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

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Contact Number:

T:EO:B2

Legend:
C =
T =

Dear Sir or Madam:

This is in reply to your rulings request of September 11, 2000, on C's proposed transfer of all of its assets to T pursuant to section 507(b)(2) of the Internal Revenue Code.

C, a nonprofit charitable corporation, and T, a charitable trust, 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. C will transfer all of its assets to T. C and T are controlled by the same individuals and are created under the laws of the same state. After C transfers all of its assets to T, C intends to notify the Internal Revenue Service of its voluntary termination of its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code. C has no grants outstanding requiring expenditure responsibility under section 4945(h) of the Code.

The following rulings are requested:

1. C's transfer to T will be pursuant to section 507(b)(2) of the Code, will not result in termination of C's private foundation status under section 509(a) of the Code pursuant to section 507(a) of the Code, and will not result in termination tax under section 507(c) of the Code .

2. If, after C's transfer of all of its assets to T, C 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, then such notice will be terminate C's private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code.

3. If, after C's transfer of all of its assets to T, C 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, and if the value of C's net assets when C gives the notice and terminates its private foundation status is zero, then C will not incur any termination tax under section 507(c) of the Code.

4. C's transfer to T will not adversely affect the tax-exempt status of C or T.

5. T will succeed to the aggregate tax benefits of C.

6. For purposes of the private foundation excise tax provisions of Chapter 42 of the Code and sections 507 through 509 of the Code, T will be treated as C, so that: (a) for purposes of section 4940 of the Code, C's net investment income for its tax year of its transfer to T can be included in T's net investment income for T's tax year of the transfer; and (b) T will be responsible for satisfying C's distribution requirements under section 4942 of the Code to the extent that C's distribution requirement is not satisfied by C.

225

7. C's transfer to T will not give rise to net investment income or tax under section 4940 of the Code.

8. C's transfer to T will not constitute an act of self-dealing under section 4941 of the Code .

9. T will succeed to C's excess qualifying distributions carryover for purposes of section 4942 of the Code .

10. C's transfer to T will not result in T's owning any excess business holdings under section 4943 of the Code .

11. C's transfer to T will not be a jeopardizing investment under section 4944 of the Code and will not result in T's owning any jeopardizing investments under section 4944 of the Code .

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

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.

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.

226

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)(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).

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. 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

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 another private foundation pursuant to any reorganization or liquidation, including a significant disposition of 25% or more of the transferor private foundation's assets. Because C will make such a disposition by transfer of all of its assets to T, C's transfer of assets to T will be a transfer under section 507(b)(2) of the Code.

Under section 1.507-4(b) of the regulations, C's transfer of its assets pursuant to section 507(b)(2) of the Code will not cause termination of C'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.

2.

Under section 507(a)(1) of the Code, when C notifies the Internal Revenue Service, after C transfers all of its net assets to T, of its intent to voluntarily terminate its private foundation status pursuant to section 507(a)(1), C will thus terminate its private foundation status pursuant to that section 507(a)(1) of the Code.

3.

Section 507(c) of the Code imposes excise tax on a private foundation which voluntarily terminates its private foundation status pursuant to section 507(a)(1) of the Code. This tax under section 507(c) of the Code is equal to the lower of: (a) the aggregate tax benefits that have resulted from the foundation's exemption from federal income tax under section 501(c)(3) of the Code, or (b) the value of the net assets of the foundation. After C transfers all of its assets, the value of C's assets will be zero when C notifies the Service of its voluntary termination of its private foundation status pursuant to section 507(a)(1) of the Code and, thus, such termination of C's private foundation status under section 509(a) of the Code will result in zero termination tax under section 507(c) of the Code.

278

4.

C's assets transferred to T will remain dedicated to exempt purposes under section 501(c)(3) of the Code and, thus, C's transfer of assets to T will not adversely affect the exemptions from federal income tax under section 501(c)(3) of the Code of T or C.

5.

Under section 1.507-3(a)(2)(i) of the regulations, upon C's transfer of all of its assets to T, T will succeed to C's aggregate tax benefits under section 507(d) of the Code.

6.

Section 1.507-3(a)(9)(i) of the regulations indicates that, where a transferor private foundation transfers assets to another private foundation, which is controlled, directly or indirectly, by the same persons 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 and sections 507 through 509 of the Code. Thus, under section 4940 of the Code, C's net investment income for its tax year of its transfer of its assets to T can be included in T's net investment income in the tax year of the transfer. Also, T must satisfy C's distribution requirements under section 4942 of the Code to the extent that C's distribution requirements are not satisfied by C.

7.

T's transfer of its assets will be for exempt purposes under section 501(c)(3) of the Code to C which is exempt from federal income tax under section 501(c)(3) of the Code and will not be investment income or a disposition of property subjecting T or C to tax on investment income under section 4940 of the Code.

8.

Under section 53.4946-1(a)(8) of the regulations, T is not a disqualified person under section 4946 of the Code for purposes of section 4941 of the Code because T is exempt from federal income tax under section 501(c)(3) of the Code. Because C's transfer of assets to T will not be a transfer to a disqualified person under section 4946 of the Code, C's transfer will not be an act of self-dealing under section 4941 of the Code.

9.

As in Revenue Ruling 78-387, described above, after C's transfer of all of its assets to T, C's excess qualifying distributions, if any, under section 4942 of the Code may be used by C or its transferee T to reduce the distributable amount of C and/or T under section 4942 of the Code by the amount, if any, of C's excess qualifying distributions carryover under section 4942(i) of the Code.

10.

Because, as you represent, C's transfer of assets will not involve excess business holdings of a private foundation with respect to C or T, C's transfer will not result in excess business holdings or tax under section 4943 of the Code

11.

Because C's transfer of assets will be made for exempt purposes under section 501(c)(3) of the Code to T, which is exempt from federal income tax under section 501(c)(3) of the Code, C's transfer will not be a jeopardizing investment or result in tax under section 4944 of the Code.

12.

Section 53.4945-6(c)(3) of the regulations indicates that 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, including private foundations, without the transfers being taxable expenditures under section 4945 of the Code. Thus, C's transfer of assets to the exempt transferee T for exempt purposes under section 501(c)(3) of the Code will not be a taxable expenditure under section 4945 of the Code.

Section 1.507-3(a)(7) of the regulations provides that, where a private foundation transfers all of its assets to another private foundations pursuant to section 507(b)(2) of the Code, such transferor foundation does not incur any expenditure responsibility requirement under section 4945(h) of the Code with respect to its transfer of all of its assets pursuant to section 507(b)(2) of the Code. Thus, when C transfers all of its assets to T pursuant to section 507(b)(2) of the Code, C will not be required to exercise any expenditure responsibility under section 4945(h) of the Code with respect to its transfer of all of its assets to T pursuant to section 507(b)(2) of the Code.

Accordingly, we rule that::

1. C's transfer to T will be pursuant to section 507(b)(2) of the Code, will not result in termination of C's private foundation status under section 509(a) of the Code pursuant to section 507(a) of the Code, and will not result in termination tax under section 507(c) of the Code .

2. If, after C's transfer of all of its assets to T, C 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, then such notice will be terminate C's private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code.

3. If, after C's transfer of all of its assets to T, C 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, and if the value of C's net assets when C gives the notice and terminates its private foundation status is zero, then C will not be incur any termination tax under section 507(c) of the Code.

4. C's transfer to T will not adversely affect the tax-exempt status of C or T.

5. C's aggregate tax benefits will carry over to T.

6. For purposes of the private foundation excise tax provisions of Chapter 42 of the Code and sections 507 through 509 of the Code, T will be treated as C, so that: (a) for purposes of section 4940 of the Code, C's net investment income for its tax year of its transfer to T can be included in T's net investment income for T's tax year of the transfer, and (b) T will be responsible for satisfying C's distribution requirements under section 4942 of the Code to the extent that C's distribution requirement is not satisfied by C.

7. C's transfer to T will not result in tax under section 4940 of the Code.

8. C's transfer to T will not be an act of self-dealing under section 4941 of the Code .

9. C's excess qualifying distributions carryover under section 4942 of the Code will carry over to T.

10. C's transfer to T will not result in excess business holdings or tax under section 4943 of the Code .

11. C's transfer to T will not be a jeopardizing investment under section 4944 of the Code or result in T's owning any jeopardizing investments under that section.

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

Because this ruling letter could help to resolve any questions, please keep it in your permanent records and include a copy in your next annual return.

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,

/S/

Robert Fontenrose
Acting Manager, Exempt Organizations
Technical Group 2