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TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

Date: MAY 18 2001

Contact Person:

Identification Number:

Telephone Number:

T:EO:B2

Employer Identification Number:

Legend:

W =
X =

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.

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 has been recognized as exempt under section 50l(c)(3) of the Code and is a private foundation within the meaning of section 509(a).

In order to reduce the administrative burden and expense of maintaining two private foundations with identical charitable purposes, W's directors have decided to consolidate W and X by distributing all of W's assets to X. The members of W's board of directors are also the members of the board of directors of X. W has represented that it has not engaged in any act giving rise to liability under Chapter 42 of the Code. After the transfer W will voluntarily terminate its private foundation status and will comply with the notification and other requirements of section 507and 6033 of the Code.

The following rulings have been requested:

1. The transfer by W of all of its net assets to X will qualify as a Section 507(b)(2) transfer, and W's status as a private foundation will not terminate as a result of such transfer. Rather, W will be terminated for purposes of section 507 when it complies with the notification and other requirements of section 507(a)(l) of the Code in the year in which it is dissolved.

2. Since W's private foundation status will not terminate as a result of the transfer, W will not be subject to any tax under section 507(c) of the Code in the year of the transfer. Additionally, there will be no termination tax imposed under section 507(c) of the Code upon W's termination in any tax year following the year in which the transfer is made.

Re:

3. X, as the transferee organization, will not be treated as a newly created organization but will be treated, pursuant to section l.507-3(a)(l) of the Federal Income Tax Regulations as possessing the attributes and characteristics of W (as defined in section l.507-3(a)(2), (3) and (4)). In addition, pursuant to section l.507-3(a)(5), the transfer by W to X shall be counted as a qualifying distribution to the extent of W's current year's undistributed income and to the extent X satisfies section 4942(g) of the Code.

4. The transfer of assets from W to X will not constitute an act of self-dealing within the meaning of section 4941 of the Code between W and X or their respective foundation managers.

5. The transfer of assets from W to X will not constitute a taxable expenditure by W within the meaning of section 4945(d) of the Code, and W will not be required to exercise expenditure responsibility as defined in section 4945(h) with respect to such transfer of assets.

6. The transfer of assets from W to X will not constitute a "sale or other disposition of property" within the meaning of section 4940(c)(4)(A) 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(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 the net investment income of a private foundation.

Section 4940(c)(l) of the Code defines the net investment income of a private foundation as the amount by which the sum of the gross investment income and the capital gain net income exceeds the deductions allowed under section 4940(c)(3).

Section 4940(c)(2) of the Code defines the gross investment income as the amount of income from interest, dividends, rents, payments with respect to securities loans and royalties.

Re:

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 includes 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.

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 than 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 4945(a) of the Code imposes an excise tax upon a private foundation's making of any taxable expenditures 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) 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 a return with respect to its dissolution.

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

Section l.507-l(b)(6) of the regulations provides that if a private foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in section 507(b)(2) and section l.507-3(c) such transferor foundation will not have terminated its private foundation status under section 507(a)(l).

Re:

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 l.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 l.507-3(a)(2), (3) and (4) of the regulations describe in particular terms the treatment to be accorded assets transferred pursuant to a section 507(b)(2) reorganization under Chapter 42 and other provisions where the transferee organization succeeds 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.

Section 1.507-3(a)(7) of the regulations provides that where the transferor has disposed of all of its assets during any period in which the transferor has no assets, section 4945(d)(4) and (h) shall not apply to the transferee or the transferor with respect to any expenditure responsibility grants made by the transferor.

Section l.507-3(a)(8)(ii) of the regulations provides that the transitional and other rules regarding Chapter 42 of the Code set forth in section l.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

Re:

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. X is a private foundation and because W has the same board of directors as X, is considered a controlled organizations for the purposes of section 507 and Chapter 42 of the Code. As the successor 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. After W transfers all its assets to W, it intends to notify the Service of its intent to terminate its private foundation status and comply with the notice and other requirements of section 507(a)(1) of the Code.

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

1. The transfer by W of all of its net assets to X will qualify as a Section 507(b)(2) transfer, and W's status as a private foundation will not terminate as a result of such transfer. Rather, W will be terminated for purposes of section 507 when it complies with the notification and other requirements of section 507(a)(I) of the Code in the year in which it is dissolved.

2. Since W's private foundation status will not terminate as a result of the transfer, W will not be subject to any tax under section 507(c) of the Code in the year of the transfer. Additionally, there will be no termination tax imposed under section 507(c) of the Code upon W's termination in any tax year following the year in which the transfer is made.

3. X, as the transferee organization, will not be treated as a newly created organization but will be treated, pursuant to section I.507-3(a)(I) of the regulations as possessing the attributes and characteristics of W (as defined in section I.507-3(a)(2), (3) and (4)). In addition, pursuant to section I.507-3(a)(5), the transfer by W to X shall be counted as a qualifying distribution to the extent of W's current year's undistributed income and to the extent X satisfies section 4942(g) of the Code.

4. The transfer of assets from W to X will not constitute an act of self-dealing within the meaning of section 4941 of the Code between W and X or their respective foundation managers.

5. The transfer of assets from W to X will not constitute a taxable expenditure by W within the meaning of section 4945(d) of the Code, and W will not be required to exercise expenditure responsibility as defined in section 4945(h) with respect to such transfer of assets.

6. The transfer of assets from W to X will not constitute a "sale or other disposition of property" within the meaning of section 4940(c)(4)(A) of the Code.

Re:

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 Ohio TE/GE Customer Service Office.

Sincerely,

Terrell M. Berkovsky
Exempt Organizations
Technical Group 2