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

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Contact Person:

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Uniform Issue List:
507.00-00
4941.04-00
4942.03-05
4944.00-00
4945.04-06
6033.02-01
OP:E:EO:T:2

Legend:

T =

C =

Dear Sir or Madam:

This is in reply to your rulings request of July 7, 1998, concerning T's proposed transfer of all of its assets to C pursuant to section 507(b)(2) of the Internal Revenue Code.

Trust T and nonprofit corporation C 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 effectively controlled by the same persons. T will transfer all of its assets to C. After its transfer, T may dissolve under state law. T has no expenditure responsibility grants outstanding under section 4945(h) of the Code.

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.

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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 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 any tax year in which it makes a section 507(b)(2) transfer of its assets to another private foundation.

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 Code section 507(b)(2) transfer of assets from a transferor private foundation.

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.

Section 1.507-3(a)(9)(iii), Example (2), of the regulations indicates that a private foundation can make a transfer of all of its assets pursuant to section 507(b)(2) of the Code to an organization exempt under section 501(c)(3) of the Code without creating any expenditure responsibility requirement under section 4945(h) of the Code on the transferor foundation.

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 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.

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 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.

Section 4942(g)(1)(A) of the Code provides that a private foundation does not make any qualifying distribution under section 4942(g) where the distribution is a contribution to either: (i) another organization that is 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).

Sections 4942(g)(3)(A) and 4942(g)(3)(B) of the Code require 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 the transferee private foundation in fact subsequently made 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 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 received the transfer.

Section 4945 of the Code imposes excise tax on any private foundation's making of any 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(h) of the Code defines expenditure responsibility in terms of a grantor private foundation requiring proper pre-grant 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 exempt purposes under section 170(c)(2)(B).

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

T will transfer all of its assets to C. Your requested rulings are discussed below:

1.

Because T's transfer of its assets to C will be for exempt purposes to an organization exempt from federal income tax under section 501(c)(3) of the Code, T's transfer will not adversely affect the exemptions under section 501(c)(3) of T or C.

2.

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, 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.

3.

Under section 1.507-3(a)(1) of the regulations, in a transfer of assets from one private foundation to another private foundation pursuant to a reorganization, the transferee private foundation is not treated as a newly created organization, but succeeds to its proportionate share of the transferor's aggregate tax benefits under section 507(d) of the Code, so that C will succeed to T's aggregate tax benefits under section 507(d) of the Code upon T's transfer of all of its assets to C.

4.

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

Under section 4944 of the Code, T's transfer is made for exempt purposes and 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 organizations exempt under section 501(c)(3) of the Code without the transfers being taxable expenditures under section 4945. 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(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 will not result in any termination tax under section 507(c) of the Code.

5.

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.

6.

Sections 4942(g)(3) of the Code provides 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) of the Code, to show that its transferee private foundation in fact subsequently made 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) of the Code. Such transferee'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 received the transfer. Thus, under section 4942(g)(3) of the Code, T's transfer of all of its assets to private foundation C could in itself be counted toward satisfaction of transferor T's distribution requirements under section 4942 of the Code if, and to the extent that, T's transferee C will meet the timely redistribution out of corpus requirement of section 4942(g)(3) of the Code.

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7.

As in Revenue Ruling 78-387, cited above, after T transfers all of its assets to C, T's excess qualifying distributions, if any, under section 4942(i) of the Code, may be used by C to meet C's own distribution requirements under section 4942 of the Code.

8.

Under section 1.507-1(b)(9) of the regulations, T will not be required to file an annual return, Form 990-PF, for any tax years subsequent to its tax year in which it transfers all of its assets.

9.

As provided by section 1.507-3(a) of the regulations, transferee C will receive the carryover of any provisions applicable to T that are carried over to C under sections 1.507-3(a)(1) through (8) of the regulations.

Accordingly, we rule that:

1. T's transfer of all of its assets to C will not adversely affect the exemptions of T or C under section 501(c)(3) of the Code.

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

3. C will succeed to T's aggregate tax benefits under section 507(d) of the Code upon T's transfer of all of its assets to C.

4. T's transfer of all of its assets to C will not be:
   a.) an act of self-dealing under section 4941 of the Code;
   b.) a jeopardizing investment under section 4944 of the Code;
   c.) a taxable expenditure under section 4945 of the Code; or
   d.) a termination of private foundation status or result in any tax under section 507 of the Code.

5. T will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfer under section 507(b)(2) of the Code of all of its assets to C.

6. T's transfer of all of its assets to C, as a controlled private foundation, may in itself be counted toward satisfaction of T's charitable distribution requirements under section 4942 of the Code if, and to the extent that, section 4942(g)(3) of the Code is met.

7. Any excess qualifying distributions carryover of T under section 4942(i) of the Code will be carried over to C and may be used by C to meet C's distribution requirements under section 4942 of the Code.

8. T, after transfer of all of its assets to C, may dissolve under state law, and will no longer be required to file an annual return, Form 990-PF, subsequent to its filing of its final return for its final tax year of the transfer.

9. C, as transferee of all of the assets of T, will not be treated as a newly created organization, and C will receive the carryover of any provisions that were applicable to T that are carried over to C as provided by sections 1.507-3(a)(1) through (8) of the regulations.

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

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

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2