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

Date: JAN 29 2001

Contact Person:

ID Number:

Contact Number:

Employer Identification Number:

Legend:
X =
Y =
Z =

Dear Sir or Madam:

This is in reply to the letter of April 12, 2000, concerning the proposed transfer of all or substantially all of Z's assets to X and Y.

Z has been recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and is a private foundation within the meaning of section 509(a) of the Code.

Z proposes to transfer all or substantially all of its assets to X and Y. X and Y have been recognized as exempt under section 501(c)(3) of the Code and are private foundations within the meaning of section 509(a). Members of the board of trustees of X and Y are also Z's trustees. Z has represented that it has no outstanding grants which require it to exercise expenditure responsibility as that phrase is defined in section 4945(h). Z has also represented that at the time of its termination there will not be any willful repeated acts or (or failures to act) or willful flagrant act (or failures to act) which would have given rise to liability for taxes under Chapter 42 of the Code. Once Z has transferred all or substantially all of its assets Z expects to cease operating and voluntarily terminate its private foundation status by giving notice to the Service under section 507(a)(1) of the Code and file a final accounting. At such time Z will pay the remaining liabilities and expenditures, if any, and will have no remaining assets.

The following rulings have been requested:

1. Z's transfer of all of its assets to X and Y will constitute a significant disposition of its assets to one or more private foundations under section 507(b)(2) of the Code.

2. Z's transfers to X and Y will not result in the termination of its private foundation status under section 507(a) of the Code, but will constitute a reorganization between these private foundations under section 507(b)(2) of the Code .

3. Z's transfers to X and Y will not constitute notification of its intent to terminate its private foundation status under section 507(a)(1) of the Code, or any willful repeated acts (or failures to act) or any willful and flagrant act (or failure to act) under section 507(a)(2) by Z, and, thus, Z will not be liable for any tax imposed by section 507(c).

226

4. Under section 507(b)(2) of the Code, transferees X and Y will not be treated as newly created organizations.

5. X and Y will be treated as possessing Z's tax attributes and characteristics pursuant to section l.507-3(a)(2)(3) and (4) of the regulations..

6. Z's transfers to X and Y will not give rise to any net investment income or constitute any other taxable sale or disposition under section 4940 of the Code.

7. Z's transfers to X and Y will not constitute any act of self-dealing under section 4941 of the Code by Z, X, or Y, or any of their foundation managers as defined in section 4946.

8. Upon Z's transfers to X and Y, transferee foundations X and Y will each succeed to a portion of Z's excess qualifying distributions, if any, based upon each transferor foundation's proportionate share of Z's total assets received, and the recordkeeping requirements of section 4942(g)(3)(B) of the Code will not apply to Z during any period in which Z has no assets (other than certain contingent beneficial interests, if any).

9. Z's transfers of all of its assets to X and Y will not constitute taxable expenditures under section 4945 of the Code.

10. Z will not be required to exercise any expenditure responsibility under section 4945(h) of the Code with respect to its transfers of all of its assets to X and Y because it will have thus disposed of all of its assets.

11. Under section 1.507-3(a)(9)(i) of the regulations, for purposes of Chapter 42 and sections 507 through 509 of the Code, X and Y will be treated as if each were Z in the proportion that the fair market value of Z's assets (less encumbrances) transferred to each bears to the fair market value of Z's assets (less encumbrances) immediately before Z's transfers of the assets.

12. Z and its foundation managers will not be required to file the annual information return required under section 6033 of the Code for any tax years following the tax year in which the last transfers of all of Z's assets occur if during such subsequent tax years Z will have neither legal nor equitable title to any assets nor engage in any activity. Upon Z's dissolution, Z will be required by section 6043(b) to file its annual return for the year of such dissolution.

13. The legal, accounting, and other expenses, if reasonable in amount, incurred by X, Y and Z, in connection with this ruling request and in carrying out the transfers of assets, will be considered qualifying distributions under section 4942(g)(1)(A) of the Code as being made to achieve the charitable purposes of the grants and, thus, the payments of such costs and expenses will also not constitute any taxable expenditures under section 4945.

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(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 507(c) of the Code imposes a 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 4940 of the Code imposes an excise tax on certain investment income of a private foundation.

Section 4941 of the Code imposes an excise tax on an act of self-dealing between a private foundation and any of its disqualified persons as defined in section 4946 of the Code.

Section 4941(d)(1)(E) of the Code provides that the term "self-dealing" includes any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4941(d)(2)(E) of the Code provides that the payment of compensation by a private foundation to a disqualified person for personal services which are reasonable and necessary to carry out the exempt purpose of the foundation shall not be an act of self-dealing if the compensation is not excessive.

Section 4942(a) of the Code imposes an excise tax on a private foundation which fails to meet the distributions requirements set forth in section 4942(d).

Section 4942(d) of the Code defines the term distributable amount as the amount equal to the sum of the minimum investment return, plus certain other amounts reduced by the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

Section 4942(g)(l)(A) of the Code provides that the term qualifying distribution includes 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).

Section 4942(g)(3)(B) of the Code provides that the term qualifying distribution includes a contribution to a section 501(c)(3) organization if not later than the close of the first taxable year after its taxable year in which a contribution is received such organization makes a distribution equal to the amount of such contribution and the private foundation making the contribution maintains adequate records on the distribution.

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 4946(a)(l)(B) of the Code provides that the term disqualified person includes a foudnation manager as that term is defined in subsection (b)(l).

Section 4946(b)(l) of the Code defines the term foundation manager as including an officer, director, or trustee of a foundation.

Section 6043(b) of the Code and section 1.6043-3(a)(1) of the regulations provide that a private foundation must file its return with respect to its dissolution.

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 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 l.507-3(a)(2), (3) and (4) of the regulations describe in particular terms the treatment to be accorded assets transferred pursuant to a section 507(b)(2) reorganization under Chapter 42 and other provisions where the trasnferee organization succeeds to the aggregate tax benefit of the transferor organization.

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)(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.

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 l.507-3(d) of the regulations provides that unless a private foundation voluntarily gives notice pursuant to section 507(a)(l), a transfer of assets described in section 507(b)(2) will not constitute a termination of the transferor's private foundation status under section 507(a)(l).

Section l.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).

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.

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.

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.

The submitted information establishes that Z intends to transfer all or substantially all of its assets to two other private foundations. Because of the overlap of trustees these foundations are considered controlled organizations and disqualified persons within the meaning of section 4946 of the Code. Z has no outstanding grants subject to the expenditure responsibility requirements and has no outstanding acts or failures to act which would give rise to liability for excise taxes under Chapter 42 of the Code. Z intends to pay all of its remaining liabilities and expenditures, if any, and will terminate its activities after transferring all or substantially all of its assets. It will then terminate its private foundation status as required by section 507(a)(l) of the Code.

Based upon the submitted information and the representations which have been made we hold that:

I. Z's transfer of all of its assets to X and Y will constitute a significant disposition of its assets to one or more private foundations under section 507(b)(2) of the Code.

2. Z's transfers to X and Y will not result in the termination of its private foundation status under section 507(a) of the Code, but will constitute a reorganization between these private foundations under section 507(b)(2) of the Code .

3. Z's transfers to X and Y will not constitute notification of its intent to terminate its private foundation status under section 507(a)(1) of the Code, or any willful repeated acts (or failures to act) or any willful and flagrant act (or failure to act) under section 507(a)(2) by Z, and, thus, Z will not be liable for any tax imposed by section 507(c).

4. Under section 507(b)(2) of the Code, transferees X and Y will not be treated as newly created organizations.

5. X and Y will be treated as possessing Z's tax attributes and characteristics pursuant to section I.507-3(a)(2)(3) and (4) of the regulations..

6. Z's transfers to X and Y will not give rise to any net investment income or constitute any other taxable sale or disposition under section 4940 of the Code.

7. Z's transfers to X and Y will not constitute any act of self-dealing under section 4941 of the Code by Z, X, or Y, or any of their foundation managers as defined in section 4946.

8. Upon Z's transfers to X and Y, transferee foundations X and Y will each succeed to a portion of Z's excess qualifying distributions, if any, based upon each transferor foundation's proportionate share of Z's total assets received, and the recordkeeping requirements of section 4942(g)(3)(B) of the Code will not apply to Z during any period in which Z has no assets (other than certain contingent beneficial interests, if any).

9. Z's transfers of all of its assets to X and Y will not constitute taxable expenditures under section 4945 of the Code.

10. Z will not be required to exercise any expenditure responsibility under section 4945(h) of the Code with respect to its transfers of all of its assets to X and Y because it will have thus disposed of all of its assets.

11. Under section 1.507-3(a)(9)(i) of the regulations, for purposes of Chapter 42 and sections 507 through 509 of the Code, X and Y will be treated as if each were Z in the proportion that the fair market value of Z's assets (less encumbrances) transferred to each bears to the fair market value of Z's assets (less encumbrances) immediately before Z's transfers of the assets.

12. Z and its foundation managers will not be required to file the annual information return required under section 6033 of the Code for any tax years following the tax year in which the last transfers of all of Z's assets occur if during such subsequent tax years Z will have neither legal nor equitable title to any assets nor engage in any activity. Upon Z's dissolution, Z will be required by section 6043(b) to file its annual return for the year of such dissolution.

13. The legal, accounting, and other expenses, if reasonable in amount, incurred by X, Y and Z, in connection with this ruling request and in carrying out the transfers of assets, will be considered qualifying distributions under section 4942(g)(1)(A) of the Code as being made to achieve the charitable purposes of the grants and, thus, the payments of such costs and expenses will also not constitute any taxable expenditures under section 4945.

Because this letter could help to resolve certain 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,

/s/

Terrill M. Berkovsky
Manager, Exempt Organizations
Technical Group 2