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

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4942.00-00;4944.00-00;4945.00-00
Date:

MAR 14 2001

Contact Person:

ID Number:

Telephone Number:

T:EO:B3

Employer Identification Number:
EO Area Manager Office:

T =
X =
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Dear Sir:

This letter is in response to your letter dated July 17, 2000, and subsequent correspondence requesting rulings under sections 501(c)(3), 509(a)(2), 507, 4941, 4942, 4944, and 4945 of the Internal Revenue Code.

T is a nonprofit corporation which received exemption under section 501(c)(3), and is classified as a public charity under section 509(a)(1) of the Code. T was also recognized as a community foundation within the meaning of section 1.170A-9(e)(10) of the Income Tax Regulations.

One of the purposes of T was to solicit and administer gifts from Christians in the r area to donor advised funds within the meaning of section 1.170A-9(e)(10) and (11) of the regulations. These funds benefit civic and Christian charities in the r area. The donor advised funds are operated in a manner similar to most community foundations. T solicits funds from the public on a regular basis. The fund raising effort is primarily by personal contact and word of mouth.

X is a nonprofit corporation. X is exempt from tax under section 501(c)(3) and is classified as a private foundation within the meaning of section 509(a) of the Code. X has made grants primarily to Christian organizations. Scholarship programs have been maintained by both X and T for students at Christian theological seminaries.

T and X have had a relationship with each other since the formation of T. X is a substantial contributor to T. They share the same offices. They share operating expenses under a written document. Each entity has a separate Board of Directors. The two Boards

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meet together on a monthly basis and have a joint annual retreat. The Executive Director of T, who is also the executive director of X, meets with the two Boards. As was disclosed in T's application for exemption, the ultimate use of a single organization to serve the purposes of T and X was contemplated before the formation of T.

Accordingly, the directors have decided that the purposes of the two organizations can be satisfied by a single organization. The merger will achieve a substantial saving in expenses. Under Articles of Merger to be adopted by the two parties, the assets of X will be merged with and into T and T will be the surviving entity. The merger will be accomplished pursuant to state law. X will terminate upon the completion of the merger. The assets transferred from X to T will not be subject to any restriction or the advice of any party other than the Board of Directors of T. It is represented that with respect to X's status as a private foundation, there have been no willful repeated acts (or failure to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under Chapter 42 during the years 1972-2000.

The following rulings have been requested:

1. The merger of T and X will not adversely affect the status of T as an exempt charitable organization under section 501(c)(3).

2. X will not be subject to termination taxes under section 507 when its existence terminates by merger into T.

3. The transfer of assets from X to T in the merger will not result in tax to X under sections 4940, 4941, 4942, 4944, or 4945 of the Code.

LAW AND ANALYSIS:

Section 501(c)(3) of the Code provides for the exemption from federal income tax of an organization formed and operated for exclusively charitable, educational, or other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 509(a)(1) of the Code defines a private foundation as an organization other than an organization described in section 170(b)(1)(A) including section 170(b)(1)(A)(vi).

Section 507(a) of the Code provides that, except as provided in subsection (b), the status of any organization as a private foundation will be terminated only if, in essence, (1) such organization notifies the Secretary, or (2) the Secretary notifies the such organization of termination by reason of willful repeated acts, or a willful and flagrant act, giving rise to liability under chapter 42, and (in either of such case, (1) or (2)) such organization either pays the tax imposed under section 507(c) or such tax is abated under section 507(g).

If there is a section 507(a) termination of private foundation status, section 507(c) imposes a termination tax equal to the lower of the aggregate tax benefit received by the terminating foundation or the net asset value of the terminating foundation.

Section 507(b)(1)(A) permits the termination of private foundation status with respect to a private foundation which distributes all of its net assets to a public charity which has been in existence for at least 60 calendar months if such private foundation has not previously engaged in willful repeated acts or a willful and flagrant act giving rise to a tax liability under chapter 42.

Section 4940 of the Code imposes a tax on the net investment income of a private foundation.

Section 4941(a) of the Code imposes a tax on acts of self-dealing between a disqualified person and a private foundation.

Section 4941(d) of the Code imposes an excise tax on private foundations for self-dealing which includes, but is not limited to the transfer of assets between a foundation and a disqualified person.

Section 4942 of the Code imposes a tax on the "undistributed income" of a private foundation for any taxable year.

Section 4944(a) of the Code imposes a tax on a private foundation if it invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes.

Section 4945 of the Code imposes tax on taxable expenditures, including grants to organizations not qualified under section 509(a) of the Code, unless expenditure responsibility is exercised.

Section 53.4946-1(a)(8) of the regulations provides that for purposes of section 4941 only, the term "disqualified person" shall not include any organization which is described in section 501(c)(3).

Section 1.507-2(a)(4) of the regulations provides generally that an organization terminating its private foundation status pursuant to section 507(b)(1)(A) will remain subject to the provisions of chapter 42 until the distribution of all of its net assets to distributee organizations described in section 507(b)(1)(A) has been completed.

Since T will be the surviving corporation and X will be the terminating private foundation, the merger of X with and into T pursuant to state law will not adversely affect the status of T as an organization exempt under section 501(c)(3) of the Code.

It has been represented that during X's existence there have been no willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under Chapter 42 of the Code. Based on section 507(a) and (c), the merger of X with and into T will result in the termination of X without any tax liability associated with such termination.

Finally based on the facts presented, the termination of X will not expose X to any tax liability under chapter 42 except to the extent provided in section 1.507-2(a)(4) of the Regulations where X remains subject to the imposition of taxes under section 4942 until the distribution of all of its net assets to T.

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Accordingly, we rule as follows:

1. The merger of T and X will not adversely affect the status of T as an exempt charitable organization under section 501(c)(3) of the Code. T will continue to be an exempt charitable organization under section 501(c)(3).

2. X will not be subject to termination taxes under section 507 when its existence terminates by merger into T.

3. The transfer of assets from X to T will not result in tax to X under section 4940, section 4941, section 4942, section 4944, or section 4945, after the completion of the transfer of all of X's assets.

We express no opinion as to the effect of the existence or operation of donor advised funds on T's continued tax exemption under section 501(c)(3) of the Code.

We are sending a copy of this ruling letter to your authorized representative listed on the power of attorney on file with this office.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

/S/

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

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