



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

200441037

Date: JUL 13 2004

Contact Person:

Uniform Issue List: 507.00-00  
509.03-00  
4941.04-00  
4942.03-05  
4945.04-06

Contact's Identification Number:

Telephone Number:

T. ED. B2

Legend:

R =

S =

Dear

This ruling letter is in reply to your requested rulings as to R's transfer of all of its assets to S pursuant to section 507(b)(2) of the Internal Revenue Code, similar to the transfers discussed in Revenue Ruling 2002-28, 2002-1 C.B. 942.

You, R, and S are nonprofit charitable corporations that are exempt from federal income tax under section 501(c)(3) of the Code and that are private foundations under section 509(a) of the Code. R and S are controlled by the same individuals. R will transfer all of its assets to S. S will continue to exercise expenditure responsibility on behalf of R if R has any grant(s) outstanding requiring such expenditure responsibility under section 4945(h) of the Code when R transfers of all of its assets to S. After R's transfer of all of its assets to S, R will dissolve and will terminate its private foundation status under section 509(a) of the Code by notice to the Internal Revenue Service pursuant to section 507(a)(1) of the Code.

The following rulings are requested:

1. The merger of R and S will not affect the status of either corporation as an organization described in section 501(c)(3) of the Code.
2. The transfer of assets of R to S will constitute a transfer described in section 507(b)(2) of the Code.
3. The transfer of the assets of R to S will not terminate the status of R as a private foundation under section 507(a) of the Code, and therefore will not result in the imposition of tax under section 507(c) of the Code.
4. If R notifies the Service that it intends to terminate its private foundation status pursuant to section 507(a)(1) of the Code at least one day after the effective transfer of all of its assets and liabilities to S, the amount of the termination tax under section 507(c) will be zero and, further, the preparation and filing of any final accounting or other documents required by state law in winding up R will not result in the imposition of the termination tax under section 507(c) of the Code.

5. The transfer of the assets of R to S may be counted toward satisfaction of R's distribution requirements under section 4942 of the Code to the extent that the transfer otherwise meets the requirements of section 4942(g) of the Code.
6. After the merger is consummated, the excess qualifying distribution carryover under section 4942(i) of the Code of R, if any, will be added to the excess qualifying distribution carryover of S, and may be used by S to reduce its distributable amount under section 4942 of the Code.
7. After the merger is consummated, the excise tax liability of R under section 4940 of the Code and any distribution requirements under section 4942 of the Code may be satisfied by S, and any refund of excise tax under section 4940 of the Code due to R may be used by S to offset its tax under section 4940 of the Code.
8. The merger and transfer of all assets of R to S will not constitute or trigger, as the case may be:
  - a. gross investment income or capital gain net income within the meaning of section 4940 of the Code;
  - b. an act of self-dealing under section 4941 of the Code;
  - c. excess business holdings under section 4943 of the Code;
  - d. an investment that jeopardizes charitable purposes under section 4944 of the Code;
  - e. a taxable expenditure under section 4945 of the Code;
  - f. liability for any taxes (whether imposed upon R, S, or any disqualified person with respect to such entities) under sections 4940 through 4945 of the Code.
9. The merger will not be treated as a sale or exchange of property subject to tax, and the tax basis and holding period of the transferred assets in the hands of S shall be determined in the same manner as if such assets had continued to be held by R without interruption.
10. After the merger is consummated and R has ceased to exist as a separate legal entity and has filed its final information return, R will no longer be required to file any tax information statements or returns, including without limitation, Form 990-PF, Return of Private Foundation.

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 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 private foundation provisions of Chapter 42 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(c)(1) of the Income Tax Regulations indicates that 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, including a significant disposition of 25% or more of the transferor foundation's assets

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Section 1.507-3(a)(1) of the regulations indicates that, in a transfer of assets from one private foundation to another private foundation pursuant to a reorganization, the transferee foundation shall not be treated as a newly created organization, but shall succeed to the transferor's aggregate tax benefits under section 507(d) of the Code.

Section 507(d) of the Code indicates, in general, that the aggregate tax benefits of an exempt private foundation refer to the value of its exemption from federal income tax and the deductions taken by its donors during its existence.

Section 1.507-1(b)(9) of the regulations provides that a private foundation which has transferred all of its net assets is not required to file annual information returns under section 6033 of the Code for tax years after the tax year of such transfer when the transferor has no assets or activities.

Section 1.507-3(a)(5) of the regulations indicates that a transferor private foundation is required to meet its own charitable distribution requirements under section 4942 of the Code, even for its 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)(7) of the regulations provides that a private foundation that has transferred all of its assets to another private foundation in a transfer pursuant to section 507(b)(2) of the Code is not subject to the expenditure responsibility requirements of section 4945(h) of the Code.

Section 1.507-3(a)(8) of the regulations provides that certain tax provisions will carry over to a transferee private foundation that is given a transfer of assets from a transferor private foundation pursuant to section 507(b)(2) of the Code.

Section 1.507-3(a)(9)(i) of the regulations indicates that, if a transferor private foundation transfers assets to one or more private foundations which are effectively controlled directly or indirectly by the same person or persons who effectively control the transferor foundation, then each transferee foundation will be treated as if it were the transferor foundation, for purposes of sections 4940 through 4948 of the Code and also sections 507 through 509. Each 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(a)(9)(ii) of the regulations indicates that a transfer of assets under section 507(b)(2) of the Code does not relieve the transferor private foundation from filing its own final returns.

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 status as a private foundation.

Section 1.507-4(b) of the regulations provides that the tax under section 507(c) of the Code on termination of private foundation status does not apply to a transfer of assets pursuant to section 507(b)(2) of the Code.

Revenue Ruling 2002-28, in its holding 1, states that if a private foundation chooses to provide notice under section 507(a)(1) of the Code to the Internal Revenue Service and therefore terminates its private foundation status under section 509(a) of the Code, it is subject to the tax under section 507(c) of the Code; however, if the private foundation has no assets on the day it provides such notice (for example, the private foundation provides such notice at least one day after it transfers all of its assets), the tax under section 507(c) of the Code will be zero. Holding 2 indicates that no further tax returns are due if the transferor has no assets and activities. Holdings 3(a), 3(b), 3(c), 3(d), 3(e), and 3(f) state that the transfer does not result in tax under sections 4940, 4941, 4942, 4943, 4944, or 4945 of the Code. Holding 3(a) notes that the carryover to the transferee of the transferor's excess tax paid under section 4940 of the Code is allowed. Holding 3(c) notes that the carryover to the transferee of the transferor's excess qualifying distributions under section 4942(i) of the Code is allowed.

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

Section 4942 of the Code requires that a private foundation must expend qualifying distributions under section 4942(g) of the Code for the conduct of exempt purposes.

Section 4942(g)(1)(A) of the Code and section 53.4942(a)-3(a)(2)(i) of the regulations provide that a "qualifying distribution" is 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) of the Code, other than any contribution to: (i) an organization controlled directly or indirectly by the transferor foundation or one or more disqualified persons with respect to the foundation, except as provided in section 4942(g)(3) of the Code, or (ii) any private foundation that is not an operating foundation under section 4942(j)(3) of the Code, except as provided in section 4942(g)(3) of the Code.

Revenue Ruling 78-387, 1978-2 C.B. 270, describes the carryover of a transferor foundation's excess qualifying distributions under section 4942(i) of the Code to a transferee foundation that is effectively controlled by the same persons under section 1.507-3(a)(9)(i) of the regulations. Under the regulation, the transferee is treated as the transferor and, thus, the transferee can reduce its own distributable amount under section 4942 of the Code by the amount, if any, of its transferor's excess qualifying distributions under section 4942(i) of the Code.

Section 4943 of the Code imposes an excise tax on any excess business holdings of a private foundation.

Section 4944 of the Code imposes an excise tax on any private foundation's making of an investment that jeopardizes its exempt purposes under section 501(c)(3) of the Code.

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

Section 4945(d)(5) of the Code provides that a taxable expenditure also includes any amount expended by a private foundation for purposes other than exempt purposes.

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 defines expenditure responsibility in terms of a grantor private foundation requiring proper pre-grant inquiry and post-grant reports from a grantee private foundation on the grantee's uses of the grant.

Sections 53.4945-6(c)(3) of the regulations allows a private foundation to make transfers of its assets pursuant to section 507(b)(2) of the Code to organizations exempt under section 501(c)(3) of the Code without the transfers being taxable expenditures under section 4945.

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.

#### Analysis

1.

Because R's transfer of all of its assets to S will be for exempt purposes to an organization exempt from federal income tax under section 501(c)(3) of the Code, R's transfer will not adversely affect the exemptions under section 501(c)(3) of R or S.

2.

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, including a significant disposition of 25% or more of the transferor foundation's assets. Because R will transfer all of its assets to S, R's transfer will be a significant disposition of R's 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.

3.

Under section 1.507-3(d) of the regulations, R's transfer of all of its assets to C pursuant to section 507(b)(2) of the Code will not be a termination of R's private foundation status under section 509(a) of the Code and, thus, will not result in termination tax under section 507(c) of the Code.

4.

Under section 507(a)(1) of the Code, when R notifies the Service, at least one day after R transfers all of its net assets to S, of its intent to voluntarily terminate its private foundation status pursuant to section 507(a)(1) of the Code, R will thus terminate its private foundation status pursuant to that section 507(a)(1) of the Code.

Under section 507(e) of the Code, the value of R's assets after R has transferred all of its assets to S will be zero. Thus, as stated in holding 1 of Revenue Ruling 2002-28, R's voluntary notice of termination of its private foundation status pursuant to section 507(a)(1) will result in zero tax under section 507(c) of the Code. The preparation and filing of any final accounting or other documents required by state law in winding up, dissolving, and terminating R will not result in termination tax under section 507(c) of the Code.

5.

Under section 4942(g)(1)(A) of the Code and section 53.4942(a)-3(a)(2)(i) of the regulations, a "qualifying distribution" is 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) of the Code, other than any contribution to: (i) an organization controlled directly or indirectly by the transferor foundation or one or more disqualified persons with respect to the foundation, except as provided in section 4942(g)(3) of the Code, or (ii) any private foundation that is not an operating foundation under section 4942(j)(3) of the Code, except as provided in section 4942(g)(3) of the Code. Thus, under holding 3(c) of Revenue Ruling 2002-28, R's transfer to its commonly controlled transferee S is not itself a qualifying distribution, unless the transfer otherwise meet the requirements of section 4942(g)(3) of the Code.

6.

Under section 1.507-3(a)(9)(i) of the regulations, R's transfer will result in S being treated as R for purposes of section 4942 of the Code. Under Revenue Ruling 78-387 and holding 3(c) of Revenue Ruling 2002-28, R's excess qualifying distributions carryover under section 4942(i) of the Code, if any, can be carried over to S, and S may reduce its required distributions under section 4942 of the Code by the amount, if any, of R's excess qualifying distributions carryover under section 4942(i) of the Code.

7.

Under section 1.507-3(a)(9)(i) of the regulations, R's transfer of all of its assets to S will result in S being treated as R for purposes of sections 4940 and 4942 of the Code so that, under holding 3(c) of Revenue Ruling 2002-28, R's distribution requirements under section 4942 of the Code may be satisfied by S, and, under holding 3(a) of Revenue Ruling 2002-28, any refund of R's excise tax under section 4940 of the Code may be used by S to reduce S's own liability for tax under section 4940 of the Code.

8.

Under section 4940 of the Code and holding 3(a) of Revenue Ruling 2002-28, R's transfer of all of its assets to S will not result in investment income or tax under that section.

Under section 4941 of the Code and holding 3(b) of Revenue Ruling 2002-28, R's transfer of assets to S will not be an act of self-dealing because R's transfer will be for exempt purposes to organization S which is exempt from federal income tax under section 501(c)(3) of the Code and which is not a disqualified person, for purposes of section 4941 of the Code, pursuant to section 53.4946-1(a)(8) of the regulations.

Under section 4943 of the Code and holding 3(d) of Revenue Ruling 2002-28, where R's assets will not constitute excess business holdings by R or by S, the transfer will not result in tax under that section.

Under section 4944 of the Code and holding 3(e) of Revenue Ruling 2002-28, R's transfer of assets for exempt purposes under section 501(c)(3) of the Code will not be a jeopardizing investment or result in tax under that section.

Under section 4945 of the Code and holding 3(f) of Revenue Ruling 2002-28, section 53.4945-6(c)(3) of the regulations indicates that a private foundation can transfer its assets pursuant to section 507(b)(2) of the Code to an organization exempt under section 501(c)(3) of the Code without the transfer being a taxable expenditure under section 4945. Thus, R's transfer to S pursuant to section 507(b)(2) of the Code will not be a taxable expenditure under section 4945 of the Code.

Under section 1.507-3(a)(7) of the regulations, R will not be required to exercise any expenditure responsibility under section 4945(h) of the Code with respect to R's transfer of assets to S because R will transfer all of its assets to S.

Under section 1.507-3(a)(9)(iii), Example (2), of the regulations and holding 3(f) of Revenue Ruling 2002-28, S must continue R's expenditure responsibility under section 4945(h) of the Code, if any, with respect to any expenditure responsibility grant(s) made by R that remain outstanding upon R's transfer of its assets to S.

9.

Under section 1.507-3(a)(9)(i) of the regulations, R will be treated as S so that the tax bases and holding periods of R's assets transferred to S will carry over to S.

10.

Under section 1.507-1(b)(9) of the regulations and holding 2 of Revenue Ruling 2002-28, R will no longer be required to file its annual return, Form 990-PF, under section 6033 of the Code for any tax years subsequent to its tax year in which R transfers all of its assets and R has no activities.

Accordingly, based on the facts and representations presented, we rule that:

1. The merger of R and S will not affect the status of either corporation as an organization described in section 501(c)(3) of the Code.
2. The transfer of assets of R to S will constitute a transfer described in section 507(b)(2) of the Code.
3. The transfer of the assets of R to S will not terminate the status of R as a private foundation under section 507(a) of the Code and, therefore, will not result in the imposition of tax under section 507(c) of the Code.
4. If R notifies the Internal Revenue Service that it intends to terminate its private foundation status pursuant to section 507(a)(1) of the Code at least one day after the effective transfer of all of its assets and liabilities to S, the amount of the termination tax under section 507(c) of the Code will be zero. The preparation and filing of any final accounting or other documents required by state law in winding up R will not result in the imposition of termination tax under section 507(c) of the Code.

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5. The transfer of the assets of R to S may be counted toward satisfaction of R's distribution requirements under section 4942 of the Code to the extent that the transfer otherwise meets the requirements of section 4942(g) of the Code.
6. After the merger is consummated, R's excess qualifying distributions carryover under section 4942(i) of the Code, if any, will be added to the excess qualifying distributions carryover of S, and may be used by S to reduce S's own distributable amount under section 4942 of the Code.
7. After the merger is consummated, R's excise tax liability under section 4940 of the Code and R's distribution requirements under section 4942 of the Code may be satisfied by S, and any refund of excise tax under section 4940 of the Code due to R may be used by S to offset S's tax under section 4940 of the Code.
8. The merger and transfer of all R's assets to S will not constitute or trigger, as the case may be:
  - a. gross investment income or capital gain net income under section 4940 of the Code;
  - b. an act of self-dealing under section 4941 of the Code;
  - c. excess business holdings under section 4943 of the Code;
  - d. an investment that jeopardizes charitable purposes under section 4944 of the Code;
  - e. a taxable expenditure under section 4945 of the Code;
  - f. liability for any taxes (whether imposed upon R, S, or any disqualified person with respect to such entities) under sections 4940 through 4945 of the Code.
9. The merger will not be treated as a sale or exchange or property subject to tax, and the tax bases and holding periods of R's transferred assets in the hands of S shall be determined in the same manner as if such assets had continued to be held by R without interruption.
10. After the merger is consummated and R has ceased to exist as a separate legal entity and has filed its final information return, R will no longer be required to file any tax information statements or returns including, without limitation, Form 990-PF.

Because this ruling letter could help to resolve any questions, please keep it in your permanent records. This ruling letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

|S|

Joseph Chasin  
Manager, Exempt Organizations  
Technical Group 2