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

200234068

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: MAY 28 2002

Contact Person:

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

Identification Number:

Telephone Number:

T:ED:B2

Legend:
T =
C =

Dear

This is in reply to your rulings request of January 11, 2001, on T's proposed transfer of all of its assets to C pursuant to section 507(b)(2) of the Internal Revenue Code.

T, a trust, and C, a nonprofit 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 will transfer all of its assets to C. T and C are effectively controlled by the same persons. T will have no expenditure responsibility grants outstanding under section 4945(h) of the Code.

The following rulings are requested:

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

2. T's transfer will not result in termination of T's private foundation status under section 509(a) of the Code pursuant to section 507(a) of the Code.

3. T's transfer will not result in tax under section 507(c) of the Code.

4. T's aggregate tax benefits under section 507(d) of the Code will transfer to C pursuant to section 1.507-3(a) of the Income Tax Regulations.

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

6. C can reduce its distributable amount under section 4942(d) of the Code by the amount, if any, of T's excess qualifying distributions carryover under section 4942(i) of the Code.

7. T's transfer will not be a taxable expenditure under section 4945 of the Code, and T 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 C.

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 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) of the Code, and provides that 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) of the Code, or (2) the value of the net assets of the private foundation.

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 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 1.507-3(a)(1) of the regulations provides 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 507(d) of the Code indicates that the aggregate tax benefits of a private foundation refer to the value of its exemption from federal income tax and of the deductions taken by its donors during its existence.

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 provides 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. Also, where a private foundation transfers all of its assets, any recordkeeping requirements under section 4942(g)(3)(B) of the Code do not apply when the foundation has no assets.

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)(i) of the regulations provides that, if a private foundation transfers assets to one or more private foundations which are effectively controlled directly or indirectly within the meaning of section 1.482-1(i)(4) of the regulations by the same persons who effectively control the transferor 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 the transferee bears to the fair market value of all of the transferor's assets 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 1.507-4(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) of the Code .

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 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 annual qualifying distributions under section 4942(g) of the Code for the conduct of exempt purposes.

Revenue Ruling 78-387, 1978-2 C.B. 270, describes the carryover 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. The transferee is treated as the transferor so that the transferee can reduce its own distributable amount under section 4942 of the Code by its share of the transferor foundation's excess qualifying distributions under section 4942(i) 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 private foundation on its 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, including private foundations, pursuant to section 507(b)(2) of the Code, without the transfers being taxable expenditures under section 4945 of the Code.

Analysis

1.

Under section 507(b)(2) of the Code and 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 one or more other private foundations pursuant to any reorganization or liquidation, which includes any significant disposition of 25% or more of the transferor foundation's assets. Because T will be in such a reorganization by its transfer of all of its assets to C, T's transfer of all of its assets will be a transfer under section 507(b)(2) of the Code.

2.

Under section 1.507-4(b) of the regulations, T's transfer of its assets pursuant to section 507(b)(2) of the Code will not terminate T's private foundation status under section 509(a) of the Code.

3.

Under section 1.507-4(b) of the regulations, T's transfer of its assets pursuant to section 507(b)(2) of the Code will not result in tax under section 507(c) of the Code.

4.

Under section 507(b)(2) of the Code and section 1.507-3(a)(1) of the regulations, in this transfer of assets under section 507(b)(2) of the Code, T's aggregate tax benefits under section 507(d) of the Code will be transferred to C.

5.

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

6.

As in Revenue Ruling 78-387, described above, after T's transfer of all of its assets to C, C will be treated as T so that T's excess qualifying distributions, if any, under section 4942 of the Code can be used by T's transferee C to reduce C's distributable amount under section 4942 of the Code by the amount, if any, of T's excess qualifying distributions carryover under section 4942(i) of the Code.

7.

Section 1.507-3(a)(7) of the regulations provides that, where a private foundation transfers all of its assets to one or more exempt organizations under section 501(c)(3) of the Code pursuant to section 507(b)(2) of the Code, such transferor private foundation will have no expenditure responsibility requirement under section 4945(h) of the Code. Thus, T will not have to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfer of all of its assets to C.

Under 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 organizations exempt from federal income tax under section 501(c)(3) of the Code without the transfer being a taxable expenditure under section 4945 of the Code, provided that any expenditure responsibility requirement under section 4945(h) of the Code is met. Thus, T's transfer of all of its assets will not be a taxable expenditure under section 4945 of the Code.

Accordingly, we rule that:

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

2. T's transfer will not result in termination of T's private foundation status under section 509(a) of the Code pursuant to section 507(a) of the Code.

3. T's transfer will not result in tax under section 507(c) of the Code.

4. T's aggregate tax benefits under section 507(d) of the Code will transfer to C pursuant to section 1.507-3(a) of the Income Tax Regulations.

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

6. C can reduce its distributable amount under section 4942(d) of the Code by the amount, if any, of T's excess qualifying distributions carryover under section 4942(i) of the Code.

7. T's transfer will not be a taxable expenditure under section 4945 of the Code, and T 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 C.

Because this rulings letter could help to resolve any questions, please keep it in your permanent records.

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

Sincerely,

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2