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

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date:

Contact Person:

Uniform Issue List: 507.00-00
501.03-02
509.03-00
4940.00-00
4941.04-00
4942.03-05
4943.00-00
4944.00-00
4945.04-06

Identification Number:

Telephone Number:

T:EO:B2

Legend:
T =
C =

Dear Sir or Madam:

This is in reply to your rulings request of July 19, 2001, concerning T's proposed transfer of all of its assets to C pursuant to section 507(b)(2) of the Internal Revenue Code.

T, a charitable trust, and C, a nonprofit charitable corporation, 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. T and C are controlled by the same individuals. T will transfer all of its assets to C. T will have no expenditure responsibility grants outstanding under section 4945(h) of the Code at the time of its transfer of all of its assets to C.

The following rulings are requested:

1. T's transfer of all of its assets to C will be a transfer of assets pursuant to a reorganization under section 507(b)(2) of the Code and its transferee will not be treated as a newly-created organization following such transfer.

2. T's status as a private foundation will not be terminated as a result of the transfer and the transfer will not result in the imposition of taxes under section 507(c) of the Code.

3. T's transfer of assets to C will not give rise to any Chapter 42 taxes, specifically:

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

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

c. T's aggregate tax benefits under Part II, Subchapter F, Chapter 1, of the Code will carry over pursuant to section 1.507-3(a)(2) of the Income Tax Regulations.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for 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 private foundation provisions of Chapter 42 of the Code.

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 Income Tax Regulations indicates that a transfer under section 507(b)(2) of the Code includes a transfer of assets from one private foundation to another private foundation 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 indicates that, in a transfer of assets from one private foundation to another private foundation pursuant to a reorganization, the transferee 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, in general, that the aggregate tax benefits of an exempt private foundation refer to the value of its exemption from federal income tax and the deductions taken by its donors during its existence.

Section 1.507-1(b)(9) of the regulations provides that a private foundation which has transferred all of its net assets is not required to file annual information returns under section 6033 of the Code for tax years after the tax year of such transfer when the transferor 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 own charitable distribution requirements under section 4942 of the Code, even for its 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 a private foundation that has transferred all of its assets to another private foundation in a transfer pursuant to section 507(b)(2) of the Code is not subject to the expenditure responsibility requirement of section 4945(h) of the Code.

Section 1.507-3(a)(9)(i) of the regulations indicates that, if a transferor private foundation transfers its assets to another private foundation which is effectively controlled directly or indirectly by the same persons who effectively control the transferor private foundation, then the transferee foundation will be treated as if it were the transferor foundation, for purposes of sections 4940 through 4948 and also sections 507 through 509 of the Code.

Section 1.507-3(a)(9)(ii) of the regulations indicates 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 returns.

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 status as a private foundation under section 509(a) of the Code.

Section 1.507-4(b) of the regulations provides that the tax under section 507(c) of the Code on termination of private foundation status does not apply to a transfer of assets pursuant to section 507(b)(2) of the Code.

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 qualifying distributions under section 4942(g) for the conduct of exempt purposes.

Revenue Ruling 78-387, 1978-2 C.B. 270, describes the carryover of a transferor foundation's excess qualifying distributions under section 4942(i) of the Code to a transferee foundation that is effectively controlled by the same persons under section 1.507-3(a)(9)(i) of the regulations. Under the regulation, the transferee is treated as the transferor and, thus, the transferee can reduce its own distributable amount under section 4942 of the Code by the amount, if any, of its transferor's excess qualifying distributions under section 4942(i) of the Code.

Section 4945 of the Code imposes excise tax on a private foundation's making of any 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 a grantor private foundation requiring proper pre-grant inquiry and post-grant reports from a grantee private foundation on the grantee's uses of the grant.

Section 4945(d)(5) of the Code provides that a taxable expenditure also includes any amount expended by a private foundation for purposes other than purposes under section 170(c)(2)(B) of the Code.

Sections 53.4945-6(c)(3) allows a private foundation to make transfers of its assets pursuant to section 507(b)(2) of the Code to organizations exempt under section 501(c)(3) of the Code without the transfers being taxable expenditures under section 4945.

Analysis

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 another private foundation pursuant to any reorganization, including a significant disposition of 25% or more of the transferor foundation's assets. Because T will transfer all of its assets to C, T's transfer will be a significant disposition of its assets under section 1.507-3(c)(1) of the regulations and, thus, will be a transfer under section 507(b)(2) of the Code.

Under section 507(b)(2) of the Code, T's transferee private foundation will not be treated as a newly created organization after the transfer.

2.

Under section 1.507-3(d) of the regulations, T's transfer of all of its assets to C pursuant to section 507(b)(2) of the Code will not be a termination of T'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.a.

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

3.b.

Under section 4945 of the Code, section 53.4945-6(c)(3) of the regulations indicates that a private foundation can transfer its assets pursuant to section 507(b)(2) of the Code to an organization exempt under section 501(c)(3) of the Code without the transfer being a taxable expenditure under section 4945, provided that any expenditure responsibility requirement under section 4945(h) is met. Under section 1.507-3(a)(7) of the regulations, T will not be required to exercise any expenditure responsibility under section 4945(h) of the Code because T will transfer all of its assets to C. Thus, T's transfer to C pursuant to section 507(b)(2) of the Code will not be a taxable expenditure under section 4945 of the Code.

3.c.

Under section 1.507-3(a)(2)(i) of the regulations, when T transfers all of its assets to C, T's aggregate tax benefits under section 507(d) of the Code will carry over as provided by that regulation.

Accordingly, we rule that:

1. T's transfer of all of its assets to C will be a transfer of assets pursuant to section 507(b)(2) of the Code, and T's transferee will not be treated as a newly-created organization following such transfer.

2. T's status as a private foundation will not be terminated as a result of the transfer and the transfer will not result in tax under section 507(c) of the Code.

3. T's transfer of all of its assets to C will not give rise to any Chapter 42 taxes, specifically:

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

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

c. T's aggregate tax benefits under Part II, Subchapter F, Chapter 1, of the Code will carry over pursuant to section 1.507-3(a)(2) of the regulations.

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 organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2