



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Identification Number:

Telephone Number:

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

Employer Identification Number:

Legend

A =
B =
C =
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 of the Internal Revenue Code.

Facts

P, S, and T are each exempt from federal tax under section 501(c)(3) of the Code and each is classified as a private foundation under section 509(a). P is controlled by three siblings, A, B and C, each members of the same family. S is controlled by A and B and their respective spouses. T is controlled by C and his spouse.

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 approximately two-thirds of the fair market value of its assets to S and approximately one-third to T. After the proposed transfers, P intends to dissolve under state law. After the proposed transfers, S will continue to be controlled by A, B, and their respective spouses, and T will be controlled by C and his spouse.

P has not received notification from the Internal Revenue Service that its status as a private foundation has been terminated under section 507 of the Code.

P has not committed either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability under Chapter 42 of the Code.

P currently has no outstanding grants that require the exercise of expenditure responsibility under section 4945(h) of the Code.

P does not have any excess business holdings and the proposed transfers of assets from P to S and T will not cause either S or T to have any excess business holdings.

P currently has three charitable pledges outstanding. The Board of Directors ("Board") of P has agreed to allocate these pledges to S and T. In addition, the Board of P has agreed to allocate any additional charitable pledges made prior to the final division of P between S and T as may be determined and agreed to by the Board of P.

Rulings Requested

1. The proposed transfers from P to S and T will not result in a termination of private foundation status under section 507(a) of the Code, but will constitute a transfer between private foundations under section 507(b)(2) of the Code.
2. As a result of the proposed transfers from P to S and T, S and T will succeed to the aggregate tax benefits of P as determined under section 1.507-3(a) of the Income Tax Regulations.
3.
 - A. The proposed transfers do not give rise to any net investment income under section 4940 of the Code.
 - B. S and T will be entitled to utilize any excess section 4940 excise tax paid by P and to determine whether a reduction in the tax on net investment income under section 4940(e) is appropriate by reference to the prior distributions of P during the base period in proportion to the assets received by each.
4. The proposed transfers do not constitute self-dealing transactions and are not subject to excise tax under section 4941 of the Code.
5.
 - A. P will not have any obligation to satisfy the minimum distribution requirements

under section 4942 of the Code for the taxable year of the proposed transfers.

- B. S and T will each succeed to P's undistributed income within the meaning of section 4942(c) of the Code.
 - C. S and T may reduce their own distributable amounts, within the meaning of section 4942(d) of the Code, by P's excess qualifying distributions, as described in section 4942(i), in proportion to the assets received by each.
- 6. As a result of the proposed transfers, for purposes of applying section 4943 of the Code, S and T will be subject to the holding period rules under section 4943(c) as were applicable to P.
 - 7. The proposed transfers will not constitute a jeopardizing investment under section 4944 of the Code.
 - 8. The proposed transfers will not constitute taxable expenditures under section 4945(d) of the Code and P will not be required to exercise expenditure responsibility under section 4945(h) with respect to the proposed transfers.

Ruling Requests No. 1 and 2

Law

Section 507(a) of the Code provides that, except as provided in section 507(b), the status of an organization as a private foundation is terminated if it notifies the Internal Revenue Service or with respect to the organization, there have certain acts that give rise to liability for tax under chapter 42.

Section 507(b)(2) of the Code provides that in the case of a transfer of assets of any private foundation to another private foundation pursuant to certain types of transactions, the transferee is not treated as a newly created organization.

Section 507(c) of the Code provides for the imposition of a tax on the termination of a private foundation described in section 507(a).

Section 1.507-1(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) of the Code and section 1.507-3(c) of the regulations, such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Section 1.507-3(a)(1) of the regulations provides that, in the case of a significant disposition of assets to one or more private foundations within the meaning of section 1.507-3(c), the transferee organization is not treated as a newly created organization. In addition, the transferee organization is treated as possessing those attributes and characteristics, as described in sections 1.507-3(a)(2), (3) and (4), of the transferor organization.

Section 1.507-3(a)(2) of the regulations also provides that where more than one transferee organization succeeds to the aggregate tax benefits of the transferor organization, each transferee succeeds to the tax benefits in proportion to the fair market value of the assets that it receives from the transferor.

Section 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its net assets to one or more foundations which are effectively controlled, directly or indirectly, by the same person or persons which effectively controlled the transferor foundation, for purposes of Chapter 42 and sections 507 through 509 of the Code, such a transferee foundation will be treated as if it were the transferor. A transferee foundation is treated as if it were the transferor in the proportion which the fair market value of the net assets transferred to such transferee bears to the fair market value of the net assets of the transferor assets immediately before the transfer.

Section 1.507-3(c) of the regulations provides that a transfers of assets described in section 507(b)(2) of the Code includes "other adjustment, organization, or reorganization," which includes a "significant disposition of assets." A "significant disposition of assets" includes a disposition of 25 percent or more of the fair market value of the foundation's net assets.

Section 1.507-5 of the regulations describes the aggregate tax benefits of a private foundation resulting from the section 501(c)(3) status of a private foundation.

Section 507(d)(1) of the Code describe the aggregate tax benefits of a private foundation resulting from the section 501(c)(3) status of a private foundation.

Section 1.507-3(a)(5) of the regulations provides 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)(6) of the regulations provides that whenever a private foundation makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation, the applicable time period described in section 4943(c)(4), (5), or (6) shall include both the period during which the transferor foundation held such assets, and the period during which the transferee foundation holds such 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 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.

P, a private foundation under section 509(a) of the Code, proposes to transfer approximately two-thirds of the fair market value of its assets to S and approximately one-third to T, both of which are also private foundations under section 509(a).

Therefore, these transfers are described in section 507(b)(2) of the Code and section 1.507-3(c) of the regulations. Consequently, under section 1.507-1(b)(6), P will not have terminated its private foundation status under section 507(a)(1).

Analysis - Ruling Request 2

P, a private foundation under section 509(a) of the Code, proposes to transfer approximately two-thirds of the fair market value of its assets to S and approximately one-third to T, both of which are also private foundations under section 509(a). Therefore, these transfers are described in section 507(b)(2) of the Code and section 1.507-3(c) of the regulations. Section 1.507-3(a)(1) provides that the transferee organization is treated as possessing those tax attributes and characteristics, as described in sections 1.507-3(a)(2), (3) and (4), of the transferor organization.

Therefore, under section 1.507-3(a)(2) of the regulations, S and T will each succeed to P's aggregate tax benefits in proportion to the fair market value of net assets that S and T will each receive.

Ruling Request 3

Law and Analysis

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

Section 4940(c)(1) of the Code defines net investment income 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 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its net assets to one or more foundations which are effectively controlled, directly or indirectly, by the same person or persons which effectively controlled the transferor foundation, for purposes of Chapter 42 and sections 507 through 509 of the Code, such a transferee foundation will be treated as if it were the transferor.

P, S, and T are each exempt from federal tax under section 501(c)(3) of the Code and each is classified as a private foundation under section 509(a). P is controlled by three siblings, A, B and C, each members of the same family. S is controlled by A and B and their respective spouses. T is controlled by C and his spouse. After the proposed transfers, S will continue to be controlled by A, B and their respective spouses and T will be controlled by C and his spouse. Therefore, after the proposed transfers, both S and T will be effectively controlled, directly or indirectly, by the same persons which effectively controlled P, within the meaning of section 1.507-3(a)(9)(i) of the regulations.

A. Under section 1.507-3(a)(9)(i) of the regulations, for purposes of section 4940 of the Code, S and T are treated as if they were the transferors. Therefore, for purpose of section 4940 of the Code, these transfers do not constitute investment income of S and T.

B. Under section 1.507-3(a)(9)(i) of the regulations, for purposes of section 4940 of the Code, S and T are treated as if they were the transferors. Therefore, any excess section 4940 tax paid by P may be used by S and T to offset any of their section 4940 tax liability. Since P is transferring approximately two-thirds of the fair market value of its assets to S and approximately one-third to T, the proportionality rules in section 1.507-3(a)(9)(i) of the regulations apply. Thus, S will succeed to two-thirds and T will succeed to one-third of any excess section 4940 tax paid by P.

Ruling Request 4

Law and Analysis

Section 4941 of the Code imposes excise taxes on any act of self-dealing between a private foundation and a disqualified person, as defined in section 4946(a)(1).

Section 53.4946-1(a)(8) of the regulations provides that, for purposes of section 4941 of the Code, the term “disqualified person” does not include an organization described in section 501(c)(3).

Since S and T are both section 501(c)(3) organizations, under Section 53.4946-1(a)(8) of the regulations, S and T are not disqualified persons for purposes of section 4941 of the Code. Therefore, the proposed transfers from P to S and T will not constitute acts of self-dealing between a private foundation and a disqualified person under section 4941 of the Code.

Ruling Request 5

Law and Analysis

Section 4942 of the Code provides that unless a private foundation makes annual “qualifying distributions,” as defined in section 4942(g)(1)(A), an excise tax is imposed on the private foundation’s “undistributed income.”

Section 4942(c) of the Code defines the term “undistributed income” as the amount by which the “distributable amount” for a taxable year exceeds the qualifying distributions made out of such distributable amount.

Section 4942(d) of the Code defines the term “distributable amount.”

Section 4942(i) provides for a carryover of the amount by which certain qualifying distributions from prior taxable years have exceeded the distributable amounts for such years.

Rev. Rul. 78-387, 1978-2 C.B. 270, holds that when private foundation transfers all of its assets to another private foundation that is controlled by the same persons who controlled the transferor foundation, the transferee foundation may reduce its own distributable amount under

section 4942(d) of the Code by the amount of the transferor's excess qualifying distributions as described in section 4942(i).

Section 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its net assets to one or more foundations which are effectively controlled, directly or indirectly, by the same person or persons which effectively controlled the transferor foundation, for purposes of Chapter 42 and sections 507 through 509 of the Code, such a transferee foundation will be treated as if it were the transferor.

A. After the proposed transfers, both S and T will be effectively controlled, directly or indirectly, by the same persons which effectively controlled P, within the meaning of section 1.507-3(a)(9)(i) of the regulations. Therefore, under Section 1.507-3(a)(9)(i) of the regulations, for purposes of section 4942 of the Code, S and T will be treated as if they were P. Therefore, for purposes of section 4942 of the Code, P will not be required to meet the minimum distributions requirements under section 4942 for the taxable year of the proposed transfers.

B. Since S and T will be treated as if they were P, S and T will succeed to P's undistributed income, within the meaning of section 4942(c) of the Code.

C. After the proposed transfers, S and T will be effectively controlled by the same persons who controlled P. Therefore, under Rev. Rul. 78-387, S and T may proportionally reduce their own distributable amounts, within the meaning of section 4942(d) of the Code, by the amount of P's excess qualifying distributions as described in section 4942(i).

Ruling Request 6

Law and Analysis

P does not have any excess business holdings and the proposed transfers of assets from P to S and T will not cause either S or T to have any excess business holdings.

Section 4943(a)(1) of the Code imposes a tax on the "excess business holdings," as defined in section 4943(c), of any private foundation in a business enterprise.

Section 1.507-3(a)(6) of the regulations provides that for purposes of sections 4943(c)(4), (5) and (6) of the Code, whenever a private foundation makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation, the holding period includes both the period during which the transferor foundation held the transferred assets and the period during which the transferee foundation holds the assets.

The proposed transfers will be described in section 507(b)(2) of the Code. (See Ruling Request No. 1). Therefore, for purposes of determining the holding period of the assets to be transferred under sections 4943(c)(4), (5) and (6) of the Code, the holding period will include both the period during which P held such assets and the period during which S and T will hold such assets.

Ruling Request 7

Law and Analysis

Section 4944(a)(1) of the Code imposes an excise tax upon a private foundation, which invests any amount in such a manner as to jeopardize the carrying out of its exempt purposes.

The proposed transfers by P to S and T do not constitute investments for purposes of section 4944 of the Code. Therefore, the transfers will not constitute investments jeopardizing P's exempt purposes and are not subject to tax under section 4944(a)(1).

Ruling Request 8

Law and Analysis

Section 4945 of the Code imposes a tax on an "taxable expenditure" (as defined in section 4945(d)) made by a private foundation.

Section 4945(d)(4) of the Code provides that the term "taxable expenditure" includes any amount paid or incurred as a grant to a private non-operating foundation unless the grantor foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Section 4945(h) of the Code defines the expenditure responsibility required under section 4945(d)(4).

Section 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its net assets to one or more foundations which are effectively controlled, directly or indirectly, by the same person or persons which effectively controlled the transferor foundation, for purposes of Chapter 42 and sections 507 through 509 of the Code, such a transferee foundation will be treated as if it were the transferor.

After the proposed transfers, both S and T will be effectively controlled, directly or indirectly, by the same persons which effectively controlled P, within the meaning of section 1.507-3(a)(9)(i) of the regulations. Therefore, under Section 1.507-3(a)(9)(i) of the regulations, for purposes of section 4945 of the Code, S and T will be treated as if they were P. Therefore, for purposes of section 4945, the proposed transfers will not constitute taxable expenditures by P under section 4945(d). Accordingly, P will not be required to exercise expenditure responsibility under section 4945(h) with respect to the assets that it will transfer to S and T.

Rulings

1. The proposed transfers from P to S and T will not result in a termination of private foundation status under section 507(a) of the Code, but will constitute a transfer between private foundations under section 507(b)(2) of the Code.
2. S and T will succeed to the aggregate tax benefit of P as determined under section 507(d) of the Code in proportion to the assets received by each.
3. A. The proposed transfers do not give rise to any net investment income under

section 4940 of the Code.

- B. S and T will be entitled to utilize any excess section 4940 excise tax paid by P and to determine whether a reduction in the tax on net investment income under section 4940(e) is appropriate by reference to the prior distributions of P during the base period in proportion to the assets received by each.
- 4. The proposed transfers do not constitute self-dealing transactions and are not subject to excise tax under section 4941 of the Code.
- 5.
 - A. P will not have any obligation to satisfy the minimum distribution requirements under section 4942 of the Code for the taxable year of the proposed transfers.
 - B. S and T will each succeed to P's undistributed income, within the meaning of section 4942(c).
 - C. S and T may reduce their own distributable amounts, within the meaning of section 4942(d) of the Code, by P's excess qualifying distributions, as described in section 4942(i), in proportion to the assets received by each.
- 6. For purposes of applying the excess business holding provisions of section 4943 of the Code, S and T will be treated as if they were P and be subject to the holding period rules under section 4943(c) as were applicable to P.
- 7. The proposed transfers will not constitute a jeopardizing investment for purposes of section 4944 of the Code.
- 8. The proposed transfers will not constitute taxable expenditures under section 4945(d) of the Code and P will not be required to exercise expenditure responsibility under section 4945(h) with respect to the proposed transfers.

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. Kaweck
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437