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

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Contact Person:

Uniform Issue List: 507.00-00
501.03-02
509.03-00
4940.00-00
4941.04-00
4942.03-03
4942.03-05
4943.00-00
4944.00-00
4945.04-06

Contact Number:

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Legend:
T =
C =

Dear Sir or Madam:

This is in reply to your rulings request dated September 10, 1999, on 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 effectively controlled by the same individuals. T will transfer all of its assets to C. Later, T will notify the Internal Revenue Service to terminate its private foundation status pursuant to section 507(a)(1) of the Code. If T has any expenditure responsibility grant(s) outstanding under section 4945(h) of the Code at the time of the transfer, C will continue T's expenditure responsibility with respect to such grant(s).

The following rulings are requested:

1. T's transfer of all of its assets to the newly created charitable corporation private foundation C will constitute a transfer pursuant to a reorganization under section 507(b)(2) of the Code.

2. T's transfer will not terminate T's status as a private foundation under section 507(a) of the Code and will not result in any termination taxes imposed by section 507(c) of the Code.

3. As a result of the transfer, transferee C will be treated as if C were T, for purposes of Chapter 42 (sections 4940 et sequitur) and for Part II of Subchapter F of Chapter 1 (sections 507-509) of the Code.

4. C will succeed to any excess qualifying distributions carryover under section 4942 of the Code.

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

6. The voluntary termination of T as a private foundation after T's transfer of assets to C will be a taxable termination under section 507(a)(1) of the Code, but no tax will be imposed under section 507(c) of the Code because T will not have any assets at the time of its termination.

7. T's transfer of assets to C will not constitute: (a) gross investment income or capital gain net income within the meaning of section 4940; (b) an act of self-dealing under section 4941; (c) undistributed income under section 4942; (d) excess business holdings under section 4943; (e) an investment that jeopardizes charitable purposes under section 4944; or (f) a taxable expenditure under section 4945. T's asset transfer will not cause T, C, or any disqualified person, as defined under section 4946, with respect to T or C to be subject to any tax under sections 4940 through 4945. T will not have to exercise expenditure responsibility as a result of the transfer.

8. T's transfer of its assets to C will not be treated as a sale or exchange of property subject to tax. The tax basis and holding period of the transferred assets into C's shall be determined in the same manner as if such assets had continued to be held uninterruptedly by T.

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 the 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 regulations provide that a private foundation may voluntarily terminate its private foundation status by submitting to the Commissioner a statement of its intention to terminate its private foundation status and by paying the termination tax imposed 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 status as a private foundation under section 507(a)(1) of the Code. This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefit that has 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.

Section 507(e) of the Code provides that, for purposes of section 507(c)(2) of the Code, the value of the net assets of the private foundation shall be determined at whichever time the value is higher: (1) the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation or (2) the date on which it ceases to be a 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 indicates 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 provides, 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 transfers all of its assets is not required to file annual information returns required by section 6033 of the Code for its tax years after the tax year of its transfer when it 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 charitable distribution requirements under section 4942 of the Code, even for any taxable 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 any transferee private foundation that is given a transfer of assets from a transferor private foundation pursuant to section 507(b)(2) of the Code.

Section 1.507-3(a)(9)(i) of the regulations indicates that, if a transferor private foundation transfers assets to a private foundation effectively controlled, directly or indirectly, by the same person or persons who effectively control the transferor private 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. The transferee is treated as the transferor in the proportion which the fair market value of the transferor's assets that were transferred bears to the fair market value of all of the assets of the transferor immediately before the transfer.

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

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 an 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 provides that a private foundation must expend qualifying distributions under section 4942(g) of the Code for exempt purposes.

Section 4942(g)(1)(A) of the Code provides that a private foundation does not make any qualifying distribution under section 4942(g) of the Code where its distribution is a contribution to: (i) an organization controlled by the transferor or by one or more of the transferor's disqualified persons, or (ii) a private foundation that is not an operating foundation under section 4942(j)(3) of the Code.

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

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.

Sections 53.4945-6(c)(3) and 1.507-3(b) of the regulations allow a private foundation to make transfers of 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, including private foundations, without the transfers being taxable expenditures under section 4945 of the Code.

Analysis

T will transfer all of its assets to C. Your requested rulings are discussed below:

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 or liquidation, including a significant disposition of 25% or more of the transferor foundation's assets. Because T will transfer all of its assets, 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.

2.

Under section 1.507-3(d) of the regulations, T's transfer of its assets under section 507(b)(2) of the Code to C will not terminate T's private foundation status under section 509(a) of the Code.

Under section 1.507-4(b) of the regulations, T's transfer of its assets under section 507(b)(2) of the Code to C will not result in termination tax under section 507(c) of the Code.

3.

Under section 1.507-3(a)(9)(i) of the regulations, transferee C will be treated as its transferor T for purposes of Chapter 42 of the Code and for sections 507 through 509 of the Code.

4.

As in Revenue Ruling 78-387, cited above, after T transfers all of its assets to C, T's excess qualifying distribution carryover, if any, under section 4942(i) of the Code, will carry over to transferee C, and may be used by transferee C to meet C's own distribution requirements under section 4942 of the Code.

5.

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

6.

Under section 507(a)(1) of the Code, when T notifies the Internal Revenue Service, after T transfers all of its assets to C, of its intent to voluntarily terminate its private foundation status pursuant to section 507(a)(1) of the Code, T will thus terminate its private foundation status pursuant to that section 507(a)(1) of the Code. Under section 507(e) of the Code, the value of T's assets after T has transferred all of its assets to C will be zero. Thus, T's voluntary notice of termination of its private foundation status pursuant to section 507(a)(1) of the Code will result in zero tax under section 507(c) of the Code.

7.

T's transfer of all of its assets to C will not constitute: (a) gross investment income or capital gain net income within the meaning of section 4940 of the Code; (b) an act of self-dealing under section 4941; (c) undistributed income under section 4942; (d) excess business holdings under section 4943 of the Code; (e) an investment that jeopardizes charitable purposes under section 4944 of the Code; or (f) a taxable expenditure under section 4945 of the Code. T's asset transfer will not cause T, C, or any disqualified person under section 4946 with respect to T or C, to be subject to tax under sections 4940 through 4945 of the Code.

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

Under section 53.4945-6(c)(3) of the regulations, a private foundation can make a transfer of its assets pursuant to section 507(b)(2) of the Code to an exempt organization under section 501(c)(3) of the Code, including a private foundation, without the transfer being a taxable expenditure under section 4945 of the Code. Thus, T's transfer of assets to C will not be a taxable expenditure under section 4945 of the Code and will not subject T to tax under that section.

8.

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

Under section 1.507-3(a)(8)(ii)(a) of the regulations, the tax bases and holding periods of T's assets transferred to C will carry over to C for purposes of section 4940 of the Code.

Accordingly, we rule:

1. T's transfer of all of its assets to C will constitute a transfer under section 507(b)(2) of the Code.

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

3. As a result of T's transfer to C, C will be treated as if C were T, for purposes of Chapter 42 of the Code and Chapter 1, Subchapter F, Part II (sections 507, 508, and 509) of the Code.

4. T's excess qualifying distributions carryover under section 4942(i) of the Code, if any, will carry over to C.

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

6. T's voluntary termination of its status as a private foundation after its transfer of its assets to C will be a termination under section 507(a)(1) of the Code, but no tax will be imposed under section 507(c) of the Code because T will have no assets at the time of T's termination.

7. T's transfer of its assets to C will not constitute: (a) gross investment income or capital gain net income under section 4940 of the Code; (b) an act of self-dealing under section 4941 of the Code; (c) undistributed income under section 4942 of the Code; (d) excess business holdings under section 4943 of the Code; (e) an investment that jeopardizes charitable purposes under section 4944 of the Code; or (f) a taxable expenditure under section 4945 of the Code. T's transfer of assets will not cause T, C, or any disqualified person under section 4946 of the Code with respect to T or C, to be subject to any tax under sections 4940 through 4945 of the Code. T will not have to exercise expenditure responsibility under section 4945(h) of the Code as to its transfer of all of its assets to C.

8. Under section 4940 of the Code, T's transfer of assets to C will not be subject to tax and the tax bases and holding periods of T's assets transferred to C shall be determined as if T's assets had continued to be held by T.

Because this ruling letter could help to resolve any questions, please keep it in your permanent records and include a copy in your annual return, Form 990-PF.

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

Sincerely,

Joseph Chasin

Joseph Chasin
Acting Manager, Exempt Organizations
Technical Group 2