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
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4940.00-00
4941.04-00
4944.00-00
4945.04-06

Identification Number:

Telephone Number:

T:EO:B2

Legend:
P =
R =
S =

Dear Sir or Madam:

This is in reply to your rulings request of March 14, 2001, on P's proposed transfer of all of its assets to R and S pursuant to section 507(b)(2) of the Internal Revenue Code.

P, R, and S 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. P will transfer all of its assets to R and S, with two-thirds of its assets to R and one-third of its assets to S. P has no expenditure responsibility grants outstanding under section 4945(h) of the Code. After its transfers, P will dissolve and intends to voluntarily terminate its private foundation status by giving notice to the Internal Revenue Service under section 507(a)(1) of the Code.

The following rulings are requested:

1. P's transfers of all of its assets to R and S will qualify as transfers under section 507(b)(2) of the Code. Under section 1.507-1(b)(6) of the Income Tax Regulations, P will not have terminated its private foundation status, and, under section 1.507-4(b) of the regulations, P will not be subject to tax under section 507(c) of the Code.

2. Under section 1.507-3(a)(9)(i) of the regulations, P will be treated as making transfers to each of R and S in the proportion that the fair market value of the assets transferred to each bears to the fair market value of P immediately before the transfer.

3. P will be terminated for purposes of section 507 of the Code when P complies with the notification requirements of sections 507(a)(1) and 6043(b) of the Code in the tax year in which P terminates.

4. There will be no tax imposed under section 507(c) of the Code on P's termination in any tax year following P's transfer of all of its assets to R and S because P will then have no assets.

5. P's transfers of assets to R and S will not constitute a sale or other disposition of property under section 4940 of the Code.

6. P's transfers of assets to R and S will not be acts of self-dealing under section 4941 of the Code between P, R, and S, or their directors.

7. P's transfers of assets to R and S will not be jeopardizing investments under section 4944 of the Code.

8. P's transfers of all of its assets to R and S will not be taxable expenditures under section 4945(d) of the Code, and P will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfers of all of its assets.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for the 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 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) of the Code, and provides that this section 507(c) tax is equal to the lower of: (1) the aggregate tax benefits that have resulted from the private foundation's exempt status under section 501(c)(3) of the Code, or (2) 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 1.507-1(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 provides 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)(9)(i) of the regulations provides that, if a private foundation transfers assets to one or more private foundations which are effectively controlled directly or indirectly within the meaning of section 1.482-1(i)(4) of the regulations by the same persons who effectively control the transferor 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 the transferee bears to the fair market value of all of the transferor's assets 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) of the Code .

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 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.

Revenue Ruling 78-387, 1978-2 C.B. 270, describes the carryover 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. The transferee is treated as the transferor so that the transferee can reduce its own distributable amount under section 4942 of the Code by its share of the transferor foundation's excess qualifying distributions under section 4942(i) of the Code.

Section 4944 of the Code imposes excise tax on any jeopardizing investment made by a private foundation.

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

Sections 53.4945-6(c)(3) 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.

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 the grantor private foundation requiring pre-grant inquiry and post-grant reports as to the grantee private foundation on its uses of the grant.

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

Analysis

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) of the Code includes a transfer of assets from one private foundation to one or more other private foundations pursuant to any reorganization or liquidation, which includes any significant disposition of 25% or more of the transferor's assets. Because P will be in such a reorganization by its transfer of all of its assets, P's transfer of assets to R and S will be a transfer under section 507(b)(2) of the Code.

Under section 1.507-4(b) of the regulations, P's transfer of its assets pursuant to section 507(b)(2) of the Code will not terminate P's private foundation status under section 509(a) of the Code.

Under section 1.507-4(b) of the regulations, P's transfer of assets to X and Y pursuant to section 507(b)(2) of the Code will not result in termination tax under section 507(c) of the Code.

2.

Under section 1.507-3(a)(9)(i) of the regulations, P will be treated as making transfers to each of R and S in the proportion that the fair market value of the assets transferred to each bears to the fair market value of the assets of P immediately before the transfers.

3.

Under section 507(a)(1) of the Code and section 1.507-1(b)(1) of the regulations, P's status as a private foundation under section 509(a) of the Code will be terminated under section 507(a)(1) of the Code when P complies with the notice and requirements of section 507(a)(1) of the Code.

Under section 1.507(a)-1(b)(9) of the regulations, P must file its final annual information return on Form 990-PF pursuant to section 6043(b) of the Code for the tax year when P terminates.

4.

Under section 507(e) of the Code, after P has transferred all of its assets to R and S, the value of P's assets will be zero. Thus, P's voluntary notice of termination of its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code will not result in tax under section 507(c) of the Code when P has no assets.

5.

P's transfer of assets to R and S will not result in tax under section 4940 of the Code.

6.

P's transfer of assets will be made for exempt purposes to R and S, which are organizations exempt from federal income tax under section 501(c)(3) of the Code. Under section 53.4946-1(a)(8) of the regulations, P is not a disqualified person under section 4946 of the Code for purposes of section 4941 of the Code because P is exempt from federal income tax under section 501(c)(3) of the Code. Because P's transfer of assets will not be a transfer to a disqualified person under section 4946 of the Code, P's transfer will not be an act of self-dealing under section 4941 of the Code.

7.

Under section 4944 of the Code, P's transfer of its assets to R and S will not be jeopardizing investments or result in tax under that section.

8.

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

Under section 1.507-3(a)(7) of the regulations, where a private foundation transfers all of its assets pursuant to section 507(b)(2) of the Code to one or more organizations exempt from federal income tax under section 501(c)(3) of the Code, the transferor private foundation will have no expenditure responsibility requirement under section 4945(h) of the Code. Thus, P will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfer of all of its assets to R and S.

Accordingly, we rule that:

1. P's transfers of all of its assets to R and S will qualify as transfers under section 507(b)(2) of the Code. Under section 1.507-1(b)(6) of the Income Tax Regulations, P will not have terminated its private foundation status, and, under section 1.507-4(b) of the regulations, P will not be subject to tax under section 507(c) of the Code.

2. Under section 1.507-3(a)(9)(i) of the regulations, P will be treated as making transfers to each of R and S in the proportion that the fair market value of the assets transferred to each bears to the fair market value of P immediately before the transfer.

3. P will be terminated for purposes of section 507 of the Code when P complies with the notification requirements of sections 507(a)(1) and 6043(b) of the Code in the tax year in which P terminates.

4. There will be no tax imposed under section 507(c) of the Code on P's termination in any tax year following P's transfer of all of its assets to R and S because P will then have no assets.

5. P's transfers of assets to R and S will not constitute a sale or other disposition of property under section 4940 of the Code.

6. P's transfers of assets to R and S will not be acts of self-dealing under section 4941 of the Code between P, R, and S, or their directors.

7. P's transfers of assets to R and S will not be jeopardizing investments under section 4944 of the Code.

8. P's transfers of all of its assets to R and S will not be taxable expenditures under section 4945(d) of the Code, and P will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfers of all of its assets.

Because this rulings letter could help to resolve any questions, please keep it in your permanent records.

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

Sincerely,

(signed) Terrell M. Berkovsky

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2