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

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date:

Contact Person:

Uniform Issue List: 507.00-00
501.03-02
509.03-00
4940.00-00
4941.04-00
4942.03-05
4943.00-00
4944.00-00
4945.04-06

Identification Number:

Telephone Number:

T:EO:B2

Legend:
T =
C =

Dear Sir or Madam:

This is in reply to your rulings request of August 30, 2001, concerning T's proposed transfer of all of its assets to C pursuant to section 507(b)(2) of the Internal Revenue Code.

T, a charitable trust, and C, a nonprofit charitable corporation, 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. T and C are controlled by the same individuals. T will transfer all of its assets to C. After its transfer, T will dissolve under state law. T will have no expenditure responsibility grants outstanding under section 4945(h) of the Code at the time of the transfer.

The following rulings are requested:

1. T's transfer of all of its assets to the newly created charitable corporation C will constitute a transfer pursuant to a reorganization under section 507(b)(2) of the Code.

2. T's transfer will not terminate T's status as a private foundation under section 507(a) of the Code and will not result in any termination taxes imposed by section 507(c) of the Code.

3. As a result of the transfer, the transferee C will be treated as if C were T, for purposes of Chapter 42 and for Part II of Subchapter F of Chapter 1 of the Code.

4. C will succeed to any excess qualifying distributions carryover of T under section 4942 of the Code.

5. T's transfer of assets to C will not be an act of self-dealing under section 4941 of the Code.

6. The voluntary termination of T as a private foundation after T's transfer of assets to C will be a taxable termination under section 507(a)(1) of the Code, but no tax will be imposed under section 507(c) of the Code because T will not have any assets at the time of its termination.

7. T's transfer of assets to C will not constitute: (a) gross investment income or capital gain net income within the meaning of section 4940 of the Code; (b) an act of self-dealing under section 4941 of the Code; (c) undistributed income under section 4942 of the Code; (d) excess business holdings under section 4943 of the Code; (e) an investment that jeopardizes charitable purposes under section 4944 of the Code; or (f) a taxable expenditure under section 4945 of the Code. T's asset transfer will not cause T, C, or any disqualified person, as defined under section 4946 of the Code, with respect to T or C to be subject to any tax under sections 4940 through 4945 of the Code. T will not have to exercise expenditure responsibility under section 4945(h) of the Code as a result of the transfer.

8. T's transfer of its assets to C will not be treated as a sale or exchange of property subject to tax under section 4940 of the Code. The tax basis and holding period of the transferred assets into C shall be determined in the same manner as if such assets had continued to be held uninterruptedly by T.

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.

Section 1.507-3(a)(1) of the regulations indicates that, in a transfer of assets from one private foundation to another private foundation pursuant to a reorganization, the transferee 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 507(d) of the Code indicates, in general, that the aggregate tax benefits of an exempt private foundation refer to the value of its exemption from federal income tax and the deductions taken by its donors during its existence.

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 its own 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)(8) of the regulations provides that certain tax provisions will carry over to a transferee private foundation that is given a transfer of assets from a transferor 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 another private foundation which is effectively controlled directly or indirectly by the same person(s) who effectively control the transferor foundation, then the 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.

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.

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 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 exempt organization under section 501(c)(3) of the Code is not a disqualified person.

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

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.

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) 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.

Analysis

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, including a significant disposition of 25% or more of the transferor foundation's assets. Because T will transfer all of its assets to C, T's transfer will be a significant disposition of its 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.

2.

Under section 1.507-3(d) of the regulations, T's transfer of all of its assets to C pursuant to section 507(b)(2) of the Code will not be a termination of T'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 on T or C.

3.

Under section 507(b)(2) of the Code and section 1.507-3(a)(9)(i) of the regulations, transferee C will be treated as its transferor T for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code.

4.

Under section 1.507-3(a)(9)(i) of the regulations, T's transfer will result in C being treated as T for purposes of section 4942 of the Code, so that: (a) T's distribution requirements under section 4942 of the Code for its tax year of its transfer may be satisfied by C; and (b) T's qualifying distributions during T's tax year of its transfer may be treated as made by C.

As in Revenue Ruling 78-387, described above, C may reduce its required distributions under section 4942 of the Code, including those for C's tax year of the transfer, by the amount, if any, of T's excess qualifying distributions carryover under section 4942(i) of the Code as of the time of T's transfer.

5.

T's transfer of its assets will be for exempt purposes to C, which is an organization exempt from federal income tax under section 501(c)(3) of the Code. Under section 53.4946-1(a)(8) of the regulations, because C is exempt from federal income tax under section 501(c)(3) of the Code, C is not a disqualified person as to T under section 4946 of the Code for purposes of section 4941 of the Code. Because T's transfer of assets will not be a transfer between a disqualified person and a private foundation, T's transfer will not be an act of self-dealing under section 4941 of the Code.

6.

Under section 507(a)(1) of the Code, when T notifies the Internal Revenue Service, at least one day after T transfers all of its net assets to C, of its intent to voluntarily terminate its private foundation status pursuant to section 507(a)(1) of the Code, T will thus terminate its private foundation status pursuant to that section 507(a)(1) of the Code.

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

7.

T's transfer of assets to C will not result in tax under section 4940 of the Code.

As discussed above in 5, T's transfer of assets to C will not result in tax under section 4941 of the Code.

Under section 1.507-3(a)(5) of the regulations, 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. Under section 1.507-3(a)(9)(i) of the regulations, T's transfer will result in C being treated as T for purposes of section 4942 of the Code. Thus, T can make its own timely distributions for exempt purposes as required by section 4942 of the Code, or C, being treated as if C were T, can make T's required distributions under section 4942 of the Code on behalf of T in same manner that T would have made the distributions.

T's transfer will not result in tax under section 4943 of the Code, provided that T's assets are not excess business holdings of T or C under section 4943 of the Code.

Under section 4944 of the Code, T's transfer of assets for exempt purposes under section 501(c)(3) of the Code will not be a jeopardizing investment or result in tax under that section.

Under section 4945 of the Code, section 53.4945-6(c)(3) of the regulations indicates that 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, provided that any expenditure responsibility requirement under section 4945(h) is met. Thus, T's transfer to C pursuant to section 507(b)(2) of the Code will not be a taxable expenditure under section 4945 of the Code.

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

T's asset transfer will not cause T, C, or any disqualified person, as defined under section 4946 of the Code, with respect to T or C to be subject to any tax under sections 4940 through 4945 of the Code.

8.

Under section 4940 of the Code, T's transfer of its assets to C will not result in tax to T or C under section 4940 of the Code.

Under section 1.507-3(a)(8)(ii)(a) of the regulations, the tax bases and holding periods of T's assets transferred to C will carry over to C for purposes of section 4940 of the Code.

Accordingly, we rule that:

1. T's transfer of all of its assets to C will constitute a transfer under section 507(b)(2) of the Code.

2. T's transfer will not terminate T's status as a private foundation under section 507(a) of the Code and will not result in termination tax under section 507(c) of the Code.

3. As a result of T's transfer, transferee C will be treated as if C were T for purposes of Chapter 42 and Part II of Subchapter F of Chapter 1 of the Code.

4. C will succeed to any excess qualifying distributions carryover of T under section 4942 of the Code.

5. T's transfer of assets to C will not be an act of self-dealing under section 4941 of the Code.

6. The voluntary termination of T as a private foundation after T's transfer of its assets to C will be a taxable termination under section 507(a)(1) of the Code, but no tax will be imposed under section 507(c) of the Code because T will have no assets at the time of its termination.

7. T's transfer of assets to C will not constitute: (a) gross investment income or capital gain net income within the meaning of section 4940 of the Code; (b) an act of self-dealing under section 4941 of the Code; (c) undistributed income under section 4942 of the Code; (d) excess business holdings under section 4943 of the Code; (e) an investment that jeopardizes charitable purposes under section 4944 of the Code; or (f) a taxable expenditure under section 4945 of the Code. T's asset transfer will not cause T, C, or any disqualified person, as defined under section 4946 of the Code with respect to T or C, to be subject to any tax under sections 4940 through 4945 of the Code. T will not have to exercise expenditure responsibility under section 4945(h) of the Code as a result of the transfer of all of its assets to C.

8. T's transfer of its assets to C will not be subject to tax under section 4940 of the Code. The tax basis and holding period of T's transferred assets to C shall be determined in the same manner as if T's assets had continued to be held uninterruptedly by T.

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,

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2