Internal Revenue Service

Department of the Treasury

Washington, DC 20224

199905023

Uniform Issue List:
507.00-00
4940.00-00
4941.04-00
4942.03-05
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:
T =
W =
X =
Y =
Z =

Dear Sir or Madam:

This is in reply to your rulings request of February 13, 1998, on T's proposed transfers of all of its assets to W, X, Y, and Z pursuant to section 507(b)(2) of the Internal Revenue Code.

T, W, 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.

T will transfer all of its assets to W, X, Y, and Z, so that each transferee can pursue its own charitable objectives. T 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 the other exempt purposes stated in that section.

Section 509(a) of the Code provides that organizations exempt from federal income tax under section 501(c)(3) of the Code can be classified as private foundations subject to the private foundation provisions of Chapter 42 of the Code.

Section 507 of the Code provides that a private foundation can terminate its status as a private foundation.

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).

13

Section 507(c) of the Code impose 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 section 501(c)(3) status, 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 any significant disposition of 25% or more of the transferor'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 other private foundations pursuant to a reorganization, each transferee private foundation is not treated as a newly created organization, but succeeds 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 a 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 1.507-1(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 those taxable years after the 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)(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 the expenditure responsibility requirement of section 4945(h) of the Code.

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 Code section 507(b)(2) transfer of assets.

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 which are controlled, directly or indirectly, 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 assets transferred to it bears to the fair market value of all of the assets of the transferor immediately before the transfer.

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 1.507-4(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 section 507(b)(2) transfer of assets.

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 any act of self-dealing between a private foundation and any of its disqualified persons under section 4946.

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 from federal income tax under section 501(c)(3) is not a disqualified person.

Section 4942 of the Code requires that a private foundation must expend annual qualifying distributions under section 4942(g) for the conduct of exempt purposes.

Section 4942(g)(1)(A) of the Code provides that a "qualifying distribution" means any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B) of the Code, other than any contribution to: (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in section 4942(g)(3) of the Code, or (ii) a private foundation which is not an operating foundation (as defined in section 4942(j)(3) of the Code), except as provided in section 4942(g)(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 private foundation, in fact, subsequently made qualifying distributions that were equal to the amount of the transfer received and that were paid out of the transferee's own corpus within the meaning of section 4942(h). Such transferee foundation's qualifying distributions 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.

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 the amount, if any, of the transferor's excess qualifying distributions under section 4942(i).

Section 53.4942(a)-2(c)(4) of the regulations provides rules for a private foundation's valuation of its securities and other assets to compute its annual qualifying distribution requirement under section 4942 of the Code.

Section 53.4942(a)-2(c)(4)(vii) provides that, where a private foundation holds an asset for less than its entire tax year, the value of the asset for computing the foundation's distribution requirement under section 4942 of the Code is reduced by multiplying by the fraction of the year during which the asset was held by the foundation. The numerator of the fraction is the number of days in the tax year when the foundation held the asset and the denominator is the number of days in its entire tax year.

Section 4943 of the Code imposes excise tax on any private foundation's excess business holdings as defined in that section.

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, to avoid making a taxable expenditure, a transferor private foundation must exercise "expenditure responsibility" under section 4945(h) of the Code on its transfers 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 its grantee private foundation on the grantee's uses of a grant.

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.

Section 53.4945-6(c)(3) of the regulations allows 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), including private foundations, without the transfers being taxable expenditures under section 4945.

Analysis

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

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) 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 T will be in such a reorganization by its disposition of all of its assets, T's transfers will be transfers under section 507(b)(2) of the Code.

2.

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

3.

T's transfers of its assets are made for exempt purposes under section 501(c)(3) of the Code so the transfers will not adversely affect the exemptions from federal income tax under that section 501(c)(3) of T, W, X, Y, or Z.

4.

T's transfers to W, X, Y, and Z for exempt purposes under section 501(c)(3) of the Code will not constitute any willful and flagrant act (or failure to act) which would result in tax under Chapter 42 of the Code.

5.

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 is not treated as a newly created organization.

6.

Under section 1.507-3(a)(1) of the regulations, in a transfer of assets from one private foundation to one or more other private foundations pursuant to a reorganization, because each transferee private foundation is not treated as a newly created organization, each transferee will succeed to its proportionate share of its transferor's aggregate tax benefits under section 507(d) of the Code. Thus, T's aggregate tax benefits will be transferred to W, X, Y, and Z in proportion to the assets transferred to each.

7.

T's investment income under section 4940 of the Code can be treated as that of its transferees, and T's tax on such income under section 4940 may be paid by its transferees on behalf of T at the same time when the tax would have been paid by T.

T's distribution requirements under section 4942 of the Code for its tax year of its transfers, if not already met by T, may be met by T's transferees. For that tax year of the transfers, each transferee may increase its own distributable amount under section 4942 of the Code by its proportionate share of T's distributable amount for T's tax year of the transfers.

Under section 4942 of the Code, T's transferees may be treated as holding T's assets for T's entire tax year of the transfers. Otherwise, section 53.4942(a)-2(c)(4)(vii) provides that, where a foundation holds an asset for less than the entire tax year, the value of the asset for computing the foundation's distribution requirement is reduced by multiplying by the fraction of the tax year during which the asset was held, where the numerator of that fraction is the number of days in the tax year when the foundation held the asset and the denominator is the total number of days in the entire tax year.

Section 53.4942(a)-2(c)(4) of the regulations describes, in detail, the timing and valuation rules for securities or other assets, in order to determine a private foundation's annual distribution requirement under section 4942 of the Code.

8.

T's transfers to W, X, Y, and Z will not constitute investment income or any taxable sale or disposition of property and, thus, the transfers will not be subject to tax under section 4940 of the Code.

9.

Under section 4941 of the Code, T'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), which are not disqualified persons, for purposes of section 4941, pursuant to section 53.4946-1(a)(8) of the regulations.

10.

T's transfers do not involve any excess business holdings under section 4943 of the Code and will not result in tax under that section.

11.

Because T's transfers are made for exempt purposes, they will not constitute jeopardizing investments or result in tax under section 4944.

12.

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 from federal income tax under section 501(c)(3), including private foundations, without the transfers being taxable expenditures under section 4945. Thus, T's transfers to W, X, Y, and Z will not be taxable expenditures under section 4945.

Section 1.507-3(a)(7) of the regulations indicates that a private foundation can make transfers of all of its assets pursuant to section 507(b)(2) of the Code to organizations exempt from federal income tax under section 501(c)(3), including private foundations, without creating any expenditure responsibility requirement under section 4945(h). Thus, T will not be required to exercise expenditure responsibility under section 4945(h) with respect to its transfers of all of its assets to W, X, Y, and Z.

13.

Under section 1.507-1(b)(9) of the regulations, T will not be required meet the reporting requirements of sections 6033, 6104, or former 6056 of the Code, for any tax years after the tax year of its transfers when T will have no assets.

14.

Under section 53.4945-6(b)(2) of the regulations, a private foundation's payment of its reasonable costs for services rendered is not a taxable expenditure under section 4945 of the Code. Thus, T's and its transferees' legal, accounting, and other expenses, if reasonable in amount, for this rulings request and the transfers, will not be taxable expenditures under section 4945.

Under section 4942 of the Code, a distribution for exempt purposes includes reasonable and necessary administrative expenses. Thus, T's and its transferees' legal, accounting, and other expenses, for this rulings request and the transfers, if reasonable in amount, will be qualifying distributions under section 4942 of the Code.

15.

Under section 1.507-3(a)(8) of the regulations, T's transferees will receive the benefits of any savings provisions or transitional rules under that regulation that were applicable to T.

Accordingly, we rule that:

1. T's transfers of all of its assets to transferees W, X, Y, and Z will be transfers under section 507(b)(2) of the Code.

/ (

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

3. T's transfers will not adversely affect the exemptions from federal income tax under section 501(c)(3) of the Code of T or its transferees W, X, Y, and Z.

4. T's transfers will not constitute a willful and flagrant act (or failure to act) which would result in tax under Chapter 42 of the Code.

5. T's transferees will not be treated under section 507(b)(2) of the Code as newly created organizations.

6. T's transferees will succeed to T's aggregate tax benefits under section 507(d) of the Code in proportion to the amount of T's assets transferred to each.

7. For purposes of Chapter 42 and sections 507 through 509 of the Code, T's transferees will be treated as their transferor T, in the proportion which the fair market value of T's assets transferred to each bears to the fair market value of all of T's assets immediately before the transfer. T's transferees will each succeed proportionately to T's tax status, including that:

a.) Each transferee's proportionate share of T's investment income under section 4940 of the Code for T's tax year of the transfers may be included in each transferee's investment income for the tax year of the transfers.

b.) T's transfers will not be investment income under section 4940 of the Code.

c.) T will not be required to meet section 4942 of the Code for the tax year of the transfers, or for its tax year immediately preceding the tax year of the transfers, if T's distribution requirements under section 4942 are met by its transferees. Any undistributed income of T under section 4942 for its tax year immediately preceding its tax year of its transfers may be allocated to its transferees who must distribute that undistributed income not later than the end of T's tax year of the transfers. To meet T's distribution requirement under section 4942 of the Code for T's tax year of the transfers, each transferee may include its proportionate share of T's transferred assets for the period of time during T's tax year when such assets were held by T, as computed under section 53.4942(a)-2(c)(4) of the regulations concerning the valuation of securities and other assets, and under section 53.4942(a)-2(c)(4)(vii) providing that, if a foundation holds an asset for less than the entire tax year, the value of the asset in computing the foundation's distribution requirement is reduced by multiplying by the fraction of those days in the tax year when the asset was held by the foundation.

8. T's transfers will not result in tax on investment income under section 4940 of the Code.

9. T's transfers will not be self-dealing or result in tax under section 4941 of the Code as to T or its transferees.

10. T's transfers will not result in tax on excess business holdings under section 4943 of the Code.

11. T's transfers will not be jeopardizing investments under section 4944 of the Code.

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

13. T will not be required to comply with the reporting, return, and notice provisions of sections 6033, 6104, or former 6056, of the Code for any tax years after the tax year of its transfers when T will have no assets.

14. T's and its transferees' legal, accounting, and other expenses, if reasonable in amount, for this rulings request and the transfers, will not be taxable expenditures under section 4945 of the Code, and will be qualifying distributions under section 4942(g)(1)(A) of the Code.

15. T's transferees will be entitled to the benefit of any savings provisions or transitional rules that were applicable to T with respect to its transferred assets, as provided by section 1.507-3(a)(8) of the regulations.

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(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