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

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Contact Person:

Uniform Issue List: 507.01-00
509.01-01
4940.00-00
4941.04-00
4942.03-05
4944.00-00
4945.04-06
6033.02-01

Contact Number:

OP:E:EO:T:2

Legend:
T =
C =

Dear Sir or Madam:

This is in reply to your rulings request, dated December 3, 1998, concerning T's proposed transfer of all of its assets to C pursuant to section 507(b)(2) of the Internal Revenue Code.

T is a trust recognized as exempt from federal income tax under section 501(c)(3) of the Code and as a private foundation under section 509(a) of the Code.

C is a nonprofit corporation recognized as exempt from federal income tax under section 501(c)(3) of the Code and as a private foundation under section 509(a) of the Code.

T will transfer all of its assets to C. T and C are controlled by the same persons. T has no grants outstanding requiring expenditure responsibility under section 4945(h) of the Code. After T transfers all of its assets to C, T will wind up and voluntarily terminate its private foundation status under section 509(a) of the Code by giving its notice of such voluntary termination of its private foundation status to the Internal Revenue Service pursuant to section 507(a)(1) of the Code.

The following rulings are requested:

1. The transfer of all of T's assets to C will not adversely affect the exemption of either T or C under section 501(c)(3).

2. The transfer of all of T's assets to C will constitute a transfer of assets under section 507(b)(2), will not constitute a termination of T's private foundation status, and will not result in the imposition of a termination tax under section 507(c).

3. The transfer of all of T's assets to C will not be treated as a transfer to a newly created organization.

4. If the trustees of T notify the IRS of their intention to terminate T's private foundation status pursuant to section 507(a)(1) at least one day after the transfer of all of T's assets to C, no tax will be due under section 507(c) since T will have no assets at the time notice of such termination occurs.

5. C is effectively controlled within the meaning of section 1.482-1(a)(3) of the Treasury Regulations by the same persons who effectively control T. Thus, C will be treated as if C were T for purposes of Chapter 42 (sections 4940 et seq.) and Part II of Subchapter F of Chapter 1 of the Code (sections 507 through 509).

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6. All of T's aggregate tax benefit as defined in section 507(d)(1) will be carried over to C.

7. The transfer of all of T's assets to C will not give rise to net investment income and will not constitute a sale or other disposition of property within the meaning of section 4940(c)(4)(A), and thus such transfer will not result in any liability to T for the tax under section 4940.

8. The transfer of all of T's assets to C will not constitute an act of self-dealing under section 4941 and will not subject T, C, or any foundation manager of either such entity to any tax under section 4941.

9. The transfer of all of T's assets to C will not constitute a jeopardy investment under section 4944.

10. The transfer of all of T's assets to C will not constitute a taxable expenditure within the meaning of section 4945 and T will not be required to exercise expenditure responsibility as defined in section 4945(h) with regard to the transferred assets.

11. The payment of reasonable legal, accounting and other expenses incurred by T in connection with this ruling request and in carrying out the proposed transfer of all of T's assets to C will constitute qualifying distributions under section 4942(g)(1)(A), and will not constitute taxable expenditures within the meaning of section 4945.

12. Any excess qualifying distributions carryover of T under section 4942(i) will be carried over to C and may be used by C to meet C's requirements under section 4942. Section 4942 will apply to C in the year all of T's assets are transferred to C as if C were T and, therefore, C will succeed to T's distribution requirements for the taxable year of the transfer. T will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) with respect to the transfer, subsequent to the transfer of all of T's assets to C.

13. After the transfer of all of T's assets to C, the trustees of T will be required to file the annual return required by section 6033 for the taxable year in which such transfer occurs. The trustees of T will not be required to file that return for any taxable year following the taxable year in which the transfer occurs if at no time during any such subsequent taxable year the trustees of T have legal or equitable title to any assets or engage in any 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 1.501(c)(3)-1(b)(4) of the Income Tax Regulations provides that, upon dissolution, the assets of an organization exempt from federal income tax under section 501(c)(3) of the Code must be used for exempt purposes under that section.

Section 509(a) of the Code describes certain organizations exempt from federal income tax under section 501(c)(3) that are private foundations subject to the private foundation provisions of Chapter 42 of the Code.

Section 507(a)(1) of the Code and section 1.507-1(b)(1) of the regulations provide that a private foundation may voluntarily terminate its private foundation status by submitting to the Service a statement of its intention to terminate its private foundation status and by paying the termination tax, if any, under section 507(c).

Section 507(c) of the Code imposes an excise tax on a private foundation which voluntarily terminates its status as a private foundation under section 509(a) pursuant to section 507(a)(1). This tax is equal to the lower of: (a) the aggregate tax benefit that has resulted from the foundation's status under section 501(c)(3) of the Code, or (b) the value of the net assets of the private foundation.

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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(a)(1) of the regulations provides that, in a transfer of assets from one private foundation to one or more other 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 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 by one private foundation to one or more other private foundations pursuant to any reorganization, including any significant disposition of 25% or more of the transferor private foundation's assets.

Section 507(d) of the Code indicates that the aggregate tax benefits of a private foundation include 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 its annual information return under section 6033 of the Code for its tax years after the 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.

Section 1.507-3(a)(8) of the regulations provides that certain tax provisions, listed therein, will carry over to the transferee private foundation that is given a section 507(b)(2) transfer of assets by a transferor private foundation.

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(a)(3) (now section 1.482-1(i)(4) of the regulations), by the same persons who effectively control the transferor private 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 foundation is treated as its transferor in the proportion which the fair market value of the transferor's assets transferred to it 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 section 1.507-3(a)(9)(i) does not relieve the transferor private foundation from filing its annual information return.

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

Sections 1.507-1(b)(7) and 1.507-3(d) of the regulations provide that a private foundation's transfer of assets pursuant to section 507(b)(2) of the Code will not constitute a termination under section 507(a) of the transferor's status as a private foundation under section 509(a) of the Code.

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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 upon 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 organization exempt from federal income tax 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 direct active conduct of exempt purposes.

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

Section 4942(g)(1)(A) of the Code and section 53.4942(a)-3(a)(2)(i) of the regulations provide that a "qualifying distribution" is any amount, including that portion of reasonable and necessary administrative expenses, paid to accomplish one or more purposes described in section 170(c)(2)(B) of the Code, other than any contribution to: (i) an organization controlled directly or indirectly by the transferor foundation or one or more disqualified persons with respect to the foundation, except as provided in section 4942(g)(3), or (ii) any private foundation that is not an operating foundation under section 4942(j)(3), except as provided in section 4942(g)(3) of the Code.

Sections 4942(g)(3) of the Code requires that a transferor private foundation, in order to have a qualifying distribution for its grant to another private foundation, must have adequate records, as required by section 4942(g)(3)(B), to show that the transferee private foundation subsequently made qualifying distributions equal to the amount of the transfer that were paid out of the transferee's own corpus within the meaning of section 4942(h). Such qualifying distributions by the transferee must be expended before the close of its first tax year after its tax year in which it received the transfer.

Section 4944 of the Code imposes excise tax on any investment by a private foundation that jeopardizes its exempt purposes.

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 a grantor private foundation must exercise expenditure responsibility under section 4945(h) of the Code on any grants to another private foundation.

Section 4945(h) of the Code defines expenditure responsibility in terms of a grantor private foundation requiring proper reports from a grantee private foundation on the grantee's uses of a grant.

Section 1.507-3(a)(7) of the regulations indicates that any private foundation granting all of its assets to another private foundation pursuant to section 507(b)(2) of the Code will not be required to exercise any expenditure responsibility under section 4945(h) of the Code.

Analysis

T will transfer all of its assets to C pursuant to section 507(b)(2) of the Code. Your requested rulings are discussed below:

1.

Under section 1.501(c)(3)-1(b)(4) of the regulations, T's assets must be for exempt purposes under section 501(c)(3) of the Code. Because T's transfer is to C which is exempt from federal income tax under section 501(c)(3) of the Code to further exempt purposes under that section, T's transfer all of its assets to C will not adversely affect the exemptions from federal income tax under section 501(c)(3) of the Code of T or C.

2.

Under section 1.507-3(a)(1) of the regulations, T's transfer of all of its assets to C pursuant to section 507(b)(2) of the Code will result in the transferee C not being considered a newly created organization but as possessing certain tax attributes of T.

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 terminate T's private foundation status and, thus, under section 1.507-4(b) of the regulations, T's transfer of its assets to C pursuant to section 507(b)(2) of the Code will not result in any private foundation termination tax under section 507(c) of the Code.

3.

Section 507(b)(2) of the Code provides that, in a transfer of assets by one private foundation to one or more other private foundations pursuant to that section, each transferee private foundation shall not be treated as a newly created organization. Thus, T's transfer of all of its assets to C pursuant to section 507(b)(2) of the Code will not be treated as a transfer to a newly created organization.

4.

Under section 507(e) of the Code, after T transfers all of its assets to C, the value of T's assets will be zero when T notifies the 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. Thus, such termination of T's private foundation status pursuant to section 507(a)(1) of the Code will not result in any private foundation termination tax under section 507(c) of the Code.

5.

Under section 1.507-3(a)(9)(i) of the regulations, because C is effectively controlled within the meaning of section 1.482-1(i)(4) of the regulations by the same persons who effectively control T, transferee C will be treated as if C were its transferor T, for purposes of Chapter 42 of the Code and Chapter 1, Subchapter F, Part II of the Code (sections 507 through 509 of the Code).

6.

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

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7.

Under section 4940 of the Code, T's transfer of all of its assets to C will not result in income under section 4940 of the Code to T or C.

8.

Under section 4941 of the Code, T's transfer of all of its assets to C will not be an act of self-dealing because T's transfer 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 which is not a disqualified person 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.

9.

Under section 4944 of the Code, T's transfer of all of its assets to C will not be a jeopardy investment because it is a transfer for exempt purposes under section 501(c)(3) of the Code to Y which is exempt from federal income tax under section 501(c)(3) of the Code.

10.

Under section 4945 of the Code, T's transfer of all of its assets to C is not a taxable expenditure because the transfer is for exempt purposes under section 501(c)(3) of the Code to organization C which is exempt under section 501(c)(3) of the Code.

Under section 1.507-3(a)(7) of the regulations, T will not be required to exercise expenditure responsibility under section 4945(h) of the Code because T will transfer all of its assets to C.

11.

Under section 4942(g)(1)(A) of the Code and section 53.4942(a)-3(a)(2)(i) of the regulations, a private foundation's payment of its administrative expenses that are part of its charitable grants may constitute a qualifying distribution under that 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 to it is not a taxable expenditure under section 4945 of the Code.

Thus, the reasonable legal, accounting, and other necessary expenses for T's transfer of all of its assets to C will be paid to accomplish exempt purposes and, thus, will be qualifying distributions under section 4942(g)(1)(A) of the Code and will not be taxable expenditures under section 4945 of the Code.

12.

As in Revenue Ruling 78-387, cited above, after T transfers all of its assets to C, T's excess qualifying distributions carryover, if any, under section 4942(i) of the Code, can be used by C to reduce C's annual distributable amount under section 4942 of the Code.

Under section 1.507-3(a)(5) of the regulations, any recordkeeping requirement under section 4942(g)(2)(B) of the Code will not apply after T transfers all of its assets to C.

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13.

Under section 1.507-3(a)(9)(ii) of the regulations, T must satisfy its information reporting requirements for its tax year in which its transfer is made.

Under section 1.507-1(b)(9) of the regulations, T will not be required to file its annual return under section 6033 of the Code for any tax year subsequent to T's tax year in which it transfers all of its assets to C when T will have no assets or activities.

Accordingly, we rule that:

1. T's transfer of all of its assets to C will not adversely affect the exemptions from federal income tax under section 501(c)(3) of the Code of T or C.

2. 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, will not constitute a termination of T's private foundation status under section 509(a) of the Code, and will not result in the imposition of private foundation termination tax under section 507(c) of the Code.

3. T's transfer of all of its assets to C will not be treated as a transfer to a newly created organization pursuant to section 507(b)(2) of the Code.

4. If T notifies the Service of its intention 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 its transfer of all of its assets to C, T will have no assets at the time of its termination of private foundation status and, thus, no termination tax will be due under section 507(c) of the Code.

5. C is effectively controlled within the meaning of section 1.482-1(i)(4) of the regulations by the same persons who control T, and C will be treated as if C were T for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code.

6. T's aggregate tax benefits under section 507(d) of the Code will carry over to C pursuant to section 507(b)(2) of the Code.

7. T's transfer of all of its assets to C will not result in tax on investment income under section 4940 of the Code.

8. T's transfer of all of its assets to C will not be an act of self-dealing under section 4941 of the Code and will not result in tax under that section.

9. T's transfer of all of its assets to C will not be a jeopardizing investment under section 4944 of the Code.

10. 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 with respect to its transfer of all of its assets to C.

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11. The payment of reasonable legal, accounting, and other expenses incurred by T or C for this transfer and rulings request will be qualifying distributions under section 4942(g)(1)(A) of the Code and will not be taxable expenditures under section 4945 of the Code.

12. T's excess qualifying distributions carryover, if any, under section 4942(i) of the Code will carry over to C, and may be used to meet C's own distribution requirements under section 4942 of the Code. Section 4942 of the Code will apply to C in its tax year of T's transfer as if C were T, so that C will succeed to T's distribution requirements under section 4942 of the Code for T's tax year of its transfer to the extent that such distribution requirements are not satisfied by T prior to its transfer. T will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code with respect to its transfer of all of its assets to C.

13. After T transfers all of its assets to C, T will be required to file its annual return, Form 990-PF, under section 6033 of the Code for its tax year of its transfer. T will not be required to file such annual return for any tax year subsequent to its tax year of its transfer when T will have no assets.

Because this ruling letter could help to resolve any questions about your status, you should 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 this ruling letter may not be used or cited as precedent.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2