Internal Revenue Service

Department of the Treasury

Washington, DC 20224

199908056

S.I.N. 0507.00-00
S.I.N. 4940.00-00
S.I.N. 4941.00-00
S.I.N. 4942.00-00
S.I.N. 4943.00-00
S.I.N. 4944.00-00
S.I.N. 4945.00-00

NO THIRD PARTY CONTACT

Contact Person

Telephone Number

In Reference to XXXXXXXXXXXXXXXXX

Date: NOV 25 1998

XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXX

OP:E:EO:T:3

Legend:
T= XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
C= XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Y= XXXXXXXX
Z= XXXXXXXXXXXXXX
A= XXXXXXXXXXXXXX
B= XXXXXXXXXXXX
E: XXXXXXXXXXXXXXXXXXXX
D: XXXXXXXXXXXXXXXXXXX
x= XXXXXXX
y= XXXX

Dear Applicant:

This is in reply to a letter dated October 5, 1998, under which T and C request certain rulings under sections 507, 4940, 4941, 4942, 4944 and 4945 of the Internal Revenue Code, in connection with a proposed transaction. More specifically T and C request us to rule that:

1. That the proposed transfer will constitute a 'significant disposition of assets to one or more private foundations' within the meaning of section 1.507-3(a)(1) and (c) of the Income Tax Regulations;

2. That the proposed transfer will not result in a 'termination of private foundation status' of T within the meaning of section 507(a) of the Code, but will constitute an 'other adjustment, organization, or reorganization' between private foundations within the contemplation of section 507(b)(2);

3. That under sections 1.507-1(b)(6) and 1.507-1(b)(7) of the regulations, the proposed transfer will not constitute either a notification of T's intent to terminate its status as a private foundation under section 507(a)(1) of the Code, or 'willful repeated acts (or failure to act) or a willful and flagrant act (or failure to act)' within the meaning of section 507(a)(2) by T and, therefore,

2

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

T will not be liable for the tax imposed by section 507(c);

4. That under section 507(b)(2) and section 1.507-3(a)(1) of the regulations, C will not be treated as a newly created organization;

5. That under section 1.507-3(a)(1) of the regulations, C will be treated as possessing T's attributes and characteristics that are described in sections 1.507-3(a)(2), (3) and (4) of the regulations;

6. That the proposed transfer will not give rise to net investment income and will not constitute a 'sale or other disposition' within the meaning of section 4940(c)(4)(A) of the Code, which would otherwise subject T to the 2% excise tax (or the reduced 1% excise tax) on any gain on the proposed transfer;

7. That the proposed transfer will not constitute an act of 'self-dealing' within the meaning of section 4941 of the Code;

8. That the proposed transfer will not subject T to any tax liability for a failure to distribute income under section 4942(a) of the Code;

9. That upon consummation of the proposed transfer, C will succeed to T's 'excess qualifying distributions' (if any) within the meaning of section 53.4942(a)-3(e) of the regulations, and that under section 1.507-3(a)(5) of the regulations the record keeping requirements of section 4942(g)(3)(B) of the Code will not apply to T during any period in which it has no assets;

10. That the proposed transfer will not constitute a jeopardizing investment within the meaning of section 4944 of the Code;

11. That the proposed transfer will not constitute a 'taxable expenditure' under section 4945(d) of the Code;

12. That under section 1.507-3(a)(9) of the regulations, T will not be required to exercise 'expenditure responsibility' under section 4945(h) of the Code with respect to the assets transferred in the proposed transfer;

13. That under section 1.507-3(a)(9) of the regulations, for purposes of Chapter 42 and sec[illegible]

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

507 through 509 of the Code, C will be treated as if it were T;

14. That the legal, accounting and other expenses incurred by T or C in connection with this ruling request and in carrying out the proposed transfer will not constitute taxable expenditures pursuant to section 4945 of the Code and will be considered qualifying distributions under section 4942 of the Code;

15. That the proposed transfer will not affect the status of T, or C, as organizations exempt from federal income tax under section 501(c)(3) of the Code;

16. That the proposed transfer will not give rise to any taxes under Chapter 42 or section 507 of the Code; and

17. That under sections 1.507-1(b)(9) and 1.507-3(a)(9)(i) of the regulations, T 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 the subsequent taxable years it has neither legal nor equitable title to any assets and engages in no activity.

Facts:

Our records reflect that in 1962 T was organized as a non-profit corporation under the laws of the State of Y. Also, our records reflect that T was recognized as exempt from federal income tax under section 501(c)(3) of the Code in June of 1968. Our records reflect that T has been classified as a private foundation.

The information furnished shows that A and B founded T and were substantial contributors to it. The file reflects that A and B were husband and wife, and that A died in 1990 and B died in 1998.

T's current officers and directors include E and D, who are A and B's daughter and son respectively. E is T's Chairman of the Board and D is T's President and Secretary. The four other Board members of T are unrelated to A and B.

The information furnished shows that T was formed to engage in the following activities:

· To give financial assistance to hospitals, corporations, foundations and other institutions in the United States which provide medical or hospital care or

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

· To give financial assistance to schools, including but not limited to technical and professional schools, colleges, universities and other institutions for the advancement of learning situate in the United States;

· To give financial assistance to churches, associations or conventions of churches and to other religious organizations institutions and corporations situate in the United States;

· To give financial assistance to museums and other institutions situate in the United States, for the preservation, study or advancement of the arts and sciences;

· To give financial assistance to societies, organizations and institutions for the performance, study or advancement of music, including operas and symphony orchestras situate in the United States;

· To give financial assistance to other corporations, trusts, community chests, funds, foundations situate in the United States organized and operated for religious, charitable, scientific, literary and educational purposes or for the prevention of cruelty to children or animals; and

· To furnish financial assistance to worthy students who are in need of such assistance to enable them to obtain an education in schools, including but not limited to technical and professional schools, colleges, universities and other institutions for the advancement of learning situate in the United States.

The information furnished shows that on May 22, 1997, B established C as a non-profit trust under the laws of the State of X. The information furnished shows that E and D are C's only Trustees. It is represented that B formed C to be the successor of T. Further, it is represented that B wanted T to be liquidated and all of its assets transferred to C.

C was recognized as exempt from federal income tax under section 501(c)(3) of the Code by determination letter dated November 3, 1997, and was held to be a private foundation within the meaning of section 509(a) of the Code.

C's trust document states that it was formed to "devote and apply ... [its] income ... exclusively for charitable, religious, scientific, literary and educational purposes either directly or by contributions to organizations duly authorized to carry on charitable, religious, scientific, literary and educational activities...."

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

The information furnished shows that in May of 1997, B established a Charitable Remainder Annuity Trust (hereafter CRAT). The information furnished shows that B transferred marketable securities valued in excess of $7x to the CRAT. By the terms of the CRAT's creating document, the CRAT was to make annual distributions of 7% of its value to B. It is represented that upon B's death, the CRAT distributed in excess of $8x to C.

Further, the information furnished shows that prior to her death in 1998, B established a Charitable Lead Annuity Trust (hereafter CLAT) in February of 1998. The information furnished shows that B transferred marketable securities valued in excess of $5x to the CLAT. By the terms of the CLAT's creating document, the CLAT was to make annual distributions of 250y to C over a 15 year period.

On April 24, 1998, T's Board of Trustees approved a resolution dissolving T and transferring all of its assets to C subject to approval by both the Court of jurisdiction of the State of Y, and by the Internal Revenue Service.

It is represented that such dissolution and liquidation action was adopted because T's directors determined that T's purposes could be most efficiently carried out by C if T's assets were transferred to, and administered by C, inasmuch as C purposes are substantially similar to T's purposes.

Further it is represented that the proposed transaction will eliminate needless extra expenses associated with the operation of twc foundations, which have virtually identical purposes. Specifically, it is represented that the proposed transaction will allow more funds to be committed to gifts and grants for exempt purposes, and will save the normal expenses associated with corporate filings in the State of Y.

It is represented that, upon receipt of a favorable response to C and T's ruling request of October 5, 1998, T will seek judicial approval, by the judicial authorities of the State of Y, of its dissolution and liquidation and the transfer of its assets to C.

T represents that, upon the transfer of its assets and its dissolution and liquidation, T will notify the Internal Revenue Service of such termination, liquidation and transfer.

It is represented that C will assume liability for any excise tax owed by T on its investment income for the year of the distribution and any subsequent year.

Also, it is represented that T will not treat any amount of the transferred assets as a qualifying distribution under Code section 4942(g).

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

It is represented that neither T nor C have committed any willful or flagrant acts (or failure to act) that would give rise to liability to tax under Chapter 42.

Further, it is represented that T and C are effectively controlled by the same individuals within the meaning of section 1.482-1(A)(3) of the regulations.

Law:

Section 501(c)(3) of the Code provides for the exemption from federal income tax of any nonprofit organization that is organized and operated exclusively for charitable and/or other exempt purposes stated in that section.

Section 507 of the Code provides that a section 501(c)(3) exempt organization's classification as a private foundation may be terminated in the ways described respectively in sections 507(a)(1), 507(a)(2), 507(b)(1)(A), and 507(b)(1)(B). Section 507 also concerns, under section 507(b)(2), the transfer of assets by one private foundation to another private foundation(s).

Section 507(b)(2) of the Code provides that, in the transfer of assets by one private foundation to one or more other private foundations as part of a reorganization, the transferee private foundations shall not be treated as newly created organizations.

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 another private foundation pursuant to a reorganization or liquidation.

Section 1.507-3(a)(1) of the regulations indicates that, in a transfer of assets from one private foundation to another private foundation pursuant to a reorganization or liquidation, the transferee private foundation shall not be treated as a newly created organization, but shall succeed to the transferor's aggregate tax benefit under Code section 507(d).

Section 1.507-3(a)(5) of the regulations indicates that a transferor private foundation is required to meet its distribution requirements under section 4942 of the Code, even 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. The section 507(b)(2) transfer itself may be counted toward satisfaction of such requirement only if it meets the requirements of section 4942(g).

Section 1.507-3(a)(7) of the regulations provides that, except as provided in section 1.507-3(a)(9), where the transferor private foundation has disposed of all of its assets, sections 4945(d)(4) and 4945(h) of the Code shall

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

to any "expenditure responsibility" grants made by the transferor foundation, except for any information reporting requirements imposed by section 4945 for any year in which any such transfer is made.

Section 1.507(a)-3(a)(8) of the regulations provides that certain tax provisions, listed therein, will carry over to a transferee private foundation that is given a Code section 507(b)(2) transfer of assets from a transferor private foundation.

Section 1.507-3(a)(9) of the regulations indicates that, if a transferor private foundation transfers all of its assets to one or more private foundations which are effectively controlled (within the meaning of section 1.482-1(a)(3), [now redesignated as section 1.482-1(A)(3)]) directly or indirectly by the same person or persons who effectively controlled the transferor private foundation, the transferee private foundation will be treated as if it were the transferor private foundation, for purposes of sections 4940 through 4948 and sections 507 through 509 of the Code, in the proportion which the fair market value of the transferor private foundation's assets that were transferred bears to the fair market value of the assets of the transferor private foundation immediately before the transfer.

Section 1.507-3(a)(9)(iii) of the regulations, Example (2), describes a situation where a private foundation P, controlled by trustees A and B, made a grant to another private foundation W for which P was therefore required to exercise expenditure responsibility under sections 4945(d)(4) and 4945(h) of the Code. The same trustees A and B then transferred all of P's assets to private foundations R, S, and T, all also controlled by A and B. The Example concludes that R, S, and T are each required to assume P's expenditure responsibility for P's grant to W, unless one or two of them is assigned that task by agreement with P as part of the transfer. The Example also concludes that R, S, and T have no expenditure responsibility for the transfer grants received by them from P, because in this regard R, S, and T are treated as P rather than as recipients of expenditure responsibility grants from P.

Section 1.507-4(b) of the regulations provides that, with exceptions not involved here, the tax on termination of private foundation status imposed by section 507(c) of the Code does not apply to a section 507(b)(2) transfer of assets.

Section 1.507-3(d) of the regulations provides that a transfer of assets under section 507(b)(2) of the Code will not constitute a termination of the transferor's private foundation status.

9

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Section 4941(a) of the Code imposes a tax upon any act of self-dealing between a private foundation and any of its disqualified persons as defined in section 4946.

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

Section 4942(g)(1)(A) of the Code indicates, in pertinent part, that a contribution will not be considered to be a qualifying distribution under section 4942(g) where the contribution is either: (i) to another organization that is controlled by the transferor or by one or more of the transferor's disqualified persons, or (ii) to any private foundation that is not an operating foundation under section 4942(j)(3), unless section 4942(g)(3) is met.

Section 4942(g)(3) of the Code requires that the transferor private foundation, in order to have a qualifying distribution for its grant to another private foundation, must have adequate records to show that the transferee private foundation in fact makes 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). That transferee's qualifying distribution must be expended before the close of the transferee's first taxable year after the transferee's taxable year in which the section 507(b)(2) transfer was received.

Section 4944(a)(1) of the Code imposes a tax upon the making by any private foundation of any investment that jeopardizes the conduct of its exempt purposes.

Section 4944(c) of the Code indicates that there is no tax upon any investment whose purpose is to further exempt purposes.

Section 4945(a)(1) of the Code imposes tax upon a private foundation's making of any taxable expenditure as defined in 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) on its grants to another private foundation.

Section 4945(h) of the Code defines expenditure responsibility in terms of the grantor private foundation requiring proper reports from the grantee private foundation on the grantee's uses of the grant. In pertinent part, section 53.4945-5(b)(7) of the regulations refers to the rules of section 1.507-3(a)(7) of the regulations, cited above.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 53.4946-1(a)(8) of the Foundation and Similar Excise Tax Regulations provides that, for purposes of self-dealing under section 4941 of the Code, an exempt organization under section 501(c)(3) is not a disqualified person (other than an organization described in section 509(a)(4)).

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, not excluding private foundations, without the transfers being considered to be taxable expenditures.

Section 53.4945-5(c)(2) of the regulations provides that "[i]f a private foundation makes a grant described in section 4945(d)(4) to a private foundation which is exempt from taxation under section 501(a) for endowment, for the purchase of capital equipment, or for other capital purposes, the grantor foundation shall require reports from the grantee on the use of the principal and the income (if any) from the grant funds. The grantee shall make such reports annually for its taxable year in which the grant was made and the immediately succeeding 2 taxable years. Only if it is reasonably apparent to the grantor that, before the end of such second succeeding taxable year, neither the principal, the income from the grant funds, nor the equipment purchased with the grant funds has been used for any purpose which would result in liability for tax under section 4945(d), the grantor may then allow such reports to be discontinued."

Rationale:

The transfers of assets from T to C will be a transfer of assets described in section 507(b)(2) of the Code because the transfer of funds will be from one private foundation to another pursuant to a reorganization or liquidation, as stated in section 1.507-3(c)(1) of the regulations. Under section 1.507-3(d), there is no private foundation termination tax in the case of section 507(b)(2) transfers from one private foundation to one or more other private foundations.

The carryover provisions for a Code section 507(b)(2) transfer will be applicable. Similar to section 1.507-3(a)(2)(iii), Example (1), all of T's aggregate tax benefit, as defined in section 507(d) of the Code, will be carried over to C. In addition, under sections 1.507-3(a)(1) through (8), any other applicable carryover provisions will be applicable to C, the private foundation transferee.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

There will be no acts of self-dealing under section 4941 of the Code. The transfers of assets are not acts of self-dealing because they are transfers of funds for exempt purposes to exempt section 501(c)(3) organizations, and, even if controlled by the same persons, the transferees are not considered disqualified persons pursuant to section 53.4946-1(a)(8) of the regulations.

Section 4942(g)(1)(A) of the Code provides that a qualifying distribution by a private foundation for exempt purposes includes any reasonable and necessary administrative expenses. That section further states, where a transfree is a private foundation which is not an opeating foundation under section 4942(j) or is controlled by one or more of the transferor's disqualified persons, a transfer, including the reasonable and necessary administrative expenses, will be a qualifying distribution only to the extent that the further requirements of section 4942(g)(3) are met. Thus, T's transfer, and the legal, accounting and other expenses of this ruling and transfer to C, if reasonable in amount, will be qualifying distributions under section 4942(g)(1)(A) to the extent that T meets section 4942(g)(3), including having adequate records required under section 4942(g)(3)(B) to show that its transfree C has timely met the distribution out of corpus requirements of section 4942(g)(3).

There will be no jeopardizing investments under section 4944 of the Code because section 4944(c) indicates that there are no jeopardizing investments involved where a foundation donates its funds for exempt purposes under section 501(c)(3), in this case, donations to other organizations exempt under section 501(c)(3).

There will be no taxable expenditures under section 4945 of the Code. Section 53.4945-6(c)(3) of the regulations indicates that no tax on taxable expenditures is involved where there is a reorganization transfer of assets under section 507(b)(2), which is the case here. Also, it is noted that T has no presently outstanding grants for which expenditure responsibility is being exercised.

Conclusions:

Accordingly, based upon the representations submitted, we rule that:

1. That the proposed transfer will constitute a 'significant disposition of assets to one or more private foundations' within the meaning of section 1.507-3(a)(1) and (c) of the Income Tax Regulations;

2. That the proposed transfer will not result in a 'termination of private foundation status' of T

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

will constitute an 'other adjustment, organization, or reorganization' between private foundations within the contemplation of section 507(b)(2);

3. That under sections 1.507-1(b)(6) and 1.507-1(b)(7) of the regulations, the proposed transfer will not constitute either a notification of T's intent to terminate its status as a private foundation under section 507(a)(1) of the Code, or 'willful repeated acts (or failure to act) or a willful and flagrant act (or failure to act)' within the meaning of section 507(a)(2) by T and, therefore, T will not be liable for the tax imposed by section 507(c);

4. That under section 507(b)(2) and section 1.507-3(a)(1) of the regulations, C will not be treated as a newly created organization;

5. That under section 1.507-3(a)(1) of the regulations, C will be treated as possessing T's attributes and characteristics that are described in sections 1.507-3(a)(2), (3) and (4) of the regulations;

6. That the proposed transfer will not give rise to net investment income and will not constitute a 'sale or other disposition' within the meaning of section 4940(c)(4)(A) of the Code, which would otherwise subject T to the 2% excise tax (or the reduced 1% excise tax) on any gain on the proposed transfer;

7. That the proposed transfer will not constitute an act of 'self-dealing' within the meaning of section 4941 of the Code;

8. That the proposed transfer will not subject T to any tax liability for a failure to distribute income under section 4942(a) of the Code;

9. That upon consummation of the proposed transfer, C will succeed to T's 'excess qualifying distributions' (if any) within the meaning of section 53.4942(a)-3(e) of the regulations, and that under section 1.507-3(a)(5) of the regulations the record keeping requirements of section 4942(g)(3)(B) of the Code will not apply to T during any period in which it has no assets;

10. That the proposed transfer will not constitute a jeopardizing investment within the meaning of section 4944 of the Code;

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

11. That the proposed transfer will not constitute a 'taxable expenditure' under section 4945(d) of the Code;

12. That under section 1.507-3(a)(9) of the regulations, T will not be required to exercise 'expenditure responsibility' under section 4945(h) of the Code with respect to the assets transferred in the proposed transfer;

13. That under section 1.507-3(a)(9) of the regulations, for purposes of Chapter 42 and sections 507 through 509 of the Code, C will be treated as if it were T;

14. That the legal, accounting and other expenses incurred by T or C in connection with this ruling request and in carrying out the proposed transfer will not constitute taxable expenditures pursuant to section 4945 of the Code and will be considered qualifying distributions under section 4942 of the Code;

15. That the proposed transfer will not affect the status of T, or C, as organizations exempt from federal income tax under section 501(c)(3) of the Code;

16. That the proposed transfer will not give rise to any taxes under Chapter 42 or section 507 of the Code; and

17. That under sections 1.507-1(b)(9) and 1.507-3(a)(9)(i) of the regulations, T 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 the subsequent taxable years it has neither legal nor equitable title to any assets and engages in no activity.

This ruling letter is directed only to the organization that requested it. Section 6110 of the Code provides that it may not be used or cited as precedent. We are sending a copy of this ruling letter to your key District Director and to your attorney.

Sincerely yours,

Edward K. Karcher

Edward K. Karcher
Chief, Exempt Organizations
Technical Branch 3