Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Uniform Issue List:
507.00-00
4940.00-00
4941.04-00
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4944.00-00
4945.04-06
6033.02-01

Contact Person:

Telephone Number:

In Reference to: OP:E:EO:T:2

Date: OCT 21 1998

Legend:
X =
Y =
Z =

Dear Sir or Madam:

This is in reply to your rulings request dated March 20, 1998, postmarked May 7, on X's proposed transfers of all of its assets to Y and Z pursuant to section 507(b)(2) of the Internal Revenue Code.

X, Y, and Z are each recognized as exempt from federal income tax under section 501(c)(3) of the Code and as private foundations under section 509 of the Code. X will transfer all of its assets to Y and Z. X has no expenditure responsibility grants outstanding under section 4945(h) 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 other exempt purposes stated in that section.

Section 509(a) of the Code provides that certain organizations exempt from federal income tax under section 501(c)(3) of the Code are private foundations subject to the private foundation 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 Commissioner a statement of its intention to terminate its private foundation status and by paying the termination tax under section 507(c) of the Code.

Section 507(c) of the Code imposes excise tax on any private foundation which voluntarily terminates its private foundation status under section 507(a)(1). This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefits that have resulted from the foundation's exempt status under section 501(c)(3) of the Code, or (b) the value of the net assets of the private foundation.

Section 507(b)(2) of the Code provides that, in a transfer of assets by one private foundation to one or more other private foundations, 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 indicates that the aggregate tax benefits of an exempt private foundation refer to the value of its exemption from federal income tax and of the deductions taken by its donors during its existence.

Section 1.507-3(a)(9)(ii) of the regulations indicates that a transfer of assets pursuant to section 507(b)(2) of the Code does not relieve the transferor private foundation from filing its own final return as required by section 6043(b) of the Code.

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 tax years after the tax year of such transfer when it has no assets or activities.

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 tax year in which it makes a section 507(b)(2) transfer of its assets to another private foundation.

Section 1.507-3(a)(8) of the regulations provides that certain tax provisions of a transferor private foundation will carry over to any transferee private foundation that receives a transfer of assets pursuant to section 507(b)(2) of the Code.

Section 1.507-3(a)(9)(i) of the regulations indicates that, if a transferor private foundation transfers assets to one or more private foundations controlled by the same persons who 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 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 1.507-4(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 private foundation's transfer of assets under section 507(b)(2) of the Code will not constitute any termination of the transferor's status as a private foundation under section 509 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 described in 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 organization exempt 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 its 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) where the distribution is a contribution to either: (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).

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

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

Section 4945 of the Code imposes excise tax upon any private foundation's making of a taxable expenditure under 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 defines expenditure responsibility in terms of a grantor private foundation requiring proper pre-grant and post-grant reports from any grantee private foundation on the grantee's uses of a grant.

Section 1.507-3(a)(7) of the regulations provides that a private foundation that has transferred all of its assets to another private foundation pursuant to section 507(b)(2) of the Code is not subject to any expenditure responsibility requirement under section 4945(h) of the Code.

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.

Sections 53.4945-6(c)(3) of the regulations allows a private foundation to transfer assets pursuant to section 507(b)(2) of the Code to organizations exempt under section 501(c)(3) of the Code without the transfers being taxable expenditures under section 4945 of the Code.

Analysis

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

1.

Under section 507(b)(2) of the Code and section 1.507-3(a)(1) of the regulations, where there is a transfer of assets from one private foundation to one or more other private foundations pursuant to a reorganization, each transferee private foundation will not be treated as a newly created organization.

2.

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, including any significant disposition of 25% or more of the transferor's assets. Because X will be in such a reorganization by its disposition of all of its assets, X's transfers will be transfers under section 507(b)(2) of the Code.

Under section 1.507-4(b) of the regulations, X's transfers of its assets pursuant to section 507(b)(2) of the Code do not cause termination of its private foundation status under section 509 and, thus, will not result in any private foundation status termination tax under section 507(c) of the Code.

3.

Section 507(c) of the Code imposes excise tax on any private foundation which voluntarily terminates its private foundation status pursuant to section 507(a)(1) of the Code. This tax under section 507(c) tax is equal to the lower of: (a) the aggregate tax benefits that have resulted from the foundation's section 501(c)(3) status, or (b) the value of the net assets of the foundation. After X transfers all of its assets to Y and Z, the value of X's assets will be zero if and when it notifies the Service of its voluntary termination of its private foundation status pursuant to section 507(a)(1) of the Code, and, thus, such termination of its private foundation status will not result in any private foundation status termination tax due under section 507(c) of the Code.

4.

Under section 1.507-3(a)(9)(i) of the regulations, after X transfers all of its assets to Y and Z pursuant to section 507(b)(2) of the Code, X's transferees Y and Z will be treated as if they were X, for purposes of Chapter 42 and sections 507 through 509 of the Code, in the proportion which the fair market value of the assets transferred to each bears to the fair market value of all of X's assets immediately before the transfers.

5.

Section 53.4945-6(c)(3) of the regulations indicates that a private foundation can make transfers of its assets pursuant to section 507(b)(2) of the Code to organizations exempt under section 501(c)(3) without the transfers being taxable expenditures under section 4945. Thus, X's transfers to Y and Z will not be taxable expenditures under section 4945.

Section 1.507-3(a)(7) of the regulations provides that a private foundation that transfers all of its assets to one or more other private foundations pursuant to section 507(b)(2) of the Code is not subject to any expenditure responsibility requirement under section 4945(h) of the Code. Thus, X 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 to Y and Z.

6.

Under section 1.507-3(a)(9)(i) of the regulations, after X transfers all of its assets to Y and Z pursuant to section 507(b)(2) of the Code, its transferees Y and Z will be treated as if they were X, for purposes of Chapter 42, in the proportion which the fair market value of the assets transferred to each bears to the fair market value of all of X's assets immediately before the transfers. Thus, because Y and Z will be treated as X, X's qualifying distribution requirements under section 4942 of the Code, if not met by X, may be met by its transferees Y and Z.

As in Revenue Ruling 78-387, after X transfers all of its assets to Y and Z, its transferees Y and Z may each reduce their own distributable amounts under section 4942 of the Code by each's share of X's excess qualifying distributions carryover, if any, under section 4942(i) of the Code.

7.

Under section 1.507-3(a)(9)(i) of the regulations, because X's transferees Y and Z will be treated as if they were X, after X transfers all of its assets to Y and Z pursuant to section 507(b)(2) of the Code, X's investment income under section 4940 of the Code may be treated as income of its transferees in proportion to the assets transferred to each, and the tax on such income under section 4940 of the Code may be paid by X's transferees on behalf of X at the time when such tax would have been paid by X.

8.

Under section 4941 of the Code, X's transfers will not be acts of self-dealing because the transfers are made for exempt purposes to organizations exempt from federal income tax under section 501(c)(3) of the Code, which are not disqualified persons, for purposes of section 4941 of the Code, pursuant to section 53.4946-1(a)(8) of the regulations.

9.

Because X's transfers will be made for exempt purposes to organizations exempt from federal income tax under section 501(c)(3) of the Code, X's transfers will not be jeopardizing investments or result in tax under section 4944 of the Code.

10.

Under section 1.507-3(a)(8) of the regulations, X's transferees Y and Z will be treated as their transferor X and, thus, may use any transitional rules and savings provisions under that regulation that were applicable to X.

Accordingly, we rule that:

1. X's transferees Y and Z will not be treated as newly created organizations for purposes of Chapter 42 of the Code.

2. X's transfers under section 507(b)(2) of the Code will not result in termination under section 507(a) of the Code of X's private foundation status under section 509, and will not result in any termination tax under section 507(c) of the Code.

3. If X notifies the Service under section 507(a)(1) of the Code of its voluntary termination of its private foundation status at least one day after it transfers all of its assets, its private foundation status termination will occur when it has no assets and no termination tax will be due under section 507(c) of the Code.

4. X's transferees Y and Z will be treated as if they were X for purposes of Chapter 42 and sections 507 through 509 of the Code, in the proportion which the fair market value of the assets transferred to each bears to the fair market value of all of X's assets immediately before the transfers.

5. X's transfers of all of its assets to Y and Z will not be taxable expenditures under section 4945 of the Code, and X will not be required to exercise any expenditure responsibility under section 4945(h) of the Code with respect to its transfers of all of its assets to Y and Z.

6. X's distribution requirements under section 4942 of the Code for its tax year of its transfers may be met by Y and Z if each timely includes its proportionate share of X's undistributed income, if any, and each may reduce its own distributable amount under section 4942 of the Code by its proportionate share of X's excess qualifying distributions, if any, as of X's tax year of the transfers.

7. X's investment income under section 4940 of the Code may be treated as that of its transferees Y and Z in proportion to the assets transferred to each, and X's tax under that section 4940 on its investment income may be paid by X's transferees Y and Z on behalf of X at the time when the tax would have been paid by X.

8. X's transfers will not be acts of self-dealing under section 4941 of the Code, and X is not a disqualified person as to Y and Z for purposes of section 4941 of the Code.

9. X's transfers will not be jeopardizing investments under section 4944 of the Code.

10. X's transferees Y and Z may use any provisions that were applicable to X with respect to its transferred assets, as provided by section 1.507-3(a)(8) of the regulations.

X will be required to file its annual return, Form 990-PF, for its tax year in which it transfers all of its assets, but will not be required to file such returns for subsequent years.

Because this ruling 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(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2