



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200532054**
Release Date: 8/12/05
234934

Date: May 20, 2005

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

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B=
C=
D=
E=
F=
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aa=

Uniform Issue List No.: 4941.00-00

Dear _____ :

This is in reply to your rulings request of May 18, 2004, submitted by your authorized representatives, requesting rulings concerning the proposed sale of real property by A to D.

Facts

A was established by B and was amended and restated on several occasions during B's lifetime. On April 4, 2002, B died and A became irrevocable.

At the time of B's death, A owned several parcels of real estate located in E. (These parcels were previously transferred to A by B.) A provides that a specific bequest be made upon B's death, as follows: The residue of A is to be allocated to the trustees of E, a private foundation formed by B during her lifetime.

E has received a determination letter from the Internal Revenue Service that it is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and is a private foundation under section 509(a) of the Code. The current trustees of E are C and D. D is the grandchild of B.

The primary purpose of E is making grants to other section 501(c)(3) organizations supporting their activities.

A plans to sell the residue of the real property it holds in E to D for cash. E is concerned that if it receives the E real property, it will not have sufficient liquid assets to retain and maintain this real estate, make the required minimum grants under the federal tax laws for a private foundation, and pay its administrative expenses. Thus, E is in favor of selling the E real property for cash, in order to support E's ongoing charitable operations.

Professional appraisers have appraised the E real property to determine its fair market value as of the date of B's death. There are two appraisals of the E real property: one appraisal values the property at \$xx, and the other appraisal values the property at \$yy. For federal estate tax purposes, the executors of B's estate valued the E real property at \$zz. (the average of the two appraisals.) The appraisers have since updated these amounts in preparation of this ruling request. The new appraisals still value the E real property at \$xx and \$yy, with an average of \$zz.

A authorizes its trustees to sell any real or personal property held in A.

A plans to sell the E real property to D for \$aa in cash, which is an amount in excess of \$zz.

The trustees of A have filed a petition with the E Court of Common Pleas, Probate Division, for approval of the proposed sale. The E Court of Common Pleas, Probate Division is the probate court having jurisdiction over A with respect to the E real property.

With respect to the proposed transaction, you represent the following:

- a. The trustees of A possess the power of sale with respect to the E real property;
- b. The transaction will not take place until it has been approved by the E Court of Common Pleas, Probate Division, the probate court having jurisdiction over A;
- c. The transaction will occur before A is subject to section 4947 of the Code;

- d. A will receive interests or expectancies at least as liquid as the ones it gives up; and
- e. A will receive amounts which equal the fair market values of its interest in the F real property.

The following rulings are requested:

1. The sale of the F real property by A to D will not constitute an act of self-dealing as to A under section 4941(d) of the Code; and
2. A will not be subject to taxes under section 4941 of the Code with respect to the proposed transaction.

Law

Section 4941(a)(1) of the Internal Revenue Code imposes a tax on acts of self-dealing between a disqualified person as defined in section 4946(a)(1) and a private foundation.

Section 4941(d)(1) of the Code provides, in part, that the term "self-dealing" means any direct or indirect-(A) sale or exchange, or leasing, of property between a private foundation and

a disqualified person; and (E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4946(a)(1) of the Code provides, in part, that the term "disqualified person" means, with respect to a private foundation, a person who is: (A) a substantial contributor to the foundation, (B) a foundation manager, (D) a member of the family of any individual described in subparagraphs (A) or (B), or (G) a trust or estate in which persons described in subparagraph (A), (B), or (D) hold more than 35% of the beneficial interest.

Section 4946(b) of the Code provides that a "foundation manager" is an officer, director, or trustee of a foundation.

Section 4946(d) of the Code provides that for purposes of 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.

Section 507(d)(2) of the Code provides that the term "substantial contributor" includes the creator of the trust.

Section 53.4941(d)-1(b)(3) of the Foundation and Similar Excise Tax Regulations provides that the term indirect self-dealing shall not include a transaction with respect to a private foundation's interest or expectancy in property held by a revocable trust which has become irrevocable on the grantor's death, if the following conditions are met:

- a. The executor of an estate or trustee of a revocable trust possesses a power of sale with _____ respect to the property or has the power to reallocate the property to another beneficiary;
- b. Such transaction is approved by the probate court having jurisdiction over the state or by another court having jurisdiction over the estate, trust, or private foundation,
- c. The transaction occurs before the state is considered terminated for Federal income tax purposes pursuant to Reg. section 1.641(b)-3(a), or in the case of a revocable trust, before it is considered subject to section 4947;
- d. The estate or revocable trust receives an amount that equals or exceeds the fair market value of the private foundation's interest or expectancy in the property at the time of the transaction; and
- e. The estate or revocable trust receives an asset that is at least as liquid as the property it sells, or receives an asset related to the active conduct of the private foundation's tax-exempt purposes.

In Rockefeller v. U.S., 718 F.2d 290 (8th Cir. 1983), cert. den., 104 S.Ct. 2180 (1984), the Court of Appeals affirmed a lower court decision holding that the purchase of stock from an estate by a son of the decedent constituted an indirect act of self dealing between a disqualified person and a private foundation that was established by a decedent's bequest.

Analysis

B is a disqualified person with respect to E, within the meaning of section 4946(a)(1) of the Code, and a substantial contributor with respect to E, because she was the creator and sole donor of assets to E.

D is a disqualified person with respect to E, within the meaning of section 4946(a)(1) of the Code, because D is the grandchild of B, and is also a trustee (and thus, foundation manager) of E.

The prohibition against indirect self-dealing applies here to the proposed sale by A to D, as a result of E's interest or expectancy in the F real estate. See Rockefeller v. U.S., supra. However, this proposed sale does not constitute a prohibited act of self-dealing under section 4941 of the Code because it meets all of the requirements of section 53.4941(d)-1(b)(3) of the regulations, as follows:

- a. The trustees of A possess the power of sale over the F real estate pursuant to paragraph H of article VII of this trust;
- b. The transaction will not take place without the approval of the probate court having jurisdiction over A;
- c. The transaction will occur before A is subject to section 4947;

- d. A will receive an amount equal to the fair market value of the F real estate; and
- e. A will receive interests or expectancies at least as liquid as the one it gives up.

Therefore, neither A nor D will be subject to excise taxes under section 4941 of the Code with respect to the proposed transaction.

Conclusion

Accordingly, we rule that:

1. The sale of the F real property by A to D will not constitute an act of self-dealing as to A under section 4941(d) of the Code; and
2. A will not be subject to taxes under section 4941 of the Code with respect to the proposed transaction.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based.

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.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides it may not be used or cited by others as precedent.

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.

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,
Lawrence M. Brauer
Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437