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

Date: OCT 27 2000

Contact Person:

ID Number:

Contact Number:

T:EO:B2

Employer Identification Number:

Legend:

W =
X =
Y =

Dear Sir or Madam:

This is in reply to the letter of May 10, 2000, regarding the proposed transfer of all of W's assets to X and Y.

W 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. X and Y have also been recognized as exempt under section 501(c)(3) of the Code and are private foundations.

W's directors have differences of opinion as to how its charitable objectives can best be achieved. Therefore, it proposes to transfer all of its assets in equal shares to X and Y. The members of W's board of directors also are on the board of directors of X or Y. W has represented that X and Y are considered controlled organizations for the purposes of section 507 and Chapter 42 of the Code. W has also represented that it has no outstanding grants over which it is required to exercise expenditure responsibility as that term is defined in section 4945(h) of the Code. After W transfers all of its assets it intends to dissolve and voluntarily terminate its status as a private foundation status by giving notice to the Service pursuant to the provisions of section 507(a)(1).

The following rulings have been requested:

1. W's transfer of all of its assets to X and Y will constitute a transfer of assets described in section 507(b)(2) and will not result in the imposition of a termination tax pursuant to section 507(c) of the Code.

2. The amount of termination tax imposed under section 507(c) of the Code as a result of its post-transfer notification to the Secretary of its termination of its status as a private foundation will be zero and neither the preparation and/or filing of any final accounting or other documents required by state law in winding up, dissolution, and termination will result in imposition of tax under section 507(c).

3. For purposes of chapter 42 and sections 507 through 509, X and Y will be treated, subsequent to the transfer, as if each were W in the proportion which the fair market value of W's assets (less encumbrances) transferred to each bears to the fair market value of W's assets (less encumbrances) immediately before the transfer.

4. W's aggregate tax benefits, as defined in section 507(d)(1) of the Code, will be carried over from W to X and Y in the proportions determined in accordance with section 1.507-3(a)(2) of the regulations.

202

Re:

200104032

5. The transfer will not constitute an act of self-dealing under section 4941 of the Code.

6. The transfer will not constitute a jeopardizing investment under section 4944 of the Code.

7. The transfer will not result in tax under section 4940.

8. The transfer will not constitute a taxable expenditure under section 4945 of the Code, and W will have no expenditure responsibility under sections 4945(d)(4) and 4945(h) with respect to the transfer.

9. Subsequent to the transfer, W will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code with respect to the transfer.

10. For the taxable year of the transfer and any subsequent year, W will not be required to comply with the minimum distribution requirements of section 4942 of the Code with respect to the transfer.

11. X and Y will assume all obligations with respect to any of W's "undistributed income" within the meaning of section 4942(c) of the Code for the taxable year of the transfer in the proportions determined in accordance with section 1.507-3(a)(9)(i) of the regulations and X and Y will succeed, in the proportions determined in accordance with section 1.507-3(a)(9)(i) of the regulations, to W's excess qualifying distributions for the taxable year of the transfer, if any, as determined in section 4942(g) of the Code.

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 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 507(e) of the Code provides that, for purposes of section 507(c)(2) of the Code, the value of the net assets of the private foundation shall be determined at whichever time the value is higher: (1) the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation or (2) the date on which it ceases to be a private foundation.

Section 4940(a) of the Code imposes an excise tax on certain 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 means 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.

203

Re: 200104032

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 that 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 4944(a) of the Code imposes an excise tax on a private foundation which makes any investments which jeopardize the carrying out of any of its exempt purposes.

Section 4945 of the Code imposes an excise tax upon a private foundation's making of any taxable expenditures as defined in 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 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 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.

Section I.507-l(a) of the Federal 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.

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 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 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.

204

Re: **200104032**

Section I.507-3(a)(8)(ii) of the regulations provides that the transitional and other rules regarding Chatper 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 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 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.

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 W intends to transfer all of its assets to X and Y. X and Y are private foundations and because of the composition of W's board of directors and their boards, are considered controlled organizations for the purposes of section 507 and Chapter 42 of the Code. As successors to W, 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 X and Y. After W transfers all its assets W intends to notify the Service of its intent to terminate its private foundation status and comply with the notice and requirements of section 507(a)(1) of the Code.

Based on the information submitted and the representations made we hold that:

1. W's transfer of all of its assets to X and Y will constitute a transfer of assets described in section 507(b)(2) and will not result in the imposition of a termination tax pursuant to section 507(c) of the Code.

2. The amount of termination tax imposed under section 507(c) of the Code as a result of its post-transfer notification to the Secretary of Ws termination of its status as a private foundation will be zero and neither the preparation and/or filing of any final accounting or other documents required by state law in winding up, dissolution, and termination will result in imposition of tax under section 507(c).

3. For purposes of Chapter 42 and sections 507 through 509, X and Y will be treated, subsequent to the transfer, as if each were W in the proportion which the fair market value of its assets (less encumbrances) transferred to each bears to the fair market value of your assets (less encumbrances) immediately before the transfer.

205

Re:

200104032

4. W's aggregate tax benefits, as defined in section 507(d)(1) of the Code, will be carried over from W to X and Y in the proportions determined in accordance with section 1.507-3(a)(2) of the regulations.

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9. Subsequent to the transfer, W will not be required to comply with the recordkeeping requirements of section 4942(g)(3)(B) of the Code with respect to the transfer.

10. For the taxable year of the transfer and any subsequent year, W will not be required to comply with the minimum distribution requirements of section 4942 of the Code with respect to the transfer.

11. X and Y will assume all obligations with respect to any of W's "undistributed income" within the meaning of section 4942(c) of the Code for the taxable year of the transfer in the proportions determined in accordance with section 1.507-3(a)(9)(i) of the regulations and X and Y will succeed, in the proportions determined in accordance with section 1.507-3(a)(9)(i) of the regulations, to W's excess qualifying distributions for the taxable year of the transfer, if any, as determined in section 4942(g) of the Code.

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 TE/GE Customer Service Office.

Sincerely,

Joseph Chasin

Joseph Chasin
Acting Manager,
Exempt Organizations
Technical Group 2

206