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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 6/21/01

UIL: 4940.00-00
4941.04-00
4942.03-05
4945.04-00
4946.02-00

Contact Person:

ID Number:

Telephone Number:

T:EO:B2

Employer ID Number:

Legend:
X =
Y =
Z =

Dear Sir or Madam:

This is in reply to your letter of February 9, 2001, as modified by your letter of May 16, 2001, concerning the proposed transfer by Y and Z of all of their assets to X pursuant to section 507(b)(2) of the Internal Revenue Code.

X, Y and Z have all been recognized as exempt under section 501(c)(3) of the Code and are private foundations within the meaning of section 509(a).

The submitted information establishes that there is substantial overlap in the charitable objectives and activities of the three organizations. In addition, there is substantial overlap among their officers and directors. It has been represented that consolidation of these three organizations into a single entity would enable X to focus more of its energies upon accomplishing the charitable objectives of the organizations and otherwise streamline the overall conduct of their charitable activities. Pursuant to the merger Y and Z will transfer all of their assets and liabilities, including all outstanding grant obligations, to X. After the merger and transfer of assets, Y and Z intend to notify the Internal Revenue Service of their intent to terminate their tax exempt status pursuant to the provisions of section 507(a)(l) of the Code.

The following rulings have been requested:

1. The transfers will not adversely affect X's exemption from federal income taxation under Code section 501(c)(3).

2. The transfers will constitute a transfer of assets described in Code section 507(b)(2);

3. Because notice of termination pursuant to Code section 507(a)(1) will not be given, the transfers will not constitute a termination of the status as private foundations of Y and Z, and the merger will not cause X, Y or Z to be subject to the tax imposed by Code section 507(c).

4. Because X, Y and Z are effectively controlled by the same persons, X will be treated as Y and Z for purposes of Chapter 42 of the Code and Code sections 507 through 509.

5. Because X will be treated as Y and Z for purposes of Code section 4942, X will succeed to Y and Z's distribution requirements under Code section 4942 and may reduce the amount of its required distributions by the excess qualifying distributions, if any, of either Y and Z as such distributions are defined in Code section 4942(i) and the accompanying regulations.

6. The amount of qualifying distributions to be made by X in connection with the assets of Y and Z will be computed based upon the portions of the year for which X and Y and Z, respectively, held those assets.

7. The transfers will not result in the imposition of net investment income tax under Code section4940(a).

8. The transfers will not constitute acts of self-dealing under Code section 4941.

9. The transfers will not constitute taxable expenditures under Code section 4945(d)(4) or (d)(5), and Y and Z (through X or otherwise) need not exercise expenditure responsibility with respect to the assets transferred.

10. X's reasonable and necessary legal, accounting, and other administrative expenditures, incurred in connection with this ruling request, the transfers, and the merger, will constitute qualifying distributions under Code section 4942(g)(1)(A) and will not be taxable expenditures under Code section 4945(d)(5).

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 provides that certain 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 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(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 507(c) of the Code imposes an 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: (a) the aggregate tax benefits that have resulted from the private foundation's exempt status under section 501(c)(3) or (b) the value of the net assets of the private foundation.

Section 4940(a) of the Code imposes an excise tax on certain investment income of a private foundation.

Section 4940(c)(l) of the Code defines the net investment income of a private foundation as the amount by which the sum of the gross investment income and the capital gain net income exceeds the deductions allowed under section 4940(c)(3).

Section 4940(c)(2) of the Code defines the gross investment income as the amount of income from interest, dividends, rents, payments with respect to securities loans and royalties.

Section 4941(a) of the Code imposes an 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 4941(d)(l)(E) of the Code provides that the term self-dealing includes any direct or indirect transfer to, or use by or for the benefit of a disqualified person of the income or assets of a private foundation.

Section 4942(a) 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(d) of the Code defines the term distributable amount as the amount equal to the sum of the minimum investment return, plus certain other amounts reduced by the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

Section 4942(g)(1)(A) of the Code provides that the term qualifying distribution means any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B) other than a contribution to either: (i) an organization controlled by the transferor or by one or more of the transferor's disqualified persons, or (ii) any private foundation which is not an operating foundation under section 4942(j)(3).

Section 4942(g)(3) of the Code requires 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), to show that its transferee foundation, in fact, subsequently made qualifying distributions that were equal to the amount of the transfer received and that were paid out of the transferee's own corpus within the meaning of section 4942(h). Such transferee foundation's qualifying distributions must be expended before the close of the transferee's first tax year after the transferee's tax year in which it receives the transfer.

Section 4945(a) of the Code imposes excise tax on any private foundation's making of a taxable expenditure under section 4945(d).

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) on its grants to another private foundation.

Section 4945(d)(5) of the Code provides that the term "taxable expenditure" includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 4945(h) of the Code defines expenditure responsibility in terms of the grantor private foundation requiring pre-grant and post-grant reports from the grantee private foundation on its uses of the grant.

Section 4946(a)(l)(B) of the Code defines the term disqualified person as including a foundation manager as that term is described in section 4946(a)(b)(l).

Section I.507-l(a) of the regulations provides, in general, that the status of any organization as a private foundation shall be terminated only if such organization notifies the district director of its intent to accomplish such termination.

Section I.507-l(b)(6) of the regulations provides that if a private foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in section 507(b)(2) and section I.507-3(c) such transferor foundation will not have terminated its private foundation status under section 507(a)(l).

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 a termination of the transferor foundation's private foundation status under section 509(a).

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 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.

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)(8) of the regulations provides that certain tax provisions will carry over to a transferee private foundation that receives a transfer of assets from another 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 one or more private foundations, which are effectively controlled within the meaning of section 1.482-1A(a)(3) of the regulations, directly or indirectly, by the same person or persons who effectively control the transferor private foundation, each 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. Each transferee is treated as its transferor in the proportion which the fair market value of the transferor's assets transferred to it 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 provides 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 tax year return as required by section 6043(b) of the Code.

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 1.507-4(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.

Section 53.4945-6(c)(3) of the Foundation and Similar Excise Tax Regulations allows a private foundation to transfer its assets to exempt organizations under section 501(c)(3) of the Code, including private foundations, pursuant to section 507(b)(2) of the Code, without the transfers being taxable expenditures under section 4945 of the Code.

Section 53.4946-1(a)(8) of the 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.

Revenue Ruling 78-387, 1978-2 C.B. 270, describes the carry-over of a transferor private foundation's excess qualifying distributions under section 4942(i) of the Code where the transferor and the transferee foundations are controlled by the same persons under section 1.507-3(a)(9)(i) of the regulations. Under that regulation, the transferee is treated as the transferor so that the

transferee can reduce its own distributable amount under section 4942 by the amount, if any, of the transferor's excess qualifying distributions under section 4942(i).

The submitted information establishes that X, Y and Z are exempt under section 501(c)(3) and private foundations within the meaning of section 509(a) of the Code. Y and Z propose to transfer all their assets to X. X will continue to carry on the same charitable program that X, Y and Z previously carried on. X, Y and Z are controlled by the same persons. As the successor to Yand Z, the transitional and other rules regarding Chapter 42 of the Code set forth in section l.507-3(a)(8)(ii)(a) through (g) apply to X. After Y and Z have transferred all their assets to X, they will notify the Service that they are voluntarily terminating their status as a private foundation.

Based on the information submitted we rule that:

1. The transfers will not adversely affect X's exemption from federal income taxation under Code section 501(c)(3).

2. The transfers will constitute a transfer of assets described in Code section 507(b)(2);

3. .Because notice of termination pursuant to Code section 507(a)(1) will not be given, the transfers will not constitute a termination of the status as private foundations of and Z, and the merger will not cause X, Y or Z to be subject to the tax imposed by Code section 507(c).

4. Because X, Y and Z are effectively controlled by the same persons, X will be treated as Y and Z for purposes of Chapter 42 of the Code and Code sections 507 through 509.

5. Because X will be treated as Y and Z for purposes of Code section 4942, X will succeed to Y and Z's distribution requirements under Code section 4942 and may reduce the amount of its required distributions by the excess qualifying distributions, if any, of either Y and Z as such distributions are defined in Code section 4942(i) and the accompanying regulations.

6. The amount of qualifying distributions to be made by X in connection with the assets of Y and Z will be computed based upon the portions of the year for which X and Y and Z, respectively, held those assets.

7. The transfers will not result in the imposition of net investment income tax under Code section 4940(a).

8. The transfers will not constitute acts of self-dealing under Code section 4941.

9. The transfers will not constitute taxable expenditures under Code section 4945(d)(4) or (d)(5), and Y and Z (through X or otherwise) need not exercise expenditure responsibility with respect to the assets transferred.

10. X's reasonable and necessary legal, accounting, and other administrative

expenditures, incurred in connection with this ruling request, the transfers, and the merger, will constitute qualifying distributions under Code section 4942(g)(1)(A) and will not be taxable expenditures under Code section 4945(d)(5).

Because this ruling letter could help to resolve any questions, please keep it in your permanent records, and include a copy in your next annual return.

This ruling letter is directed only to the organizations that requested it. Section 6110(k)(3) of the Code provides that this ruling letter may not be used or cited as precedent.

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. For other matters, including questions concerning reporting requirements, please contact the Ohio TE/GE Customer Service Office.

Sincerely,

/S/

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2