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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:EEE:EOET:EO3
PLR-120517-22

Date:
April 18, 2023

Transferring Foundation =

Recipient Foundation =
State 1 =
State 2 =

Dear :

This is in response to your letter dated October 14, 2022, in which Recipient Foundation requested a private letter ruling involving sections 507, 4940, 4941, 4942, 4944, 4945, 6033, and 6043 of the Internal Revenue Code.

BACKGROUND

Both Transferring Foundation and Recipient Foundation (collectively, the "Foundations") are recognized as exempt organizations described in section 501(c)(3) and classified as private foundations under section 509(a). The Foundations are not operating foundations within the meaning of section 4942(j)(3).

Transferring Foundation was established via trust agreement by its two grantors. Subsequently, the survivor of the two grantors of Transferring Foundation established Recipient Foundation. The Foundations make grants to exempt organizations described in section 501(c)(3) in State 1 and State 2. The Foundations are controlled by the same two co-trustees and share offices and support staff.

Transferring Foundation and Recipient Foundation would like to consolidate their operations. The Foundations represent that this would allow them to carry out their grantmaking activities more effectively because it would simplify their operations,

prevent the duplication of effort and expenses related to compliance issues, assist in managing distribution requirements, provide more consistent cashflow, and lessen the confusion of potential grantees during the application process.

To carry out this consolidation, Transferring Foundation proposes to initially transfer substantially all its assets to Recipient Foundation with a reserve retained for any final expenses, including taxes owed, if any. Once Transferring Foundation determines and pays its final expenses, the balance of Transferring Foundation's assets would be transferred to Recipient Foundation (together with the initial transfer, the "Asset Transfer"). Transferring Foundation represents that the Asset Transfer will not be out of current income. Recipient Foundation would not provide any consideration for Transferring Foundation's assets. The Foundations represent that the Asset Transfer is permitted by their respective trust agreements.

Following the Asset Transfer, Transferring Foundation represents that it would retain no assets and engage in no activities. Transferring Foundation would file a final Form 990-PF for the year in which it transfers the last of its assets to Recipient Foundation. Transferring Foundation will notify the Internal Revenue Service (the "Service") of its intent to terminate its private foundation status pursuant to section 507(a)(1) no earlier than one day after the transfer of the last of its assets to Recipient Foundation. The Foundations represent that following the Asset Transfer, Recipient Foundation will use Transferring Foundation's assets exclusively in furtherance of its tax-exempt purposes.

The Foundations represent that the legal, accounting, and other expenses paid by the Foundations in connection with the Asset Transfer, including the Foundations' requests for private letter rulings, are reasonable, necessary, and consistent with ordinary business care and prudence. Additionally, Transferring Foundation represents that it has not committed any willful repeated acts (or failures to act), nor any willful and flagrant act (or failure to act), giving rise to liability under chapter 42. Finally, Transferring Foundation represents that it does not have, and will not have at the time of the Asset Transfer, any outstanding grants which require expenditure responsibility under section 4945(d)(4)(B).

RULINGS REQUESTED, LAW, AND ANALYSIS

Requested Ruling 1: *The Asset Transfer will qualify as a transfer of assets described in section 507(b)(2).*

Section 507(b)(2) provides that in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

Treas. Reg. § 1.507-3(c)(1) describes the terms "other adjustment, organization, or reorganization" as including any significant distribution of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income. A significant disposition of assets may occur in a single taxable year or over the course of two or more taxable years. Treas. Reg. § 1.507-3(c)(2) defines the term "significant disposition of assets to one or more private foundations" to include any disposition (or series of related dispositions) where the aggregate value transferred is 25 percent or more of the fair market value of the net assets of the transferor foundation at the beginning of the taxable year (or at the beginning of the first taxable year in which any of a series of related dispositions was made).

The Asset Transfer will be a significant disposition. Transferring Foundation will transfer all of its assets to Recipient Foundation and will not receive any consideration for the amounts transferred. Transferring Foundation represents that the Asset Transfer will not be out of current income. Accordingly, the Asset Transfer will be a transfer described in section 507(b)(2). Because the Asset Transfer is described in section 507(b)(2), Recipient Foundation shall not be treated as a newly created organization. Additionally, Recipient Foundation will be treated as possessing the attributes and characteristics of Transferring Foundation described in Treas. Reg. § 1.507-3(a)(2)-(4).

Requested Ruling 2: *The Asset Transfer will not terminate Transferring Foundation's private foundation status and will not cause any liability for the termination tax under section 507(c).*

Section 507(a) provides that, except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if (1) it notifies the Secretary of its intent to accomplish such a termination, or (2) with respect to such organization, there have been either 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, and the Secretary notifies such organization that it is liable for the tax imposed by section 507(c), and either such organization pays the tax (or any portion not abated under section 507(g)) or the entire amount of such tax is abated under section 507(g).

Section 507(c) imposes an excise tax on an organization whose private foundation status is terminated pursuant to section 507(a) equal to the lower of (1) the aggregate tax benefit that has resulted from the private foundation's tax-exempt status under section 501(c)(3), or (2) the value of the net assets of the foundation.

Treas. Reg. § 1.507-3(d) states that 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 section 507(a)(1). See also Treas. Reg. § 1.507-1(b)(6) and Rev. Rul. 2002-28, 2002-1 C.B. 941. Treas. Reg. § 1.507-4(b) states that private foundations that make transfers described in section 507(b)(2) are not subject to the tax imposed under section 507(c)

with respect to such transfers unless the provisions of section 507(a) become applicable.

Transferring Foundation has not notified the Service of an intent to terminate its status as a private foundation pursuant to section 507(a)(1), and represents that it will not do so prior to the completion of the Asset Transfer. Transferring Foundation also represents that it has not willfully engaged in repeated acts (or failures to act) or committed a willful and flagrant act (or failure to act) which would give rise to tax under chapter 42. See section 507(a)(2). The Asset Transfer itself will not constitute such an act. Since the Asset Transfer is described in section 507(b)(2), and because Transferring Foundation's status as a private foundation will otherwise not be terminated pursuant to section 507(a) prior to the completion of the Asset Transfer, the Asset Transfer will not terminate Transferring Foundation's private foundation status and will not cause any liability under section 507(c). Following the Asset Transfer, Transferring Foundation will be eligible to voluntarily terminate its private foundation status through the voluntary termination procedures under section 507(a)(1).

Requested Ruling 3: *Transferring Foundation's voluntary termination after completion of the Asset Transfer will not result in imposition of tax under section 507(c).*

As stated above, section 507(c) imposes an excise tax on an organization whose private foundation status is terminated pursuant to section 507(a) equal to the lower of (1) the aggregate tax benefit that has resulted from the private foundation's tax-exempt status under section 501(c)(3), or (2) the value of the net assets of the foundation. Treas. Reg. § 1.507-7(b)(1) states that in the case of a termination under section 507(a)(1), the date referred to in Treas. Reg. § 1.507-7(a)(1), for purposes of determining the value of net assets, shall be the date on which the terminating foundation gives the notification described in section 507(a)(1).

Rev. Rul. 2002-28 presents three situations in which a transferor private foundation transfers all of its assets to one or more transferee private foundations. Rev. Rul. 2002-28 states that, in each situation presented, if the transferor foundation gives notice to the Service of its intent to terminate, then the section 507(c) tax applies on the date such notice is given. Thus, in each situation, if the transferor foundation provides notice at least one day after it transfers all of its assets, the tax imposed by section 507(c) will be zero.

Transferring Foundation represents that it will notify the Service of its intent to voluntarily terminate its private foundation status under section 507(a)(1) no earlier than one day after the completion of the Asset Transfer. Transferring Foundation further represents that following the Asset Transfer, it will retain no assets. Therefore, as long as Transferring Foundation has no assets on the date of notification, the tax imposed by section 507(c) will be zero.

Requested Ruling 4: *The transfer will not give rise to any net investment income pursuant to section 4940.*

Section 4940(a) imposes an excise tax on a private foundation's net investment income for the taxable year. Section 4940(c)(1) 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 4940(c)(2) provides, in part, that for purposes of section 4940, the term "gross investment income" means the gross amount of income from interest, dividends, rents, payments with respect to securities loans, and royalties. Section 4940 does not define "capital gain net income," but section 4940(c)(1) provides that net investment income is generally determined under the principles of subtitle A.

Rev. Rul. 2002-28 presents situations where a private foundation transfers all of its assets to transferee private foundations that are effectively controlled (within the meaning of the regulations under section 507), directly or indirectly by the same person who effectively controlled the transferor private foundations. The ruling concludes that the transfers do not constitute investments of the transferor for purposes of section 4940; therefore, the transfers do not give rise to net investment income subject to tax under section 4940(a).

As in Rev. Rul. 2002-28, the Asset Transfer does not constitute an investment for the purposes of section 4940. Accordingly, the proposed Asset Transfer to Recipient Foundation will not result in the production of net investment income and will not result in the imposition of tax under section 4940 on Transferring Foundation.

Requested Ruling 5: *Recipient Foundation may use any excess tax paid by Transferring Foundation under section 4940 to offset Recipient Foundation's tax liability under section 4940.*

Treas. Reg. § 1.507-3(a)(9)(i) states that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled by the same persons which effectively controlled the transferor private foundation, for purposes of chapter 42 and sections 507 through 509 such a transferee private foundation shall be treated as if it were the transferor.

Rev. Rul. 2002-28 holds that where the transferor foundation transfers all of its assets to one or more private foundations effectively controlled by the same persons that effectively control the transferor, any excess section 4940 tax paid by the transferor may be used by the transferee to offset the transferee's section 4940 tax liability.

Transferring Foundation will transfer all of its assets to Recipient Foundation in the Asset Transfer. Moreover, both Transferring Foundation and Recipient Foundation are effectively controlled by the same persons. Therefore, Recipient Foundation may

use any excess tax paid by Transferring Foundation under section 4940 to offset Recipient Foundation's tax liability under section 4940.

Requested Ruling 6: *The Asset Transfer, and the payment of reasonable expenses to effect the Asset Transfer, will not be considered self-dealing and will not create any tax obligation under section 4941.*

Section 4941(a)(1) imposes taxes on each act of self-dealing between a disqualified person and a private foundation. Section 4946(a)(1) defines the term "disqualified person." Treas. Reg. § 53.4946-1(a)(8) provides that the term "disqualified person" does not include organizations that are exempt under section 501(c)(3).

In each situation presented in Rev. Rul. 2002-28, the transferee foundations are recognized as exempt from federal income tax under section 501(c)(3) and classified as private foundations under section 509(a). Rev. Rul. 2002-28 states, in part, that because the transfers in question are to section 501(c)(3) organizations, which are not treated as disqualified persons for purposes of section 4941, the transfers do not constitute self-dealing transactions and are not subject to tax under section 4941(a)(1).

Because Recipient Foundation is recognized by the IRS as an organization described in section 501(c)(3) and therefore not a disqualified person, the Asset Transfer (and Transferring Foundation's payment of reasonable expenses related to the transaction) will not constitute an act of self-dealing.

Requested Ruling 7: *Transferring Foundation's distributable amount and qualifying distributions under section 4942 for the tax year in which the Asset Transfer occurs will be carried over to Recipient Foundation, and Transferring Foundation will not need to separately meet the qualifying distribution requirements under section 4942 for the tax year in which the transfer occurs.*

Section 4942(a) generally imposes a tax on the undistributed income of a private foundation for any taxable year which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year. Section 4942(c) defines "undistributed income" for any taxable year as the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made out of such distributable amount for such taxable year. Section 4942(g)(1)(A) defines "qualifying distribution" generally as 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), but a qualifying distribution does not include a contribution to an organization controlled directly or indirectly by the foundation or by one or more disqualified persons with respect to the foundation.

Treas. Reg. § 1.507-3(a)(5) provides that, except as provided in § 1.507-3(a)(9), a private foundation making a transfer described in section 507(b)(2) must satisfy its distribution requirements under section 4942 for the taxable year in which the transfer is

made. As stated above, Treas. Reg. § 1.507-3(a)(9)(i) provides that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled by the same persons which effectively controlled the transferor private foundation, for purposes of chapter 42 and sections 507 through 509, such a transferee private foundation shall be treated as if it were the transferor.

Rev. Rul. 2002-28 holds that where, by reason of Treas. Reg. § 1.507-3(a)(9)(i), a transferee private foundation is treated as though it were the transferor for purposes of section 4942, a transfer to the transferee foundation is not treated as a qualifying distribution of the transferor foundation. Rather, the transferee foundation assumes all obligations with respect to the transferor's "undistributed income" within the meaning of section 4942(c), if any, and reduces its own distributable amount under section 4942(d) by the transferor foundation's excess qualifying distributions under section 4942(i).

Pursuant to Treas. Reg. § 1.507-3(a)(9)(i), Recipient Foundation would be treated as Transferring Foundation for purposes of chapter 42, including section 4942. Accordingly, the Asset Transfer would not be treated as a qualifying distribution of Transferring Foundation. Transferring Foundation's distributable amount and qualifying distributions under section 4942 for the tax year in which the Asset Transfer occurs will be carried over to Recipient Foundation. Recipient Foundation will be responsible for satisfying Transferring Foundation's remaining distribution requirement for the tax year, if any, and Transferring Foundation will not need to separately meet the qualifying distribution requirements under section 4942 for the tax year in which the transfer occurs.

Requested Ruling 8: *The Asset Transfer will not be a jeopardizing investment within the meaning of section 4944 and will not trigger any tax under section 4944.*

Section 4944(a)(1) imposes a tax on any amount invested by a private foundation in a manner that jeopardizes the carrying out of any of the foundation's exempt purposes. Neither section 4944 nor the regulations thereunder define "invest" or "investment." However, as held in Rev. Rul. 2002-28 in the context of applying sections 507(b)(2) and 4944 to a transfer of all of a private foundation's assets to one or more other private foundations that are effectively controlled by the same persons effectively controlling the transferor foundation, section 507(b)(2) transfers do not constitute investments for purposes of section 4944. Accordingly, the Asset Transfer will not constitute a jeopardizing investment and will not be subject to tax under section 4944(a)(1).

Requested Ruling 9: *The Asset Transfer will not be a taxable expenditure under section 4945 and no expenditure responsibility requirements must be exercised under section 4945(d)(4) or (h) with respect to the Asset Transfer. The payment of legal, accounting, and other expenses incurred in connection with the Asset Transfer, including this ruling request, will also not be taxable expenditures under section 4945.*

Section 4945(a) imposes a tax on each "taxable expenditure" of a private foundation. Section 4945(d)(4) provides that the term "taxable expenditure" includes any amount paid or incurred by a private foundation 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).

Treas. Reg. § 53.4945-6(c)(3) allows a private foundation to transfer its assets to exempt organizations described in section 501(c)(3), including private foundations, pursuant to section 507(b)(2), without the transfers being taxable expenditures under section 4945(d)(5). As discussed, Treas. Reg. § 1.507-3(a)(9)(i) provides that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled by the same person or persons which effectively controlled the transferor private foundation, for purposes of chapter 42 and sections 507 through 509 such a transferee private foundation shall be treated as if it were the transferor. Rev. Rul. 2002-28 provides that because each transferor foundation transfers all of its assets to private foundations effectively controlled by the same persons that effectively control the transferor foundation, the transferee foundations are treated as if they were the transferor for purposes of section 4945. Because the transferee foundations are treated as though they were the transferor foundation rather than as recipients of expenditure responsibility grants, there are no expenditure responsibility requirements under section 4945 that must be exercised with respect to the Asset Transfer to Recipient Foundation and the Asset Transfer will not be a taxable expenditure.

Treas. Reg. § 53.4945-6(b)(2) provides that legal, administrative, and other expenses incurred by a private foundation are not taxable expenditures if the foundation can demonstrate that such expenses were paid or incurred in the good faith belief that they were reasonable and that the payment or incurrence of such expenses in such amounts was consistent with ordinary business care and prudence. The Foundations represent that the legal, accounting, and other expenses paid in connection with this ruling request and in effectuating the proposed transfer are reasonable, necessary, and consistent with ordinary business care and prudence. Therefore, these payments will also not constitute taxable expenditures under section 4945.

Requested Ruling 10: *Transferring Foundation will not be required to file Form 990-PF for any taxable year following the taxable year in which the Asset Transfer concludes.*

Treas. Reg. § 1.507-1(b)(9) states that a private foundation which transfers all of its net assets is required to file the annual information return required by section 6033, and the foundation managers are required to file the annual report of a private foundation required by section 6056, for the taxable year in which such transfer occurs. However, neither such foundation nor its foundation managers will be required to file such returns for any taxable year following the taxable year in which the last of any such transfers occurred, if at no time during the subsequent taxable years in question the foundation has either legal or equitable title to any assets or engages in any activity. See also Rev. Rul. 2002-28.

Therefore, Transferring Foundation will not be required to file Form 990-PF for any taxable year subsequent to the taxable year in which the Asset Transfer occurs, as long as it has no assets and engages in no activity.

RULINGS

Based on the foregoing, and assuming the accuracy of the facts and representations set forth herein, we rule as follows:

1) The Asset Transfer will qualify as a transfer of assets described in section 507(b)(2).
2) The Asset Transfer will not terminate Transferring Foundation's private foundation status and will not cause any liability for the termination tax under section 507(c).
3) Transferring Foundation's voluntary termination after completion of the Asset Transfer will not result in imposition of tax under section 507(c).
4) The transfer will not give rise to any net investment income pursuant to section 4940.
5) Recipient Foundation may use any excess tax paid by Transferring Foundation under section 4940 to offset Recipient Foundation's tax liability under section 4940.
6) The Asset Transfer, and the payment of reasonable expenses to effect the Asset Transfer, will not be considered self-dealing and will not create any tax obligation under section 4941.
7) Transferring Foundation's distributable amount and qualifying distributions under section 4942 for the tax year in which the Asset Transfer occurs will be carried over to Recipient Foundation, and Transferring Foundation will not need to separately meet the qualifying distribution requirements under section 4942 for the tax year in which the transfer occurs.
8) The Asset Transfer will not be a jeopardizing investment within the meaning of section 4944 and will not trigger any tax under section 4944.
9) The Asset Transfer will not be a taxable expenditure under section 4945 and no expenditure responsibility requirements must be exercised under section 4945(d)(4) or (h) with respect to the Asset Transfer. The payment of legal, accounting, and other expenses incurred in connection with the Asset Transfer, including this ruling request, will also not be taxable expenditures under section 4945.
10) Transferring Foundation will not be required to file Form 990-PF for any taxable year following the taxable year in which the Asset Transfer concludes.

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Recipient Foundation and accompanied by a penalty of perjury statement executed by an individual with authority to bind Recipient Foundation, and upon the understanding that there will be no material changes in the

facts. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2023-1, section 11.05.

This letter does not address the applicability of any section of the Code or Regulations to the facts submitted other than with respect to the sections specifically described, and, except as expressly provided in this letter, no opinion is expressed or implied concerning the tax consequences of any aspects of any transaction or item of income discussed or referenced in this letter.

Because it could help resolve questions concerning federal income tax status, this letter should be kept in Recipient Foundation's permanent records.

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if Recipient Foundation files a return electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and control number of this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Recipient Foundation's authorized representative.

This ruling letter is directed only to Recipient Foundation. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Nathanael DeJonge
Senior Technician Reviewer
Office of the Chief Counsel
(Employee Benefits, Exempt Organizations, and Employment Taxes)