



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
SIN - 4941.04-00
No Third Party Contacts

200429016

Date: APR 21 2004

Contact Person:

Identification Number:

Contact Number:

T:ED:B3

Employer Identification Number:

Legend:

X =
Y =
Z =

Partnership 1 =
Partnership 2 =

A =
B =
C =
D =
E =
F =
G =
H =
I =
K =
L =
M =

u =
v =
w =
x =
y =
z =

Dear

This refers to a ruling request dated December 17, 2003, that the proposed transaction will not constitute an act of self-dealing under section 4941 of the Internal Revenue Code (the Code).

Fact:

X is exempt under section 501(c)(3) of the Code and is a private foundation. X is primarily engaged in distributing grants to charitable organizations. X was formed by the estate of A, which contributed the interests in two partnerships -- Partnership 1 and Partnership 2. To date, the estate of A is the only contributor to X.

X's primary assets consist of a u % interest in Partnership 1, a v % interest in Partnership 2, and various publicly traded stocks and bonds, none of which represent a significant holding in the issuer. The u and v interests are insubstantial in respect to Partnerships 1 and 2. The income from these assets are the only sources of income for X.

The officers of X are E, F and H who serve as president, vice president and secretary, respectively. E, F and H also serve as members of its Board of Trustees. X has no employees.

X intends to sell its u % interest in Partnership 1 for \$z, an amount that is equal to fair market value. X states the sale will enable X to restructure its assets and to provide greater liquidity to more effectively meet its charitable goals and purposes. The sale was approved by X's Board and no brokerage fees are being paid with respect to the sale. The purchasers are L and M.

X represents that the material terms of the sale are as follows: X will transfer its interest in Partnership 1 free and clear of all liens and executions. Each of the purchasers will assume the obligations of a partner in Partnership 1. The sale is subject to the condition that the seller will obtain the following: (a) a private letter ruling from the Internal Revenue Service that no excise or other taxes will be imposed on the seller based on any relationship of any parties to the transaction; and (b) an approval letter or statement of no objection to the transaction by the State Attorney General Charities Bureau.

Partnership 1 was established upon settlement of the estate of B. B was the husband of A and son of C. Partnership 1 owns industrial and commercial rental real estate. It does not engage in activities unrelated to real estate. In addition to X, the other partners in Partnership 1 are Y (w % interest) and E (x % interest). There are no limited partners in Partnership 1.

Y is exempt under section 501(c)(3) of the Code and is a private foundation. Y is primarily engaged in distributing grants to charitable organizations. Y's primary assets consist of a w % interest in Partnership 1, a y % interest in Partnership 2, various mortgages, and various publicly traded stocks and bonds, none of which represent a significant holding in the issuer. The income from these assets are the only sources of income for Y.

Y was formed by B and C. B's parents, C and D contributed a w % interest in Partnership 1, and a small amount of cash to Y. There are no other contributors to Y. The officers of Y are E, who serves as president, and K, vice president, secretary and treasurer. The two are also the members of Y's Board of Trustees that include I, and E's children, F and G. Y has no employees.

K is the father of L and M. K, L and M are not related, within the meaning of section 4946(d) of the Code, to A, B, C, D, E, F, G, H or I. K is not a foundation manager of X.

The business and properties of Partnership 1 are managed by Z, a general partnership equally owned by K and his wife. Z also manages other properties. In managing Partnership 1, Z is authorized to collect receipts and pay all expenses of day to day operations, and is required to account to the partners for all such receipts and expenses. Z may act alone as to all phases of day to day operations, but is required to consult with the partners, separately advise them in writing and obtain their prior written approval on sales, leasing or mortgaging of the property including foreclosures, deeds in lieu of foreclosure and failure to pay mortgage interest or real property taxes. Z is required to confer on a regular basis with the partners and distribute interim/annual financial statements to them. It is also required to distribute a status report of any material events or transactions, at least quarterly. Finally, it must make quarterly distributions to the partners of the net income from the properties less a reasonable reserve. The precise timing of distributions and information is determined by the partners, after conferring with Z.

X is only requesting a ruling that the sale of its interest in Partnership 1 to L and M, shall not constitute an act of self-dealing under Section 4941 of the Code.

Applicable law:

Section 4941(a)(1) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(A) of the Code defines the term "self-dealing" to mean any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person.

4946(a)(1) of the Code defines the term "disqualified person" to mean, with respect to a private foundation, a person who is--

- (A) a substantial contributor to the foundation,
- (B) a foundation manager (within the meaning of subsection (b)(1)),
- (C) an owner of more than 20 percent of--
 - (i) the total combined voting power of a corporation,
 - (ii) the profits interest of a partnership, or
 - (iii) the beneficial interest of a trust or unincorporated enterprise,
 which is a substantial contributor to the foundation,
- (D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),
- (E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,

Section 4946(a)(2) of the Code provides that the term "substantial contributor" means a person who is described in Code section 507(d)(2). Section 507(d)(2) of the Code provides, in relevant part, that the term "substantial contributor" means any person who contributed or bequeathed an aggregate amount of more than \$5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person.

Section 4946(b) of the Code defines the term "foundation manager" to mean, with respect to any private foundation-

(1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

Section 4946(d) of the Code provides that, for purposes of Code section 4946(a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

Analysis:

Pursuant to the provisions of section 4941 of the Code, X's sale of its u % interest in Partnership 1 to L and M would be an act of self-dealing if any of the purchasers is a disqualified person with respect to X. The submitted facts indicate that L and M are not substantial contributors to, or foundation managers of, X. Also, L and M are not 20% owners of a corporation, partnership, trust or an unincorporated enterprise that is a substantial contributor to X. Therefore, neither L nor M is a disqualified person under section 4946(a)(1)(A), (B), or (C).

We have also considered whether L and M are disqualified persons with respect to X under section 4946(d) of the Code as members of the family of K. While K is an officer and thus a foundation manager in Y, and he manages Partnership 1 through his ownership of Z, he is not an officer or a foundation manager in X. Therefore, K is not a disqualified person with respect to X and the same is true with L and M, who are members of his family.

Conclusion:

Based on the facts and representations, we rule that X's sale of its interest in Partnership 1 to L and M would not constitute an act of self-dealing under section 4941 of the Code.

This ruling is based on the assumption that there is no material change in the submitted facts. Also, this ruling only addresses section 4941 of the Code to the issue presented in regard to X and neither expresses nor implies any opinion as to the federal tax consequences of the

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transactions under any other provisions of the Code.

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 as precedent. Please keep this in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Robert C Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3