DEPARTMENT OF THE TREASURY 200009054
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Contact Person:

Uniform Issue List: 507.01-00
509.01-01
4940.00-00
4941.04-00
4942.03-05
4944.00-00
4945.04-06

Contact Number:

OP:E:EO:T:2

Legend:
X =
Y =

Dear Sir or Madam:

This is in reply to your rulings request of March 17, 1999, on X's proposed transfer of all of its assets to Y pursuant to section 507(b)(2) of the Internal Revenue Code.

X and Y 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. X and Y are effectively controlled by the same persons. X will transfer all of its assets to Y. After its transfer, X will notify the Service of its intent to terminate its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code. X has no expenditure responsibility grants outstanding under section 4945(h) of the Code.

The following rulings are requested:

1. The proposed Merger will qualify as a transfer described in Code section 507(b)(2) and will not result in the termination of X's private foundation status under Code section 507(a)(1).

2. The proposed Merger will not subject X to the termination tax imposed by Code section 507(c).

3. The proposed transfer of assets by X to Y pursuant to the Merger will not be treated as a transfer to a newly-created organization.

4. Y will succeed to the aggregate tax benefit of X under Code section 507(d). X will treat the proposed transfer to Y pursuant to the Merger as a transfer of its assets subject to the amount of any liability X may have incurred under Chapter 42 of the Code to the extent not satisfied by X following the Merger.

5. As a result of the proposed Merger, X's excess qualifying distributions carryovers for prior years, if any, as defined under Code section 4942(i), will be transferred to Y.

6. The proposed transfer of assets to Y pursuant to the Merger will not constitute an act of self-dealing and will not subject X, its foundation managers, and disqualified persons with respect to X to any tax under Code sections 4941(a)(1) or (2).

7. The proposed transfer of assets to Y pursuant to the Merger will not give rise to net investment income and, therefore, will not result in the imposition of tax under Code section 4940.

8. The proposed transfer of assets to Y pursuant to the Merger will not constitute a jeopardizing investment within the meaning of Code section 4944(a).

282

9. The proposed transfer of assets to Y pursuant to the Merger will not constitute a taxable expenditure and, therefore, will not subject X to tax under Code section 4945.

10. The proposed transfer of assets to Y pursuant to the Merger will not subject X to any tax under Code section 4942(a) for a failure to distribute income.

11. X will not have to exercise expenditure responsibility with respect to the transfer of assets to Y pursuant to the Merger.

12. X will not be subject to tax under Code section 507(c) if X informs the Internal Revenue Service of its intention to terminate its private foundation status in a later taxable year when it has no assets.

13. X will not be required to comply with the record-keeping requirements of Code section 4942(g)(3)(B) with respect to the transfer of assets to Y pursuant to the Merger after the transfer 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 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).

Section 507(c) of the Code imposes an excise 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 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 1.507-3(a)(1) of the regulations indicates that, in a transfer of assets from one private foundation to one or more private foundations pursuant to a reorganization, each transferee private 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 provides, 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 1.507-3(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 section 507(b)(2) transfer of its assets to another private foundation.

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.

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.

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 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 4940 of the Code imposes excise tax on certain investment income of a private foundation.

Section 4941 of the Code imposes excise tax on an 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 provides that a private foundation must expend qualifying distributions under section 4942(g) of the Code for exempt purposes.

Section 4942(g)(1)(A) of the Code provides that a private foundation does not make any qualifying distribution under section 4942(g) of the Code where its distribution is a contribution to: (i) an organization controlled by the transferor or by one or more of the transferor's disqualified persons, or (ii) a private foundation that is not an operating foundation under section 4942(j)(3) of the Code.

Section 4942(g)(3) of the Code provides that a transferor private foundation, in order to have a qualifying distribution for its grant to another private foundation, must have adequate records, as required by section 4942(g)(3)(B) of the Code, to show that the transferee foundation in fact subsequently made a qualifying distribution that is equal to the amount of the transfer received and that is paid out of the transferee's own corpus within the meaning of section 4942(h) of the Code. The transferee's qualifying distribution must be expended before the close of the transferee's first tax year after the transferee's tax year in which it received the transfer.

284

Section 4944 of the Code imposes excise tax on a private foundation's making of any investment that jeopardizes the conduct of its exempt purposes.

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) 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 exempt purposes under section 170(c)(2)(B).

Section 4945(h) of the Code defines expenditure responsibility in terms of a grantor private foundation requiring proper reports from a grantee private foundation on the grantee's uses of a grant.

Sections 53.4945-6(c)(3) and 1.507-3(b) of the regulations allow a private foundation to make section 507(b)(2) transfers of its assets to organizations exempt under section 501(c)(3) of the Code, including private foundations, without the transfers being taxable expenditures under section 4945.

Analysis

X will transfer all of its assets to Y. Your requested rulings are discussed below:

1.

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 or liquidation, including a significant disposition of 25% or more of the transferor foundation's assets. Because X will transfer all of its assets, X'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, X's transfer of its assets under section 507(b)(2) of the Code to Y will not terminate X's private foundation status under section 509(a) of the Code.

2.

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

3.

Under section 1.507-3(a)(1) of the regulations, the transfer of X's assets to Y pursuant to section 507(b)(2) of the Code will result in Y not being considered a newly created organization.

4.

Under section 1.507-3(a)(2)(i) of the regulations, upon X's transfer of all of its assets to Y, Y will succeed to X's aggregate tax benefits under section 507(d) of the Code.

Under section 1.507-3(a)(4) of the regulations, upon X's transfer of all of its assets to Y, transferee Y will be responsible for any liabilities under Chapter 42 of the Code of its transferor X to the extent that X does not satisfy such liabilities.

285

5.

As in Revenue Ruling 78-387, cited above, after X transfers all of its assets to Y, X's excess qualifying distribution carryover, if any, under section 4942(i) of the Code, will carry over to Y and may be used by Y to meet Y's own distribution requirements under section 4942 of the Code.

6.

Under section 4941 of the Code, X's transfer of assets to Y will not be an act of self-dealing because the transfer will be for exempt purposes to an organization exempt from federal income tax under section 501(c)(3) of the Code, which is not a disqualified person, for purposes of section 4941, pursuant to section 53.4946-1(a)(8) of the regulations.

7.

Under section 4940 of the Code, X's transfer of its assets to Y will not result in any income under section 4940 of the Code.

8.

X's transfer of assets to Y is made for exempt purposes under section 501(c)(3) of the Code and will not be a jeopardizing investment or result in tax under section 4944 of the Code.

9.

Under section 53.4945-6(c)(3) of the regulations, a private foundation can make a transfer of its assets pursuant to section 507(b)(2) of the Code to exempt organizations under section 501(c)(3) of the Code, including private foundations, without the transfer being a taxable expenditure under section 4945 of the Code. Thus, X's transfer of assets to Y will not be a taxable expenditure under section 4945 of the Code and will not subject X to tax under that section.

10.

Under section 1.507-3(a)(9)(i) of the regulations, the transferee Y will be treated as its transferor X, so that X's undistributed income under section 4942(c) of the Code, if not already distributed by X, must be taken into account by Y in its such requirements as the successor to its transferor X.

11.

Section 1.507-3(a)(7) of the regulations provides that, where a private foundation transfers all of its assets to an exempt organization under section 501(c)(3) of the Code pursuant to section 507(b)(2) of the Code, it has no expenditure responsibility requirement under section 4945(h) of the Code. Thus, X will not have to exercise expenditure responsibility under section 4945(h) of the Code with respect to X's transfer of all of its assets to Y.

12.

X's filing of its voluntary notice of intent to terminate its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code will not result in any termination tax under section 507(c) of the Code because, under section 507(e) of the Code, the value of X's assets after it has transferred all of its assets to Y will be zero.

13.

Under section 1.507-3(a)(5) of the regulations, X's recordkeeping requirement under section 4942(g)(3)(B) of the Code, if any, will not apply after X has transferred all of its assets to Y.

286

Accordingly, we rule that:

1. X's transfer of all of its assets and its merger into Y will qualify as a transfer under section 507(b)(2) of the Code and will not result in the termination of X's private foundation status pursuant to section 507(a)(1) of the Code.

2. X's transfer will not subject X to termination tax under section 507(c) of the Code.

3. X's transfer of assets to Y pursuant to section 507(b)(2) of the Code will not be treated as a transfer to a newly-created organization.

4. X's aggregate tax benefits under section 507(d) of the Code will carry over to Y. X will treat its transfer to Y as a transfer of its assets subject to the amount of any liability which X may have incurred under Chapter 42 of the Code to the extent not satisfied by X.

5. As a result of X's transfer, X's excess qualifying distributions carryovers for prior years, if any, under section 4942(i) of the Code, will be transferred to Y.

6. X's transfer of assets to Y will not be an act of self-dealing and will not subject X, its foundation managers, or its disqualified persons to any tax under section 4941 of the Code.

7. X's transfer of assets to Y will not be subject to the tax on investment income under section 4940 of the Code.

8. X's transfer of assets to Y will not be a jeopardizing investment or result in tax under section 4944 of the Code.

9. X's transfer of assets to Y will not be a taxable expenditure or subject X to tax under section 4945 of the Code.

10. X's transfer of assets to Y will not subject X to tax under section 4942 of the Code for failure to distribute income.

11. X will not have to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfer of all of its assets to Y.

12. X will not be subject to tax under section 507(c) of the Code if X informs the Internal Revenue Service of its intention to terminate its private foundation status under section 509(a) of the Code pursuant to section 507(a)(1) of the Code in a later tax year when X has no assets.

13. X will not be required to comply with any recordkeeping requirements under section 4942(g)(3)(B) of the Code after its transfer of all of its assets.

28

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

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

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

288