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

200046041

Date: AUG 23 2000

Contact Person:

Contact Number:

E.O.R.2

Uniform Issue List:
507.00-00
501.03-02
509.01-01
4940.00-00
4941.04-00
4942.03-05
4942.03-06
4943.00-00
4944.00-00
4945.04-06

Legend:
P =
S =
T =
U =

Dear Sir or Madam:

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

P, S, T, and U 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. P will transfer all of its assets to S, T, and U. Later, P intends to notify the Internal Revenue Service pursuant to section 507(a)(1) of the Code of its voluntary termination of its private foundation status under section 509(a) of the Code. P has no expenditure responsibility grants outstanding under section 4945(h) of the Code.

The following rulings are requested:

1. P's transfer of all of its assets to S, T, and U will be pursuant to section 507(b)(2) of the Code.

2. P's transfer will not terminate P's status as a private foundation and will not cause the imposition of the termination tax under section 507(c) of the Code.

3. P's transfer will not constitute any willful and flagrant act, or failure to act, which would result in tax under Chapter 42 of the Code.

4. P's transfer will not constitute investment income or any taxable sale or disposition of property and, thus, the transfers will not subject P to tax under section 4940 of the Code.

5. P's transfer will not constitute acts of self-dealing under section 4941 of the Code.

6. P's transfer will not constitute excess business holdings and does not involve any excess business holdings under section 4943 and, thus, will not result in tax under that section.

7. P's transfer will not constitute jeopardizing investments or result in tax under section 4944 of the Code.

8. P's transfer will not constitute a taxable expenditure under section 4945 of the Code.

9. S, T, and U will each be treated as P rather than the recipient of an expenditure responsibility grant and there will be no expenditure responsibility requirements that must be met under sections 4945(d)(4) and 4945(h) of the Code relative to the transfer.

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10. Any expenditure responsibility requirements imposed on P under section 4945 with respect to grants made to organizations, other than S, T, and U, if any, which will be assumed by S, T, and U after the transfer, will not subject P to the imposition of any tax under section 4945 of the Code.

11. S, T, and U will succeed to the P's aggregate tax benefits in proportion to the relative fair market values of the assets transferred to them.

12. S, T, and U will be treated as if they were P for purposes of sections 4940 through 4948 of the Code and sections 507 through 509 of the Code.

13. The recordkeeping requirements of section 4942(g)(3)(B) of the Code and section 6033 of the Code will not apply to P for any period in which P has no assets.

14. The provisions of section 4942 of the Code will apply to S, T, and U in the taxable year of the transfer and any subsequent year as if each were P.

15. All of the legal, accounting and other expenses of P, S, T, and U related to this rulings request and the associated transfers, if reasonable in amount, will be qualifying distributions for purposes of section 4942 of the Code, and will not be taxable expenditures for purposes of section 4945 of the Code.

16. This ruling request does not constitute a notice of intent to terminate P's status as a private foundation under section 507(a)(1) of the Code.

17. If P notifies the Internal Revenue Service of its intent to terminate its private foundation status pursuant to section 507(a)(1) at least one day after the transfer of all of its assets, the amount of the termination tax under section 507(c) will be zero. Neither the preparation and/or filing of any final accounting or other documents required by state law in winding up, dissolution and termination will result in imposition of the tax under section 507(c) of the Code.

18. S, T, and U will be entitled to the benefit of any savings provisions or transitional rules that were applicable to P with respect to its transferred assets, as provided in section 1.507-3(a)(8) of the regulations.

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)(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.

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).

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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

P will transfer all of its assets to S, T, and U. 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) 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's assets. Because P will be in such a reorganization by its transfer of all of its assets to S, T, and U, P'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, P's transfer of its assets pursuant to section 507(b)(2) of the Code will not terminate P's private foundation status under section 509(a) of the Code and, thus, will not result in termination tax under section 507(c) of the Code.

3.

P's transfer of its assets to S, T, and U for exempt purposes under section 501(c)(3) of the Code will not be any willful and flagrant act, or failure to act, which would result in tax under Chapter 42 of the Code.

4.

P's transfer of its assets to S, T, and U will not constitute investment income or any taxable sale or disposition of property and, thus, the transfers will not subject P to tax under section 4940 of the Code.

5.

Under section 4941 of the Code, P's transfer of assets will not be an act of self-dealing because it will be made for exempt purposes to S, T, and U, which are organizations 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.

6.

Under section 4943 of the Code, under your representation, P's transfer of its assets to S, T, and U will not result in any excess business holdings or tax under that section.

7.

Under section 4944 of the Code, P's transfer of its assets to S, T, and U will not constitute jeopardizing investments or result in tax under that section.

8.

Under section 53.4945-6(c)(3) of the regulations, a private foundation can transfer 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. Thus, P's transfer of assets will not be a taxable expenditure under section 4945 of the Code.

9. and 10.

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 foundation will have no expenditure responsibility requirement under section 4945(h) of the Code. 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, and U.

As in section 1.507-3(a)(9)(iii), Example 2, at least one of P's transferees must assume P's existing expenditure responsibility requirements under section 4945(h) of the Code with respect to P's expenditure responsibility grants, if any, that were made by P and are outstanding to other grantee private foundations when P transfers of all of its assets to S, T, and U.

11.

Under section 1.507-3(a)(1) of the regulations, in a transfer of assets under section 507(b)(2) of the Code by one private foundation to one or more other private foundations, each transferee private foundation will not be treated as a newly created organization, but will succeed to its proportionate share of its transferor's aggregate tax benefits under section 507(d) of the Code. Thus, P's aggregate tax benefits under section 507(d) of the Code will be transferred to S, T, U in proportion to the fair market value of the assets transferred by P to each.

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12.

As provided by section 1.507-3(a)(9)(i) of the regulations, P's transferees S, T, and U will be treated as if they were P for purposes of sections 4940 through 4948 of the Code and sections 507 through 509 of the Code.

13.

Under section 1.507-3(a)(5) of the regulations, any recordkeeping requirements under section 4942(g)(3)(B) of the Code will not apply to P for any period when P has no assets.

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. Such return of P for its final tax year of its transfer of all of its assets will be due by the fifteenth day of the fifth month after the close of its final tax year of such transfer.

14.

Under section 1.507-3(a)(5) of the regulations, P's qualifying distribution requirements under section 4942 of the Code for its tax year of its transfer of all of its assets must be met by P or by P's transferees S, T, and U.

Under section 1.507-3(a)(9)(i) of the regulations, P's transferees S, T, and U will be treated as transferor P, so that P's undistributed income under section 4942(c) of the Code, if not already distributed by P, must be taken into account by S, T, and/or U as the successors to transferor P's requirements under section 4942 of the Code.

As in Revenue Ruling 78-387, cited above, after P transfers all of its assets to S, T, and U, P's excess qualifying distributions carryover under section 4942(i) of the Code, if any, may be used by S, T, and U to reduce their distributable amounts under section 4942 of the Code.

15.

Under section 4942(g)(1)(A) of the Code, a qualifying distribution for exempt purposes includes the reasonable and necessary administrative expenses of such grant(s) for exempt purposes. Thus, the legal, accounting, and other expenses for this rulings request and the transfers, if reasonable in amount, paid by P, S, T, and/or U will be qualifying distributions under section 4942(g)(1)(A) of the Code.

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, the legal, accounting, and other expenses, if reasonable in amount, for this rulings request and the transfer, will not be taxable expenditures under section 4945 of the Code.

16.

Under section 507(a)(1) of the Code, when P notifies the Internal Revenue Service, at least one day after P transfers all of its assets to S, T, and U, of its intent to voluntarily terminate its private foundation status pursuant to section 507(a)(1) of the Code, P will terminate its private foundation status pursuant to that section 507(a)(1) of the Code. Under section 507(c)(2) of the Code, the value of P's assets after P has transferred all of its assets to S, T, and U will be zero. Thus, P's voluntary notice of termination of its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code will result in zero tax under section 507(c) of the Code.

17.

Under section 1.507-3(a)(8) of the regulations, P's transferees S, T, and U will receive the benefits, if any, of the transitional rules and savings provisions of that regulation that were applicable to P.

Accordingly, we rule that:

1. P's transfer of all of its assets to S, T, and U will be pursuant to section 507(b)(2) of the Code.

2. P's transfer will not terminate P's status as a private foundation and will not cause the imposition of the termination tax under section 507(c) of the Code.

3. P's transfer will not constitute any willful and flagrant act or failure to act which would result in tax under Chapter 42 of the Code.

4. P's transfer will not constitute investment income or any taxable sale or disposition of property and will not subject P to tax under section 4940 of the Code.

5. P's transfer will not constitute acts of self-dealing under section 4941 of the Code.

6. P's transfer will not involve or result in excess business holdings or tax under section 4943 of the Code.

7. P's transfer will not constitute jeopardizing investments or result in tax under section 4944 of the Code.

8. P's transfer will not constitute a taxable expenditure under section 4945 of the Code.

9. There will be no expenditure responsibility requirements that must be met under sections 4945(d)(4) and 4945(h) of the Code relative to P's transfer of all of its assets to S, T, and U.

10. Any expenditure responsibility grant requirements imposed on P under section 4945 with respect to grants made to organizations, other than S, T, and U, if any, which will be assumed by S, T, and U after the transfer, will not subject P to the imposition of any tax under section 4945 of the Code.

11. S, T, and U will succeed to P's aggregate tax benefits in proportion to the relative fair market values of P's assets transferred to each.

12. S, T, and U will be treated as if they were P for purposes of sections 4940 through 4948 of the Code and sections 507 through 509 of the Code.

13. The recordkeeping requirements of section 4942(g)(3)(B) of the Code and the requirements of section 6033 of the Code will not apply to P for any tax year after the tax year in which P transfers all of its assets when P has no assets.

14. The provisions of section 4942 of the Code will apply to S, T, and U in the tax year of the transfer and any subsequent year as if each were P.

15. The legal, accounting, and other expenses of P, S, T, and U, related to this rulings request and the transfers, if reasonable in amount, will be qualifying distributions for purposes of section 4942(g)(1)(A) of the Code, and will not be taxable expenditures for purposes of section 4945 of the Code.

16. If P notifies the Internal Revenue 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, at least one day after P's transfer of all of its assets, the amount of the termination tax under section 507(c) of the Code will be zero. The preparation and/or filing of any final accounting or other documents required by state law in winding up, dissolution, and termination will not result in tax under section 507(c) of the Code.

17. S, T, and U will be entitled to the benefit of any savings provisions or transitional rules that were applicable to P with respect to its transferred assets, as provided in section 1.507-3(a)(8) of the regulations.

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This ruling request is not a notice of intent under section 507(a)(1) of the Code to voluntarily terminate P's status as a private foundation under section 509(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,

Joseph Chasin

Joseph Chasin
Acting Manager, Exempt Organizations
Technical Group 2

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