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
509.03-00
4942.03-05
4945.04-06

Contact Number:

T:EO:B2

Legend:
X =
Y =

Dear Sir or Madam:

This is in reply to your rulings request of March 24, 2000, concerning X's proposed transfer of all of its assets to Y pursuant to section 507(b)(2) of the Internal Revenue Code.

X and Y are exempt from federal income tax under section 501(c)(3) of the Code, and are private foundations under section 509(a) of the Code which are effectively controlled by the same persons. X will transfer all of its assets to Y. Y must continue to exercise X's expenditure responsibility, if any, as to any expenditure responsibility grants of X that may be outstanding under section 4945(h) of the Code at the time of X's transfer of its assets to Y.

The following rulings are requested:

1. X's transfer of all of its assets to Y will be a transfer of assets under section 507(b)(2) of the Code, and will not result in any termination tax under section 507(c) of the Code.

2. X's excess qualifying distributions carryover under section 4942(i) of the Code will carry over to Y and can be used by Y to meet Y's own distribution requirements under section 4942 of the Code.

3. X's transfer of all of its assets to Y will not be a taxable expenditure under section 4945 of the Code and will not result in any tax under that section.

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.

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.

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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 the 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)(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.

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 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.

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

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) of the Foundation and Similar Excise Taxes Regulations 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 of the Code.

Analysis

X will transfer all of its assets to Y. 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 private foundation's assets. Because X will transfer all of its assets to Y, X's transfer will be a significant disposition of X's 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, X's transfer of all of its assets to Y pursuant to section 507(b)(2) of the Code will not be a termination of X'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.

If X notifies the Internal Revenue Service of its intent to voluntarily terminate its private foundation status pursuant to section 507(a)(1) of the Code, X will thus terminate its private foundation status pursuant to that section, and, at that time, if the value of X's assets, after X has transferred all of its assets to Y, will be zero, X's voluntary notice pursuant to section 507(a)(1) of the Code of its termination of its private foundation status will result in zero termination tax under section 507(c) of the Code.

2.

As in Revenue Ruling 78-387, described above, Y may reduce its required distributions under section 4942 of the Code, including those of X for X's tax year of the transfer, by the amount, if any, of X's excess qualifying distributions carryover under section 4942(i) of the Code as of the time of the transfer.

Under section 1.507-3(a)(9)(i) of the regulations, X's transfer will result in Y being treated as if Y were X for purposes of section 4942 of the Code so that X's distribution requirements under section 4942 of the Code for its tax year of its transfer may be satisfied by Y on behalf of X, and X's qualifying distributions made during X's tax year of its transfer of assets to Y may be treated as made by Y in Y's tax year of receipt of X's assets.

3.

Under section 4945 of the Code and section 53.4945-6(c)(3) of the regulations, 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 of the Code. Thus, X's transfer of assets to Y pursuant to section 507(b)(2) of the Code will not be a taxable expenditure under section 4945 of the Code.

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

As in section 1.507-3(a)(9)(iii), Example (2), of the regulations, Y must continue any expenditure responsibility under section 4945(h) of the Code of X with respect to any expenditure responsibility grants made by X that continue outstanding at the time of X's transfer of its assets to Y.

Accordingly, we rule that:

1. X's transfer of all of its assets to Y will be a transfer of assets under section 507(b)(2) of the Code and will not result in any termination tax under section 507(c) of the Code.

2. X's excess qualifying distributions carryover under section 4942(i) of the Code will carry over to Y and can be used by Y to meet Y's own distribution requirements under section 4942 of the Code.

3. X's transfer of all of its assets to Y will not be a taxable expenditure under section 4945 of the Code and will not result in any tax under that section.

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,

Joseph Chasin

Joseph Chasin
Acting Manager, Exempt Organizations
Technical Group 2

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