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INTERNAL REVENUE SERVICE
TE/GE TECHNICAL ADVICE MEMORANDUM

11/1/05

Significant Index No.: 4940.00-00

Northeast Area Manager, EO Examinations, SE:T:EO:E:NE

Through: EO Mandatory Review Staff, SE:T:EO:E:PR:MR

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification Number:

Year Involved:

Date of Conference:

Legend:

Foundation =

Issue:

Whether Foundation is subject to the tax on net investment income imposed on private foundations by section 4940 of the Internal Revenue Code.

Facts:

Foundation is described in section 501(c)(3) of the Code and classified as a private foundation within the meaning of section 509(a). Before the end of its first taxable year, Foundation terminated its foundation status in accordance with section 507(b)(1)(A) of the Code by distributing its assets to public charities.

Law:

Section 507(a) of the Code provides that except as provided in section 507(b), a private foundation may terminate its private foundation status only under the specific rules set forth in section 507(a).

Section 4940 of the Code imposes an excise tax based on the investment income of private foundations, which are exempt from taxation under section 501(a) for the taxable year.



Rev. Rul. 2003-13 describes the responsibilities of a private foundation relating to section 507 and chapter 42 (section 4940-4945) of the Code when it transfers all of its assets to one or more public charities described in sections 509(a)(1), 509(a)(2), or 509(a)(3). The Rev. Rul. provides that the distributions do not constitute investments for purposes of section 4940. Therefore, the private foundation has satisfied its obligations under section 4940 as long as it retains sufficient income or assets to pay the tax on investment for the taxable year prior to the distribution.

Discussion and Conclusion:

Foundation terminated its private foundation prior to the completion of its first tax year. In accordance with Rev. 2003-13, the distributions will not be considered investments. Therefore Foundation is not liable for tax under section 4940.

A copy of the technical advice memorandum is to be given to the organization. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent.

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