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

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Uniform Issue List: 507.00-00
501.03-02
509.03-00
4940.00-00
4941.04-00
4942.03-05
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 May 2, 2000, 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. After its transfer, T will dissolve under state law. T will have no expenditure responsibility grants outstanding under section 4945(h) of the Code at the time of its transfer.

The following rulings are requested:

1. For purposes of Chapter 42 of the Code (sections 4940 et seq.) and Part II of Subchapter F of Chapter 1 (sections 507 through 509 of the Code), as a result of T's transfer of all of its assets to C, C will be treated as T, and all of the savings provisions applicable to private foundations under the Tax Reform Act of 1969, as amended, will apply to C to the same extent and in the same manner as such provisions applied to T.

2. T's transfer of the assets to C will constitute a transfer of assets described in section 507(b)(2) of the Code. Consequently, the transfer will not result in the termination of the private foundation status of T under section 507(a) of the Code, and T and C will not be subject to the termination tax imposed by section 507(c) of the Code.

3. Voluntary termination of T under section 507(a)(1) of the Code by notice to the Internal Revenue Service given at least one day after T's transfer of assets will not result in termination tax under section 507(c) of the Code. The preparation and/or filing by T of any final accounting or other documents, required by state law in winding up, dissolving, and terminating T, will not result in tax under section 507(c) of the Code .

4. The tax basis computed under section 4940(c)(4)(B) of the Code and the holding period of each asset received by C pursuant to T's transfer will be determined in the same manner as if such assets had continued to be held uninterruptedly by T.

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5. C can report the investment income of T for the year of the transfer and pay the excise tax imposed on T under section 4940 of the Code.

6. T's transfer of all of its assets to C:

a. will not result in net investment income to T under section 4940 of the Code;

b. will not be a direct or indirect act of self-dealing under section 4941 of the Code with regard to T, C, or any foundation managers, substantial contributors, or other disqualified persons of T or C;

c. will not be an investment by T or C which jeopardizes the exempt purposes of T or C under section 4944 of the Code;

d. will not be a taxable expenditure under section 4945(d) of the Code by T. If T has any grant(s) requiring expenditure responsibility under section 4945(h) of the Code at the time of T's transfer of all of its assets, C must exercise expenditure responsibility with respect to such grant(s) on behalf of T.

e. will not require T or C to exercise expenditure responsibility under section 4945(h) of the Code.

7. T's transfer will result in C being treated as T for purposes of section 4942 of the Code so that:

a. T's distribution requirements under section 4942 of the Code for the tax year of T's transfer may be fulfilled by C;

b. all of T's qualifying distributions during its tax year in which T's transfer of assets occurs will be treated as if made by C as determined immediately prior to the transfer;

c. C may reduce the amount of its required distributions under section 4942 of the Code, including those for the tax year of T's transfer, by the amount, if any, of T's excess qualifying distributions carryover for prior years under section 4942(i) of the Code as determined prior to T's transfer as if C had incurred such carryover;

d. T will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code with regard to the transfer of assets.

8. The transfer will not adversely affect the tax-exempt status of T or C, and neither T nor C will be subject to federal income tax under Subtitle A of the Code with regard to the transfer.

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)(8) of the regulations provides that certain tax provisions will carry over to a 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 one or more private foundations which are effectively controlled directly or indirectly by the same person or persons who effectively control the transferor foundation, then each 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. Each 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(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.

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

Your requested rulings are discussed below:

1.

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 sections 507 through 509 of the Code.

Under section 1.507-3(a) of the regulations, transferee C will receive the carryover of any savings provisions applicable to T that are carried over to C under sections 1.507-3(a)(1) through (8) of the regulations.

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2.

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 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 on T or C.

3.

Under section 507(a)(1) of the Code, when T notifies the Internal Revenue Service, at least one day after T transfers all of its net 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 it 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) will not result in tax under section 507(c) of the Code.

The preparation and filing of any final accounting or other documents required by state law in winding up, dissolving, and terminating T will not result in termination tax under section 507(c) of the Code.

4.

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.

5.

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, thus, C may report T's investment income for the tax year of the transfer and may pay T's excise tax under section 4940 of the Code.

6.

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

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 organization C which is exempt from federal income tax under section 501(c)(3) of the Code and 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.

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

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. 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.

As in section 1.507-3(a)(9)(iii), Example (2), of the regulations, C must continue T's expenditure responsibility under section 4945(h) of the Code with respect to any expenditure responsibility grant(s) made by T that remain outstanding at the time of T's transfer of its assets to C.

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.

7.

Under section 1.507-3(a)(9)(i) of the regulations, T's transfer will result in C being treated as T for purposes of section 4942 of the Code, so that: (a) T's distribution requirements under section 4942 of the Code for its tax year of its transfer may be satisfied by C; and (b) T's qualifying distributions during T's tax year of its transfer may be treated as made by C.

As in Revenue Ruling 78-387, described above, C may reduce its required distributions under section 4942 of the Code, including those for C's tax year of the transfer, by the amount, if any, of T's excess qualifying distributions carryover under section 4942(i) of the Code as of the time of T's transfer.

Under section 1.507-3(a)(5) of the regulations, T will not be required to comply with any recordkeeping requirements of section 4942(g)(3)(B) of the Code after T's transfer of all of its assets to C.

8.

Because T's transfer of its assets to C will be for exempt purposes to an organization exempt from federal income tax under section 501(c)(3) of the Code, T's transfer will not adversely affect the exemptions under section 501(c)(3) of T or C, and T and C will not be subject to federal income tax with regard to the transfer.

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Accordingly, we rule that:

1. As a result of T's transfer of all of its assets to C, C will be treated as T for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code, and all of the savings provisions of the Tax Reform Act of 1969, as amended, applicable to T will apply to C to the same extent as such applied to T.

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

3. If T terminates its private foundation status at least one day after T transfers all of its assets to C and so notifies the Internal Revenue Service pursuant to section 507(a)(1) of the Code, T will not be liable for tax under section 507(c) of the Code because T will have no assets upon its termination. The preparation and filing of any final accounting or other documents, required by state law in winding up, dissolving, and terminating T, will not result in tax under section 507(c) of the Code.

4. The tax basis and the holding period of each asset transferred by T to C will be carried over to C as if each assets had continued to be held by T.

5. C may report T's investment income for the tax year of the transfer and may pay T's excise tax under section 4940 of the Code.

6. T's transfer of all of its assets to C:

a. will not result in net investment income to T under section 4940 of the Code;

b. will not be a direct or indirect act of self-dealing under section 4941 of the Code with regard to T, C, or any foundation managers, substantial contributors, or other disqualified persons of T or C;

c. will not be an investment by T or C which jeopardizes the exempt purposes of T or C under section 4944 of the Code;

d. will not be a taxable expenditure under section 4945(d) of the Code by T. If T has any grant(s) requiring expenditure responsibility under section 4945(h) of the Code at the time of T's transfer of all of its assets, C must exercise expenditure responsibility with respect to such grant(s) on behalf of T.

e. will not require T or C to exercise expenditure responsibility under section 4945(h) of the Code.

7. T's transfer will result in C being treated as T for purposes of section 4942 of the Code so that:

a. T's distribution requirements under section 4942 of the Code for the tax year of T's transfer may be fulfilled by C;

b. all of T's qualifying distributions during its tax year in which T's transfer of assets occurs will be treated as if made by C as determined immediately prior to the transfer;

c. C may reduce the amount of its required distributions under section 4942 of the Code, including those for the tax year of T's transfer, by the amount, if any, of T's excess qualifying distributions carryover for prior years under section 4942(i) of the Code as determined prior to T's transfer as if C had incurred such carryover;

d. T will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code with regard to its transfer of assets.

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8. T's transfer will not adversely affect the exemptions from federal income tax under section 501(c)(3) of the Code of T or C, and will not subject T or C to federal income tax with regard to the transfer.

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,

/s/

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2