



## Voluntary Termination of a Private Foundation

Section 507 of the Internal Revenue Code permits the termination of a private foundation in either trust\* or corporate form and the distribution of its assets to a public charity.

The Marin Community Foundation (MCF) qualifies as a public charity into which a private foundation may distribute all its assets. Such a termination not only releases the private foundation from the reporting requirements of the Internal Revenue Code, but also terminates the payment of the excise tax imposed on private foundations. The steps for a California nonprofit corporation to distribute all its assets to MCF and terminate are as follows:

- Determine whether the private foundation has current obligations regarding any of the following:
  - The 2% investment income excise tax, unrelated business income taxes, private foundation penalty taxes, or 5% minimum distribution requirement.
  - Outstanding grants that are subject to expenditure responsibility (see IRS Form 990-PF).
  - Fees for accountants, lawyers, investment managers, or other service providers.
  - Filing of IRS Form 990-PF and related forms with the IRS and/or California Attorney General, FTB Form 199 or Statements of Information with the Secretary of State.
- Satisfy all current obligations of the terminating foundation, and create a reserve for anticipated expenditures through the completion of the conversion process. Identify any donor-imposed restrictions that apply to the private foundation's assets. These might include purpose restrictions, endowment restrictions, or both.
- Establish a fund at MCF into which the private foundation's assets will be distributed and prepare a fund agreement identifying the terms of the new fund, including identifying the advisors.
- Submit a letter to the California Attorney General's office requesting a waiver of objections to the transfer of the assets of the foundation to MCF, including the following:
  - Itemized list of assets to be distributed to MCF, proposed date of distribution to MCF, any restrictions on the use of the assets to be distributed, and MCF's Articles of Incorporation.
  - Signed copy of the Certificate of Election to Wind-Up and Dissolve and/or signed Certificate of Dissolution prepared for submission to the California Secretary of State.
  - Copy of private foundation's Form 990-PF for the last 3 accounting periods.
  - Copy of the private foundation's Articles of Incorporation.
  - In some instances, a private foundation may be required to petition the Superior Court to request approval of the termination. However, assuming the private foundation is not currently under court jurisdiction, this step is likely not required.
- Once waiver of objections is received by the California Attorney General's office (or court approval, if required), distribute all the private foundation's net assets to the MCF fund.
- Submit letter from the California Attorney General's office and executed Certificate of Dissolution to the Secretary of State's office for filing.
- Submit Final Notice of Submission to the California Attorney General's office including:
  - Filed stamped copy of Certificate of Dissolution.
  - Final financial report for private foundation showing that all the assets were properly distributed to MCF, and all liabilities were satisfied, resulting in a zero balance.
- The private foundation must note on its 990-PF for the year in which the transfer of assets occurred, that this will be the organization's final return.

\* The steps to terminate a trust are much simpler.