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

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Contact Person:

Uniform Issue List: 507.00-00
501.03-02
509.01-01
4940.00-00
4941.04-00
4942.03-05
4944.00-00
4945.04-06
6033.02-01

Contact Number:

OP:E:EO:T2

Legend:
X =
Y =
Z =

Dear Sir or Madam:

This is in reply to your rulings request of August 31, 1999, on X's proposed transfer of all of its assets to Y.

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. After its transfer, X will notify the Internal Revenue Service of its intent to terminate its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code. X has no expenditure responsibility grants outstanding under section 4945(h) of the Code.

Y is exempt from federal income tax under section 501(c)(3) of the Code and is not a private foundation under section 509(a) of the Code because Y is a supporting organization under section 509(a)(3) of the Code that supports Z.

Z is exempt from federal income tax under section 501(c)(3) of the Code and is not a private foundation under section 509(a) of the Code because Z is a financially publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code that is also a community foundation under section 1.170A-9(e)(10) of the Income Tax Regulations.

The following rulings are requested:

1. X's transfer of its assets to Y will not be a termination under section 507 of the Code of X's private foundation status under section 509(a) of the Code and thus will not result in any private foundation status termination tax under section 507(c) of the Code.

2. X's voluntary termination of its private foundation status by notice to the Internal Revenue Service pursuant to section 507(a)(1) of the Code, after the transfer of all of its assets to Y, will be a termination under section 507(a)(1) of the Code. However, because X will have no assets when such termination occurs, no termination tax under section 507(c) of the Code will be due.

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

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

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5. X's transfer of its assets to Y will be treated as qualifying distributions under section 4942(g)(1)(A) of the Code, and will not be taxable expenditures under section 4945 of the Code.

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

7. X's transfer of all of its assets to Y will not be a taxable expenditure under section 4945 of the Code and, under section 1.507-3(a)(7) of the regulations, 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. The legal, accounting, advising, and other expenses, if reasonable in amount, incurred for X's transactions described in this ruling, will be qualifying distributions under section 4942(g)(1)(A) of the Code, and will not be taxable expenditures under section 4945 of the Code.

9. After X transfers all of its assets and voluntarily terminates its private foundation status pursuant to section 507(a)(1) of the Code, X must file its annual return, Form 990-PF, for its final tax year in which the transfer and termination occur, but will not be required to file such returns for any future tax years when it will have no assets and no activities.

10. X's transfer and transactions described in this ruling will not adversely affect X's exemption from federal income tax under section 501(c)(3) 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 are private foundations subject to the provisions of Chapter 42 of the Code.

Section 509(a)(1) of the Code describes organizations exempt from federal income tax under section 501(c)(3) of the Code that are financially publicly supported and are not private foundations.

Section 509(a)(3) of the Code provides that a "supporting organization" under that section is not a private foundation under section 509(a) 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: (1) the aggregate tax benefits that have resulted from the private foundation's exempt status under section 501(c)(3) or (2) the value of the net assets of the private foundation.

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.

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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)(9)(ii) of the regulations provides that a transfer of assets does not relieve the transferor private foundation from filing its own final tax year return as required by section 6033 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 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 under section 4946 of the Code.

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.

Section 4942(g)(1)(A) of the Code and section 53.4942-3(a)(2)(i) of the regulations provide that qualifying distributions include the reasonable administrative expenses incurred to conduct exempt purposes.

Section 4942(g)(1)(A) of the Code provides that a private foundation does not make a 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 under section 4946 of the Code, or (ii) a private foundation that is not an operating foundation under section 4942(j)(3) 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 foundation'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 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 pursuant to section 507(b)(2) 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. Your requested rulings are discussed below:

1.

X's transfer of assets is to organization Y which is exempt from federal income tax under section 501(c)(3) of the Code and is not a private foundation under section 509(a) of the Code because Y is a supporting organization under section 509(a)(3) of the Code. X's transfer of its assets to Y will not terminate X'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(a)(1) of the Code, when X notifies the Internal Revenue Service, at least one day after it transfers all of its assets to Y, of its intent to voluntarily terminate its private foundation status under section 509(a)(1) of the Code pursuant to section 507(a)(1) of the Code, X will thus terminate its private foundation status pursuant to that section 507(a)(1) of the Code.

Under section 507(c)(2) of the Code, the value of X's assets after it has transferred all of its assets to Y will be zero. Thus, X's voluntary notice of termination of its private foundation status pursuant to section 507(a)(1) of the Code will not result in tax under section 507(c) of the Code.

3.

X's transfer of its assets to Y will not result in excise tax on investment income under section 4940 of the Code.

4.

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

5.

X's transfer of its assets to Y will be a qualifying distribution under section 4942(g)(1)(A) of the Code because X's transfer will be paid for exempt purposes under section 501(c)(3) of the Code to Y, which is exempt from federal income tax under section 501(c)(3) of the Code and is not a private foundation under section 509(a) of the Code because Y is a supporting organization under section 509(a)(3) of the Code. X's qualifying distribution to Y for exempt purposes will not be a taxable expenditure under section 4945 of the Code.

6.

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

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7.

Under section 4945(d)(4)(A) of the Code, a private foundation can transfer assets to an organization which is exempt from federal income tax under section 501(c)(3) of the Code and is not a private foundation because it is a supporting organization under section 509(a)(3) of the Code, without the transfer being a taxable expenditure under section 4945(d)(4) of the Code. Thus, X's transfer of its assets to Y will not be a taxable expenditure under section 4945 of the Code or subject X to tax under that section.

Also, under section 4945(d)(4)(A) of the Code, where a private foundation transfers assets to an organization which is exempt from federal income tax under section 501(c)(3) of the Code and which is not a private foundation because it is a supporting organziation under section 509(a)(3) of the Code, the transferor private foundation will have no expenditure responsibility requirement under section 4945(h) 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 all of its assets to Y.

8.

The legal, accounting, and other expenses, if reasonable in amount, incurred by X, in connection with this ruling request and in carrying out the transfer of assets, will be qualifying distributions under section 4942(g)(1)(A) of the Code because they are paid to achieve the charitable purpose of making the grant to Y and, also for that reason, the payments of such expenses will not be taxable expenditures under section 4945 of the Code.

9.

Under section 1.507-1(b)(9) of the regulations, after X transfers all of its assets and voluntarily terminates its private foundation status pursuant to section 507(a)(1) of the Code, X must file its annual return, Form 990-PF, for its final tax year in which its transfer and termination occur, but will not be required to file such returns for any future tax years when X will have no assets and no activities.

10.

Because X's transfer of its assets to Y will be for exempt purposes under section 501(c)(3) of the Code, X's transfer of assets will not adversely affect X's exemption from federal income tax under section 501(c)(3) of the Code.

Accordingly, we rule that:

1. X's transfer of all of its assets to Y will not be a termination under section 507(a) of the Code of X's private foundation status under section 509(a) of the Code and will not result in termination tax under section 507(c) of the Code.

2. X's voluntary termination of its private foundation status by notice to the Internal Revenue Service pursuant to section 507(a)(1) of the Code, after X's transfer of all of its assets to Y, will be a termination under section 507(a)(1) of the Code. However, because X will have no assets when its termination occurs, no termination tax under section 507(c) of the Code will be due.

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

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

5. X's transfer of its assets to supporting organization Y described in section 509(a)(3) of the Code will be treated as qualifying distributions under section 4942(g)(1)(A) of the Code, and will not be taxable expenditures under section 4945 of the Code.

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

7. X's transfer of all of its assets to Y will not be a taxable expenditure under section 4945 of the Code. 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. The legal, accounting, advising, and other expenses, if reasonable in amount, incurred for X's transactions described in this ruling, will be qualifying distributions under section 4942(g)(1)(A) of the Code, and will not be taxable expenditures under section 4945 of the Code.

9. After X transfers all of its assets to Y and voluntarily terminates its private foundation status pursuant to section 507(a)(1) of the Code, X must file its annual return, Form 990-PF, for its final tax year in which its transfer and termination occur, but X will not be required to file such returns for any future tax years when X will have no assets and no activities.

10. X's transfer and transactions described in this ruling will not adversely affect X's exemption from federal income tax under section 501(c)(3) of the Code.

Because this ruling letter could help to resolve any questions about your status, please keep it in your permanent records and include a copy in your 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
Manager, Exempt Organizations
Technical Group 2