DEPARTMENT OF THE TREASURY 200125092
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Contact Person:
XXXXXXXXXXXXXXXXX
ID Number:
XXXXXXXXXX
Telephone Number:
XXXXXXXXXXXXXXX

T:EO:B3

Employer Identification Number:XXXXXXXXXX
Legend:

X= XXXXXXXXXXXXXXXXX
U= XXXXXXXXXXX
V= XXXXXXXXXXXXXXXXXXXXXXXXXXX

Dear Applicant:

This refers to your letter dated September, 29 2000, as supplemented by correspondence dated November 28, 2000, in which you and X requested certain rulings in connection with a proposed transaction under sections 507, 4941, 4942, and 4945 of the Internal Revenue Code. More specifically you and X requested us to rule:

1. That the transfer by operation of law of your assets to X pursuant to the merger constitutes a transfer of assets described in section 507(b)(2) of the Code and will not result in termination of your status as a private foundation under section 507(a) of the Code.

2. That neither the transfer by operation of law of your assets to X pursuant to the merger, nor any subsequent notice of termination will result in the imposition of the termination tax under section 507(c) of the Code.

3. That because you and X are effectively controlled by the same persons, X will be treated as if it were you for purposes of Chapter 42, section 507 and section 509 of the Code.

4. That X will succeed to your aggregate tax benefit.

5. That as a result of the proposed merger, X will succeed to your excess qualifying distributions carryover as of the effective date of the merger.

6. That the contemplated transaction will not constitute an act of self-dealing and therefore will not result in the imposition of tax under section 4941 of the Code.

7. That the proposed transfer by operation of law of assets to X pursuant to the merger will not subject you to any tax under section 4942(a) of the Code for a failure to distribute income.

8. That you will not be required to comply with the record keeping requirements of section 4942(g)(3)(B) of the Code with respect to the transfer of assets to X pursuant to the merger after the transfer by operation of law of all of its assets.

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9. That the contemplated transaction will not be a taxable expenditure under section 4945 of the Code and therefore will not subject you to tax under section 4945 of the Code, nor will you be required to exercise expenditure responsibility over the assets transferred to X.

Facts:

X was incorporated as a non-profit corporation and received a determination letter recognizing it as exempt from federal income tax under section 501(c)(3) of the Code.

You were incorporated and received a determination letter recognizing you as exempt from federal income tax under section 501(c)(3) of the Code. Both you and X have been classified as private foundations.

U, a corporation, was the founder and is a substantial contributor to X. V, a corporation, was your founder and is a substantial contributor to you. U and V merged, with U being the surviving corporation. Thus, U is a disqualified person with respect to both you and X.

Your president is also the president of X. Your secretary is also the secretary of X. Currently, all three of your directors serve on X's seven member Board of Directors.

X's Board of Directors and your Board of Directors approved a plan of merger under which it was agreed that you and X would merge, with X being the surviving foundation. X's Board of Directors and your Board of Directors concluded that the proposed merger would eliminate needless extra expenses associated with the operation of two foundations. Upon the merger, your separate corporate existence would cease, with X being the surviving foundation. All your rights, privileges, immunities, powers, franchises and authority would cease. All of your assets and liabilities would vest in X by operation of law without further act or deed.

You represent that you intend to make sufficient qualifying distributions in 2000 to satisfy the distribution requirements imposed by section 4942 of the Code. You represent that you have no outstanding expenditure responsibility grants under section 4945(h) of the Code. You will notify the Service of your intent to terminate within the meaning of section 507(a) of the Code at least one day after all of your assets have been transferred to X.

You represent that, upon the transfer of your assets to X and your subsequent merger, you will notify the Internal Revenue Service of such merger and transfer. X will assume liability for any excise tax owed by you on your investment income for the year of the distribution and any subsequent year. Also, you will not treat any amount of the transferred assets as a qualifying distribution under section 4942 (g) of the Code.

You and X represent that neither has committed any willful repeated acts giving rise to liability under Chapter 42 of the Code.

Law and Rationale:

A. Ruling #1 and Ruling #2

Section 507 of the Code provides that a section 501(c)(3) exempt organization's classification as a private foundation may be terminated in the ways described respectively in sections 507(a)(1), 507(a)(2), 507(b)(1)(A), and 507(b)(1)(B). Section 507 also concerns, under section 507(b)(2), the transfer of assets by one private foundation to another private foundation.

Section 507(b)(2) of the Code provides that, in the transfer of assets by one private foundation to one or more other private foundations as part of a reorganization, the transferee private foundations shall not be treated as a newly created organization.

Section 507(c) of the Code imposes on each organization referred to section 507(a) a tax equal to the lower of (1) the amount which the foundation substantiates by adequate records as the aggregate tax benefit resulting from the section 501(c)(3) status of the foundation, or (2) the value of the net assets of such foundation.

Section 1.507-1(b)(1) of the Income Tax Regulations provides in part that a private foundation that wishes to terminate its private foundation status must submit a statement to the district director of its intent to terminate its private foundation status and that such statement must set forth in detail the computation and amount of tax imposed under section 507(c).

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 another private foundation pursuant to a reorganization, merger or liquidation.

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

Section 1.507-4(b) of the regulations provides that, with exceptions not involved here, the tax on termination of private foundation status imposed by section 507(c) of the Code does not apply to a section 507(b)(2) transfer of assets.

Your Board of Directors and X's Board of Directors concluded that the proposed merger would eliminate needless extra expenses associated with the operation of two foundations. The transfers of your assets to X will be a transfer of assets described in section 507(b)(2) of the Code because the transfer of funds will be from one private foundation to another pursuant to a merger, as stated in section 1.507-3(c)(1) of the regulations. Under section 1.507-3(d), there is no private foundation termination tax in the case of section 507(b)(2) transfers from one private foundation to one or more other private foundations. If subsequent to the merger, you file a voluntary notice of intent to terminate your private foundation status pursuant to section 507(a)(1), such filing will not result in any termination tax under section 507(c) because the value of your assets at that time will be zero.

B. Ruling #3, Ruling #4 and Ruling #5

Section 1.507-3(a)(1) of the regulations provides that in the transfer of assets from one private foundation to another private foundation pursuant to a reorganization or liquidation, the transferee private foundation shall not be treated as a newly created organization.

Section 1.507-3(a)(2)(i) of the regulations provides that a transferee organization to which this paragraph applies shall succeed to the aggregate tax benefit of the transferor organization. Such amount shall be an amount equal to the amount of such aggregate taxbenefit multiplied by a fraction the numerator of which is the fair market value of the assets (less encumbrances) transferred to such transferee and the denominator of which is the fair market value of the assets of the transferor (less encumbrances) immediately before the transfer. Fair market value shall be determined as of the time of the transfer.

Section 1.507-3(a)(2)(iii) of the regulations, Example (1), provides that:

> Pursuant to a transfer described in section 507(b)(2), F, a private foundation, transfers to G, a private foundation, all of its assets which have a fair market value of $400,000. Immediately before the transfer F's aggregate tax benefit was $200,000, and G's aggregate tax benefit was $300,000. After the transfer G's aggregate tax benefit is $500,000 ($200.000 +$300,000).

Section 1.507-3(a)(8) of the regulations provides that certain tax provisions, listed therein, will carry over to a transferee private foundation that is given a Code section 507(b)(2) transfer of assets from a transferor private foundation.

Section 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled (within the meaning of Sec. 1.482-1(i)(4)), directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of chapter 42 (section 4940 et seq.) and part II of subchapter F of chapter 1 of the Code (sections 507 through 509) such a transferee private foundation shall be treated as if it were the transferor.

Section 1.507-3(a)(9)(iii) of the regulations, Example (1), describes a situation where the trustees of X charitable trust, a private foundation, formed Y charitable corporation, also a private foundation, in order to facilitate the conduct of their activities. The trustees of X are also the directors of Y. Y has the same charitable purpose as X. All of the assets of X are transferred to Y, and Y continues to carry on X's charitable activities. Under such circumstances, Y shall be treated as if it were X for purposes of subdivision (i) of this subparagraph. Thus, for example, Y will be permitted to take advantage of any special rules or savings provisions with respect to chapter 42 to the same extent as X could have if X continued in existence.

You and X are effectively controlled by the same individuals within the meaning of section 1.482-1(i)(4) of the regulations. The carryover provisions for a Code section 507(b)(2) transfer will be applicable. Similar to section 1.507-3(a)(2)(iii), Example (1), all of your aggregate tax benefit, as defined in section 507(d) of the Code, will be carried over to X, including your excess qualifying distribution carryover for your last taxable year. In addition, under sections 1.507-3(a)(1) through (8), any other applicable carryover

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provisions will be applicable to X, the private foundation transferee.

C. Ruling # 6

Section 4941 of the Code imposes a tax upon any act of self-dealing between a private foundation and any of its disqualified persons as defined in section 4946.

Section 53.4946-1(a)(8) of the regulations provide that for purposes of section 4941 only, the term "disqualified person" shall not include any organization which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

There will be no acts of self-dealing under section 4941 of the Code. The transfers of assets are not acts of self-dealing because they are transfers of funds for exempt purposes to another section 501(c)(3) organization, and, even if controlled by the same persons, the transferee is not considered a disqualified person pursuant to section 53.4946-1(a)(8) of the regulations.

D. Ruling #7 and Ruling # 8

Section 4942 of the Code requires that a private foundation make qualifying distributions as defined in section 4942(g)) in amount equal to its distributable amount as defined in section 4942(d).

Section 4942(g)(1)(A) of the Code indicates, in pertinent part, that a private foundation does not make any qualifying distribution under section 4942(g) where the contribution is either: (i) to another organization that is controlled by the transferor or by one or more of the transferor's disqualified persons, or (ii) to any private foundation that is not an operating foundation under section 4942(j)(3), unless the requirements of section 4942(g)(3) are met.

Section 4942(g)(3) of the Code requires that a private foundation, in order to have a qualifying distribution for its grant to another private foundation, have adequate records to show that the transferee private foundation in fact makes 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). That transferee's qualifying distribution must be expended before the close of the transferee's first taxable year after the transferee's taxable year in which the transfer was received.

Section 1.507(a)-3(a)(5) of the regulations provides that except as provided in subparagraph (9) of this paragraph, a private foundation is required to meet the distribution requirements of section 4942 for any taxable year in which it makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation. Such transfer shall itself be counted toward satisfaction of such requirements to the extent the amount transferred meets the requirements of section 4942(g). However, where the transferor has disposed of all of its assets, the record keeping requirements of section 4942(g)(3)(B) shall not apply during any period in which it has no assets. Such requirements are applicable for any taxable year other than a taxable year during which the transferor has no assets.

Section 1.507-3(a)(9)(ii) of the regulations provides that subdivision (i) of this subparagraph shall not apply to the requirements under sections 6033, 6056, and 6104 which must be

complied with by the transferor private foundation, nor to the requirement under section 6043 that the transferor file a return with respect to its liquidation, dissolution, or termination.

Under section 1.507-3(a)(5) of the regulations, even if a transferor transfers all of its assets to other private foundations, the transferor's obligation to expend for exempt purposes, as required by section 4942(g) of the Code, must still be met for that year. You are responsible for meeting your qualifying distribution requirements under section 4942 of the Code. You represent that you will make sufficient qualifying distributions in the year 2000 to comply with the requirements of section 4942 of the Code.

You are subject to the record-keeping requirements of section 4942(g)(3)(B) of the Code for the tax year of the transfer of your assets to X. In the following tax your separate corporate status will cease. Also, all of your assets will vest in X by operation of law, and X will succeed to your aggregate tax benefit. The record-keeping requirements will not be applicable to you in the following tax year because you will have no assets. However, X will continue to be subject to the record-keeping requirements of section 4942(g)(3)(B).

E. Ruling #9

Section 1.507-3(a)(7) of the regulations provides that, except as provided in section 1.507-3(a)(9), where the transferor private foundation has disposed of all of its assets, sections 4945(d)(4) and 4945(h) of the Code shall not apply to the transferor or transferee foundations with respect to any "expenditure responsibility" grants made by the transferor foundation, except for any information reporting requirements imposed by section 4945 for any year in which any such transfer is made

Section 4945 of the Code imposes a tax upon a private foundation's making of any taxable expenditure as defined in section 4945(d).

Section 4945(h) of the Code defines expenditure responsibility in terms of the grantor private foundation requiring proper reports from the grantee private foundation on the grantee's uses of the grant. In pertinent part, section 53.4945-5(b)(7) of the regulations refers to the rules of section 1.507-3(a)(7) of the regulations, cited above.

Sections 53.4945-6(c)(3) and 1.507-3(b) of the regulations allow a private foundation to make section 507(b)(2) transfers of its assets to organizations exempt under section 501(c)(3) of the Code, not excluding private foundations, without the transfers being taxable expenditures.

There will be no taxable expenditures under section 4945 of the Code. Section 53.4945- 6(c)(3) of the regulations indicates that no tax on taxable expenditures is involved where there is a reorganization transfer of assets under section 507(b)(2), which is the case here. Also, you have no presently outstanding grants for which expenditure responsibility is being exercised.

Conclusions:

Accordingly, based upon the information furnished, and assuming that you will operate in the manner represented, we rule:

1. That the transfer by operation of law of your assets to X pursuant to the merger constitutes a transfer of assets described in section 507(b)(2) of the Code and will not result in

termination of your status as a private foundation under section 507(a) of the Code.

2. That neither the transfer by operation of law of your assets to X pursuant to the merger, nor any subsequent notice of termination will result in the imposition of the termination tax under section 507(c) of the Code.

3. That because you and X are effectively controlled by the same persons, X will be treated as if it were you for purposes of Chapter 42, section 507 and section 509 of the Code.

4. That X will exceed to your aggregate tax benefit.

5. That as a result of the proposed merger, X will succeed to your excess qualifying distributions carryover as of your last taxable year.

6. That the contemplated transaction will not constitute an act of self-dealing and therefore will not result in the imposition of tax under section 4941 of the Code.

7. That the proposed transfer by operation of law of assets to X pursuant to the merger will not subject you to any tax under section 4942(a) of the Code for a failure to distribute income.

8. That you will not be required to comply with the record keeping requirements of section 4942(g)(3)(B) of the Code with respect to the transfer of assets to X pursuant to the merger after the transfer by operation of law of all of its assets.

9. That the contemplated transaction will not be a taxable expenditure under section 4945 of the Code and therefore will not subject you to tax under section 4945 of the Code, nor will you be required to exercise expenditure responsibility over the assets transferred to X.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

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. We are sending a copy of this ruling letter to your attorney as you requested.

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

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