DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224 200115038

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Contact Person:

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4941.04-00
4942.03-05
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4945.04-06
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Contact Number:

T:ED:B2

Legend:
T =
C =

Dear Sir or Madam:

This is in reply to your rulings request of March 27, 2000, 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 its transfer, C will continue T's expenditure responsibility as to such grant(s).

The following rulings are requested:

1. T's transfer all of its net assets to C will be a transfer described in section 507(b)(2) of the Code, will not constitute a termination of the private foundation status of T, and will not cause the imposition of the termination tax under section 507(c) of the Code.

2. If T terminates its private foundation status at least one day after the transfer of all of its net assets and so notifies the Secretary pursuant to section 507(a)(1) of the Code, then T will not be liable for the tax imposed under section 507(c) of the Code because T will not have any assets after such termination and payment of expenses. Likewise, the preparation and/or filing of any final accounting or other documents required by state law in winding up, dissolving, and terminating will not result in imposition of the tax under section 507(c) of the Code.

3 T's transfer of assets to C will not affect T's or C's status under section 501(c)(3) or 509(a) of the Code.

4. Both prior to and after the transfer of assets, T and C are effectively controlled by the same persons within the meaning of section 1.482-1A(a)(3) of the Income Tax Regulations. The transfer of assets by T to C will be treated as a transfer of all of T's assets to a private foundation, within the meaning of section 1.482-1A(a)(3) of the regulations, by the same persons that control C. Thus, pursuant to section 1.507-3(a)(9)(i) of the regulations, the transfer will not subject T to the taxes imposed by sections 4941 through 4945 of the Code, because after the transfer, C will be treated as though C were T for purposes of Chapter 42 and section 509 of the Code.

5. C will succeed to the aggregate tax benefits, if any, of T.

6. As the transferee of the net assets of T, C will receive the benefit of any transitional rules or savings provisions applicable to T, as enumerated in sections 1.507-3(a)(8)(i) and (ii) of the regulations.

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7. T's transfer of assets to C will not constitute a "sale or other disposition" of property within the meaning of section 4940(c)(4)(A) of the Code and will not give rise to net investment income for T or C. Therefore, the transfer of assets will not result in an imposition of additional taxes on T or C under section 4940 of the Code and will not subject T to the two percent excise tax on any gain that might otherwise be imposed.

8. T's transfer of assets to C will not constitute an act of direct or indirect self-dealing under section 4941 of the Code with any interested parties or the foundation managers, and no tax under section 4941 will be incurred as a result of the transfer.

9. After T's transfer of assets to C, C may reduce the amount of its required distributions under section 4942 of the Code by the amount, if any, of the excess qualifying distribution carryover of T for prior years, as defined by section 4942(i) of the Code. Further, C's distributable amount under section 4942(d) for its tax year in which the transfer occurs will be increased by the distributable amount for T for its tax year in which the transfer occurs, as if C had held the assets for the entire tax year. All qualifying distributions made by C during the entire year, and all qualifying distributions made by T during its tax year in which the transfer occurs will be treated as if made by C. Therefore, the distribution requirements of T under section 4942 of the Code in the year of the transfer may be fulfilled by C.

10. After T's transfer of assets to C, T will not be required to comply with the recordkeeping requirements, if any, of section 4942(g)(3)(B) of the Code because T will have no assets.

11. T's transfer of assets to C will not constitute an investment by T and T will not be subject to the tax on jeopardy investments imposed by section 4944 of the Code.

12. T's transfer of all of its assets to C will not constitute a taxable expenditure under section 4945 of the Code, and neither T nor C will be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to the assets transferred.

13. T will not be required to file the tax return prescribed by section 6033 of the Code for any tax year subsequent to the year of the transfer of the assets if during such years T does not have legal or equitable title to any of the assets.

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 provides that certain organizations exempt from federal income tax under section 501(c)(3) of the Code 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 impose excise tax on a private foundation which voluntarily terminates its private foundation status under section 507(a)(1). This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefits that have resulted from the private foundation's exempt status under section 501(c)(3) or (b) 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 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 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 indicates 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)(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)(8) of the regulations provides that certain tax provisions will carry over to a transferee private foundation that receives a transfer of assets from another 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 one or more private foundations, which are effectively controlled within the meaning of section 1.482-1A(a)(3) of the regulations, directly or indirectly, by the same person or 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 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 assets of the transferor 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 any termination of the transferor foundation's private foundation status under section 509(a).

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

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

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 its transferee foundation, in fact, subsequently made qualifying distributions that were equal to the amount of the transfer received and that were paid out of the transferee's own corpus within the meaning of section 4942(h). Such transferee foundation's qualifying distributions must be expended before the close of the transferee's first tax year after the transferee's tax year in which it receives the transfer.

Revenue Ruling 78-387, 1978-2 C.B. 270, describes the carry-over 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. Under that regulation, the transferee is treated as the transferor so that the transferee can reduce its own distributable amount under section 4942 by the amount, if any, of the transferor's excess qualifying distributions under section 4942(i).

Section 4945 of the Code imposes excise tax on any private foundation's making of a taxable expenditure under section 4945(d).

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) 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 and post-grant reports from 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.

Section 53.4945-6(c)(3) of the regulations allows a private foundation to transfer its assets to exempt organizations 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.

Analysis

Your requested rulings are discussed below:

1.

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) includes a transfer of assets from one private foundation to another private foundation pursuant to any liquidation or reorganization, including any significant disposition of 25% or more of the transferor's assets. Because T will be in such a reorganization by its transfer of all of its assets to C, T's transfer will be a transfer under section 507(b)(2) of the Code.

Under section 1.507-4(b) of the regulations, T's transfer of assets pursuant to section 507(b)(2) of the Code does not cause termination of T's private foundation status under section 509(a) of the Code and, thus, does not result in any termination tax under section 507(c) of the Code.

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2.

Section 507(c) of the Code imposes excise tax on a private foundation which voluntarily terminates its status as a private foundation pursuant to section 507(a)(1) of the Code. This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefits that have resulted from the foundation's exempt status under section 501(c)(3) of the Code or (b) the value of the net assets of the foundation. The value of T's net assets, after T has transferred all of its assets to C, will be zero. Thus, at that time, T's voluntary notice to the Service of its termination of its private foundation status pursuant to section 507(a)(1) of the Code will not result in any termination tax under section 507(c) of the Code.

3.

T's transfer of assets to C for exempt purposes under section 501(c)(3) of the Code will not adversely affect the exemption under section 501(c)(3) of the Code or the private foundation status under section 509(a) of the Code of T or C.

4.

Section 1.507-3(a)(9)(i) of the regulations indicates that, if a transferor private foundation transfers assets to one or more private foundations which are effectively controlled, directly or indirectly, by the same person or persons who effectively control the transferor private foundation, then each transferee private foundation will be treated as if it were the transferor private foundation, for purposes of sections 4940 through 4948 and sections 507 through 509 of the Code. Each transferee is treated as the transferor in the proportion which the fair market value of the transferor foundation's assets that were transferred bears to the fair market value of all of the assets of the transferor foundation immediately before the transfer. In this case, where transferee C's directors are substantially the same as those of T, T's transfer will be treated as a transfer to a transferee organization that is effectively controlled by the same persons who control the transferor so that the transfer is within section 1.507-3(a)(9) of the regulations.

5.

Under section 1.507-3(a)(1) of the regulations, in a transfer of assets from one private foundation to another private foundation pursuant to a reorganization, the 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, T's aggregate tax benefits will be transferred to C in full proportion to all of the assets transferred by T to C.

6.

Under section 1.507-3(a)(8)(ii) of the regulations, T's transferee C will receive the benefits, if any, of the transitional rules and savings provisions of that regulation that are applicable to T.

7.

T's transfer of assets will not constitute investment income or any taxable sale or disposition of property and will not result in tax on T or C under section 4940 of the Code.

8.

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

9.

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

Transferee C, in its tax year in which the transfer occurs, may increase its distributable amount under section 4942(d) of the Code by T's distributable amount for T's tax year in which T's transfer occurs. Transferee C can treat T's qualifying distributions for its tax year of its transfer as if made by transferee C, in addition to any qualifying distributions made by C alone. T's distribution requirement under section 4942 of the Code for its tax year of its transfer may be fulfilled by transferee C.

10.

Under section 1.507-3(a)(5) of the regulations, any record-keeping requirement under section 4942(g)(3)(B) of the Code as to transferor T will not apply after T has transferred all of its assets to C.

11.

T's transfer of its assets to C for exempt purposes under section 501(c)(3) of the Code will not be a jeopardizing investment or result in tax under section 4944 of the Code.

12.

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 private foundations, without the transfer being a taxable expenditure under section 4945 of the Code. Thus, T's transfer to C will not be a taxable expenditure under section 4945 of the Code and will not subject T or C to tax under that section.

Section 1.507-3(a)(7) of the regulations provides that, where a private foundation transfers all of its assets to an exempt organization under section 501(c)(3) of the Code pursuant to section 507(b)(2) of the Code, there is no expenditure responsibility requirement under section 4945(h) of the Code. Thus, T and C will not have to exercise expenditure responsibility under section 4945(h) of the Code with respect to T's transfer of all of its assets to C.

13.

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 years subsequent to the tax year in which T transfers all of its assets to C.

Accordingly, we rule that:

1. T's transfer all of its net assets to C will be a transfer described in section 507(b)(2) of the Code, will not constitute a termination of the private foundation status of T, and will not cause the imposition of the termination tax under section 507(c) of the Code.

2. If T terminates its private foundation status at least one day after the transfer of all of its net assets and so notifies the Secretary pursuant to section 507(a)(1) of the Code, then T will not be liable for the tax imposed under section 507(c) of the Code because T will not have any assets after such termination and payment of expenses. Likewise, the preparation and/or filing of any final accounting or other documents required by state law in winding up, dissolving, and terminating will not result in imposition of the tax under section 507(c) of the Code.

3 T's transfer of assets to C will not affect T's or C's status under section 501(c)(3) or 509(a) of the Code.

4. Both prior to and after the transfer of assets, T and C are effectively controlled by the same persons within the meaning of section 1.482-1A(a)(3) of the Income Tax Regulations. The transfer of assets by T to C will be treated as a transfer of all of T's assets to a private foundation, within the meaning of section 1.482 -1A(a)(3) of the regulations, by the same persons that control C. Thus, pursuant to section 1.507-3(a)(9)(i) of the regulations, the transfer will not subject T to the taxes imposed by sections 4941 through 4945 of the Code, because after the transfer, C will be treated as though C were T for purposes of Chapter 42 and section 509 of the Code.

5. C will succeed to the aggregate tax benefits under section 507(d) of the Code, if any, of T.

6. As the transferee of the net assets of T, C will receive the benefit of any transitional rules or savings provisions applicable to T, as enumerated in sections 1.507-3(a)(8)(i) and (ii) of the regulations.

7. T's transfer of assets to C will not constitute a "sale or other disposition" of property within the meaning of section 4940(c)(4)(A) of the Code and will not give rise to net investment income for T or C. Therefore, the transfer of assets will not result in an imposition of additional taxes on T or C under section 4940 of the Code and will not subject T to the two percent excise tax on any gain that might otherwise be imposed.

8. T's transfer of assets to C will not constitute an act of direct or indirect self-dealing under section 4941 of the Code with any interested parties or the foundation managers, and no tax under section 4941 will be incurred as a result of the transfer.

9. After T's transfer of assets to C, C may reduce the amount of its required distributions under section 4942 of the Code by the amount, if any, of the excess qualifying distribution carryover of T for prior years, as defined by section 4942(i) of the Code. Further, C's distributable amount under section 4942(d) for its tax year in which the transfer occurs will be increased by the distributable amount for T for its tax year in which the transfer occurs, as if C had held the assets for the entire tax year. All qualifying distributions made by C during the entire year, and all qualifying distributions made by T during its tax year in which the transfer occurs will be treated as if made by C. Therefore, the distribution requirements of T under section 4942 of the Code in the year of the transfer may be fulfilled by C.

10. After T's transfer of assets to C, T will not be required to comply with the recordkeeping requirements, if any, of section 4942(g)(3)(B) of the Code because T will have no assets.

11. T's transfer of assets to C will not constitute an investment by T and T will not be subject to the tax on jeopardy investments imposed by section 4944 of the Code.

12. T's transfer of all of its assets to C will not constitute a taxable expenditure under section 4945 of the Code, and neither T nor C will be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to the assets transferred.

13. T will not be required to file the tax return prescribed by section 6033 of the Code for any tax year subsequent to the year of the transfer of the assets if during such years T does not have legal or equitable title to any of the assets.

This ruling request will not be construed as notice by T to terminate its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code.

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

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

Sincerely,

/S/

Robert Fontenrose
Acting Manager, Exempt Organizations
Technical Group 2

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