, and such material is subject to verification on examination.

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No ruling is granted as to whether Foundation 1 qualifies as an organization described in sections 501(c) and 509(a), and, except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income set forth in the ruling.

This letter is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if Foundation 1 files its returns electronically, it may satisfy this requirement by attaching a statement to its 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 your authorized representative.

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

Sincerely,

Kenneth M. Griffin
Chief
Exempt Organization Branch 3
(Tax Exempt & Government Entities)

Enclosure: Notice 437, Notice of Intention to Disclose
Redacted copy of this letter

cc:

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