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

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Contact Person:

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509.01-01
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4941.04-00
4942.03-05
4944.00-00
4945.04-06
6033.02-01

Contact Number:

OP:E:EO:T2

Legend:

P =

S =

T =

U =

Z =

Dear Sir or Madam:

This is in reply to your rulings request of January 27, 1999, on P's proposed transfer of all of its assets to S, T, and U pursuant to section 507(b)(2) of the Internal Revenue Code.

P, S, T, U, and Z are nonprofit corporations exempt from federal income tax under section 501(c)(3) of the Code and are private foundations under section 509(a) of the Code.

P will transfer all of its assets to S, T, and U. The control of S, T, and U is by family members sharing control of P. After its transfer of all of its assets, P intends to notify the Internal Revenue Service of its termination of its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code.

P has maintained a separate subfund account for each family member donor to P, so that P can determine which one (or more) of five donors authorized the payment of the actual qualifying distributions paid by P that were made out of his or her donated subfund in P, and, thus, identify the donor who actually paid P's qualifying distributions that generated P's cumulative excess qualifying distributions. P proposes to allocate its excess qualifying distributions carryover under section 4942(i) of the Code based upon the excess qualifying distributions made by each donor/director's subfund because, if P were to allocate such carryover on the basis of the remaining donor assets, the carryover would go to a greater extent to donors with remaining assets in P, rather than to the donor(s) who actually paid out their subfunds to charity and thus made the actual excess qualifying distributions carryover of P that must be allocated when P transfers all of its assets. Prior to the transfer, one of the five subfunds will be distributed to one or more charities which are exempt from federal income tax under section 501(c)(3) of the Code and which are not private foundations under section 509(a) of the Code.

P has expenditure responsibility grant(s) outstanding to Z under section 4945(h) of the Code, and P's transferees agree to continue to exercise that outstanding expenditure responsibility under section 4945(h) of the Code.

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The following rulings are requested:

1. The proposed transfer of all of P's existing assets, based upon each trustee's fund share of P's assets, will be a transfer described in section 507(b)(2) of the Code, which will not result in a termination of P's status under section 507(a) and will not cause the imposition of the termination tax described in section 507(c).

2. The transfer of assets will be transfers to foundations controlled by the same persons who control P, and S, T and U will not be treated as newly created organizations within Section 1.507-3(a)(9)(i) of the Foundation and Similar Excise Taxes Regulations.

3. The transfer of P's assets are made for exempt purposes under Section 501(c)(3) and the transfer will not adversely affect P's exemption under Section 501(c)(3), or the S, T, or U exemptions under Section 501(c)(3) or private foundation status under Section 509(a).

4. S, T, and U will succeed to the aggregate tax benefit of P as defined in Section 507(d) in proportion to the fair market value of the assets transferred by P to each S, T, and U, as provided in Regulation Section 1.507-3(a)(2).

5. S, T, and U will receive the benefits of any transitional rules and savings provisions under Regulation Section 1.507-3(a)(8) that were applicable to P.

6. The proposed transfer will not subject P to the excise tax on net investment income under Section 4940 of the Code.

7. P's transfer of its assets to S, T, and U will not be an act of self-dealing under Section 4941 of the Code as it relates to both S, T, and U, and their foundation managers under Section 4946.

8. Following the proposed transfer, S, T, and U may reduce their required distributions under Section 4942 by their allocated share of P's excess qualifying distribution carryover for prior years as defined in Section 4942(i), and by the allocable share of P's qualifying distributions for the year of the transfer. Each S, T, and U allocated share shall reflect the corresponding fund's contribution to P's excess contribution carryover.

9. The transfer of P's assets to S, T, and U will not constitute a jeopardizing investment within the meaning of Section 4944.

10. The transfer of P's assets to S, T, and U will not constitute taxable expenditures within the meaning of Section 4945 of the Code, and P will not be required to exercise expenditure responsibility with respect to the transferred assets. In addition, expenditure oversight over any outstanding grants of P will be allocated equally among S, T, and U.

11. Provided P has no assets, P will not be required to file any tax returns under Section 6033 of the Code for any taxable years subsequent to that in which all assets are distributed. A final return would be due by the 15th day of the fifth month after termination.

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 are private foundations subject to the provisions of Chapter 42 of the Code.

Section 507(a)(1) of the Code and section 1.507-1(b)(1) of the Income Tax Regulations provide 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 section 507(a)(1) and by paying any termination tax under section 507(c) of the Code.

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

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 regulations indicates that a transfer under section 507(b)(2) of the Code includes a transfer of assets from one private foundation to one or more other private foundations 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 provides that, in a transfer of assets from one private foundation to one or more private foundations pursuant to a reorganization, each transferee private 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 that the aggregate tax benefits of a private foundation refer to the value of its exemption from federal income tax and of the deductions taken by its donors during its existence.

Section 1.507-1(b)(9) of the regulations provides that a private foundation which transfers all of its net assets is not required to file annual information returns required by section 6033 of the Code for subsequent tax years after its tax year of such transfer when it 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 charitable distribution requirements under section 4942 of the Code, even for any 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, where a private foundation has transferred all of its assets to another private foundation in a transfer under section 507(b)(2) of the Code, it is not required to exercise expenditure responsibility under section 4945(h) of the Code with respect to such transfer.

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

Section 1.507-3(a)(9)(i) of the regulations provides that, if a private foundation transfers assets to one or more private foundations which are effectively controlled directly or indirectly within the meaning of section 1.482-1(i)(4) of the regulations by the same persons who effectively control the transferor foundation, each transferee foundation will be treated as if it were the transferor foundation, for purposes of sections 4940 through 4948 and sections 507 through 509 of the Code. Each transferee is treated as its transferor in the proportion which the fair market value of the transferor's assets transferred to the transferee bears to the fair market value of all of the transferor's assets immediately before the transfer.

Section 1.507-3(a)(9)(ii) of the regulations provides 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 tax year return as required by section 6043(b) of the Code.

Section 1.507-4(b) of the regulations provides that the tax on termination of private foundation status under section 507(c) of the Code does not apply to a transfer of assets under 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 private foundation status under section 509(a).

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 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 annual qualifying distributions under section 4942(g) of the Code for the conduct of exempt purposes.

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

Section 4945 of the Code imposes excise tax on any private foundation's making of a 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 the grantor private foundation requiring pre-grant inquiry and post-grant reports as to the grantee private foundation on its 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 exempt purposes.

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

Analysis

P will transfer all of its assets to S, T, and U. Your requested rulings are discussed below:

1.

Under section 507(b)(2) of the Code and 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 one or more other private foundations pursuant to any reorganization, which includes any significant disposition of 25% or more of the transferor's assets. Because P will be in such a reorganization by its transfer of all of its assets to S, T, and U, P's transfer of all of its assets will be a transfer under section 507(b)(2) of the Code.

Under section 1.507-4(b) of the regulations, P's transfer of its assets pursuant to section 507(b)(2) of the Code will not terminate P's private foundation status under section 509(a) of the Code and, thus, will not result in foundation termination tax under section 507(c) of the Code.

2.

Under section 507(b)(2) of the Code and section 1.507-3(a)(1) of the regulations, where there is a transfer under section 507(b)(2) of the Code of assets from one private foundation to one or more other private foundations, each transferee private foundation will not be treated as a newly created organization.

3.

P's transfer of all of its assets to S, T, and U will be for exempt purposes under section 501(c)(3) of the Code so P's transfer will not adversely affect the exemptions from federal income tax under section 501(c)(3) of the Code or the private foundation statuses under section 509(a) of the Code of P, S, T, or U.

4.

Under section 1.507-3(a)(1) of the regulations, in a transfer of assets under section 507(b)(2) of the Code by one private foundation to one or more other private foundations, each transferee private foundation will not be treated as a newly created organization, but will succeed to its proportionate share of its transferor's aggregate tax benefits under section 507(d) of the Code. Thus, P's aggregate tax benefits under section 507(d) of the Code will be transferred to S, T, U in proportion to the fair market value of the assets transferred by P to each.

5.

Under section 1.507-3(a)(8) of the regulations, P's transferees S, T, and U will receive the benefits, if any, of the transitional rules and savings provisions of that regulation that were applicable to P.

6.

P's transfer of its assets will not be investment income or result in excise tax on investment income under section 4940 of the Code to P or its transferees S, T, and U.

7.

Under section 4941 of the Code, P's transfer of assets will not be an act of self-dealing because it will be made for exempt purposes to S, T, and U, which are organizations exempt from federal income tax under section 501(c)(3) of the Code and which are not disqualified persons 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.

8.

As in Revenue Ruling 78-387, cited above, after P transfers all of its assets to S, T, and U, P's excess qualifying distributions carryover under section 4942(i) of the Code, may be used by S, T, and U to reduce their own distributable amounts under section 4942 of the Code.

S, T, and U can apportion P's excess qualifying distributions carryover among themselves in proportion to the donor fund accounts in P that show the past qualifying distributions made by each donor that resulted in P's excess qualifying distributions carryover under section 4942(i) of the Code. This allocation among S, T, and U will not increase or decrease the total amount of carryover from P, but will allocate the carryover among S, T, and U in the same proportion that each donor's fund account in P contributed to the creation of P's excess qualifying distributions carryover.

9.

Because P's transfer of all of its assets will be for exempt purposes under section 501(c)(3) of the Code to organizations S, T, and U which are exempt from federal income tax under that section, P's transfer of assets will not be a jeopardizing investment or result in tax under section 4944 of the Code.

10.

Under section 53.4945-6(c)(3) of the regulations, a private foundation can transfer of its assets pursuant to section 507(b)(2) of the Code to organizations exempt from federal income tax under section 501(c)(3) of the Code without the transfer being a taxable expenditure under section 4945 of the Code. Thus, P's transfer of assets will not be a taxable expenditure under section 4945 of the Code or subject P to tax under that section.

Section 1.507-3(a)(7) of the regulations provides that, where a private foundation transfers all of its assets to one or more exempt organizations under section 501(c)(3) of the Code pursuant to section 507(b)(2) of the Code, such transferor foundation will have no expenditure responsibility requirement under section 4945(h) of the Code. Thus, P will not have to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfer of all of its assets.

As in section 1.507-3(a)(9)(iii), Example 2, P's transferees S, T, and U will be required to assume P's existing expenditure responsibility requirements under section 4945(h) of the Code with respect to P's outstanding expenditure responsibility grants to grantee private foundation Z.

11.

Under section 1.507-1(b)(9) of the regulations, P will no longer be required to file its annual return, Form 990-PF, under section 6033 of the Code for any tax years subsequent to its tax year in which it transfers all of its assets. Such return of P for its final tax year of its transfer of all of its assets will be due by the fifteenth day of the fifth month after the close of its final tax year of such transfer.

Accordingly, we rule that:

1. P's transfer of all of its assets to S, T, and U will be a transfer under section 507(b)(2) of the Code, will not result in termination under section 507(a) of the Code of P's private foundation status under section 509(a) of the Code, and will not result in foundation termination tax under section 507(c) of the Code.

2. P's transfer of all of its assets pursuant to section 507(b)(2) of the Code will not cause its transferees S, T, and U to be treated as newly created organizations.

3. P's transfer of all of its assets will not adversely affect the exemptions from federal income tax under section 501(c)(3) of the Code, or the private foundation statuses under section 509(a) of the Code, of P, S, T, and U.

4. P's transferees of its assets S, T, and U, will succeed to P's aggregate tax benefits under section 507(d) of the Code in proportion to the fair market value of the assets transferred by P to each transferee.

5. P's transferees of its assets S, T, and U will succeed to any transitional rules and savings provisions under section 1.507-3(a)(8) of the regulations that were applicable to P.

6. P's transfer of all of its assets will not result in tax on investment income under section 4940 of the Code.

7. P's transfer of all of its assets will not be an act of self-dealing under section 4941 of the Code as to P, S, T, or U, or their foundation managers under section 4946 of the Code, and will not result in tax under section 4941 of the Code.

8. P's excess qualifying distributions carryover under section 4942(i) of the Code will be carried over to S, T, and U. S, T, and U can apportion that carryover among themselves in proportion to each donor's fund account in P for which your records show which donor's fund made the actual excess qualifying distributions that resulted in P's carryover.

9. P's transfer of all of its assets will not be a jeopardizing investment or result in tax under section 4944 of the Code.

10. P's transfer of all of its assets to S, T, and U will not be a taxable expenditure under section 4945 of the Code. Because P will transfer all of its assets, P 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. S, T, and U will be required to continue P's existing expenditure responsibility under section 4945(h) of the Code with respect to P's outstanding expenditure responsibility grants to private foundation Z.

11. P will not be required to file its annual return, Form 990-PF, required under section 6033 of the Code for any tax years subsequent to its tax year of its transfer of all of its assets if, during such subsequent tax years, P has no assets. P's return for its final tax year will be due by the fifteenth day of the fifth month after the close of such final tax year of its transfer of all of its assets.

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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 organizations that requested it. Section 6110(k)(3) of the Code provides that this ruling letter 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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