



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

200433031

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: MAY 20 2004

Contact Person:

Uniform Issue List Numbers: 0507.03-00
4940.00-00
4941.04-00
4945.04-00

Identification Number:

Telephone Number:

T:EO:B2

Legend:

C =
T =
Z =

Dear

This ruling letter concerns trust T's transfer of all of its assets to college C in a 12-month termination of T's private foundation status pursuant to section 507(b)(1)(A) of the Internal Revenue Code and section 1.507-2(a)(5) of the Income Tax Regulations.

T is a charitable trust exempt from federal income tax under section 501(c)(3) of the Code that is recognized as a private foundation under section 509(a) of the Code. Created recently pursuant to a will, T will donate all of its assets to college C before the z end of T's first tax year beginning after December 31, 1969.

C, the transferee of T's assets, is a charitable corporation exempt from federal income tax under section 501(c)(3) of the Code that is not a private foundation under section 509(a) of the Code. C is a college, described in sections 509(a)(1), 170(b)(1)(A)(ii) and/or 170(b)(1)(A)(vi) of the Code, for the continuous period of at least 60 months immediately preceding T's transfer of all of its assets to C.

T requests the following rulings:

1. T's termination by distribution of all its assets to C will constitute a termination of T's private foundation status pursuant to 507(b)(1)(A) of the Code.
2. T's termination will not require the notice described in section 507(a) of the Code.
3. T's termination will not give rise to the tax imposed by section 507(c) of the Code.
4. If T's termination and distribution occur prior to the end of the first 12-month period of T's existence, T will not be subject to tax under section 4940(a) of the Code for the period from the inception of T until T's termination, in accord with the special transitional rule of section 1.507-2(a)(5) of the regulations.
5. T's termination and distribution of its assets to C will not be self-dealing under section 4941 of the Code.
6. T's termination and distribution of its assets to C will not be a taxable expenditure under section 4945 of the Code.

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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(a)(1) of the Code describes termination of private foundation status under section 509(a) of the Code by means of the private foundation voluntarily so notifying the Internal Revenue Service.

Section 507(c) of the Code impose excise tax on a private foundation which voluntarily terminates its private foundation status pursuant to section 507(a)(1) of the Code. This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefits that have resulted from the foundation's section 501(c)(3) status, or (b) the value of the net assets of the foundation.

Section 1.507-4(b) of the regulations provides, in pertinent part, that the tax under section 507(c) of the Code on termination of private foundation status does not apply to a transfer of assets under section 507(b)(1)(A) of the Code.

Section 507(b)(1)(A) of the Code and section 1.507-2(a)(1) of the regulations provide that a private foundation may voluntarily terminate its private foundation status by transferring all of its assets to an organization that is exempt from federal income tax under section 501(c)(3) of the Code and that is described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code for the continuous period of at least 60 months immediately preceding the transfer of all of such transferor foundation's assets.

Revenue Ruling 2003-13, 2003-4 I.R.B. 305 (January 27, 2003), describes, in its Situation 1, a termination of private foundation status under section 509(a) of the Code pursuant to section 507(b)(1)(A) of the Code. The Ruling indicates, in the first paragraph of Holding 1, that such termination under section 507(b)(1)(A) of the Code results in a termination of private foundation status under section 509(a) of the Code, that no notice to the Internal Revenue Service under section 507(a)(1) of the Code is required, and that no termination tax is imposed under section 501(c) of the Code.

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

Section 1.507-2(a)(5)(i) of the regulations provides a special transitional rule for no tax under section 4940 of the Code, in the case of a termination under section 507(b)(1)(A) of the Code within a 12-month period.

Section 1.507-2(a)(5)(ii) of the regulations provides that the 12-month termination period under section 507(b)(1)(A) of the Code is the 12-month period that begins with the first day of the organization's first tax year after December 31, 1969.

Section 4941 of the Code imposes 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 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 excise tax on any private foundation's making of a taxable expenditure under section 4945(d) of the Code.

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

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

Analysis

1.

As in Revenue Ruling 2003-13, Situation 1, T's distribution of all its assets to C, which has been described in section 170(b)(1)(A)(ii) and/or 170(b)(1)(A)(vi) of the Code for the required 60 months, is a termination of T's private foundation status as defined in section 507(b)(1)(A) of the Code.

2.

Under section 1.507-2(a)(1) of the regulations, and as stated in Revenue Ruling 2003-13, T's termination and distribution of all its assets to C pursuant to section 507(b)(1)(A) of the Code will not require the voluntary notice to the Internal Revenue Service described in section 507(a)(1) of the Code.

3.

Under section 1.507-2(a)(1) of the regulations, and as stated in Revenue Ruling 2003-13, T's termination under section 507(b)(1)(A) of the Code is not subject to the termination tax imposed by section 507(c) of the Code.

4.

The special transitional rule of section 1.507-2(a)(5)(ii) of the regulations provides for no tax on investment income under section 4940 of the Code in the case of a termination under section 507(b)(1)(A) within the first 12-months. Thus, if T's termination and distribution of all of its assets to C pursuant to section 507(b)(1)(A) of the Code occurs prior to the end of the first 12-month period of T's existence, T will not be subject to the tax on investment income under section 4940 of the Code for the tax year from T's inception to T's termination.

5.

T's transfer of assets will be made for exempt purposes to C, an organization exempt from federal income tax under section 501(c)(3) of the Code. As stated in Revenue Ruling 2003-13, under section 53.4946-1(a)(8) of the regulations, transferee C is not a disqualified person under section 4946 of the Code, for purposes of section 4941 of the Code, because C is exempt from federal income tax under section 501(c)(3) of the Code. Because T's transfer of assets will not be a transfer to a disqualified person under section 4946 of the Code, T's transfer will not be an act of self-dealing under section 4941 of the Code.

6.

Section 53.4945-6(c)(3) of the regulations indicates that a private foundation can transfer assets to organizations exempt from federal income tax under section 501(c)(3) of the Code without the transfers being taxable expenditures under section 4945 of the Code. T's transfer will be made to exempt transferee C for exempt purposes under section 501(c)(3) of the Code and, thus, will not be a taxable expenditure or result in tax under section 4945 of the Code.

Accordingly, we rule that:

1. T's termination by distribution of all its assets to C will constitute a termination of T's private foundation status pursuant to 507(b)(1)(A) of the Code.
2. T's termination will not require the notice described in section 507(a) of the Code.
3. T's termination will not give rise to the tax imposed by section 507(c) of the Code.
4. Under the special transitional rule of section 1.507-2(a)(5) of the regulations, if T's termination and distribution under section 507(b)(1)(A) of the Code occur prior to the end of T's first 12-month period of existence, T will not be subject to the tax on investment income under section 4940 of the Code for all of the period from T's inception to T's termination.
5. T's termination and distribution of its assets to C will not be any act of self-dealing under section 4941 of the Code.
6. T's termination and distribution of its assets to C will not be a taxable expenditure under section 4945 of the Code.

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,



Joseph Chasin
Manager, Exempt Organizations
Technical Group 2