



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200545050**

Release Date: 11/10/2005

SE:T:EO:RA:T:1

Date: August 17, 2005

Contact Person:

Uniform Issue List:

507.00-00, 501.03-02, 509.03-00
4940.00-00, 4941.04-00, 4942.05-05
4944.00-00, 4945.04-06

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

P =
S =
T =

Dear _____ :

This is in response to a letter from your authorized representative requesting a ruling on P's behalf concerning P's proposed transfers of all of its assets to S and T pursuant to section 507(b)(2) of the Internal Revenue Code.

Facts

P, S, and T are exempt from federal income tax under section 501(c)(3) of the Code and are private foundations under section 509(a), which are effectively controlled by the same persons. Over time, differences of opinion have arisen among the Board members of P as to the management and charitable activities of P. To resolve this discord, P proposes to transfer fifty-four percent of its assets to S, and forty-six percent to T. After the transfers, P will notify the Service of its intent to terminate its private foundation status under section 509(a) pursuant to section 507(a)(1). P has no expenditure responsibility grants outstanding under section 4945(h).

Rulings Requested

The following rulings are requested:

- (1) Pursuant to section 507(b)(2) of the Code, S will not be treated as a newly created organization.
- (2) S will be treated as possessing the tax attributes and characteristics of P pursuant to section 1.507-3(a)(2), (3), and (4) of the Income Tax Regulations.
- (3) P's transfer to S will not constitute any act of self-dealing under section 4941 of the Code by P, S, or T, or any of their foundation managers as defined in section 4946.
- (4) Upon P's transfers to S and T, they will each succeed to a portion of P's excess qualifying distributions, if any, based upon each transferee foundation's proportionate share of P's total assets received, under section 4942(i) of the Code.
- (5) Pursuant to section 1.507-3(a)(9) of the regulations, and for purposes of Chapter 42 of the Code (section 4940 *et seq.* of the Code) and section 507 through 509 of the Code, S and T will be treated as if each were P in the proportion that the fair market value of P's assets (less encumbrances) transferred to S and T bears to the fair market value of P's assets (less encumbrances) immediately before P's transfers of the assets.
- (6) The legal, accounting, and other expenses, if reasonable in amount, incurred by S in connection with this private letter ruling request and in carrying out the transfers of assets, will be considered qualifying distributions under section 4942(g)(1)(A) of the Code on the basis that they have been made to achieve the charitable purposes of the grants.
- (7) The legal, accounting, and other expenses, if reasonable in amount, incurred by S in connection with this private letter ruling request and in carrying out the transfers of assets, will not constitute taxable expenditures under section 4945 of the Code or acts of self-dealing under section 4941.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for the charitable and/or 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) 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 Income Tax Regulations provide that a private foundation may voluntarily terminate its private foundation status by submitting to the Internal Revenue Service a statement of its intention to voluntarily terminate its private foundation status pursuant to section 507(a)(1) of the Code and by paying any termination tax under section 507(c) of the Code.

Section 507(c) of the Code impose excise tax on a 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 private foundation's exempt status under section 501(c)(3) or (b) the value of the net assets of the private 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 provides 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 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 subsequent tax years after its 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 transfer of its assets to another private foundation pursuant to section 507(b)(2) of the Code.

Section 1.507-3(a)(7) of the regulations provides that, where a private foundation has transferred all of its assets to another private foundation in a transfer under section 507(b)(2) of the Code, it is not required to exercise expenditure responsibility under section 4945(h) of the Code with respect to such transfer.

Section 1.507-3(a)(9)(i) of the regulations provides that, if a private foundation transfers assets to one or more private foundations which are effectively controlled directly or indirectly within the meaning of section 1.482-1(i)(4) of the regulations by the same persons who effectively 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 its transferor in the proportion which the fair market value of the transferor's assets transferred to the transferee bears to the fair market value of all of the transferor's assets immediately before the transfer.

Section 1.507-3(a)(9)(ii) of the regulations provides that a transfer of assets under section

507(b)(2) of the Code does not relieve the transferor private foundation from filing its own final tax year 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 transfer of assets under 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 private foundation status under section 509(a) 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 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 exempt organization 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) for the conduct of exempt purposes.

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. Under that regulation, the transferee is treated as the transferor so that the transferee can reduce its own distributable amount under section 4942 of the Code by its share of the amount, if any, of the transferor foundation's excess qualifying distributions under section 4942(i) of the Code.

Revenue Ruling 2002-28, 2002-1 C.B. 942, describes the tax effects of a private foundation distributing all of its assets to other private foundations under section 507 of the Code under various situations, where the transferor and the transferee foundations are controlled by the same persons under section 1.507-3(a)(9)(i) of the regulations.

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 4945 of the Code imposes excise tax on 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) on its grants to another private foundation.

Section 4945(h) of the Code defines expenditure responsibility in terms of the grantor private foundation requiring pre-grant inquiry and post-grant reports as to the grantee private foundation on

its uses of the 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 transfer its assets to exempt organizations under section 501(c)(3) of the Code, including private foundations, pursuant to section 507(b)(2) of the Code, without the transfers being taxable expenditures under section 4945 of the Code.

Analysis

Ruling Request 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 one or more other private foundations pursuant to any reorganization or liquidation, including a significant disposition of 25% or more of the transferor private foundation's assets. Because P will transfer all of its assets, P's transfers will be a significant disposition of its assets under section 1.507-3(c)(1) of the regulations and, thus, will be transfers under section 507(b)(2) of the Code. Under section 507(b)(2) and section 1.507-3(a)(1) of the regulations, P's transfers of its assets pursuant to section 507(b)(2) will not be considered transfers to newly created organizations.

Ruling Request 2

Under section 1.507-3(a)(2)(i) of the regulations, upon P's transfer of all of its assets pursuant to section 507(b)(2) of the Code, P's transferees S and T will succeed to P's aggregate tax benefits under section 507(d) of the Code in proportion to the assets transferred to each.

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

Ruling Request 3

Under section 4941 of the Code, P's transfers of its assets will not be acts of self-dealing because P's transfers will be for exempt purposes under section 501(c)(3) to organization S and T, which are exempt from federal income tax under section 501(c)(3), and which are not disqualified persons under section 4946, for purposes of section 4941, pursuant to section 53.4946-1(a)(8) of the regulations.

Ruling Request 4

As in Revenue Ruling 78-387, cited above, after P transfers all of its assets, P's excess qualifying distribution carryover, if any, under section 4942(i) of the Code, will carry over to P's transferees S and T, in proportion to the assets transferred to each, and may be used by each transferee to meet its own distribution requirements under section 4942.

Ruling Request 5

Under section 1.507-3(a)(9) of the regulations, transferees S and T will be treated as its transferor P for purposes of Chapter 42 of the Code and sections 507 through 509 of the Code.

Under section 1.507-3(a)(9) of the regulations, S and T will be treated as if each were P in the proportion that the fair market value of P's assets (less encumbrances) transferred to S and T bears to the fair market value of P's assets (less encumbrances) immediately before P's transfers of the assets.

Under section 1.507-3(a)(9) of the regulations, upon P's transfer of all of its assets, P's transferees S and T will be responsible for any liabilities under Chapter 42 of the Code of transferor P to the extent that P does not satisfy such liabilities.

Ruling Request 6

Under section 4942(g)(1)(A) of the Code and section 53.4942(a)-3(a)(2)(i) of the regulations, qualifying distributions include the reasonable and necessary administrative expenses paid to accomplish one or more exempt purposes. The legal, accounting, and other necessary expenses incurred to implement P's transfer to S and T, if reasonable in amount, will be paid to further the exempt purposes of S and T and will be qualifying distributions under section 4942(g)(1)(A) of the Code.

Ruling Request 7

Under section 53.4945-6(c)(3) of the regulations, P can make transfers of its assets pursuant to section 507(b)(2) of the Code to organizations exempt under section 501(c)(3), including private foundations, without the transfers being taxable expenditures under section 4945. Thus, the costs associated with P's transfers of its assets to S and T will not be taxable expenditures under section 4945 and will not subject P to tax under that section.

Under section 4941 of the Code, P's transfers of its assets and payments for costs associated with such transfers will not be acts of self-dealing because P's transfers will be for exempt purposes under section 501(c)(3) to organizations S and T which are exempt from federal income tax under section 501(c)(3) and which are not disqualified persons under section 4946, for purposes of section 4941, pursuant to section 53.4946-1(a)(8) of the regulations.

Conclusion

Accordingly, we rule that:

1. Pursuant to section 507(b)(2) of the Code, P's transfers of assets to S will not be treated as a transfer to a newly created organization.
2. P will treat its aggregate tax benefits as having been transferred to S and T in proportion to its assets transferred to each of S and T. P will treat the transfers to S and T as transfers of its assets subject to the proportionate amount of any liability P may have incurred under Chapter 42 of the Internal Revenue Code to the extent not satisfied by P.

3. P's transfer of its assets to S will not constitute an act of self-dealing and will not subject P's foundation managers or disqualified persons to tax under sections 4941(a)(1) or 4941(a)(2) of the Code.

4. As a result of its transfers to S and T, P's excess qualifying distributions carryover under section 4942(i) of the Code will be transferred to S and T in proportion to the assets transferred to each.

5. S and T will be treated as if each were P in the proportion that the fair market value of P's assets (less encumbrances) transferred to S and T bears to the fair market value of P's assets (less encumbrances) immediately before P's transfers of the assets, under section 1.507-3(a)(9) of the regulations.

Upon P's transfer of all of its assets, P's transferees S and T will be responsible for any liabilities under Chapter 42 of the Code, and section 1.507-3(a)(9) of the regulations, of transferor P, to the extent that P does not satisfy such liabilities.

6. The legal, accounting, and other expenses, if reasonable in amount, incurred by S in connection with this private letter ruling request and in carrying out the transfers of assets, will be considered qualifying distributions under section 4942(g)(1)(A) of the Code on the basis that they have been made to achieve the charitable purposes of the grants.

7. The payments of legal, accounting, and other expenses, if reasonable in amount, incurred by S in connection with this private letter ruling request and in carrying out the transfers of assets, will not constitute taxable expenditures under section 4945 of the Code or acts of self-dealing under section 4941.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

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

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Debra J. Kawecki
Manager, Exempt Organizations
Technical Group 1

Enclosure

Notice 437