DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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4941.04-00
4942.03-05
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4945.04-06

Contact Number:

OP:E:ED:T:2

Legend:
T =
C =
E =

Dear Sir or Madam:

This is in reply to your rulings request of February 9, 1999, concerning trust T's proposed transfer of all of its assets to corporation C pursuant to section 507(b)(2) of the Internal Revenue Code.

Trust T and nonprofit charitable corporation C are each recognized as exempt from federal income tax under section 501(c)(3) of the Code and as private foundations under section 509(a) of the Code. T and C are effectively controlled by the same persons. T will transfer all of its assets to C. After its transfer, T may dissolve under state law. T will have no expenditure responsibility grants outstanding under section 4945(h) of the Code at the time of the transfer.

C may give funds to E which is a nonprofit corporation recognized as 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 because it is currently described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code during its advance ruling period. One director of C is one of the three directors of E.

The following rulings are requested:

1. For purposes of Chapter 42 of the Code (sections 4940 et seq.) and Part II of Subchapter F of Chapter 1 (sections 507 through 509 of the Code), as a result of T's transfer of all of its assets to C, C will be treated as if it were T, and all of the savings provisions applicable to private foundations under the Tax Reform Act of 1969, as amended, will apply to C to the same extent and in the same manner as such provisions applied to T.

2. The transfer of the assets from T to C will constitute a transfer of assets described in section 507(b)(2) of the Code. Consequently, the transfer will not result in the termination of the private foundation status of T under section 507, and neither T nor C will be subject to the termination tax imposed by section 507(c) of the Code.

3. Voluntary termination of T under section 507(a)(1) by notice given at least one day after the transfer to the Service will not result in any termination tax under section 507(c) of the Code. Moreover, neither the preparation and/or filing by T of any final accounting or other documents required by state law in winding up, dissolving and terminating T will result in the imposition of the tax under section 507(c).

4. The tax basis computed under section 4940(c)(4)(B) and the holding period of each asset received by C pursuant to the transfer will be determined in the same manner as if such assets had continued to be held uninterruptedly by T.

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5. C will report the investment income of T for the year of the transfer and pay any excise tax imposed under section 4940 of the Code.

6. T's transfer of assets to C:

a. will not itself give rise to net investment income to T under section 4940 of the Code;

b. will not constitute a direct or indirect act of self-dealing under section 4941 of the Code with regard to T, C, or any foundation managers, substantial contributors or other disqualified persons of T or C;

c. will not constitute an investment by T or C which jeopardizes the exempt purposes of T or C under section 4944 of the Code;

d. will not constitute a taxable expenditure as defined in section 4945(d) of the Code by T. Moreover, to the extent that T has any obligation which requires the exercise of expenditure responsibility under section 4945 at the time of the transfer, C will exercise expenditure responsibility with respect to such obligations.

7. T's transfer will result in C being treated as T for purposes of section 4942 of the Code; accordingly,

a. T's distribution requirements under section 4942 of the Code for the year of the transfer may be fulfilled by C;

b. all qualifying distributions made by T during its taxable year in which the transfer of assets occurs will be treated as if made by C as determined immediately prior to the transfer.

c. C may reduce the amount of its required distributions (including those for the year of the transfer) under section 4942 of the Code by the amount, if any, of the excess qualifying distributions carryovers of T for prior years as set forth in section 4942(i) of the Code as determined prior to the transfer as if it had itself incurred such carryovers.

d. T will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code with regard to the transfer of assets.

8. The transfer will not adversely affect the tax-exempt status of T or C, and neither T nor C will be subject to federal income tax under Subtitle A of the Code with regard to the transfer.

9. E is not an organization controlled by C within the meaning of Code section 4942 and section 53.4942(a)-3(a)(3) of the Foundation and Similar Excise Taxes Regulations. Any distributions made by C to E will be treated as qualifying distributions for purposes of Code section 4942(g) without regard to section 4942(g)(3).

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for 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.

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Section 507(b)(2) of the Code concerns the transfer of assets by one private foundation to one or more other private foundations, and provides that each transferee private foundation shall not be treated as a newly created organization.

Section 1.507-3(c)(1) of the Income Tax Regulations indicates that a transfer under section 507(b)(2) of the Code includes a transfer of assets from one private foundation to another private foundation pursuant to any reorganization, including a significant disposition of 25% or more of the transferor foundation's assets.

Section 1.507-3(a)(1) of the regulations indicates that, in a transfer of assets from one private foundation to another private foundation pursuant to a reorganization, the transferee foundation shall not be treated as a newly created organization, but shall succeed to the transferor's aggregate tax benefits under section 507(d) of the Code.

Section 507(d) of the Code indicates, in general, that the aggregate tax benefits of an exempt private foundation refer to the value of its exemption from federal income tax and the deductions taken by its donors during its existence.

Section 1.507-1(b)(9) of the regulations provides that a private foundation which has transferred all of its net assets is not required to file annual information returns under section 6033 of the Code for tax years after the tax year of such transfer when the transferor has no assets or activities.

Section 1.507-3(a)(5) of the regulations indicates that a transferor private foundation is required to meet its own charitable distribution requirements under section 4942 of the Code, even for its tax year in which it makes a transfer of its assets to another private foundation pursuant to section 507(b)(2) of the Code.

Section 1.507-3(a)(7) of the regulations provides that a private foundation that has transferred all of its assets to another private foundation in a transfer pursuant to section 507(b)(2) of the Code is not subject to the expenditure responsibility requirement of section 4945(h) of the Code.

Section 1.507-3(a)(8) of the regulations provides that certain tax provisions will carry over to a transferee private foundation that is given a transfer of assets from a transferor private foundation pursuant to section 507(b)(2) of the Code.

Section 1.507-3(a)(9)(i) of the regulations indicates that, if a transferor private foundation transfers assets to one or more private foundations which are effectively controlled directly or indirectly by the same person or persons who effectively control the transferor foundation, then each transferee foundation will be treated as if it were the transferor foundation, for purposes of sections 4940 through 4948 and also sections 507 through 509. Each transferee is treated as the transferor in the proportion which the fair market value of the transferor's assets that were transferred bears to the fair market value of all of the assets of the transferor immediately before the transfer.

Section 1.507-3(a)(9)(ii) of the regulations indicates that a transfer of assets under section 507(b)(2) of the Code does not relieve the transferor private foundation from filing its own final returns.

Revenue Ruling 78-387, 1978-2 C.B. 270, describes the carryover of a transferor foundation's excess qualifying distributions under section 4942(i) of the Code to a transferee foundation that is effectively controlled by the same persons under section 1.507-3(a)(9)(i) of the regulations. Under the regulation, the transferee is treated as the transferor and, thus, the transferee can reduce its own distributable amount under section 4942 of the Code by the amount, if any, of its transferor's excess qualifying distributions under section 4942(i) of the Code.

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Section 1.507-4(b) of the regulations provides that the tax under section 507(c) of the Code on termination of private foundation status does not apply to a transfer of assets pursuant to section 507(b)(2) of the Code.

Sections 1.507-1(b)(7) and 1.507-3(d) of the regulations provide that a transferor foundation's transfer of assets under section 507(b)(2) of the Code will not constitute any termination of the transferor foundation's status as 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 exempt organization under section 501(c)(3) of the Code is not a disqualified person.

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

Sections 4942(g)(1)(A)(i) and 4942(g)(1)(A)(ii) of the Code provide that a private foundation does not make any qualifying distribution under section 4942(g) of the Code where the distribution is a contribution to either: (i) another organization controlled by the transferor or by one or more of the transferor's disqualified persons, or (ii) any private foundation which is not an operating foundation under section 4942(j)(3) of the Code.

Sections 4942(g)(3)(A) and 4942(g)(3)(B) of the Code require that a transferor private foundation, in order to have a qualifying distribution for its grant to another private foundation, must have adequate records, as required by section 4942(g)(3)(B), to show that the transferee private foundation in fact subsequently made a qualifying distribution that is equal to the amount of the transfer received and that is paid out of the transferee's own corpus within the meaning of section 4942(h). That transferee private foundation's qualifying distributions must be expended before the close of the transferee's first tax year after the transferee's tax year in which it received the transfer.

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

Section 4945(d)(4) of the Code requires that, in order to avoid making a taxable expenditure, a transferor private foundation must exercise "expenditure responsibility" under section 4945(h) of the Code on its grants to another private foundation.

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

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

Sections 53.4945-6(c)(3) allows a private foundation to make transfers of its assets pursuant to section 507(b)(2) of the Code to organizations exempt under section 501(c)(3) of the Code without the transfers being taxable expenditures under section 4945.

Analysis

T will transfer all of its assets to C. Your requested rulings are discussed below:

1.

Under section 1.507-3(a)(9)(i) of the regulations, transferee C will be treated as its transferor T for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code.

Under section 1.507-3(a) of the regulations, transferee C will receive the carryover of any savings provisions applicable to T that are carried over to C under sections 1.507-3(a)(1) through (8) of the regulations.

2.

Under section 1.507-3(c)(1) of the regulations, a transfer under section 507(b)(2) of the Code includes a transfer of assets from one private foundation to another private foundation pursuant to any reorganization, including a significant disposition of 25% or more of the transferor foundation's assets. Because T will transfer all of its assets to C, T's transfer will be a significant disposition of its assets under section 1.507-3(c)(1) of the regulations and, thus, will be a transfer under section 507(b)(2) of the Code.

Under section 1.507-3(d) of the regulations, T's transfer of all of its assets to C pursuant to section 507(b)(2) of the Code will not be a termination of T's private foundation status under section 509(a) of the Code and, thus, will not result in termination tax under section 507(c) of the Code on T or C.

3.

Under section 507(a)(1) of the Code, when T notifies the Internal Revenue Service, at least one day after T transfers all of its net assets to C, of its intent to voluntarily terminate its private foundation status pursuant to section 507(a)(1) of the Code, T will thus terminate its private foundation status pursuant to that section 507(a)(1) of the Code.

Under section 507(e) of the Code, the value of T's assets after it has transferred all of its assets to C will be zero. Thus, T's voluntary notice of termination of its private foundation status pursuant to section 507(a)(1) will not result in tax under section 507(c) of the Code.

The preparation and filing of any final accounting or other documents required by state law in winding up, dissolving, and terminating T will not result in termination tax under section 507(c) of the Code.

4.

Under section 1.507-3(a)(8)(ii)(a) of the regulations, the tax bases and holding periods of T's assets transferred to C will carry over to C for purposes of section 4940 of the Code.

5.

Under section 1.507-3(a)(9)(i) of the regulations, transferee C will be treated as its transferor T for purposes of Chapter 42 of the Code and, thus, C may report T's investment income for the tax year of the transfer and may pay T's excise tax under section 4940 of the Code.

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6.

Under section 4940 of the Code, T's transfer of its assets to C will not itself constitute income to T or C under section 4940 of the Code.

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

Under section 4944 of the Code, T's transfer will be made for exempt purposes and will not be a jeopardizing investment or result in tax under that section.

Under section 4945 of the Code, section 53.4945-6(c)(3) of the regulations indicates that a private foundation can transfer its assets pursuant to section 507(b)(2) 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. Thus, T's transfer to C pursuant to section 507(b)(2) of the Code will not be a taxable expenditure under section 4945 of the Code.

Under section 1.507-3(a)(7) of the regulations, T will not be required to exercise any expenditure responsibility under section 4945(h) of the Code because T will transfer all of its assets to C.

As in section 1.507-3(a)(9)(iii), Example (2), of the regulations, transferee C must continue T's expenditure responsibility under section 4945(h) of the Code with respect to any expenditure responsibility grants made by T that remain outstanding at the time of the T's transfer of its assets to C.

7.

Under section 1.507-3(a)(9)(i) of the regulations, T's transfer will result in C being treated as if it were T for purposes of section 4942 of the Code, so that:

a. T's distribution requirements under section 4942 of the Code for its tax year of its transfer may be satisfied by C.

b. T's qualifying distributions during its tax year of its transfer may be treated as made by C in its tax year of receipt of T's assets.

c. As in Revenue Ruling 78-387, described above, C may reduce its required distributions under section 4942 of the Code, including those for C's tax year of the transfer, by the amount, if any, of T's excess qualifying distributions carryover under section 4942(i) of the Code as of the time of the transfer.

d. Under section 1.507-3(a)(5) of the regulations, T will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code after its transfer of all of its assets to C.

8.

Because T's transfer of its assets to C will be for exempt purposes to an organization exempt from federal income tax under section 501(c)(3) of the Code, T's transfer will not adversely affect the exemptions under section 501(c)(3) of T or C, pursuant to which T and C will not be subject to federal income tax with regard to the transfer.

9.

C's distributions, if any, to exempt organization E will be qualifying distributions under section 4942(g)(1)(A) of the Code without regard to the requirements of section 4942(g)(3) of the Code because E is not a controlled organization of T or C or otherwise described in section 4942(g)(1)(A)(i) or 4942(g)(1)(A)(ii) of the Code.

Accordingly, we rule that:

1. As a result of T's transfer of all of its assets to C, C will be treated as if it were T for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code, and all of the savings provisions of the Tax Reform Act of 1969 as amended applicable to T will apply to C to the same extent as such applied to T.

2. T's transfer of all of its assets to C will be a transfer under section 507(b)(2) of the Code, and will not cause termination of T's private foundation status or result in termination tax under section 507(c) of the Code on T or C.

3. If T terminates its private foundation status at least one day after T transfers all of its assets to C and so notifies the Internal Revenue Service pursuant to section 507(a)(1) of the Code, T will not be liable for tax under section 507(c) of the Code because T will have no assets upon its termination. The preparation and filing of any final accounting or other documents required by state law in winding up, dissolving, and terminating T will not result in tax under section 507(c) of the Code.

4. The tax basis and the holding period of each asset transferred by T to C will be carried over to C as if such assets had continued to be held by T.

5. C may report T's investment income for the tax year of the transfer and may pay T's excise tax under section 4940 of the Code.

6. T's transfer to C:

a. will not itself give rise to net investment income under section 4940 of the Code;

b. will not be an act of self-dealing under section 4941 of the Code as to T, C, or any of their disqualified persons under section 4946 of the Code;

c. will not be a jeopardizing investment by T or C under section 4944 of the Code;

d. will not be a taxable expenditure under section 4945 of the Code and, to the extent that T has any grant(s) requiring expenditure responsibility outstanding at the time of its transfer, C will continue to exercise T's expenditure responsibility on such grant(s).

7. T's transfer will result in C being treated as if it were T for purposes of section 4942 of the Code so that:

a. T's distribution requirements under section 4942 of the Code for its tax year of its transfer may be satisfied by C;

b. All qualifying distributions made by T during its tax year of its transfer may be treated as made by C in its tax year of receipt of T's assets.

c. C may reduce its required distributions under section 4942 of the Code, including those for C's tax year of the transfer, by the amount, if any, of T's excess qualifying distributions carryover under section 4942(i) of the Code as of the time of the transfer.

d. T will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code with regard to its transfer of all of its assets.

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8. T's transfer will not adversely affect the exemptions from federal income tax under section 501(c)(3) of the Code of T or C, and will not subject T or C to federal income tax with regard to the transfer.

9. C's distributions to exempt organization E will be qualifying distributions under section 4942(g)(1)(A) of the Code without regard to the requirements of section 4942(g)(3) of the Code because E is not a controlled organization of T or C or otherwise described in section 4942(g)(1)(A)(i) or 4942(g)(1)(A)(ii) of the Code.

Because this ruling letter could help to resolve any questions, please keep it in your permanent records.

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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