DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE 200023056
WASHINGTON, D.C. 20224

UIL: 0507.00-00; -4945.04-04

Date: MAR 16 2000

OP:E:EO:T3

Contact Person:
XXXXXXXX
ID Number:
XXXXXX
Telephone Number:
XXXXXXX

Employer Identification Number:
Key District Office:

a =
X =
Z =

Dear Sir:

This is in response to your letter dated November 3, 1999, and subsequent correspondence dated February 16, 2000, requesting certain rulings under sections 507, 4941, 4942, and 4945 of the Internal Revenue Code (the "Code").

X is a private foundation described in section 509(a) of the Code. The Internal Revenue Service recognized X as exempt from federal income tax under section 501(c)(3) of the Code.

Z is a private foundation described in section 509(a) of the Code. The Internal Revenue Service recognized Z as exempt from federal income tax under section 501(c)(3) of the Code.

The Board of Trustees of X approved the Plan of Separation (the "Plan") providing for the reorganization of X. Pursuant to the Plan, X will transfer one-half of its investment assets to Z. Z was established by a, one of the Trustees and Co-Chairperson of X. The purpose of the transfer is to allow both X and Z (which will be chaired by a) to pursue separate grantmaking strategies. Some of the existing directors of X, including a, will resign from X and serve only as directors of Z. At some point after the closing of the Plan, one remaining director of X will appoint all new directors. As a result, X and Z will have

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different directors.

X has excess qualifying distributions of a certain amount. After receiving a favorable letter from the Service, and consents from the appropriate state officials and court, X intends to transfer one-half of the net investment assets to Z.

You have requested the following rulings:

1. That the transfer of assets contemplated in the Plan will not be a voluntary termination of X's private foundation status;

2. That no termination tax will be assessed under section 507(c) of the Code;

3. That the transfer of assets contemplated in the plan will be a transaction described in section 507(b)(2) of the Code;

4. That Z will succeed to one-half of X's aggregate tax benefit under Part II, Subchapter F, Chapter 1 of the Code and the accompanying regulations, including one-half of any excess qualifying distribution carryover of X as of December 31, 1999;

5. That the contemplated transaction will not be considered self-dealing under section 4941 of the Code; and

6. That the contemplated transaction will not be a taxable expenditure under section 4945 of the Code, nor will X be required to exercise expenditure responsibility over the assets transferred to Z.

Section 507(a) of the Code provides that an organization's status as a private foundation shall be terminated if- (1) the organization notifies the Service of its intent to terminate such status, or (2) the organization engages in willful and repeated acts giving rise to liability for tax under Chapter 42 of the Code.

If there is a section 507(a) termination of private foundation status, section 507(c) imposes a termination tax equal to the lower of the aggregate tax benefit received by the terminating foundation or the net asset value of the terminating foundation.

Section 507(b)(2) of the Code provides that in the case of a transfer of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, the transferee foundation shall not be treated as a newly created organization for purposes of section 507(a).

Section 4941(d) of the Code imposes an excise tax on private foundations for self-dealing which includes, but is not limited to, the transfer of assets between a foundation and a disqualified person.

Section 4945 of the Code imposes an excise tax for taxable expenditures, including grants to organizations not qualified under section 509(a) of the Code, unless expenditure responsibility is exercised.

Section 1.507-4(b) of the Income Tax Regulations provides that private foundations that make transfers described in section 507(b)(2) are not subject to the tax imposed under section 507(c).

Section 1.507-3(c)(1) of the regulations provides that the terms "other adjustment, organization, or reorganization" shall include any partial liquidation or any other significant disposition of assets to one or more private foundations.

Section 1.507-3(c)(2)(ii) of the regulations defines the term "significant disposition of assets" as the aggregate disposition to one or more private foundations of 25% or more of the transferor private foundation's assets for other than full and adequate consideration.

Section 1.507-3(d) provides that a transfer described in section 507(b)(2) will not constitute a termination of the transferor's private foundation status under section 507(a)(1).

Sections 1.507-3(a)(1),(2),(3), and (4) of the regulations provide that a transfer of assets pursuant to section 507(b)(2) will result in the carryover of certain tax attributes and characteristics of the transferor foundation to the transferee foundation.

Section 1.507-3(a)(8)(ii) of the regulations provides that the provisions enumerated shall apply to the transferee foundation with respect to assets transferred to the same extent and in the same manner that they would have applied to the transferor foundation had the transfer described in section 507(b)(2) not occurred.

Section 1.507-3(a)(9)(i) of the regulations provide that in a section 507(b)(2) transfer, if the transferee foundation is effectively "controlled" by the same person or persons which effectively controlled the transferor foundation, such transferee shall be treated as if it were the transferor for purposes of Chapter 42 and sections 507 and 509 of the Code. However, where proportionately is appropriate, such a transferee foundation private foundation shall be treated as if it were the transferor in the proportion which the fair market value of the assets (less encumbrances) transferred to such transferee bears to the fair market value of the assets of the transferor immediately before the transfer.

Example (2) of section 1.507-3(a)(9)(iii) of the regulations provides at the last sentence that since R, S, and T (the transferees) are treated as P (the transferor) rather than as recipients of "expenditure responsibility" grants, there are no expenditure responsibility requirements for which must be exercised under sections 4945(d) and (h) with respect to transfer of assets to R, S, and T.

Section 53.4946-1(a)(8) of the regulations provides that for purposes of section

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4941 only, the term "disqualified person" shall not include any organization which is described in section 501(c)(3).

In Rev. Rul. 78-387, 1978-2 C.B. 270, the Service addressed the application of excess qualifying distributions carryover to a transferee private foundation which was treated as if it were the transferor private foundation pursuant to section 1.507-3(a)(9) of the Regulations. The Service held that the transferee foundation was permitted to take into account the excess qualifying distributions carryover for purposes of determining its distribution requirements under section 4942 of the Code.

The Plan involves the aggregate transfer of one-half of X's investment assets to another private foundation, making it a significant disposition as defined by section 1.507-3(c)(2) of the Regulations and a section 507(b)(2) transfer. Accordingly, there is no termination of X's private foundation status in that X has not made a voluntary termination under section 507(a) of the Code. Further, the section 507(b)(2) transfer avoids termination treatment under the authority provided by section 1.507-3(d) of the Regulations.

Accordingly, since there is no termination under section 507(a) of the Code, there is no termination tax under section 507(c) of the Code.

A majority of the trustees of Z and Z's executive director, a, will be individuals who served as trustees of X. Therefore, Z will be controlled by the same persons who effectively control X. Pursuant to section 1.507-3(a)(i) of the Regulations, Z will succeed to a proportionate share of the tax attributes and characteristics of X. Also, see 1.507-3(a)(9)(i). Accordingly, Z will succeed to one-half of the excess qualifying carryover distributions of X as well as one-half of any other tax attributes and characteristics.

Z has been recognized as an organization exempt from tax under section 501(c)(3) of the Code. The transfer of assets from X to Z will be a transfer from one private foundation to another private foundation. Since section 53.4946-1(a)(8) provides that a section 501(c)(3) organization is not a disqualified person, the transfer of assets from X to Z will not involve a disqualified person and will not be an act of self-dealing within the meaning of section 4941 of the Code.

Since Z is not treated as a newly created organization under section 507(b)(2), the transfer of assets to it by X will not be treated as a taxable expenditure under section 4945 by virtue of sections 1.507-3(a)(1) and 1.507-3(a)(9) and, in particular, example (2) of section 1.507-3(a)(9)(iii). Because Z is treated as X rather than as the recipient of an "expenditure responsibility" grant, there are expenditure responsibility requirements which must be exercised with respect to the transfer of assets.

Accordingly, we rule as follows:

(1) The transfer of assets from X to Z, as contemplated in the Plan, will not be a voluntary termination of X's private foundation status.

(2) No termination tax will be assessed under section 507(c) of the Code.

(3) Z will succeed to one-half of X's tax attributes and characteristics under Part II, Subchapter F, Chapter 1 of the Code, including one-half of any excess qualifying distribution carryover of X as of December 31, 1999.

(4) That the contemplated transaction will not be considered self-dealing under section 4941 of the Code.

(5) That the contemplated transaction will not be a taxable expenditure under section 4945 of the Code, nor will X be required to exercise expenditure responsibility over the assets transferred to Z.

This ruling 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. Pursuant to a power of attorney on file with this office, we are sending a copy of this ruling letter to your attorney.

Sincerely,

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

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