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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: OCT 30 2001

Contact Person:

Identification Number:

Telephone Number:

T:EO:B2

Employer Identification Number:

LEGEND: M =
N =
O =

Dear Sir or Madam:

This is in reply to the letter of March 7, 2001, regarding the proposed transfer of all of M's assets to N and O.

M 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. N and O have also been recognized as exempt under section 501(c)(3) of the Code and are private foundations within the meaning of section 509(a).

In recent years there have arisen differences of opinion among the family members concerning how best to manage the affairs of M. To resolve these problems M proposes to transfer all of its assets in equal shares to two newly created private foundations whose purposes are the same as M's. No director of M will serve as a director of more than one of the two new foundations. The assets of M are to be divided equally between N and O. After the transfer M will have no assets and it then expects to dissolve and provide voluntary notice to the Service of its intention of terminate its private foundation status under section 507(a)(l) of the Code.

You have requested a ruling that the transfer of the assets from M to N and O will not be subject to the private foundation termination tax and that the newly created entities will succeed to all of the tax characteristics and attributes of the transferor Foundation, including, but not limited to, any tax benefits, on a pro rata basis.

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 provides 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(a) of the Code imposes an excise tax on the net investment income of a private foundation.

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

Section 4941(d)(l)(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 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)(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 4942(i) of the Code provides for the adjustment of the distributable amount where distributions during prior years have exceeded income.

Section 4943(a)(l) imposes a tax on the excess business holdings of any private foundation in a business enterprise.

Section 4944(a) of the Code provides for the imposition of an excise tax on investments which jeopardize the carrying out of any of the exempt purposes of a private foundation.

Section 4945(a) of the Code imposes an excise tax upon a private foundation's making of any taxable expenditures as defined in 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) of the Code on its grants to another private foundation.

Section 4945(h) of the Code provides the term expenditure responsibility means that the private foundation is responsible to exert all reasonable efforts and establish adequate procedures to see that the grant is spent solely for the purposes for which made, to obtain full and complete reports from the grantee on how the funds are spent, and to make full and detailed reports with respect to such expenditures to the Secretary.

Section 4946(a)(l)(B) of the Code defines the term disqualified person as including a foundation manager as that term is described in section 4946(a)(b)(l).

Section 6033(a)(l) of the Code requires that every organization exempt from taxation under section 501(a), with certain exceptions which are not applicable here, shall file an annual return.

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

Section I.507-l(a) of the Income Tax Regulations provides, in general, that the status of any organization as a private foundation shall be terminated only if such organization notifies the district director of its intent to accomplish such termination.

Section I.507-l(b)(6) of the regulations provides that if a private foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in section 507(b)(2) and section I.507-3(c) such transferor foundation will not have terminated its private foundation status under section 507(a)(l).

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 a termination of the transferor foundation's status as a private foundation unless the transferor private foundation elects to terminate pursuant to section 507(a)(l) or section 507(a)(2) is applicable.

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 if it has no legal or equitable title to any assets an does not engage in any activities.

Section 1.507-3(a)(l) of the regulations provides that in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, the transferee organization shall not be treated as a newly created organization.

Section I.507-3(a)(2)(i) of the regulations provides that a transferee organization shall succeed to the aggregate tax benefit of the transferor organization.

Section I.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 transferee 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)(7) of the regulations provides that where the transferor has disposed of all of its assets during any period in which the transferor has no assets, section 4945(d)(4) and (h) shall not apply to the transferee or the transferor with respect to any expenditure responsibility grants made by the transferor.

Section I.507-3(a)(8)(ii) of the regulations provides that the transitional and other rules regarding Chapter 42 of the Code set forth in section I.507-3(a)((8)(ii)(a) through (g), apply to a transferee foundation to the same extent and in the same manner that they would have applied to the transferor foundation had the transfer described in section 507(b)(2) had not be effected.

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 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 53.4945-6(c)(3) and 1.507-3(b) of the Foundation and Similar Excise Tax 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 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 information submitted establishes that M intends to transfer all of its assets to N and O. N and O qualify for recognition of exemption under section 501(c)(3) and are private foundations. As the successor to M, the transitional and other rules regarding Chapter 42 of the Code set forth in section l.507-3(a)((8)(ii)(a) through (g), apply to N and O. Furthermore, N and O are not considered a newly created organization and are treated in the same manner as M would be for the purposes of Chapter 42 and sections 507 through 509. After M transfers all its assets to N and O, M intends to notify the Service of its intent to terminate its private foundation status and comply with the notice and other requirements of section 507(a)(1) of the Code.

Accordingly, we rule that:

1. The proposed transfer of all of M's assets to the two new foundations will constitute a transfer described in section 507(b)(2) of the Code.

2. As a transfer described in section 507(b)(2), the proposed transaction will not result in a termination of M's foundation status under section 507(a) and will not cause the imposition of the termination tax described in section 507(c).

3. The two new foundations will not be treated as newly created organizations.

4. The two new foundations will succeed to the aggregate tax benefit of M in proportion to the assets transferred.

5. The two new foundations will be treated as if they were M for the purposes of section 4940 through 4948 and sections 507 through 509 of the Code.

6. Following the transfer, the two new foundations may proportionately reduce their required distributions under section 4942 of the Code, by their proportional amounts of M's excess qualifying distributions carryover for prior years as defined in section 4942(i).

7. The provisions of section I.507-3(a)(8)(ii)(a) through (g) of the regulations will apply to the two new foundations with respect to the assets transferred from M.

8. The transfer of M's assets to the two new foundations will not constitute self-dealing under section 4941 of the Code because for purposes of section 4941 the term disqualified person does not include an organization described in section 501(c)(3).

9. The transfer of M's assets to the two new foundations will not constitute a jeopardizing investment within the meaning of section 4944 of the Code.

10. The transfer of M's assets to the two new foundations will not constitute taxable expenditures within the meaning of section 4945 of the Code.

11. Provided M has no assets, M will not be required to file any tax returns under section 6033 of the Code for any taxable years subsequent to that in which all assets are distributed.

Accordingly, based on the information submitted and the representations made we hold that the transfer of the assets from M to N and O will not be subject to the private foundation termination tax and that the newly created entities will succeed to all of the tax characteristics and attributes of the transferor Foundation, including, but not limited to, any tax benefits, on a pro rata basis.

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

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact the Ohio TE/GE Customer Service Office.

Sincerely yours,

(signed) Terrell M. Berkovsky

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2