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

Date: OCT 14 1999

Contact Person:

Uniform Issue List: 507.00-00
509.00-00
4941.04-00
4942.03-05
4942.05-01
4945.04-06

Contact Number:

OP:E:EO:T2

Legend:
X =
Y =

Dear Sir or Madam:

This is in reply to your rulings request dated October 30, 1998, on X's proposed transfer of all of its assets to Y pursuant to section 507(b)(2) of the Internal Revenue Code.

X is exempt from federal income tax under section 501(c)(3) of the Code, a private foundation under section 509(a) of the Code, and an operating foundation under section 4942(j)(3) of the Code.

Y is exempt from federal income tax under section 501(c)(3) of the Code and a private foundation under section 509(a) of the Code.

X and Y were created by the same principal donor. X will transfer all of its assets to Y, which will also assume all of the liabilities of X. X's transfer will reduce the administrative duties involved in administering two private foundations. X's transfer will include its significant numismatic collection, which Y will continue to use for exempt purposes under section 501(c)(3) of the Code. Y will continue to make the collection available to researchers, scholars, and the interested public through personal viewings by appointment, the maintenance of a complete and informative Internet site, and by extensive catalogs to be posted on Y's Internet site.

You request the following rulings:

A. The proposed merger of X with and into Y will qualify as a transfer of assets described in section 507(b)(2) of the Code, and, pursuant to the provisions of section 1.507-3(d), will not result in the termination of X's private foundation status under section 507(a)(1) or subject X to liability for the tax imposed by section 507(c).

B. Pursuant to section 1.507-1(b)(9), X will have no continuing separate recordkeeping, distribution or filing requirements for taxable years after the year in which the proposed merger is consummated.

C. The proposed merger will not subject X or Y to any of the excise taxes imposed by sections 494 through 4945 of the Code. Specifically :

1 . The proposed transfer of all of the assets of X to Y, and Y's assumption of all of X's liabilities, w not constitute an act of self-dealing under section 4941 of the Code.

2. a. The proposed transfer of all of the assets of X to Y will not constitute an investment whic jeopardizes X's charitable purposes and will not subject X to the taxes imposed by section 4944 of the Code.

b. Further, the numismatic collection transferred by X to Y will be treated as a program-rela investment of Y within the meaning of section 4944(c).

3. As a program-related investment of Y, the numismatic collection transferred by X to Y will not be treated as an investment asset included in the calculation of Y's minimum investment return for purposes of computing its minimum distribution requirements under section 4942 after the merger. Such program-related assets will, under section 4942(e)(i)(A), be considered used (or held for use) directly in carrying out Y's exempt purposes.

4. The proposed transfer of all of the assets of X to Y will not constitute a taxable expenditure under section 4945, and X will not be required to exercise expenditure responsibility with respect to the transfer of all of its assets to Y.

D. The proposed merger of X with and into Y, and Y's receipt of the assets of X and assumption of its liabilities, will not affect the present tax exempt status of Y under section 501(c)(3) of the Code or its classification as a private non-operating foundation described in section 509(a).

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations that are organized and operated exclusively for charitable and/or the other exempt purposes within that section.

Section 509(a) of the Code provides that certain organizations exempt from federal income tax under section 501(c)(3) are further classified as private foundations so that they are thus subject to the private foundation provisions of Chapter 42 of the Code.

Section 507(a)(1) of the Code and section 1.507-1(b)(1) of the 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 terminate its private foundation status and by paying the termination tax, if any, under section 507(c) of the Code.

Section 507(c) of the Code imposes an excise tax on a private foundation which voluntarily terminates its status as a private foundation under section 507(a)(1). This tax is equal to the lower of: (a) the aggregate tax benefit that has resulted from the foundation's section 501(c)(3) exempt status, or (b) the value of the net assets of the foundation.

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

Section 1.507-3(a)(1) of the regulations provides that, in a transfer of assets from one private foundation to another private foundations 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 1.507-3(c)(1) of the regulations provides that a transfer under section 507(b)(2) of the Code includes a transfer of assets by 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 507(d) of the Code provides that the aggregate tax benefits of a private foundation include 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 ne assets is not required to file its annual information return under section 6033 of the Code for its tax yea subsequent to the year of such transfer when it has no assets or activities.

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

Section 1.507-3(a)(7) of the regulations indicates that a private foundation granting all of its assets to another private foundation pursuant to section 507(b)(2) of the Code will not be required to exercise any expenditure responsibility under section 4945(h) of the Code.

Section 1.507-3(a)(9)(i) of the regulations provides that, where a transferor private foundation transfers its assets to another private foundation that is effectively controlled directly or indirectly by the same person(s) who control the transferor foundation, the transferee foundation will be treated as if it were the transferor foundation, for purposes of sections 4940 through 4948 of the Code and sections 507 through 509 of the Code. Section 1.507-3(a)(9)(ii) of the regulations provides that the transferor private foundation is not relieved from filing its annual information return for its tax year of its transfer of 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 transfers 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 private foundation's transfer of assets pursuant to section 507(b)(2) of the Code will not constitute a termination under section 507 of the Code of the transferor status as a private foundation 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.

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 organization exempt from federal income tax under section 501(c)(3) is not a disqualified person.

Section 4942 of the Code provides that a private foundation must expend annual qualifying distributions under section 4942(g) for the direct active conduct of exempt purposes. The foundation's distributable amount is calculated with reference to its minimum investment return under section 4942(e) of the Code.

Section 4942(e)(1)(A) of the Code and section 53.4942(a)-2(c)(3) of the regulations provide that an asset used directly in carrying out the foundation's exempt purposes is excluded in computing a foundation's minimum investment return and distribution requirement under section 4942 of the Code.

Section 4942(j)(3) of the Code describes the requirements for a private foundation to be an "operating foundation" under that section.

Section 4944 of the Code imposes excise tax on any investment by a private foundation that jeopardizes its exempt purposes.

Section 4945 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 provides that a grantor private foundation must exercise expenditure responsibility under section 4945(h) of the Code on any grants to another private foundation.

Section 4945(h) of the Code defines expenditure responsibility in terms of a grantor private foundation requiring proper reports from a grantee private foundation on the grantee's uses of a grant.

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Analysis

X will transfer all of its assets to Y. Your requested rulings are discussed below:

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 X will transfer all of its assets to Y, X's transfer will be a significant disposition of its assets under section 1.507-3(c)(1) of the regulations and will be a transfer under section 507(b)(2) of the Code.

Under section 1.507-3(d) of the regulations, X's transfer of all of its assets to Y pursuant to section 507(b)(2) of the Code will not terminate X's private foundation status and, under section 1.507-4(b) of the regulations, X's transfer pursuant to section 507(b)(2) of the Code will not result in any termination tax under section 507(c) of the Code.

2.

Under section 1.507-3(a)(9)(ii) of the regulations, X must satisfy any information reporting requirements for its tax year in which its transfer of assets is made. Under section 1.507-1(b)(9) of the regulations, X will not be required to file an annual return under section 6033 of the Code for tax years subsequent to its tax year in which it transfers all of its assets to Y.

3.

X's transfer to Y pursuant to section 507(b)(2) of the Code will not subject X or Y to excise taxes under sections 4941 through 4945 of the Code, as discussed in 4, 5, 6, and 7, below.

4.

X's transfer of its assets to Y is not an act of self-dealing under section 4941 of the Code because the transfer is made for exempt purposes to organization Y exempt from federal income tax under section 501(c)(3) of the Code which, pursuant to section 53.4946-1(a)(8) of the regulations, is not a disqualified person under section 4946 for purposes of section 4941 of the Code.

5.

X's transfer of its assets to Y is for exempt purposes under section 501(c)(3) of the Code and will not be a jeopardy investment or result in tax under section 4944 of the Code, and X's numismatic collection included in the transfer will be an asset used by Y for its exempt programs.

6.

Under section 4942(e)(1)(A) and section 53.4942(a)-2(c)(3) of the regulations, because X's numismatic collection transferred to Y will be an asset used directly by Y in carrying out Y's exempt educational purposes and programs, the numismatic collection will be asset excludable by Y in computing Y's minimum investment return and charitable distribution requirements under section 4942 of the Code.

7.

X's transfer of all of its assets to Y is not a taxable expenditure under section 4945 of the Code because the transfer is made for exempt purposes to an organization exempt from federal income under section 501(c)(3) of the Code.

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

8.

X's transfer and merger is made with organization Y exempt from federal income tax under section 501(c)(3) of the Code to further exempt purposes. Thus, X's merger into Y, Y's receipt of all of X's assets, and Y's assumption of all of X's liabilities will not adversely affect the transferee Y's exemption from federal income tax under section 501(c)(3) of the Code or Y's status as a private foundation under section 509(a) of the Code that is not an operating foundation under section 4942(j)(3) of the Code.

Accordingly, we rule that:

1. X's transfer of all of its assets to Y will be a transfer under section 507(b)(2) of the Code, will not be a termination under section 507(a) of the Code of X's private foundation status under section 509(a) of the Code, and will not subject X to termination tax under section 507(c) of the Code.

2. After X transfers all of its assets to Y, X will no longer be required to file annual information returns on Form 990-PF, except for filing such return for its final tax year in which it transfers all of its assets to Y.

3. X's transfer of all of its assets to Y and merger with Y will not subject X or Y to excise taxes under sections 4941 through 4945 of the Code.

4. X's transfer of all of its assets to Y and Y's assumption of all of the liabilities of X will not be acts of self-dealing under section 4941 of the Code.

5. X's transfer of all of its assets to Y will not be a jeopardizing investment or subject X to tax under section 4944 of the Code. X's numismatic collection included in the transfer by X to Y will be an educational asset used by Y for Y's exempt purposes.

6. X's numismatic collection transferred to Y will be an asset that will be excluded by Y in computing Y's minimum investment return and charitable distribution requirements under section 4942 of the Code because the numismatic collection will be an asset excluded under section 4942(e)(1)(A) of the Code as used directly by Y in carrying out Y's exempt purposes.

7. X's transfer of all of its assets to Y will not be a taxable expenditure under section 4945 of the Code, and X will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfer all of its assets to Y.

8. X's merger into Y, Y's receipt of all of X's assets, and Y's assumption of all of X's liabilities will not adversely affect Y's exemption from federal income tax under section 501(c)(3) of the Code or Y's status as a private foundation under section 509(a) of the Code that is not an operating foundation under section 4942(j)(3) of the Code.

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Because this letter could help to resolve any questions about your status, 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

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