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

200140083

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date:

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Contact Person:

Identification Number:

Telephone Number:

T:EO:B2

Legend:	UIL Nos.
W =	507.00-00
X =	507.05-00
Y =	4940.00-00
Z =	4941.04-00
	4942.03-05
	4945.04-05

Dear Sir or Madam:

We have considered your ruling request dated September 18, 2000 regarding a private foundation's transfer of all of its assets to several transferee foundations under section 507(b)(2) of the Code.

W, X, Y, and Z are private non-operating foundations described in sections 501(c)(3) and 509 of the Code. W represents that X, Y, and Z are effectively controlled, directly or indirectly, by the same persons which effectively control W. In order to avoid disagreement and conflict among W's directors (family members), W proposes to transfer its net assets proportionately to X, Y, and Z (the Transferee Foundations), and later give notice of its intent to terminate private foundation status and dissolve. W expects to have excess qualifying distributions under section 4942 that will carry over proportionally to the transferee foundations. W represents that it has not engaged in any willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42.

W requests the following rulings:

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

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

3. X, Y, and Z, as transferee organizations, will not be treated as newly created organizations but will be treated, under section 1.507-3(a)(1) of the regulations, as possessing the attributes and characteristics of W (as defined in sections 1.507-3(a)(2), (3), and (4)). In addition, under section 1.507-3(a)(5), the transfers by W shall be counted as qualifying distributions to the extent of its current year's undistributed income and to the extent the Transferee Foundations satisfy section 4942(g) of the Code.

4. The transfer of assets from W to the three Transferee Foundations will not constitute acts of self-dealing under section 4941 of the Code between W and the Transferee Foundations or their respective foundation managers.

5. The transfer of assets from W to the three Transferee Foundations will not constitute taxable expenditures of W under section 4945(d) of the Code, and W will not be required to exercise expenditure responsibility under section 4945(h) with respect to such transfer of assets.

6. The transfer of assets from W to the three Transferee Foundations will not constitute a "sale or other disposition of property" under 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 and section 1.507-1(b)(1) of the 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 imposed under section 507(c) of the Code.

Section 1.507-1(b)(6) of the regulations states that a transfer of all of the net assets of a private foundation is not deemed to be a termination of the transferor-private foundation's status unless the transferor- private foundation elects to terminate such status.

Section 1.507-1(b)(7) 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 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 507(a)(1) of the Code and section 1.507-3(d) of the regulations provide that unless a private foundation gives notice, a transfer of assets described in Section 507(b)(2) will not constitute a termination of private foundation status.

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.

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Section 1.507-1(b)(6) of the regulations states that a transfer of all of the net assets of a private foundation is not deemed to be a termination of the transferor-private foundation's status unless the transferor-private foundation elects to terminate such status.

Section 1.507-1(b)(7) 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 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 507(a)(1) of the Code and section 1.507-3(d) of the regulations provide that unless a private foundation gives notice, a transfer of assets described in Section 507(b)(2) will not constitute a termination of private foundation status.

Section 1.507-3(a)(1) of the Treasury Regulations states that where a private foundation transfers all of its assets to another private foundation pursuant to a transfer described in Section 507(b)(2) of the Code, the transferee-foundation will be treated as possessing the attributes of the transferor-foundation as described in Treasury Regulation Sections 1.507-3(a)(2), (3) and (4).

Section 507(c) of the Code imposes a tax upon a private foundation that voluntarily terminates its status as a private foundation under section 507(a)(1) of the Code.

Section 507(g) provides for an abatement of this tax. 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.

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(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 4942 of the Code imposes certain minimum distribution requirements on private foundations.

Section 4942(i) provides, in part, that a private foundation that has exceeded the minimum distribution requirements for any taxable year will have excess qualifying distributions for such year.

Section 4942(g)(1) of the Code provides that a "qualifying distribution" means (A) 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), 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), or (ii) a private foundation which is not an operating foundation (as defined in Section 4942(j)(3)), except as provided in Section 4942(g)(3), or (B) any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in Section 170(c)(2)(B).

Section 53.4942(a)-3(e) of the Regulations provides that excess qualifying distributions may be carried over and used to reduce the private foundation's minimum distribution requirement for any subsequent taxable year within the specified five-year adjustment period.

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.

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.

Section 4941 of the Code imposes excise tax on an act of self-dealing between a private foundation and any of its disqualified persons under section 4946 of the Code.

Section 4941(d)(1) of the Code defines "self-dealing" to include the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Treasury Regulation Section 53.4946-1(a)(8) provides that for purposes of Section 4941 only, the term "disqualified person" shall not include any organization which is described in Section 501(c)(3) of the Code.

Section 53.4941(d)-2(f)(2) of the Regulations provides, in part, that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing.

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 4945 of the Code imposes tax upon a private foundation's making of any taxable expenditure under section 4945(d) of the Code.

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(d)(5) of the Code provides that a taxable expenditure includes any amount expended by a private foundation for purposes other than the charitable or other purposes under section 170(c)(2)(B) of the Code.

Section 4945(h) of the Code defines expenditure responsibility in terms of a grantor private foundation requiring proper reports from a grantee private foundation on the grantee's uses of a grant.

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 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 1.507-3(a)(7) of the regulations provides that, where a private foundation

transfers all of its assets pursuant to section 507(b)(2) of the Code to one or more private foundations exempt from federal income tax under section 501(c)(3) of the Code, the transferor private foundation will have no expenditure responsibility requirement under section 4945(h) of the Code.

Section 4940 of the Code imposes excise tax on certain investment income of a private foundation.

Section 4940(c)(4)(A) of the Code states that in determining capital gain net income for purposes of Section 4940(a) of the Code, only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents and royalties shall be taken into account.

Treasury Regulation Section 53.4940-1 (f) states, in part, that a distribution of property for purposes described in Section 170(c)(1) or (2)(B) which is a qualifying distribution under Section 4942 of the Code shall not be treated as a sale or other disposition of property.

Section 6043(b) of the Code and section 1.6043-3(a)(1) of the regulations provides that a private foundation must file its return with respect to its dissolution.

Each of the ruling requests is addressed separately below.

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 another private foundation pursuant to any reorganization or liquidation, including a significant disposition of 25% or more of the transferor foundation's assets. Because W will transfer all of its assets, W's transfer will be a significant disposition of its assets under section 1.507-3(c)(1) of the regulations and, thus, will be a transfer under section 507(b)(2) of the Code.

Under sections 1.507-1(b)(6) and (7) of the regulations a transfer of all of the net assets of a private foundation is not deemed to be a termination of the transferor-private foundation's status unless the transferor-private foundation elects to terminate such status. W's transfer of assets to X, Y, and Z pursuant to section 507(b)(2) of the Code will not terminate W's private foundation status under section 509(a) of the Code.

Under section 1.507-3(d) of the regulations, unless a private foundation voluntarily gives notice pursuant to section 507(a)(1), a transfer of assets described in section 507(b)(2) will not constitute a termination of the transferor's private foundation status under 507(a)(1). W does not intend to terminate its private foundation status in the year of transfers. W's private foundation status will terminate in the year in which it complies with the provisions of section 507(a)(1) of the Code and formally notifies the IRS of its intention to dissolve.

2.

Section 507(c) of the Code imposes an excise tax on each terminating private foundation equal to the lower of the aggregate tax benefit resulting from such termination or the value of its net assets. Section 507(e) provides that, for purposes of Section 507(c), the value of the net assets shall be determined at whichever time such value is higher: (1) the first day on which action is taken which culminates in its ceasing to be a private foundation or (2) the date on which it ceases to be a private foundation.

Under section 1.507-4(b) of the regulations, private foundations which make transfers described in section 507(b)(1)(A) or (2) are not subject to the tax imposed under section 507(c). W's transfer of assets to X, Y, and Z pursuant to section 507(b)(2) of the Code will not result in termination tax under section 507(c) of the Code. W does not intend to terminate its private foundation status in the year it transfers its assets to the Transferee Foundations, therefore, no tax should be imposed under Section 507(c) of the Code in the year of the transfers. The subsequent voluntary termination of W after the transfer of assets to the Transferee Foundations will be a taxable termination within the meaning of Section 507(a)(1). However, no tax will be due under Section 507(c) inasmuch as W will have no assets at the time of such voluntary termination.

3.

Because the transfer is described in section 507(b)(2) of the Code, the Transferee Foundations will be treated as possessing W's attributes described in sections 1.507-3(a)(2), (3) and (4) of the regulations. Moreover, given that the Transferee Foundations are effectively controlled by the same persons which effectively control W, the Transferee Foundations will be treated proportionately as W. Any excess qualifying distributions of W will carry over proportionately to the Transferee Foundations.

Under section 1.507-3(a)(5), a section 507(b)(2) transfer will be counted toward satisfaction of the requirement to make distributions under Section 4942 to the extent that the amount transferred meets with the requirements of Section 4942(g). Because the Transferee Foundations are effectively controlled by the same persons which effectively control W, and because the Transferee Foundations are non-operating private foundations, the proposed transfer is described in section 4942(g)(1)(A)(i) and (ii) and not itself a qualifying foundation unless the Transferee Foundations meet the distribution-from-corpus requirements of section 4942(g)(3). Thus, W (or the Transferee Foundations) must satisfy W's 4942 requirements in the year of the proposed transfer independently of the proposed transfer.

4.

Section 4941 (d)(1) of the Code generally defines acts of self-dealing as certain transactions between private foundations and disqualified persons. There is no such transaction here, for several reasons. Section 53.4946-1 (a)(8) of the regulations provides that for purposes of self-dealing, a section 501(c)(3) organization generally is not a disqualified person. The Transferee Foundations are treated as W for purposes of section 4941. Also, section

53.4941(d)-2(f)(2) of the regulations also indicates that a grant by a private foundation to a section 509(a)(1), (2), or (3) organization will not be an act of self-dealing merely because one of the section 509(a)(1), (2), or (3) organization's officers, directors, or trustees is also a manager of the foundation.

5.

Given that X, Y, and Z are described in section 501(c)(3) of the Code, the proposed transfer will be considered as used exclusively for section 170(c)(2)(B) purposes. Given that W will have no assets after the transfer, and that X, Y, and Z are treated proportionately as W, W need not exercise expenditure responsibility with respect to such transfer. Thus, the transfer will not be a taxable expenditure under section 4945(d)(5).

6.

Under section 4940(c)(4)(A) of the Code, when determining capital gain net income for purposes of Section 4940(a) of the Code, only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents and royalties shall be taken into account. W realizes no gain subject to taxation under section 4940 upon its transfer to the Transferee Foundations, as the Transferee Foundations are treated proportionally as W.

Therefore, we rule as follows:

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

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

3. X, Y, and Z, as transferee organizations, will not be treated as newly created organizations but will be treated, under section 1.507-3(a)(1) of the regulations, as possessing the attributes and characteristics of W (as defined in sections 1.507-3(a)(2), (3), and (4)).

4. The transfer of assets from W to the three Transferee Foundations will not constitute acts of self-dealing under section 4941 of the Code between W and the Transferee Foundations or their respective foundation managers.

5. The transfer of assets from W to the three Transferee Foundations will not constitute taxable expenditures of W under section 4945(d) of the Code, and W will not be required to exercise expenditure responsibility under section 4945(h) with respect to such transfer of assets.

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

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

Because this letter could help resolve future tax questions, you should keep a copy of this ruling in your permanent records.

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.

Sincerely,

/s/

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2