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

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Contact Person:

Uniform Issue List: 507.01-00
509.01-01
4940.00-00
4941.04-00
4942.03-05
4945.04-06

Contact Number:

OP:E:EO:T:2

Legend:

X =
Y =
Z =

Dear Sir or Madam:

This is in reply to your rulings request, dated January 11, 1999, concerning X's proposed transfer of all of its assets to Y and Z pursuant to section 507(b)(2) of the Internal Revenue Code.

X, Y, and Z are nonprofit corporations that 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. X will transfer all of its assets to Y and Z. X has no grants outstanding requiring expenditure responsibility under section 4945(h) of the Code.

The following rulings are requested:

1. The transfer of all of X's assets to Y and Z will be a transfer described in section 507(b)(2), and pursuant to section 507(b)(2), Y and Z will not be treated as newly created organizations and will succeed proportionately to X's aggregate tax benefits under section 507(d) and X's tax attributes and characteristics as described in sections 1.507-3(a)(2), (3) and (4) of the Regulations.

2. The transfer of all of X's assets to Y and Z will not result in a termination of X's private foundation status under section 507(a) and will not result in the imposition of the termination tax under section 507(c).

3. X will not be subject to tax under section 507(c) if it informs the Service of its intention to terminate its private foundation status under section 507(a) in a later taxable year when it has no assets.

4. The transfer of all of X's assets to Y and Z will not constitute an act of self-dealing under section 4941 and will not result in the imposition of the tax under section 4941(a).

5. The transfer of all of X's assets to Y and Z will not constitute a payment for which expenditure responsibility is required to be exercised under 4945(d)(4) and (h) and will not result in the imposition of the tax under section 4945(a).

6. The legal, accounting and other necessary expenses for the transfer of assets to Y and Z and for this ruling request, if reasonable in amount, will not be taxable expenditures under section 4945 and will be qualifying distributions under section 4942(g) to the extent that the requirements of section 4942(g)(1)(A) are met.

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 that 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 Commissioner a statement of its intention to terminate its private foundation status and by paying the 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). This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefits that have resulted from the private foundation's section 501(c)(3) exempt status, or (b) 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 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 507(d) of the Code indicates that the aggregate tax benefits of an exempt 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 those 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 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.

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.

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Section 1.507-3(a)(9)(i) of the regulations provides that, if a transferor 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 the transferor in the proportion which the fair market value of the transferor's assets 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 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 return.

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 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 4942(g)(1)(A) of the Code and section 53.4942(a)-3(a)(2)(i) of the regulations provide that a "qualifying distribution" is 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) of the Code, other than any contribution to: (i) an organization controlled directly or indirectly by the transferor foundation or one or more disqualified persons with respect to the foundation, except as provided in section 4942(g)(3), or (ii) any private foundation that is not an operating foundation under section 4942(j)(3), except as provided in section 4942(g)(3) 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 under section 4946 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 any 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 from the grantee private foundation on the grantee's 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 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.

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Analysis

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

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) includes a transfer of assets from one private foundation to one or more other private foundations pursuant to any reorganization, including any significant disposition of 25% or more of the transferor foundation's assets. Because X will be in such a reorganization by its transfer of all of its assets to Y and Z, X's transfer will be a transfer under section 507(b)(2) of the Code.

Under section 1.507-3(a)(1) of the regulations, in a transfer of assets from one private foundation to one or more other private foundations pursuant to a reorganization, each transferee private foundation will not be treated as a newly created organization and X's aggregate tax benefits under section 507(d) of the Code will be transferred to Y and Z in proportion to the assets of X that are transferred to each transferee foundation.

Under section 1.507-3(a)(8) of the regulations, X's transferees will receive the benefits, if any, of the transitional rules and savings provisions of that regulation that were applicable to X.

2.

Under section 1.507-4(b) of the regulations, X's transfer of assets pursuant to section 507(b)(2) of the Code will not cause termination of X's private foundation status under section 509(a) of the Code and, thus, will not result in private foundation termination tax under section 507(c) of the Code.

3.

Section 507(c) of the Code imposes excise tax on a private foundation which voluntarily terminates its status as a private foundation under section 509(a) of the Code pursuant to section 507(a)(1) of the Code. This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefits that have resulted from the foundation's section 501(c)(3) status, or (b) the value of the net assets of the foundation.

The value of X's net assets, after X has transferred all of its assets to Y and Z, will be zero. Thus, at that time, X's voluntary notice to the Service of its termination of its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code will not result in any termination tax under section 507(c) of the Code.

4.

Under section 4941 of the Code, X's transfer of all of its assets to Y and Z will not be an act of self-dealing because it will be for exempt purposes under section 501(c)(3) of the Code to organizations Y and Z which are exempt from federal income tax under that section 501(c)(3) of the Code and which are not disqualified persons, for purposes of section 4941 of the Code, pursuant to section 53.4946-1(a)(8) of the regulations.

5.

Under section 53.4945-6(c)(3) of the regulations, a private foundation can make a transfer of its assets pursuant to section 507(b)(2) of the Code to exempt organizations under section 501(c)(3) of the Code, including private foundations, without the transfer being a taxable expenditure under section 4945 of the Code. Thus, X's transfer to Y and Z will not be a taxable expenditure under section 4945 of the Code and will not subject X to tax under that section.

Section 1.507-3(a)(7) of the regulations provides that, where a private foundation transfers all of its assets to an exempt organization under section 501(c)(3) of the Code pursuant to section 507(b)(2) of the Code, it has no expenditure responsibility requirement under section 4945(h) of the Code. Thus, X 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 Y and Z.

6.

Under section 53.4945-6(b)(2) of the regulations, a private foundation's payment of its reasonable costs for services rendered is not a taxable expenditure under section 4945 of the Code. Thus, X's payment of reasonable legal, accounting, and other expenses for this transfer and rulings request will not be taxable expenditures under section 4945 of the Code. Further, such reasonable legal, accounting, and other expenses for this transfer and rulings request will be qualifying distributions under section 4942(g)(1)(A) of the Code.

Accordingly, we rule that:

1. X's transfer of all of its assets to Y and Z will be a transfer under section 507(b)(2) of the Code, and X's aggregate tax benefits under section 507(d) of the Code and its tax attributes and characteristics under sections 1.507-3(a)(2), (3), and (4) of the regulations will carry over to its transferees Y and Z.

2. X's transfer of all of its assets to Y and Z pursuant to section 507(b)(2) of the Code will not cause termination of X's private foundation status under section 509(a) of the Code and will not result in termination tax under section 507(c) of the Code.

3. If X terminates its private foundation status under section 509(a) of the Code, after it transfers all of its assets, by notifying the Internal Revenue Service under section 507(a)(1) of the Code, X will not be liable for termination tax under section 507(c) of the Code when it has no assets.

4. X's transfer of all of its assets to Y and Z will not be an act of self-dealing under section 4941 of the Code and will not result in tax under that section.

5. X's transfer of all of its assets to Y and Z will not require any expenditure responsibility under section 4945(h) of the Code and will not result in tax under section 4945 of the Code.

6. The reasonable legal, accounting, and other expenses for this transfer and rulings request will not be taxable expenditures under section 4945 of the Code and will be qualifying distributions under section 4942(g)(1)(A) of the Code.

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 organizations that requested it. Section 6110(k)(3) of the Code provides that this ruling letter 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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