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

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Contact Person:

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501.03-02
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4940.00-00
4941.04-00
4942.03-05
4944.00-00
4945.04-06
6033.02-01

Contact Number:

OP:E:EO:T2

Legend:
P =
S =
T =
U =
V =
W =

Dear Sir or Madam:

This is in reply to your rulings request of August 13, 1999, on P's proposed transfers of all of its assets to S, T, U, V, and W pursuant to section 507(b)(2) of the Internal Revenue Code.

P, S, T, U, V, and W 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, which are effectively controlled by the same persons. P will transfer all of its assets to S, T, U, V, and W, in the proportions of one-fourth to each of S and T and one-sixth to each of U, V, and W. After the transfers, P will notify the Service of its intent to terminate its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code. P has no expenditure responsibility grants outstanding under section 4945(h) of the Code.

The following rulings are requested:

1. The proposed transfers of P's assets to S, T, U, V, and W will qualify as transfers described in Internal Revenue Code section 507(b)(2) and will not constitute a termination of P's status as a private foundation under Internal Revenue Code section 507(a).

2. The proposed transfers of P's assets to S, T, U, V, and W will not result in any tax under Internal Revenue Code section 507(c).

3. The transfers by P to S, T, U, V, and W will not be treated as transfers to newly created organizations.

4. P will treat its aggregate tax benefit as having been transferred to S, T, U, V, and W in proportion to the assets transferred to each of S, T, U, V, and W. P will treat the proposed transfers to S, T, U, V, and W as transfers of its assets subject to the proportionate amount of any liability P may have incurred under Chapter 42 of the Internal Revenue Code to the extent not satisfied by P.

5. As a result of the proposed transfers to S, T, U, V, and W, P's excess qualifying distributions carryovers for prior years, as defined under Internal Revenue Code section 4942(i), will be transferred to S, T, U, V, and W in proportion to the assets transferred.

6. The proposed transfers to S, T, U, V, and W will not constitute acts of self-dealing and will not subject P's foundation managers and disqualified persons with respect to P to any tax under Internal Revenue Code sections 4941(a)(1) or 4941(a)(2).

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7. The proposed transfers to S, T, U, V, and W will not give rise to net investment income and, therefore, will not result in the imposition of tax under Internal Revenue Code section 4940.

8. The proposed transfers to S, T, U, V, and W will not constitute jeopardizing investments within the meaning of Internal Revenue Code section 4944(a).

9. The proposed transfers to S, T, U, V, and W will not constitute taxable expenditures and, therefore, will not subject P to tax under Internal Revenue Code section 4945.

10. The proposed transfers to S, T, U, V, and W will not subject P to any tax under Internal Revenue Code section 4942(a) for failure to distribute income.

11. P will not have to exercise expenditure responsibility with respect to the proposed transfers of assets to S, T, U, V, and W as long as P disposes of all of its assets.

12. Except for the information return requirements for the year of the transfers, P will not be required to file any information returns under Internal Revenue Code section 6033 for any taxable years subsequent to that in which the distribution occurs.

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

14. P will not be required to comply with the recordkeeping requirements of Internal Revenue Code section 4942(g)(3)(B) with respect to the proposed transfers after the transfer of all of its assets.

Law

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). This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefits that have resulted from the private foundation's exempt status under section 501(c)(3) 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.

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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 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 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 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 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. Under that regulation, 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 amount, if any, 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

P will transfer all of its assets to S, T, U, V and W. 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 one or more other private foundations pursuant to any reorganization or liquidation, including a significant disposition of 25% or more of the transferor private foundation's assets. Because P will transfer all of its assets, P's transfers will be a significant disposition of its assets under section 1.507-3(c)(1) of the regulations and, thus, will be transfers under section 507(b)(2) of the Code.

Under section 1.507-3(d) of the regulations, P's transfers of its assets under section 507(b)(2) of the Code will not terminate P's private foundation status under section 509(a) of the Code.

2.

Under section 1.507-4(b) of the regulations, P's transfers of its assets under section 507(b)(2) of the Code will not result in foundation termination tax under section 507(c) of the Code.

3.

Under section 507(b)(2) of the code and section 1.507-3(a)(1) of the regulations, P's transfers of its assets pursuant to section 507(b)(2) of the Code will not be considered transfers to newly created organizations.

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4.

Under section 1.507-3(a)(2)(i) of the regulations, upon P's transfer of all of its assets pursuant to section 507(b)(2) of the Code, P's transferees S, T, U, V and W will succeed to P's aggregate tax benefits under section 507(d) of the Code in proportion to the assets transferred to each.

Under section 1.507-3(a)(4) of the regulations, upon P's transfer of all of its assets, P's transferees S, T, U, V and W will be responsible for any liabilities under Chapter 42 of the Code of transferor P to the extent that P does not satisfy such liabilities.

5.

As in Revenue Ruling 78-387, cited above, after P transfers all of its assets, P's excess qualifying distribution carryover, if any, under section 4942(i) of the Code, will carry over to P's transferees S, T, U, V and W, in proportion to the assets transferred to each, and may be used by each transferee to meet its own distribution requirements under section 4942 of the Code.

6.

Under section 4941 of the Code, P's transfers of its assets will not be acts of self-dealing because P's transfers will be for exempt purposes under section 501(c)(3) of the Code to organizations S, T, U, V, and W, which are exempt from federal income tax under section 501(c)(3) of the Code and which are not disqualified persons 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.

7.

Under section 4940 of the Code, P's transfers of its assets to S, T, U, V, and W will not result in any income or tax under section 4940 of the Code.

8.

P's transfers of its assets to S, T, U, V, and W will be for exempt purposes under section 501(c)(3) of the Code and will not be jeopardizing investments or result in tax under section 4944 of the Code.

9.

Under section 53.4945-6(c)(3) of the regulations, private foundation P can make transfers 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 transfers being taxable expenditures under section 4945 of the Code. Thus, P's transfers of its assets to S, T, U, V, and W will not be taxable expenditures under section 4945 of the Code and will not subject P to tax under that section.

10.

Under section 1.507-3(a)(9)(i) of the regulations, P's transferees S, T, U, V, and W will be treated as their transferor P so that P's undistributed income, if any, under section 4942 of the Code, if not already distributed by P, can be taken into account by P's transferees S, T, U, V, and W as part of their distribution requirements under section 4942 of the Code. Thus, because P's distribution requirements under section 4942 of the Code will be met by P or by P's transferees on behalf of P, P will not be subject to tax under section 4942 of the Code for failure to distribute income for exempt purposes.

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11.

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 on such transfers. Thus, P 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 S, T, U, V, and W.

12.

Under section 1.507-1(b)(9) of the regulations, P will no longer be required to file its annual return, Form 990-PF, under section 6033 of the Code for any tax years subsequent to its tax year in which it transfers all of its assets.

13.

P's filing of its voluntary notice of intent to terminate 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 because, under section 507(e) of the Code, the value of P's assets after it has transferred all of its assets will be zero.

14.

Under section 1.507-3(a)(5) of the regulations, P's recordkeeping requirement under section 4942(g)(3)(B) of the Code, if any, will not apply after P has transferred all of its assets.

Accordingly, we rule that:

1. P's transfers of all of its assets to S, T, U, V, and W will qualify as transfers under section 507(b)(2) of the Code, and will not constitute a termination of P's status as a private foundation under section 509(a) of the Code pursuant to section 507(a) of the Code.

2. P's transfers of assets to S, T, U, V, and W will not result in tax under section 507(c) of the Code.

3. P's transfers of assets to S, T, U, V, and W will not be treated as transfers to newly created organizations.

4. P will treat its aggregate tax benefits as having been transferred to S, T, U, V, and W, in proportion to its assets transferred to each of S, T, U, V, and W. P will treat the transfers to S, T, U, V, and W as transfers of its assets subject to the proportionate amount of any liability P may have incurred under Chapter 42 of the Internal Revenue Code to the extent not satisfied by P.

5. As a result of its transfers to S, T, U, V, and W, P's excess qualifying distributions carryover under section 4942(i) of the Code will be transferred to S, T, U, V, and W in proportion to the assets transferred to each.

6. P's transfers of its assets to S, T, U, V, and W will not constitute acts of self-dealing and will not subject P's foundation managers or disqualified persons to tax under sections 4941(a)(1) or 4941(a)(2) of the Code.

7. P's transfers of its assets to S, T, U, V, and W will not result in investment income or tax under section 4940 of the Code.

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8. P's transfers of its assets to S, T, U, V, and W will not constitute jeopardizing investments under section 4944 of the Code.

9. P's transfers of its assets to S, T, U, V, and W will not constitute taxable expenditures or subject P to tax under section 4945 of the Code.

10. P's transfers of its assets to S, T, U, V, and W will not subject P to tax under section 4942 of the Code.

11. P will not have to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfers of its assets because P will transfer all of its assets to S, T, U, V, and W.

12. Except for the information return requirements for its year of the transfers, P will not be required to file information returns under section 6033 of the Code for tax years subsequent to that in which its distribution of all of its assets occurs.

13. P will not be subject to tax under section 507(c) of the Code if P informs the Internal Revenue Service of its intention to terminate its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code in a later tax year when P has no assets.

14. P will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code with respect to its transfers after it transfers all of its assets.

Because this 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 this ruling letter may not be used or cited as precedent.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Manager, Exempt Organizations
Technical Group 2