DEPARTMENT OF THE TREASURY 200009048
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Contact Person:

Uniform Issue List: 507.03-00
509.01-01
4940.00-00
4941.04-00
4942.03-05
4944.00-00
4945.04-06

Contact Number:

OP:E:EO:T:2

Legend:

X =

Y =

Dear Sir or Madam:

This is in reply to your rulings request of November 20, 1998, on X's proposed transfer of all of its assets to Y pursuant to section 507(b)(1)(A) of the Internal Revenue Code.

X is exempt from federal income tax under section 501(c)(3) of the Code and is a private foundation under section 509(a) of the Code. X will transfer all of its assets to Y pursuant to section 507(b)(1)(A) of the Code. X has no expenditure responsibility grants outstanding under section 4945(h) of the Code. X will then dissolve and notify the key district of such dissolution.

Y is exempt from federal income tax under section 501(c)(3) of the Code. Y is not a private foundation under section 509(a) of the Code because Y is a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code and Y is described in those sections for the continuous period of at least 60 months immediately preceding X's transfer of all of its assets to Y.

Y is a community foundation under section 170(b)(1)(A)(vi) of the Code pursuant to section 1.170A-9(e)(11) of the Income Tax Regulations. Y is sponsored by a large religious denomination in a particular city. Under a donor-advised fund agreement between X and Y on the transfer of X's assets, Y concurs that X's fund will be named for a deceased child of X's creators, and will be used to provide scholarships for students in financial need in the local county to attend parochial and private high schools in the state, with at least three-fourths of the scholarship funds to be used for students at parochial schools. As a donor-advised fund of Y, the funds from X will have an advisory committee, consisting of the persons who are currently trustees of X, who will make non-binding recommendations to Y's board of directors on the amounts of the distributions and the beneficiaries of the funds from X. Y's board of directors is not bound by the advice of this advisory committee, which acts in an advisory capacity only and is subject to Y's policies for donor-advised funds. To the extent that Y may follow the advice of this advisory committee, Y will do so only after Y has made its independent determination that such advice is consistent with Y's exempt purposes. Y will distribute as much of the principal of the fund as Y deems appropriate after consultation with the advisory committee. Y is not subject to any material restrictions or conditions on its uses of the assets from X and will have full ownership and control of such assets.

The following rulings are requested:

1. The transfer of X's assets to Y furthers X's exempt purposes and does not constitute prohibited inurement or private benefit to any of the individual trustees and will not adversely affect X's tax exempt status.

2. The transfer of X's assets to Y will terminate X's status as a private foundation under section 507(b)(1)(A) of the Code, and will not give rise to any tax upon termination under section 507(c) of the Code.

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3. The transfer of X's assets to Y will not constitute an act of self-dealing, and therefore will not result in the imposition of additional tax under section 4941 of the Code.

4. The transfer of X's assets to Y will constitute qualifying distributions with the meaning of section 4942 of the Code and will not subject X to an excise tax under that section.

5. The transfer of X's assets to Y will not give rise to net investment income to X, and therefore will not result in the imposition of tax under section 4940 of the Code.

6. The transfer of X's assets to Y will not constitute an investment on the part of X, and therefore X will not be subject to the tax on jeopardizing investments under section 4944 of the Code.

7. The transfer of X' s assets to Y will not constitute a taxable expenditure within the meaning of section 4945(d)(4) of the Code, and therefore X will not be subject to the expenditure responsibility requirements of section 4945(h) of the Code.

8. The legal, accounting or other expenses (including filing) incurred by X in connection with this ruling request will not constitute a taxable expenditure under section 4945 of the Code.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for the charitable and/or other exempt purposes stated in that section.

Section 509(a) of the Code describes organizations exempt from federal income tax under section 501(c)(3) of the Code that are private foundations subject to the private foundation provisions of Chapter 42 of the Code.

Section 509(a)(1) of the Code provides that the definition of a private foundation does not include an organization, such as a community trust, exempt under section 501(c)(3) of the Code that is a financially publicly supported organization under section 170(b)(1)(A)(vi) of the Code pursuant to either the one-third public support test of section 1.170A-9(e)(2) of the Income Tax Regulations or the ten percent public support test with facts and circumstances under section 1.170A-9(e)(3) of the regulations.

Section 507(b)(1)(A) of the Code and section 1.507-2(a)(1) of the regulations provide that a private foundation may voluntarily terminate its private foundation status by transferring all of its assets to an organization that is exempt from federal income tax under section 501(c)(3) of the Code and that is described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code for the continuous period of at least 60 months immediately preceding the transfer of all of such transferor foundation's assets.

Section 507(c) of the Code impose excise tax on a private foundation which voluntarily terminates its private foundation status pursuant to section 507(a)(1) of the Code. This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefits that have resulted from the foundation's section 501(c)(3) status, or (b) the value of the net assets of the foundation.

Section 1.507-4(b) of the regulations provides, in pertinent part, that the tax under section 507(c) of the Code on termination of private foundation status does not apply to a transfer of assets under section 507(b)(1)(A) of the Code.

Section 1.170A-9(e)(10) of the regulations provides that a community trust can be comprised of separate component funds, but such community trust must have a common governing body that controls such funds for the charitable needs of its community under section 501(c)(3) of the Code, and it must be a financially publicly supported organization under section 170(b)(1)(A)(vi) of the Code pursuant to either the one-third public support test of section 1.170A-9(e)(2) of the regulations or the ten percent support test with facts and circumstances under section 1.170A-9(e)(3) of the regulations.

Section 1.170A-9(e)(11) of the regulations provides that a community trust having separate component funds from donors will be treated as a single entity, rather than as the separate funds, if the assets in such separate funds can be freely used by the community trust without being subject to any material restrictions or conditions imposed by the donor, including a transferor private foundation.

Section 1.170A-9(e)(11)(iv) of the regulations provides that each fund in a community trust is subject to the common governing instrument of such community trust.

Section 1.170A-9(e)(11)(v)(A) of the regulations provides each fund in a community trust is subject to the common governing body of such community trust that directs the distribution of all of the funds of such community trust.

Section 1.170A-9(e)(11)(v)(B)(1) of the regulations provides each fund in a community trust is subject to the common governing body of such community trust and that such governing body in its sole judgment has the power to modify any restriction or condition with respect to any fund in the community trust.

Section 1.170A-9(e)(11)(ii)(B) of the regulations provides that, in order for a fund to be a component part of a community trust, such fund must not be subjected by the donor to any material restriction or condition with the meaning of section 1.507-2(a)(8) of the regulations.

Section 1.507-2(a)(8)(i) of the regulations provides that, in order for a transferor private foundation to make a transfer of all of its assets pursuant to section 507(b)(1)(A) of the Code to a publicly supported charity, the transferor foundation must not impose any material restriction or condition that would prevent the transferee public charity from freely using the transferred assets. In determining whether any restriction or condition may exist in fact, various favorable and unfavorable factors may also be considered.

Section 1.507-2(a)(8)(i)(A) of the regulations provides that a favorable nonrestrictive factor exists where the public charity or community trust becomes the owner in fee of the assets transferred by the private foundation pursuant to section 507(b)(1)(A) of the Code.

Section 1.507-2(a)(8)(i)(B) of the regulations provides that a favorable factor exists where the public charity or community trust will use the transferred assets in furtherance of its exempt purposes under section 501(c)(3) of the Code.

Section 1.507-2(a)(8)(i)(C) of the regulations provides that a favorable factor exists where the public charity or community trust has the ultimate authority and control over the transferred assets and the income therefrom.

Section 1.507-2(a)(8)(i)(D) of the regulations provides that a favorable factor exists where the transferee public charity has its own governing body which is independent of the transferor private foundation and its disqualified persons.

Section 1.507-2(a)(8)(iii)(C) of the regulations provides that the assets transferred by the private foundation to a public charity can become a separate fund that is a component part of a community trust described in section 1.170A-9(e)(11) of the regulations.

Section 1.507-2(a)(8)(iii)(A) of the regulations provides that the transferred assets can be held by the public charity as a fund whose name memorializes the transferor private foundation or its disqualified persons.

Section 1.507-2(a)(8)(iv)(A)(2)(i) of the regulations provides that a favorable factor exists where the transferee public charity has its own staff evaluating and assuring that any donor's advice as to a fund is consistent with the specific charitable needs that are determined by the public charity itself.

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Section 1.507-2(a)(8)(iv)(A)(2)(iv) of the regulations provides that a favorable factor exists where the transferee public charity distributes its other funds for charitable needs that are the same or similar to those suggested by the transferor.

Section 1.507-2(a)(8)(v), Example 3, of the regulations describes a transfer of assets under section 507(b)(1)(A) of the Code by a private foundation where the assets become a component fund of a community trust and where the community trust receives the transferor's nonbinding advice as to the exempt purposes for the assets.

Sections 1.507-2(a)(8)(iv)(A)(1) and 1.507-2(a)(8)(iv)(A)(3)(iii) of the regulations provide that an adverse restrictive factor exists where only the advice of the donor as to distributions is considered by the public charity without any procedure for considering advice from persons other than the donor.

Sections 1.507-2(a)(8)(iv)(B), (C), (D), (E), (F), and (G) of the regulations describe additional adverse restrictive factors that would exist where the donor or transferor foundation requires actions to be taken or not taken by the public charity, involves the public charity in liabilities, leases, restrictions and rights of first refusal on its assets, required relationships with named managers or companies, or any condition on action by the public charity which would prevent it from exercising ultimate control over the transferred assets for the public charity's exempt purposes.

Section 4940 of the Code imposes excise tax on certain investment income of a private foundation.

Section 4941 of the Code imposes excise tax on any act of self-dealing between a private foundation and any of its disqualified persons under section 4946 of the Code.

Section 53.4946-1(a)(8) of the Foundation and Similar Excise Taxes Regulations provides that, for purposes of self-dealing under section 4941 of the Code, an organization exempt from federal income tax under section 501(c)(3) of the Code is not a disqualified person.

Section 4942 of the Code provides that a private foundation must expend annual qualifying distributions under section 4942(g) of the Code for exempt purposes.

Section 4942(g)(1)(A) of the Code provides, in pertinent part, that a "qualifying distribution" is any amount, including that portion of reasonable and necessary administrative expenses, paid by a private foundation to accomplish one or more purposes described in section 170(c)(2)(B) of the Code, which includes purposes that are exclusively charitable and/or educational.

Section 4944 of the Code imposes excise tax on a private foundation's making of any investment that jeopardizes its exempt purposes.

Section 4945 of the Code imposes excise tax on a private foundation's making of a taxable expenditure under section 4945(d) of the Code.

Section 4945(d)(4) of the Code provides that, to avoid making a taxable expenditure, a transferor private foundation must exercise "expenditure responsibility" under section 4945(h) of the Code on any grants to a private foundation that is not also an "exempt operating foundation" under section 4940(d)(2) of the Code.

Section 4945(h) of the Code defines expenditure responsibility in terms of the grantor private foundation requiring proper pre-grant inquiry and post-grant reports from the grantee private foundation on the grantee's uses of the grant.

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

Section 53.4945-6(b) of the regulations provides that a private foundation may pay reasonable expenses to manage its assets and to make qualifying distributions to organizations exempt from federal income under section 501(c)(3) of the Code without the expenses being taxable expenditures under section 4945 of the Code.

Section 53.4945-6(c)(3) of the regulations provides that a private foundation may transfer assets to organizations exempt from federal income under section 501(c)(3) of the Code pursuant to section 507(b) of the Code without the transfers being taxable expenditures under section 4945 of the Code.

Analysis

X will transfer all of its assets to Y pursuant to section 507(b)(1)(A) of the Code. Your requested rulings are discussed below:

1.

Under section 501(c)(3) of the Code, X's transfer of all of its assets to Y will be for exempt purposes under that section and, thus, X's transfer will not adversely affect the exemptions from federal income tax under section 501(c)(3) of the Code of X or Y.

2.

Pursuant to section 507(b)(1)(A) of the Code, X's transfer of all of its assets to Y, which is a public charity under section 170(b)(1)(A)(vi) that has been in existence as a public charity for at least the preceding 60 months or more, will result in termination of X's private foundation status under section 509(a) of the Code.

Under section 1.507-4(b) of the regulations, X's transfer of all of its assets to Y pursuant to section 507(b)(1)(A) of the Code will not result in any private foundation termination tax under section 507(c) of the Code.

X's transfer all of its assets to Y remains a transfer under section 507(b)(1)(A) of the Code because the transfer involves no material restrictions or conditions under section 1.507-2(a)(8) of the regulations that would prevent Y from freely using the transferred assets.

Under section 1.507-2(a)(8)(i)(A) of the regulations, Y becomes the owner in fee of all of the assets transferred by private foundation X's transfer under section 507(b)(1)(A) of the Code.

Under section 1.507-2(a)(8)(i)(B) of the regulations, Y will use the transferred assets in furtherance of its exempt purposes under section 501(c)(3) of the Code.

Under section 1.507-2(a)(8)(i)(C) of the regulations, Y will have ultimate authority and control over the transferred assets and the income therefrom.

Under section 1.507-2(a)(8)(i)(D) of the regulations, Y has its own governing body which is independent of the transferor private foundation and its disqualified persons.

Under section 1.507-2(a)(8)(iii)(C) of the regulations, the assets transferred by X to Y can become a separate fund that is a component part of Y as a community trust described in section 1.170A-9(e)(11) of the regulations.

Under section 1.507-2(a)(8)(iii)(A) of the regulations, the transferred assets can be held by Y as a separate fund whose name memorializes the transferor private foundation and its disqualified persons.

Under section 1.507-2(a)(8)(iv)(A)(2)(i) of the regulations, Y has its own staff evaluating and assuring that any donor's advice as to the fund is consistent with the specific charitable needs that are determined by Y.

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As in section 1.507-2(a)(8)(v), Example 3, of the regulations, X's transfer of all of its assets to Y is a transfer of assets under section 507(b)(1)(A) of the Code where the assets become a component fund of a community trust and where the community trust receives the transferor's nonbinding advice as to the exempt purposes for the assets.

Under sections 1.507-2(a)(8)(iv)(A)(1) and 1.507-2(a)(8)(iv)(A)(3)(iii) of the regulations, Y is not restricted to only the advice of the transferor X as to distributions from the assets.

X's transfer to Y does not involve any of the types of situations in sections 1.507-2(a)(8)(iv)(B), (C), (D), (E), (F), and (G) of the regulations, describing adverse restrictive factors that would exist where the transferor foundation requires actions to be taken or not to be taken by the public charity, involves the public charity in liabilities, leases, restrictions or rights of first refusal as to assets, required relationships with managers or companies, or any other condition on action by the public charity which would prevent it from exercising ultimate control over the transferred assets for the public charity's exempt purposes.

3.

Under section 4941 of the Code, X's transfer of its assets to Y will not be an act of self-dealing because X's transfer will be made for exempt purposes under section 501(c)(3) of the Code to organization Y which is exempt from federal income tax under section 501(c)(3) of the Code and which is not a disqualified person under section 4946 of the Code, for purposes of section 4941 of the Code, pursuant to section 53.4946-1(a)(8) of the regulations.

4.

Under section 4942(g)(1) of the Code, X's transfer of assets to Y for exempt purposes under section 501(c)(3) of the Code will be a qualifying distribution to Y as an organization exempt from federal income tax under section 501(c)(3) of the Code and described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code for the purposes under section 4942(g)(1) of the Code, and, thus, there will be no tax under section 4942 of the Code on such qualifying distribution made by X to Y.

5.

X's transfer of its assets to Y will be a grant for exempt purposes under section 501(c)(3) of the Code and, thus, X's transfer will not be any income or disposition of property subject to tax under section 4940 of the Code.

6.

Because X's transfer of its assets to Y will be made for exempt purposes under section 501(c)(3) of the Code, X's transfer will not be a jeopardizing investment or result in tax under section 4944 of the Code.

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7.

Under section 53.4945-6(c)(3) of the regulations, a private foundation can transfer its assets pursuant to section 507 of the Code to an organization exempt under section 501(c)(3) of the Code without the transfer being a taxable expenditure under section 4945 of the Code. Thus, X's transfer to Y for exempt purposes will not be a taxable expenditure under section 4945 of the Code.

Under section 4945(h) of the Code, X's transfer of its assets to Y will be for exempt purposes under section 501(c)(3) of the Code and will be made to Y which is exempt from federal income tax under section 501(c)(3) of the Code and which is not a private foundation under section 509(a) of the Code pursuant to sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Thus, X will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfer of assets to Y.

8.

Under section 53.4945-6(b) of the regulations, X can pay its reasonable expenses of making its qualifying distribution transfer to Y without the expenses being taxable expenditures under section 4945 of the Code. Thus, X's legal, accounting, and other expenses, if reasonable in amount, in filing this rulings request and in making this transfer to Y, will not be taxable expenditures under section 4945 of the Code.

Accordingly, we rule that:

1. X's transfer of all of its assets to Y will not adversely affect X's exemption from federal income tax under section 501(c)(3) of the Code.

2. X's transfer of all its assets to Y will terminate X's status as a private foundation under section 509(a) of the Code pursuant to section 507(b)(1)(A) of the Code, but will not result in tax under section 507(c) of the Code.

3. X's transfer of assets to Y will not be an act of self-dealing under section 4941 of the Code and will not result in tax under that section.

4. X's transfer of assets to Y will be a qualifying distribution under section 4942(g)(1)(A) of the Code and will not result in tax under section 4942 of the Code.

5. X's transfer of assets to Y will not result in tax under section 4940 of the Code.

6. X's transfer of assets to Y will not be a jeopardizing investment or result in tax under section 4944 of the Code.

7. X's transfer of assets to Y will not be a taxable expenditure under section 4945 of the Code, and X will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfer of all of its assets to Y.

8. X's legal, accounting, and other expenses in filing this rulings request, if reasonable in amount, will not be taxable expenditures under section 4945 of the Code.

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Because this letter could help to resolve any questions, please keep it in your permanent records and include a copy in your final annual return on Form 990-PF.

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

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

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