DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224 200021057

Date: FEB 28 2000

Contact Person:

Uniform Issue List: 507.01-00
501.03-02
509.01-01
4940.00-00
4941.04-00
4942.03-05
4945.04-06
6033.02-01
6043.01-00

Contact Number:

OP: E: EO.T2

Legend:

T =

C =

Dear Sir or Madam:

This is in reply to your rulings request of July 26, 1999, as modified by your letter of February 22, 2000, on T's proposed transfer of all of its assets to C pursuant to section 507(b)(2) of the Internal Revenue Code.

T, a charitable trust, and C, a nonprofit charitable corporation, are each exempt from federal income tax under section 501(c)(3) of the Code and are private foundations under section 509(a) of the Code. T and C are effectively controlled by the same individuals. T will transfer all of its assets to C. After its transfer, T will notify the Internal Revenue Service of its intent to terminate its private foundation status pursuant to section 507(a)(1) of the Code, and will terminate. If T has any expenditure responsibility grant(s) outstanding under section 4945(h) of the Code at the time of its transfer, C will continue T's expenditure responsibility as to such grant(s).

The following rulings are requested:

1. The proposed transfer will not result in the termination of T's private foundation status within the meaning of Code section 507(a) or the imposition of any termination tax pursuant to Code section 507(c), but will constitute an other adjustment, organization, or reorganization between private foundations within the meaning of Code section 507(b)(2) because it is a significant disposition of assets to one or more private foundations within the meaning of section 1.507-3(c) of the Income Tax Regulations.

2. After T transfers its assets to C and subsequently notifies the Internal Revenue Service of its intent to terminate under section 507(a)(1), no tax will be due pursuant to Code section 507(c) because T will have no assets.

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3. Under Code section 507(b)(2) and section 1.507-3(a)(1) of the Income Tax Regulations, C will not be treated as a newly-created organization.

4. Under Regulation 1.507-3(a)(9), C will be treated as if it were T for purposes of Chapter 42 and sections 507 through 509 of the Code;

5. The proposed transfer will not give rise to net investment income and will not constitute a sale or other disposition within the meaning of Code section 4940(c)(4)(A).

6. The proposed transfer will not constitute an act of self-dealing within the meaning of section 4941 of the Code between T and C.

7. T's distribution requirement for the taxable year of the proposed transfer may be fulfilled by C; T will not be required to comply with the recordkeeping requirements of Code section 4942(g)(3)(B); and T will not be subject to tax pursuant to section 4942 of the Code;

8. The proposed transfer will not constitute a taxable expenditure under Code section 4945(d) and T will not be required to exercise expenditure responsibility with respect to the transfer.

9. C, not T, will be required to exercise expenditure responsibility with respect to any expenditure responsibility grants made by T prior to the proposed transfer.

10. Under Regulations I.507-1(b)(9) and 1.507-3(a)(9)(i), T will not be required to file the annual information return required by Code section 6033 for any taxable year following the taxable year in which the proposed transfer occurs, if during the subsequent taxable years T has neither legal nor equitable title to any assets and engages in no activity, provided that upon T's liquidation, dissolution or termination, T will file a return required by section 6043(b).

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 the 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 provisions of Chapter 42 of the Code.

Section 507(a)(1) of the Code and section 1.507-1(b)(1) of the regulations provide that a private foundation may voluntarily terminate its private foundation status by submitting to the Commissioner a statement of its intention to terminate its private foundation status and by paying the termination tax imposed under section 507(c) of the Code.

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Section 507(c) of the Code imposes an excise tax on a private foundation which voluntarily terminates its status as a private foundation under section 507(a)(1) of the Code. This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefit that has resulted from the foundation's exemption from federal income tax under section 501(c)(3) of the Code, or (b) the value of the net assets of the foundation.

Section 507(e) of the Code provides that, for purposes of section 507(c)(2) of the Code, the value of the net assets of the private foundation shall be determined at whichever time the value is higher: (1) the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation or (2) the date on which it ceases to be a 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 indicates 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 provides, 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 transfers all of its assets is not required to file annual information returns required by section 6033 of the Code for its tax years after the tax year of its 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 taxable 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)(8) of the regulations provides that certain tax provisions, listed therein, will carry over to any 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 a private foundation effectively controlled, directly or indirectly, by the same person or persons who effectively control the transferor private foundation, the 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. The 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.

Revenue Ruling 78-387, 1978-2 C. B. 270, concerns a private foundation that transferred all of its assets to another private foundation that was effectively controlled by the same persons. In accordance with section 1.507-3(a)(9)(i) of the regulations, the transferee foundation is treated as the transferor foundation and, thus, the transferee can use its transferor's excess qualifying distributions carryover, if any, under section 4942(i) of the Code to reduce the transferee's distributable amount under section 4942 of the Code by the amount, if any, of its transferor's excess qualifying distributions carryover under section 4942(i) 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 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 4940 of the Code imposes excise tax on certain investment income of a private foundation.

Section 4941 of the Code imposes excise tax on an 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 provides that a private foundation must expend qualifying distributions under section 4942(g) of the Code for exempt purposes.

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

Section 4942(g)(3) of the Code provides 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) of the Code, to show that the transferee 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) of the Code. The transferee's qualifying distribution 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 tax upon 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(d)(5) of the Code provides that a taxable expenditure includes any amount expended by a private foundation for purposes other than the charitable or other purposes under section 170(c)(2)(B) of the Code.

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

Sections 53.4945-6(c)(3) and 1.507-3(b) of the regulations allow a private foundation to make transfers 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, including private foundations, without the transfers being taxable expenditures under section 4945 of the Code.

Section 6043(b) of the Code and section 1.6043-3(a)(1) of the regulations provides that a private foundation must file its return with respect to its dissolution.

Analysis

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

1.

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 or liquidation, including a significant disposition of 25% or more of the transferor foundation's assets. Because T will transfer all of its assets, 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 its assets under section 507(b)(2) of the Code to C will not terminate T's private foundation status under section 509(a) of the Code.

Under section 1.507-4(b) of the regulations, T's transfer of its assets under section 507(b)(2) of the Code to C will not result in termination tax under section 507(c) of the Code.

2.

Under section 507(e) of the Code, the value of X's assets after it has transferred all of its assets to T 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.

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.

3.

Under section 1.507-3(a)(1) of the regulations, the transfer of T's assets to C pursuant to section 507(b)(2) of the Code will result in C's not being considered a newly created organization.

4.

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 for sections 507 through 509 of the Code.

5.

Under section 4940 of the Code, T's transfer of its assets to C will not result in any tax under section 4940 of the Code.

6.

Under section 4941 of the Code, T's transfer of assets to C will not be an act of self-dealing because the transfer will be for exempt purposes to C, an organization exempt from federal income tax under section 501(c)(3) of the Code, 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.

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7.

Under section 1.507-3(a)(9)(i) of the regulations, transferee C will be treated as its transferor T after T's transfer of all of its assets to C pursuant to section 507(b)(2) of the Code. Thus, after T transfers all of its assets to C, T's excise tax liability under section 4942 of the Code for its final tax year may be satisfied by C so that T will then owe no tax under section 4942 of the Code after C's payment of such tax of T.

Under section 1.507-3(a)(5) of the regulations, T's recordkeeping requirement, if any, under section 4942(g)(2)(B) of the Code will not apply after T transfers all of its assets to C.

8.

Under section 53.4945-6(c)(3) of the regulations, a private foundation can make a transfer of its assets pursuant to section 507(b)(2) of the Code to an exempt organization under section 501(c)(3) of the Code, including a private foundation, without the transfer being a taxable expenditure under section 4945 of the Code. Thus, T's transfer of assets to C will not be a taxable expenditure under section 4945 of the Code and will not subject T 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 an exempt organization under section 501(c)(3) of the Code pursuant to section 507(b)(2) of the Code, the transferor private foundation has no expenditure responsibility requirement under section 4945(h) of the Code. Thus, T will not have to exercise expenditure responsibility under section 4945(h) of the Code with respect to T's transfer of all of its assets to C.

9.

As in Example (3) of section 1.507-3(a)(9)(i) of the regulations, because transferee C will be treated as its transferor T, C must continue any outstanding expenditure responsibility of T under section 4945(h) of the Code with respect to any expenditure responsibility grants made by T prior to T's transfer that remain outstanding as of the transfer of T's assets to C.

10.

Under section 1.507-1(b)(9) of the regulations, T will not be required to file any returns under section 6033 of the Code for any tax year subsequent to the tax year in which T transfers all of its assets to C when T will have no assets. T will file its return required by section 6043(b) of the Code.

Accordingly, we rule:

1. T's transfer of all its assets to C will not result in the termination of T's private foundation status pursuant to section 507(a) of the Code or the imposition of any termination tax under section 507(c) of the Code, but will constitute a reorganization between private foundations T and C within the meaning of section 507(b)(2) of the Code.

2. After T transfers all of its assets to C and subsequently notifies the Internal Revenue Service of its intent to terminate under section 507(a)(1) of the Code, no tax will be due from T pursuant to section 507(c) because T will have no assets.

3. Under section 507(b)(2) and section 1.507-3(a)(1) of the regulations, C will not be treated as a newly-created organization.

4. Under section 1.507-3(a)(9) of the regulations, C will be treated as if it were T for purposes of Chapter 42 and sections 507 through 509 of the Code.

5. T's transfer will not result in tax on investment income under section 4940 of the Code.

6. T's transfer will not be an act of self-dealing under section 4941 of the Code.

7. T's distribution requirement for the taxable year of the transfer may be fulfilled by C. T will not be subject to tax pursuant to section 4942 of the Code. T will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code.

8. T's transfer will not constitute a taxable expenditure under section 4945(d) of the Code, and T will not be required to exercise expenditure responsibility with respect to its transfer of all of its assets to C.

9. C will be required to exercise any continuing expenditure responsibility under section 4945(h) of the Code with respect to any expenditure responsibility grants, made by T prior to T's transfer, which remain outstanding at the time of the transfer.

10. Under section I.507-1(b)(9) and 1.507-3(a)(9)(i), T will not be required to file its annual information return required by section 6033 of the Code for any taxable year following the taxable year in which T's transfer occurs, if during the subsequent taxable years T has neither legal nor equitable title to any assets and engages in no activity. Upon T's termination, T will file its final information return required by section 6043(b) 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 annual return, Form 990-PF.

This ruling letter is directed only to the organizations 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
Manager, Exempt Organizations
Technical Group 2