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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

**Release Date: 2/22/08**

Date: November 29, 2007

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Uniform Issue List:
501.03.02
507.00.00
4941.00.00

Legend:

A =
C =
D =
E =
J =
K =
X =
Y =
M =
N =
O =
P =
R =
S =
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gg =

Dear :

We have considered your ruling request dated November 8, 2007, in which you requested certain rulings related to a proposed transaction, in the manner and for the purposes described below.

STATEMENT OF FACTS

X was established in aa and is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code and is a private foundation within the meaning of section 509(a) of the Code.

Following the deaths of A and his wife, the trustees of X were C, an employee of A and D, a relative of A.

On cc, C and D signed an M to move the situs of the X for administration and for all other purposes from the State of J to the State of K.

On dd, Y was incorporated by C and D as a K nonprofit corporation. On ee, the Y received a determination letter from the Internal Revenue Service that it is exempt from federal income taxes under section 501(c)(3) of the Code and is a private foundation within the meaning of section 509(a).

On ff, C, as Managing Trustee of X and as a director of the Y, and D, as a director of Y executed an N, which authorized the X to transfer all of its assets to Y. Prior to the transfer X obtained a ruling from the Internal Revenue Service that the transfer met the requirements of 507(b)(2) of the Code. On gg, the Y accepted receipt of all of the assets of the X.

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As C and D resigned from their roles as trustees, the J Court appointed E as trustee of the X "in order to protect the trust property for the benefit and interest of the beneficiaries." The J Court instructed E to undertake to secure recognition by the Service of the X's status as an organization described in section 501(c)(3). The Internal Revenue Service confirmed that the X is an organization exempt from federal income tax pursuant to section 501(c)(3) and is a private foundation pursuant to section 509(a).

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Subsequent litigation involving X and Y and conflicting judicial orders kept the assets intact awaiting an ultimate decision by the courts or the parties as to the proper persons to own and control the use of the assets.

The parties to the litigation, including the Attorneys General of J and K have entered into a settlement agreement and the J and K courts have approved the settlement agreement.

As a result of the judicially-approved settlement agreement, the assets will be allocated between X and Y. Assets valued at a (the "Settlement Allocation") will be under the control of X. The balance of the assets will be under the control of Y. Judicial approval was granted for a partial allocation of b to X (subject to return if the rulings requested are not granted). The remaining allocation of c to the X will take place upon the issuance, by the Internal Revenue Service, of favorable rulings requested by X and Y.

X and Y have represented that the distribution will not consist of ownership interests in any S. They have further represented that there is no limitation or material restrictions on the use of the distributions by X except for certain charitable pledges within the purposes of X which have been assumed by X as part of the settlement agreement.

RULINGS REQUESTED

You have requested the following rulings:

1. The distribution of a from Y to X, will not jeopardize the tax-exempt status of either the X or Y under section 501(c)(3) of the Internal Revenue Code;

2. The distribution of a is not a transfer of assets within the meaning of section 507(b)(2) of the Code; and

3. The distribution of a from Y to X will not result in the imposition of excise taxes under sections 4941, 4942, 4943, 4944 or 4945 of the Code.

LAW

Section 501(c)(3) of the Internal Revenue Code provides, in part, for the exemption from Federal income tax for organizations organized and operated exclusively for religious, charitable, scientific and educational purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be operated exclusively for one or more exempt purposes only if it engages primarily in activities that accomplish one or more exempt purposes specified in section 501(c)(3).

Revenue Ruling 67-149, 1967-1 C.B. 133 provides that an organization that makes distributions to organizations described in section 501(c)(3) of the Code is furthering exclusively exempt purposes within the meaning of section 501(c)(3).

Section 509 of the Code provides that the term "private foundation" includes organizations described in section 501(c)(3) other than organizations described in sections 509(a)(1), (2), (3), or (4).

Section 507(a)(1) of the Code provides that the status of any organization as a private foundation shall be terminated only if it notifies the Secretary of its intent to accomplish a termination or there have been either willful repeated acts (or failures to act), or a willful flagrant act (or failure to act) giving rise to chapter 42 liability for tax and the Secretary notifies such organization that it is liable for the tax imposed by subsection (c) and either such organization pays the tax or pays any portion not abated under subsection (g).

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 any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

Section 1.507-1(b)(6) of the Foundation and Similar Excise Taxes 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, such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Sections 4941, 4942, 4943, 4944 and 4945 of the Code apply excise taxes to certain transactions involving private foundations, including taxes on self-dealing, failure to distribute income, excess business holdings, jeopardizing investments, and taxable expenditures.

RATIONALE

As provided by Rev. Rul. 67-149 supra, a distribution from one charitable organization to another is an activity that furthers exempt purposes within the meaning of section 501(c)(3) of the Code. Since the distribution of assets from Y, a section 501(c)(3) organization, to X, another section 501(c)(3) organization, is without restriction that could limit the ability of X to accomplish its purposes and is undertaken as part of a judicially-approved settlement for which the Attorneys General of both states are in agreement, the distribution from Y to X is consistent with the charitable purposes for which these organizations were formed and will not adversely affect their tax-exempt status.

The judicially-approved settlement, for which the Attorneys General of both states are in agreement, provides, effectively, that in exchange for X and Y ceding certain of their interest in the assets currently held by Y, there will be a distribution of a to X. This distribution from Y to X is more in the nature of a restoration of funds to X rather than a transfer of funds from one private foundation to another foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization for purposes of section 507(b)(2) of the Code.

Having concluded that the distribution will not adversely affect the tax-exempt status of X or Y and that it does not constitute a transfer of assets under section 507(b)(2), we can find no basis to apply the excise tax provisions under sections 4941, 4942, 4943, 4944, or 4945 to the distribution undertaken pursuant to the judicially-approved settlement.

HOLDINGS

Accordingly, based on the information submitted, we rule that:

1. The distribution of a from Y to X pursuant to the settlement agreement is consistent with the charitable purposes for which these organizations were formed and it will not adversely affect the tax-exempt status of X or Y.

2. The distributions are not a transfer of assets for which transferee liability applies under section 507(b)(2) of the Code.

3. The distribution of a from Y to X will not result in the imposition of excise taxes under sections 4941, 4942, 4943, 4944 or 4945 of the Code.

We express no opinion as to whether any other transactions or activities would jeopardize your tax-exempt status or result in the imposition of excise taxes applicable to private foundations.

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.

This ruling 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 by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. 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. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept 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.

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,

Theodore R. Lieber
Acting Manager
Exempt Organizations
Technical Group 2

Enclosure
Notice 437