199905030

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

SIN 507.05-00; 4940.00-00; 4941.00-00
4942.03-05; 4945.04-06
No Third Party Contacts

Contact Person:

Telephone Number:

In Reference to: OP:E:EO:T:3

Date:

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Legend:

X =

Y =

Z =

A =
B =
C =

D =
E =
F =

M =

x =
y =
z =

Dear Sir or Madam:

This refers to your rulings request under section 507(b)(2) of the Internal Revenue Code (the "Code").

X is exempt under section 501(c)(3) of the Code and a private operating foundation within the meaning of section 4942(j)(3). X was formed to conduct scientific research in the

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public interest specifically on research regarding Restless Legs Syndrome ("RLS") and other neurological diseases and disorders that are associated with RLS, including Parkinson's and Alzheimer's diseases. X's primary source of support is from RLS sufferers and their families who choose to sponsor research into RLS.

X's officers and directors are A, B and C. All serve without compensation except for A who is employed by X to conduct substantial research activities and is paid an annual salary of z dollars.

Y is exempt under section 501(c)(3) of the Code and classified as a private operating foundation within the meaning of section 4942(j)(3). Y was formed for the purpose of conducting scientific research in the public interest specifically on diseases of the brain, including manic depressive illness, RLS, and obsessive-compulsive disorders.

Y's officers and directors are D, E and F who all serve without compensation.

Z is a new corporation which is exempt under section 501(c)(3) of the Code and a private operating foundation within the meaning of section 4942(j)(3). Z and X have the same purpose, primary source of support, and individuals as officers and directors.

X has assets consisting of funds and assets in M Bank Account, valued as of October 1, 1997 at x dollars (the "M Assets") and other assets in the aggregate value of y dollars. X has no outstanding expenditure responsibility grants under section 4945(h) of the Code and does not plan to make any future expenditure responsibility grants. X does not intend to elect to terminate its private foundation status under section 507(a)(1) of the Code on or before the effective date of the proposed transfer.

X was originally funded by C and thereafter D made a substantial contribution. Because of differences in their overall long term charitable goals, X's Board of Directors has agreed upon a plan of reorganization for the purpose of dividing X's assets and transferring them to Y and Z in pursuit of their independent charitable interests and objectives.

X proposes to transfer the M Assets (less the reasonable and necessary legal, accounting and other expenses incurred in connection with this ruling request and in effectuating the proposed transfer) to Y and all of its remaining assets to Z.

After the transfer, X will have no assets and will continue to exist for a short period of time. Thereafter, X expects to dissolve and provide voluntary notice to the Internal Revenue Service (the "Service") of its intention to terminate its private foundation status under section 507(a)(1) of the Code. After the proposed transfer of assets, X, Y and Z will be directed by the same individuals who currently direct them. Also, A will be employed by Z to conduct substantial research activities and will be paid with the same amount of annual salary he receives from X.

Section 507(a)(1) of the Code provides that, except as provided in section 507(b), the status of an organization as a private foundation shall be terminated if the organization notifies the Secretary in the manner prescribed in the Income Tax Regulations of its intent to accomplish such termination and the organization either pays the tax imposed by section 507(c) (or any portion not abated under section 507(g)) or the tax is abated under section 507(g).

Section 507(b)(2) of the Code 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 foundation shall not be treated as a newly created organization.

Section 507(c) of the Code imposes a tax on each organization which terminates its private foundation status under section 507(a).

Section 1.507-1(b)(6) of the Income Tax Regulations (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) of the Code, such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Section 1.507-1(b)(9) of the regulations provides that a private foundation which transfers all of its net assets is required to file the annual information return required by section 6033, and the foundation managers are required to file the annual report of a private foundation required by section 6056, for the taxable year in which such transfer occurs. However, neither such foundation nor its foundation managers will be required to file such returns for any taxable year following the taxable year in which the last of any such transfers occurred, if at no time during the subsequent taxable years in question the foundation has either legal or equitable title to any assets or engages in any activity.

Section 1.507-3(a)(1) of the regulations provides that in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of this section, the transferee organization shall not be treated as a newly created organization. A transferee organization to which this paragraph applies shall be treated as possessing those attributes and characteristics of the transferor organization which are described in subparagraphs (2), (3), and (4) of this paragraph.

Section 1.507-3(a)(2)(i) of the regulations provides that a transferee organization to which this paragraph applies shall succeed to the aggregate tax benefit of the transferor organization.

Section 1.507-3(a)(4) of the regulations provides that if a private foundation incurs liability for one or more of the taxes imposed under Chapter 42 (or any penalty resulting therefrom) prior to, or as a result of, making a transfer of assets described in section 507(b)(2) to one or more private foundations, in any case where transferee liability applies, each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

Section 1.507-3(a)(8)(ii) of the regulations provides that the provisions enumerated in subparagraphs (a) through (g) of paragraph (8) apply to a transferee foundation to the same extent and in the same manner as they would have applied to the transferor foundation had the transfer described in section 507(b)(2) not been effected.

Section 1.507-3(c)(1) of the regulations provides, in part, that a transfer of assets is described in section 507(b)(2) if it is made by a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization. The terms "other adjustment, organization, or reorganization" include any partial liquidation or any other significant disposition of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income.

Section 1.507-3(c)(2) of the regulations provides, in part, that the term "significant disposition of assets to one or more private foundations" includes any disposition for the taxable year of 25% or more of the fair market value of the net assets of the foundation at the beginning of the taxable year.

Section 1.507-3(d) of the regulations provides that unless a private foundation voluntarily gives notice pursuant to section 507(a)(1), 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)(1). Such transfer must, nevertheless, satisfy the requirements of any pertinent provisions of Chapter 42.

Section 1.507-4(b) of the regulations provides that private foundations which make transfers described in section 507(b)(2) are not subject to the tax imposed under section 507(c) with respect to such transfers unless the provisions of section 507(a) become applicable.

Section 4940(a) of the Code imposes on a private foundation with respect to the carrying on of its activities, a tax equal to 2% of its net investment income for the taxable year.

Section 4941(a) of the Code provides for the imposition of a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 53.4946-1(a)(8) of the Foundation and Similar Excise Tax Regulations (also the "regulations") provides that, for purposes of section 4941 only, the term "disqualified person" shall not include any organization which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Section 4942(a) of the Code provides, in part, for the imposition of a tax on the undistributed income of a private foundation.

Section 4942(c) of the Code provides, in part, that the term "undistributed income" means, with respect to any private foundation for any taxable year, the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made before such time out of such distributable amount.

Section 1.507-3(a)(5) of the regulations provides that, except as provided in subparagraph (9) of this paragraph, a private foundation is required to meet the distribution requirements of section 4942 for any taxable year in which it makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation. Such transfer shall itself be counted toward satisfaction of such requirements to the extent the amount transferred meets the requirements of section 4942(g).

Section 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled, directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of chapter 42 (section 4940 et seq.) and part II of subchapter F of chapter 1 of the Code (sections 507 through 509) such a transferee private foundation shall be treated as if it were the transferor. However, where proportionality is appropriate, such a transferee private foundation shall be treated as if it were the transferor in the proportion which the fair market value of the assets (less encumbrances) transferred to such transferee bears to the fair market value of the assets (less encumbrances) of the transferor immediately before the transfer.

Section 1.482-1A(a)(3) of the regulations provides that the term "controlled" includes any kind of control, direct or indirect, whether legally enforceable and however exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise.

Section 4944(a) of the Code provides generally for the imposition of a tax on a private foundation and a foundation manager if investments are made in such a manner as to jeopardize the carrying out of the foundation's exempt purposes.

Section 4945(a) of the Code imposes a tax on each taxable expenditure (as defined in section 4945(d)) of the private foundation.

Section 4945(d)(4) of the Code provides that the term "taxable expenditure" means an amount paid or incurred by a private foundation as a grant to an organization unless the private foundation exercises expenditure responsibility with respect to such grants in accordance with section 4945(h) of the Code.

Section 53.4945-5(b) (7) of the regulations provides that for rules relating to the extent to which the expenditure responsibility rules contained in section 4945(d)(4) and (h) and this section apply to transfers of assets described in section 507(b)(2), see sections 1.507-3(a)(7), 1.507(a)(8)(ii)(f) and 1.507-3(a)(9).

Section 1.507-3(a)(7) of the regulations provides that, except as provided in section 1.507-3(a)(9), 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

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apply to the transferee or the transferor with respect to any "expenditure responsibility" grants made by the transferor.

Section 53.4945-6(c)(3) of the regulations provides that if a private foundation makes a transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization to any person, the transferred assets will not be considered used exclusively for purposes described in section 170(c)(2)(B) unless the assets are transferred to a fund or organization described in section 501(c)(3).

The proposed transaction involves a significant disposition of assets within the meaning of section 1.507-3(c)(1) of the regulations. Accordingly, the proposed transfers are described in section 507(b)(2) of the Code and not subject to tax under section 507(c). Consistent with the provisions of section 507(b)(2) and the regulations promulgated thereunder, Y and Z will not be treated as newly created organizations. Also, Y and Z will be deemed to possess certain attributes and characteristics of X, including being entitled to a pro-rata portion of X's aggregate tax benefit not exceeding the fair market value of the transferred assets at the time of the proposed transfer. In addition, and as long as Y and Z will each qualify for exemption under section 501(c)(3) of the Code, the transfer of X's assets to each will constitute a distribution for a charitable purpose and will be not be treated as self-dealing, jeopardizing investments or taxable expenditures within the meaning of sections 4941, 4944 and 4945.

Based upon these facts and representations, and as you have requested, we rule as follows:

1. That the proposed transfer of all of X's assets to the Y and Z will constitute a transfer as described in section 507(b)(2) of the Code;

2. That as a transfer described in section 507(b)(2) of the Code, the proposed transfer of assets will neither result in the termination of X's private foundation status within the meaning of section 507(a) of the Code, nor subject X to the tax imposed by section 507(c);

3. That Y and Z will be "transferee foundations" as described in section 507(b)(2) and, therefore, will not be treated as newly created organizations;

4. That Y and Z will succeed to the aggregate tax

benefit of X in the proportion that the fair market value of the assets (less encumbrances) transferred to Y and Z in the proposed transfer bears to the fair market value of X's assets (less encumbrances) immediately before the proposed transfer;

5. That the proposed transfer of assets will not constitute either a willful and flagrant act (or failure to act) or one of a series of willful repeated acts (or failures to act) giving rise to liability for tax under Chapter 42 of the Code;

6. That the proposed transfer of assets will not result in any liability for tax under section 4940 of the Code concerning the tax on investment income since the transfer will not constitute a "sale or other disposition of property or other realizable event" within the meaning of section 4940;

7. That the proposed transfer of assets will not constitute an act of "self-dealing" within the meaning of section 4941 of the Code by X, Y or Z or any of their "foundation managers," within the meaning of section 4946(b);

8. That the proposed transfer of assets will qualify as a distribution for X under section 4942 of the Code;

9. That the reasonable and necessary legal, accounting and other expenses incurred in connection with this ruling request and in effecting the proposed transfer will constitute qualifying distributions under section 4942 of the Code and will not constitute taxable expenditures under section 4945;

10. That under section 4944 of the Code, X's transfer of assets to Y and Z will not constitute a jeopardy investment;

11. That the proposed transfer of assets will not constitute a taxable expenditure under section 4945 of the Code as long as X disposes of all of its assets to Y and Z;

12. That X will not be required to exercise expenditure responsibility under section 4945(d) or (h) of the Code with respect to the assets transferred to Y and Z;

13. That after the proposed transfer of all of X's

assets, X will not be required to comply with the record-keeping requirements of section 4942(g)(3)(B) of the Code during any period in which it has no assets;

14. That the proposed transfer of assets will not adversely affect the tax-exempt status under section 501(c)(3) of the Code of X, Y or Z and that X, Y and Z will retain their classifications as section 509 private foundations and section 4942(j)(3) private operating foundations;

15. That X will not be required to file the annual information return required by section 6033 of the Code for any taxable year following the taxable year in which the proposed transfer occurs, if during that subsequent taxable year X has neither legal nor equitable title to any assets and engages in no activity, and that upon X's liquidation, dissolution or termination it will be required to file a return required by section 6043(b);

16. That should X properly notify the Service, at least one day after all of the assets of X are transferred to Y and Z, then such notice will be effective to terminate the private foundation status of X under section 507(a)(1) of the Code; and

17. That should the value of the assets of X equal zero at such time as X terminates its private foundation status by properly notifying the Service, then X will not be liable for any termination tax under section 507(c) of the Code.

We are informing your Key District of this ruling. Please keep a copy of it in your permanent records.

This ruling does not express or imply any opinion as to the federal tax consequences of this transaction under any other provisions of the Code. Also, this ruling is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Edward K. Karcher

Edward K. Karcher
Chief, Exempt Organizations
Technical Branch 3