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

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Identification Number:

Telephone Number:

T:EO:B2

Employer Identification Number:

LEGEND:
P=
R=
S=
T=
U=
V=

Dear Sir or Madam:

We have considered your ruling request dated June 14, 2000, on P's proposed transfer of all of its assets to R, S, T, U, and V pursuant to section 507(b)(2) of the Internal Revenue Code.

P, R, 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. V is exempt from federal income tax under section 501(c)(3) of the Code but is not a private foundation because V is described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. P will transfer all of its assets to R, S, T, U, and V. P will have no expenditure responsibility grants outstanding under section 4945(h) of the Code. P is not imposing on V any material restriction or condition under section 1.507-2(a)(8)(i) of the regulations that prevents V from freely and effectively employing the transferred assets, or the income therefrom, in furtherance of V's exempt purposes. After its transfer of all of its assets, P will 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.

The following rulings are requested:

1. P's transaction and transfer of all of its assets to R, S, T, U, and V will be a significant disposition of assets to one or more private foundations under sections 1.507-3(a)(1) and 1.507-3(c) of the Income Tax Regulations.

2. P's transaction will not result in termination of P's private foundation status under

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section 507(a) of the Code, but will be a reorganization between the private foundations and the organization described in section 170(b)(1)(A)(vi) of the Code.

3. Under sections 1.507-1(b)(6) and 1.507-1(b)(7) of the regulations, P's transaction will not constitute either a notification of P's intent to terminate its status as a private foundation under section 507(a)(1) of the Code, or "willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act)" under section 507(a)(2) of the Code by P and, therefore, P will not be liable for the tax imposed by section 507(c) of the Code in the transaction.

4. P is not imposing any material restriction or condition under section 1.507-2(a)(8)(i) of the regulations that prevents V from freely and effectively employing the transferred assets, or the income therefrom, in furtherance of V's exempt purposes.

5. Under section 507(b)(2) of the Code and section 1.507-3(a)(1) of the regulations, R, S, T, and U will not be treated as newly created organizations.

6. Under section 1.507-3(a), R, S, T, and U will each be treated as succeeding to P's aggregate tax benefit and tax attributes under Chapter 42 in proportion to the respective percentage of P's assets transferred to each.

7. The percentage of P's aggregate tax benefit attributable to its transfer to V will be retained by P under section 1.507-3(a)(2)(iii), Examples 2 and 3, of the regulations.

8. Upon its notification to the Service of its intent to terminate its private foundation status, P will be subject to the Code section 507(c) tax, but the amount of tax will be zero.

9. P's transfer of its assets to R, S, T, U, and V will not give rise to net investment income under section 4940 of the Code, will not constitute a sale or other disposition under section 4940(c)(4)(A), and, thus, will not give rise to tax under section 4940 of the Code.

10. The transaction will not be an act of self-dealing under section 4941 of the Code.

11. The transaction will not subject P to tax liability for a failure to distribute income under section 4942 of the Code.

12. R, S, T, and U will succeed to P's excess qualifying distributions under section 53.4942(a)-(3)(e) of the Foundation and Similar Excise Taxes Regulations.

13. Under section 1.507-3(a)(5) of the regulations, the record keeping requirements of section 4942(g)(3)(B) of the Code will not apply to P during any period in which P has no assets.

14. Neither P, R, S, T, U, nor V will be subject to the tax on excess business holdings under section 4943 of the Code by virtue of the transaction.

15. The transaction will not be a jeopardizing investment under section 4944 of the Code.

16. The transaction will not be a taxable expenditure under section 4945 of the Code.

17. Under section 1.507-3(a)(9) of the regulations, P will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to the assets transferred in the transaction during any period in which P has no assets.

18. The legal, accounting, and other expenses incurred by P, R, S, T, U, and V in connection with this rulings request and in carrying out this transaction, will not be taxable expenditures under section 4945 of the Code and will be qualifying distributions under section 4942 of the Code.

19. The transaction will not affect the status of P, R, S, T, U, and V, as organizations exempt from federal income tax under section 501(c)(3) of the Code.

20. Under section 1.507-1(b)(9) of the regulations, P will not be required to file the annual information return required by section 6033 of the Code for any tax year following the tax year in which the transaction occurs if, during the subsequent tax years, P has no legal or equitable title to any assets and engages in no activity.

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 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 imposes an 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 record keeping 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)(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 a 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 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 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 provides 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 organizations that are exempt 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.

Section 1.507-2(a)(8)(i) of the regulations describes various types of conditions and restrictions that a donor might place on a grant donation to a charity that would cause the grant not to be considered subject to the required control by the community foundation.

Analysis

Your requested rulings are discussed below:

1 and 2.

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, P's transfer of all of its assets will be a transfer under section 507(b)(2) of the Code.

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.

3.

P's transfer of its assets to R, S, T, U, and V 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.

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 result in tax under section 507(c) of the Code.

4.

With respect to P's transfer of assets to charity V, P is not imposing any material restriction or condition that prevents V from freely and effectively employing the transferred assets, or the income therefrom, in furtherance of V's exempt purposes under section 1.507-2(a)(8)(i) of the regulations.

5, 6, and 7.

Under section 507(b)(2) of the Code and 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, R, S, T, and U will not be treated as newly created organizations, and P's aggregate tax benefits under section 507(d) of the Code will be transferred to R, S, T, and U in proportion to the fair market value of the assets transferred by P to each. P's aggregate tax benefit with respect to its transfer to V will be retained in P.

8.

Under section 507(a)(1) of the Code, when P notifies the Internal Revenue Service, after P transfers all of its assets, 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 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 will be zero, and, 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.

9.

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

10.

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 R, S, T, U, and V, which are organizations exempt from federal income tax under section 501(c)(3) of the Code and, thus, 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.

11. and 12.

P's transfer of assets will not subject P to any tax liability for a failure to distribute income under section 4942 of the Code.

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

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.

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

13.

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

14.

Based on the understanding that no excess business holdings will be involved, neither P, R, S, T, U, nor V will be subject to tax on excess business holdings under section 4943 of the Code.

15.

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

16.

Under section 53.4945-6(c)(3) of the regulations, a private foundation can transfer its 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.

17.

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.

18.

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

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 paid by P, R, S, T, U or V, if reasonable in amount, will be qualifying distributions under section 4942(g)(1)(A) of the Code.

19.

P's transfer of all of its assets to R, S, T, U, and V will be for exempt purposes under section 501(c)(3) of the Code and, thus, P's transfer will not adversely affect the exemptions from federal income tax under section 501(c)(3) of the Code of P, R, S, T, U, and V.

20.

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.

Accordingly, we rule that:

1. P's transaction and transfer of all of its assets to R, S, T, U, and V will involve a significant disposition of assets to the private foundations under sections 1.507-3(a)(1) and 1.507-3(c) of the Income Tax Regulations.

2. P's transaction will not result in a termination of P's private foundation status pursuant to section 507(a) of the Code, but will be a reorganization between the private foundations pursuant to section 507(b)(2) of the Code and the organization V described in section 170(b)(1)(A)(vi) of the Code.

3. Under sections 1.507-1(b)(6) and 1.507-1(b)(7) of the regulations, P's transaction will not be either a notification of P's intent to terminate its status as a private foundation pursuant to section 507(a)(1) of the Code, or "willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act)" under section 507(a)(2) by P and, therefore, P will not be liable for the tax imposed by section 507(c) of the Code by virtue of engaging in the transaction.

4. P is not imposing any material restriction or condition under section 1.507-2(a)(8)(i) of the regulations that prevents V from freely and effectively employing the transferred assets, or the income therefrom, in furtherance of V's exempt purposes.

5. Under section 507(b)(2) of the Code and section 1.507-3(a)(1) of the regulations, R, S, T, and U will not be treated as newly created organizations;

6. Under section 1.507-3(a), R, S, T, and U will each be treated as succeeding to P's aggregate tax benefits and tax attributes under Chapter 42 in proportion to the respective percentage of P's assets transferred to each.

7. The percentage of P's aggregate tax benefits attributable to its transfer to V will be retained by P.

8. Upon its notification to the Service of its intent to terminate its private foundation status

pursuant to section 507(a)(1) of the Code, P will be subject to the section 507(c) tax, but the amount of tax will be zero.

9. P's transfer of assets to R, S, T, U, and V will not give rise to net investment income under section 4940 of the Code, will not be a sale or other disposition under section 4940(c)(4)(A), and, thus, will not give rise to tax under section 4940 of the Code.

10. The transaction will not be an act of self-dealing under section 4941 of the Code.

11. The transaction will not subject P to any tax liability for a failure to distribute income under section 4942 of the Code.

12. R, S, T, and U will succeed to P's excess qualifying distributions, if any, under section 53.4942(a)-(3)(e) of the Foundation and Similar Excise Taxes Regulations.

13. Under section 1.507-3(a)(5) of the regulations, the record keeping requirements of section 4942(g)(3)(B) of the Code will not apply to P during any period in which P has no assets.

14. Neither P, R, S, T, U, nor V is subject to the tax on excess business holdings under section 4943 of the Code by virtue of the transaction.

15. The transaction will not be a jeopardizing investment under section 4944 of the Code.

16. The transaction will not be a taxable expenditure under section 4945 of the Code.

17. Under section 1.507-3(a)(9) of the regulations, P 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 in the transaction.

18. The legal, accounting, and other expenses incurred by P, R, S, T, U, and V in connection with this rulings request and in carrying out the proposed transaction will not be taxable expenditures under section 4945 of the Code and will be qualifying distributions under section 4942 of the Code.

19. The transaction will not affect the status of P, R, S, T, U, and V as organizations exempt from federal income tax under section 501(c)(3) of the Code.

20. Under section 1.507-1(b)(9) of the regulations, P will not be required to file the annual information return required by section 6033 of the Code for any tax year following the tax year in which the transaction occurs if, during the subsequent tax years, P has neither legal nor equitable title to any assets and engages in no activity.

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

Because this rulings letter could help to resolve any questions, please keep it in your

permanent records.

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

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

/S/

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2