

§ 1.507-3 Special rules; transferee foundations.

(a) *General rule.* (1) For purposes of part II, subchapter F, chapter 1 of the Code, 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 organization shall not be treated as a newly created organization. Thus, in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of this section, the transferee organization shall not be treated as a newly created organization. A transferee organization to which this paragraph applies shall be treated as possessing those attributes and characteristics of the transferor organization which are described in subparagraphs (2), (3), and (4) of this paragraph.

(2)(i) A transferee organization to which this paragraph applies shall succeed to the aggregate tax benefit of the transferor organization in an amount determined as follows: Such amount shall be an amount equal to the amount of such aggregate tax benefit multiplied by a fraction the numerator of which is the fair market value of the assets (less encumbrances) transferred to such transferee and the denominator of which is the fair market value of the assets of the transferor (less encumbrances) immediately before the transfer. Fair market value shall be determined as of the time of the transfer.

(ii) Notwithstanding subdivision (i) of this subparagraph, a transferee organization which is not effectively controlled (within the meaning of § 1.482-1(a)(3)), directly or indirectly, by the same person or persons who effectively control the transferor organization shall not succeed to an aggregate tax benefit in excess of the fair market value of the assets transferred at the time of the transfer.

(iii) This subparagraph may be illustrated by the following examples:

Example 1. Pursuant to a transfer described in section 507(b)(2), F, a private foundation, transfers to G, a private foundation, all of its assets, which have a fair market value of \$400,000. Immediately before the transfer F's aggregate tax benefit was \$200,000, and G's

aggregate tax benefit was \$300,000. After the transfer G's aggregate tax benefit is \$500,000 (\$200,000+\$300,000).

Example 2. Pursuant to a transfer described in section 507(b)(2), M, a private foundation, transfers all of its assets, which immediately prior to the transfer have a fair market value of \$100,000. The assets were transferred to the following organizations at the following fair market values (determined at the time of transfer) \$40,000 to N, a private foundation, \$30,000 to O, a private foundation, and \$30,000 to P, an organization described in section 170(b)(1)(A)(vi). Immediately before the transfer M's aggregate tax benefit was \$50,000. Therefore, N succeeds to M's aggregate tax benefit to the extent of \$20,000 ($\$50,000 \times \$40,000 / \$100,000$) and O succeeds to M's aggregate tax benefit to the extent of \$15,000 ($\$50,000 \times \$30,000 / \$100,000$). The remaining \$15,000 of M's aggregate tax benefit is retained by M as M has not terminated under section 507.

Example 3. Assume the same facts as in Example 2 except that the transfers were made as follows: M transferred \$30,000 to N on January 1, 1972, \$40,000 to P on July 1, 1972, and \$30,000 to O on December 31, 1972. Further, assume that the fair market value of the assets and the aggregate tax benefit do not change during 1972 and that O is not effectively controlled (directly or indirectly) by the same person or persons who effectively control M. N succeeds to M's aggregate tax benefit to the extent of \$15,000 ($\$50,000 \times \$30,000 / \$100,000$). However, since \$40,000 of the remaining \$70,000 ($\$100,000 - \$30,000$) of assets of M was transferred to P on July 1, 1972, immediately before the transfer to O, the fair market value of the assets held by M is \$30,000 ($\$70,000 - \$40,000$). On the other hand, because P is not a private foundation, M's aggregate tax benefit immediately before the transfer to O remains \$35,000 ($\$50,000 - \$15,000$). Therefore, before applying subdivision (ii) of this subparagraph, O would succeed to \$35,000 ($\$35,000 \times \$30,000 / \$30,000$) of M's aggregate tax benefit. However, applying subdivision (ii) of this subparagraph since M transferred only \$30,000 to O, O shall succeed to only \$30,000 of M's aggregate tax benefit. The remaining \$5,000 ($\$35,000 - \$30,000$) of M's aggregate tax benefit is retained by M as M has not terminated under section 507.

(3) For purposes of section 507(d)(2), in the event of a transfer of assets described in section 507(b)(2), any person who is a *substantial contributor* (within the meaning of section 507(d)(2)) with respect to the transferor foundation shall be treated as a *substantial contributor* with respect to the transferee foundation, regardless of whether such person meets the \$5,000-two percent

test with respect to the transferee organization at any time. If a private foundation makes a transfer described in section 507(b)(2) to two or more transferee private foundations, any person who is a *substantial contributor* with respect to the transferor foundation prior to such transfer shall be considered a *substantial contributor* with respect to each transferee private foundation.

(4) If a private foundation incurs liability for one or more of the taxes imposed under chapter 42 (or any penalty resulting therefrom) prior to, or as a result of, making a transfer of assets described in section 507(b)(2) to one or more private foundations, in any case where transferee liability applies each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

(5) Except as provided in subparagraph (9) of this paragraph, a private foundation is required to meet the distribution requirements of section 4942 for any taxable year in which it makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation. Such transfer shall itself be counted toward satisfaction of such requirements to the extent the amount transferred meets the requirements of section 4942(g). However, where the transferor has disposed of all of its assets, the recordkeeping requirements of section 4942(g)(3)(B) shall not apply during any period in which it has no assets. Such requirements are applicable for any taxable year other than a taxable year during which the transferor has no assets.

(6) For purposes of section 4943(c) (4), (5), and (6), 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 period of time 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.

(7) Except as provided in subparagraph (9) of this paragraph, where the transferor has disposed of all of its assets, during any period in which the

transferor has no assets, section 4945 (d)(4) and (h) shall not apply to the transferee or the transferor with respect to any *expenditure responsibility* grants made by the transferor. However, the exception contained in this subparagraph shall not apply with respect to any information reporting requirements imposed by section 4945 and the regulations thereunder for any year in which any such transfer is made.

(8)(i) Except as provided in subdivision (ii) of this subparagraph or subparagraph (6) or (9) of this paragraph or whenever a private foundation makes a transfer of assets described in section 507(b)(2) to one or more private foundations, the transferee foundation:

(a) Will not be treated as being in existence prior to January 1, 1970, with respect to any transferred assets;

(b) Will not be treated as holding the transferred assets prior to January 1, 1970; and

(c) Will not be treated as having engaged in, or become subject to, any transaction, lease, contract, or other obligation with respect to the transferred assets prior to January 1, 1970.

(ii) Notwithstanding subdivision (i) of this subparagraph, the provisions enumerated in (a) through (g) of this subdivision shall apply to the transferee foundation with respect to the assets transferred to the same extent and in the same manner that they would have applied to the transferor foundation had the transfer described in section 507(b)(2) not been effected:

(a) Section 4940(c)(4)(B) and the regulations thereunder with respect to basis of property,

(b) Section 4942(f)(4) and the regulations thereunder with respect to distributions of income,

(c) Section 101(l)(2) of the Tax Reform Act of 1969 (83 Stat. 533), as amended by sections 1301 and 1309 of the Tax Reform Act of 1976 (90 Stat. 1713, 1729), with respect to the provisions of section 4941,

(d) Section 101(l)(3)(A) of the Tax Reform Act of 1969 (83 Stat. 534) with respect to the provisions of section 4942, but only if the transferor qualified for the application of such section immediately before the transfer, and at least 85 percent of the fair market value of

the net assets of the transferee immediately after the transfer was received pursuant to the transfer,

(e) Section 101(l)(3) (B) through (E) of the Tax Reform Act of 1969 (83 Stat. 534) with respect to the provisions of section 4942,

(f) Section 101(l)(5) of the Tax Reform Act of 1969 (83 Stat. 535) with respect to the provisions of section 4945, and

(g) Section 101(l)(6) of the Tax Reform Act of 1969 (83 Stat. 535) with respect to the provisions of section 508(e).

(9) (i) If a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled (within the meaning of § 1.482-1(a)(3)), directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of chapter 42 (section 4940 *et seq.*) and part II of subchapter F of chapter 1 of the Code (sections 507 through 509) such a transferee private foundation shall be treated as if it were the transferor. However, where proportionality is appropriate, such a transferee private foundation shall be treated as if it were the transferor in the proportion which the fair market value of the assets (less encumbrances) transferred to such transferee bears to the fair market value of the assets (less encumbrances) of the transferor immediately before the transfer.

(ii) Subdivision (i) of this subparagraph shall not apply to the requirements under sections 6033, 6056, and 6104 which must be complied with by the transferor private foundation, nor to the requirement under section 6043 that the transferor file a return with respect to its liquidation, dissolution, or termination.

(iii) This subparagraph may be illustrated by the following examples:

Example 1. The trustees of X charitable trust, a private foundation, form the Y charitable corporation, also a private foundation, in order to facilitate the conduct of their activities. The trustees of X are also the directors of Y. Y has the same charitable purposes as X. All of the assets of X are transferred to Y, and Y continues to carry on X's charitable activities. Under such circumstances, Y shall be treated as if it were X for the purposes of subdivision (i) of this subparagraph. Thus, for example, Y will be permitted to take advantage of any special rules or savings provi-

sions with respect to chapter 42 to the same extent as X could have if X had continued in existence.

Example 2. A and B are the trustees of the P charitable trust, a private foundation, and are the only substantial contributors to P. On July 1, 1973, in order to facilitate accomplishment of diverse charitable purposes, A and B create and control the R Foundation, the S Foundation and the T Foundation and transfer the net assets of P to R, S, and T. As of the end of 1973, P has an outstanding grant to Foundation W and has been required to exercise expenditure responsibility with respect to this grant under sections 4945 (d)(4) and (h). Under these circumstances, R, S, and T shall each be treated as if they are P in the proportion the fair market value of the assets transferred to each bears to the fair market value of the assets of P immediately before the transfer. Since R, S, and T are treated as P, absent a specific provision for exercising expenditure responsibility with respect to the grant to W, each of them is required to exercise expenditure responsibility with respect to such grant. If, as a part of the transfer to R, P assigned, and R assumed, P's duties with respect to the expenditure responsibility grant to W, only R would be required to exercise expenditure responsibility with respect to the grant to W. Since R, S, and T are treated as P rather than as recipients of *expenditure responsibility* grants, there are no expenditure responsibility requirements which must be exercised under sections 4945 (d)(4) and (h) with respect to the transfers of assets to R, S, and T.

(10) For certain rules relating to filing requirements where a private foundation has transferred all its net assets, see § 1.507-1(b)(9).

(b) *Status of transferee organization under section 507(b)(2).* Since a transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization to an organization not described in section 501(c)(3) (other than an organization described in section 509(a)(4)) or 4947 is a taxable expenditure under section 4945(d)(5), in order for such a transfer of assets not to be a taxable expenditure, it must be to an organization described in section 501(c)(3) (other than an organization described in section 509(a)(4)) or treated as described in section 501(c)(3) under section 4947. See § 53.4945-6(c)(3) of this chapter. Consequently, unless such a transferee is an organization described in section 509(a) (1), (2), or (3), the transferee is a private foundation and the rules of section 507(b)(2) and

paragraph (a) of this section apply. On the other hand, if such a transfer of assets is made to a transferee organization which is not described in either section 501(c)(3) (other than an organization described in section 509(a)(4)) or 4947, and in order to correct the making of a taxable expenditure, such assets are transferred to a private foundation, section 507(b)(2) and paragraph (a) of this section shall apply as if the transfer of assets had been made directly to such private foundation.

(c) *Section 507(b)(2) transfers.* (1) A transfer of assets is described in section 507(b)(2) if it is made by a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization. This shall include any organization or reorganization described in subchapter C of chapter 1. For purposes of section 507(b)(2), the terms *other adjustment, organization, or reorganization* shall include any partial liquidation or any other significant disposition of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income. For purposes of this paragraph, a distribution out of current income shall include any distribution described in section 4942(h)(1) (A) and (B).

(2) The term *significant disposition of assets to one or more private foundations* shall include any disposition for a taxable year where the aggregate of:

(i) The dispositions to one or more private foundations for the taxable year, and

(ii) Where any disposition to one or more private foundations for the taxable year is part of a series of related dispositions made during prior taxable years, the total of the related dispositions made during such prior taxable years, is 25 percent or more of the fair market value of the net assets of the foundation at the beginning of the taxable year (in the case of subdivision (i) of this subparagraph) or at the beginning of the first taxable year in which any of the series of related dispositions was made (in the case of subdivision (ii) of this subparagraph). A *significant disposition of assets* may occur in a single taxable year (as in subdivision (i) of

this subparagraph) or over the course of two or more taxable years (as in subdivision (ii) of this subparagraph). The determination whether a significant disposition has occurred through a series of related distributions (within the meaning of subdivision (ii) of this subparagraph) will be made on the basis of all the facts and circumstances of the particular case. However, if one or more persons who are disqualified persons (within the meaning of section 4946) with respect to the transferor private foundation are also disqualified persons with respect to any of the transferee private foundations, such fact shall be evidence that the transfer is part of a series of related dispositions (within the meaning of subdivision (ii) of this subparagraph). In the case of a series of related dispositions described in subdivision (ii) of this subparagraph, each transferee private foundation shall (on any date) be subject to the provisions of section 507(b)(2) (with respect to all such dispositions made to it on or before such date) to the extent described in paragraphs (a) and (b) of this section.

(3) A private foundation which fails to meet the requirements of section 507(b)(1)(A) for a taxable year may be required to file a return under section 6043(b) by reason of a transfer of assets to one or more sections 509(a) (1), (2), or (3) organizations. Hence, such filing does not necessarily mean that a section 507(b)(2) transfer has occurred. See § 1.6043-3(f)(1).

(4) This paragraph applies to any section 507(b)(2) transfer made by a private foundation referred to in section 170(b)(1)(E) (i), (ii), or (iii).

(5) The provisions of this paragraph may be illustrated by the following examples:

Example 1. M is a private foundation on the calendar year basis. It has net assets worth \$100,000 as of January 1, 1971. In 1971, in addition to distributions out of current income, M transfers \$10,000 to N, \$10,000 to O, and \$10,000 to P. N, O, and P are all private foundations. Under subparagraph (2)(i) of this paragraph, M has made a significant disposition of its assets in 1971 since M has disposed of more than 25 percent of its net assets (with respect to the fair market value of such assets as of January 1, 1971). M has therefore made section 507(b)(2) transfers within the meaning of this paragraph, and

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section 507(b)(2) applies to the transfers made to N, O, and P.

Example 2. U, a tax-exempt private foundation on the calendar year basis, has net assets worth \$100,000 as of January 1, 1971. As part of a series of related dispositions in 1971 and 1972, U transfers in 1971, in addition to distributions out of current income, \$10,000 to private foundation X and \$10,000 to private foundation Y, and in 1972, in addition to distributions out of current income, U transfers \$10,000 to private foundation Z. Under subparagraph (2)(ii) of this paragraph, U is treated as having made a series of related dispositions in 1971 and 1972. The aggregate of the 1972 disposition (under subparagraph (2)(i) of this paragraph) and the series of related dispositions (under subparagraph (2)(ii) of this paragraph) is \$30,000, which is more than 25 percent of the fair market value of U's net assets as of the beginning of 1971 (\$100,000), the first year in which any such disposition was made. Thus, U has made a significant disposition of its assets and has made transfers described in section 507(b)(2). The provisions of paragraphs (a) and (b) of this section apply to each of the transferees as of the date on which it received assets from U.

(d) *Inapplicability of section 507(a) to section 507(b)(2) transfers.* 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). Such transfer must, nevertheless, satisfy the requirements of any pertinent provisions of chapter 42. See subparagraphs (5) through (7) of paragraph (a) of this section. However, if such transfer constitutes an act or failure to act which is described in section 507(a)(2)(A), then such transfer will be subject to the provisions of section 507(a)(2) rather than section 507(b)(2). For example, X, a private nonoperating foundation, transfers all of its net assets to Y, a private operating foundation, in 1971. X does not file the notice referred to in section 507(a)(1) and the transfer does not constitute either a willful and flagrant act (or failure to act), or one of a series of willful repeated acts (or failures to act), giving rise to liability for tax under chapter 42. Under these circumstances, the transfer is described in section 507(b)(2) and the provisions of paragraph (a) of this section apply with respect to Y. The private foundation status of X has

not been terminated under section 507(a).

(e) *Transfers to certain section 509(a) (1), (2), or (3) organizations.* If a private foundation transfers all or part of its assets to one or more organizations described in section 509(a) (1), (2), or (3) and, within a period of 3 years from the date of such transfers, one or more of the transferee organizations lose their section 509(a) (1), (2), or (3) status and become private foundations, then for purposes of this section, a transfer of assets within the meaning of paragraph (c) of this section to such an organization which becomes a private foundation will be treated as a transfer described in section 507(b)(2), and the provisions of paragraph (a) of this section shall be treated as applying to such a transferee organization from the date on which any such transfer was made to it.

(f) *Certain transfers made during section 507(b)(1)(B) terminations.* If:

(1) During the course of the 12-month or 60-month period described in section 507(b)(1)(B), a private foundation makes one or more transfers to one or more private foundations;

(2) Such transfers are described in § 1.507-3(c)(1); and

(3) Even though the transferor foundation thereafter meets the requirements of section 507(b)(1)(B)

then for purposes of this section, the provisions of § 1.507-2(e) shall not apply with respect to such transfers, and such transfers will be treated as transfers described in section 507(b)(2) and § 1.507-3 rather than as transfers from an organization described in section 509(a) (1), (2), or (3).

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§ 1.507-4 Imposition of tax.

(a) *General rule.* Section 507(c) imposes on each organization the private foundation status of which is terminated under section 507(a) a tax equal to the lower of:

(1) The amount which such organization substantiates by adequate records (or other corroborating evidence which may be required by the Commissioner) as the aggregate tax benefit (as defined in section 507(d)) resulting from the