



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Release Date: 8/12/05

Date: May 19, 2005

UIL #4941.04-00
No Third Party Contact

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend

L =
M =
N =
O =

Dear _____ :

We have considered your ruling request dated August 20, 2004, in which rulings were requested regarding the treatment of contributions to school districts under section 4941 of the Internal Revenue Code.

The L is an exempt organization under section 501(c)(3) of the Internal Revenue Code (the Code) and is classified as a private foundation under section 509(a) of the Code. The L was organized for the purpose of making distributions to organizations that qualify for exemption under section 501(c)(3).

M has established an educational program known as the N, which provides “at-risk” or underserved minority school students the opportunity to earn a home computer and learn technology skills to better prepare them for opportunities in the technology sector. Students attend an after-school program where they learn computer basics including how to: disassemble and assemble a computer, load and use software, identify and correct basic hardware problems, and upgrade computer hardware. At the end of the program students earn a refurbished M computer.

O is a Director of the L and is a Senior Vice President at M. In this role O’s responsibility include sales to the education sector, which includes school districts that are impacted by the N. You represent that O’s salary consists of a base pay plus a bonus based upon how well M performs worldwide. You further represent that O owns less than 1 percent of M.

You state that the N was launched nationwide in the fall of 2002. Since July 2001, you state that more than 2,000 students from across the United States have completed the program. All students are defined as “at-risk” or low income and more than 80% of students participating in the N are Hispanic and African American. Participating school districts for the fall class of 2003 included: Alameda, CA; Chicago; Denver; Atlanta; Philadelphia; Laredo, TX; Austin, TX;. Kansas City, MO; Trenton, NJ; Norfolk, VA; Detroit; and Nashville, TN.

You further state that school districts incur expenses in operating the N which generally includes the cost of keeping the schools open, paying the instructors, and producing the necessary educational materials. The schools generally fund these expenses with grants from charitable organizations described in section 501(c)(3) of the Code. M’s employees often assist the school districts in locating donor organizations. You state that the L would like to provide funds to assist school districts in meeting these expenses through a charitable donation. To this end, L would like to contribute one million dollars to qualifying individuals within qualifying school districts. You state that qualifying school districts will be determined on the regional level. Once a school district qualifies, the specific districts, schools and students will be chosen based upon meeting the qualifications for participation including the lack of a computer at home.

L has made grants to a number of exempt organizations covering the period of 2000 through 2005. L’s grants to N as of May 5, 2005 have been a very small part of the total grants made by L.

Based on the information described above and supplemental information provided, you have requested the following rulings regarding the federal income tax consequences associated with this transaction.

1. A charitable contribution to school districts participating in the N will not be acts of self-dealing subject to tax under section 4941(d) of the Code.
2. While the availability of the N is sometimes a consideration in a school district's decision to choose to contract with M and that may provide incidental economic benefit to O, the transactions provide only incidental and tenuous benefits and thus are not an act of self-dealing under section 4941(d).

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, scientific or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 509(a) of the Code describes organizations exempt from federal income tax under section 501(c)(3) that are private foundations subject to the provisions of Chapter 42.

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

Section 4941(d)(1)(E) of the Code defines self-dealing as any direct or indirect "transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation."

Section 53.4941(d)-1(b)(4) of the Foundation and Similar Excise Tax Regulations (the regulations) provides that a transaction between a private foundation and an organization which is not controlled by the foundation (within the meaning of subparagraph (5) of this paragraph), and which is not described in section 4946(a)(1)(E), (F), or (G) because persons described in section 4946(a)(1)(A), (B), (C), or (D) own no more than 35 percent of the total combined voting power or profits or beneficial interest of such organization, shall not be treated as an indirect act of self-dealing between the foundation and such disqualified persons solely because of the ownership interest of such person in such organization.

Section 53.4941(d)-1(b)(5) of the regulations states that an organization is “controlled” by a private foundation if the foundation or one or more of its foundation managers (acting only in such capacity) may, only by aggregating their votes or positions of authority, require the organization to engage in a transaction which if engaged in with the private foundation would constitute self-dealing. Similarly, for purposes of this paragraph, an organization is controlled by a private foundation in the case of such a transaction between the organization and a disqualified person, if such disqualified person, together with one or more persons who are disqualified persons by reason of such person’s relationship (within the meaning of section 4946(a)(1)(C) through (G)) to such disqualified person, may, only by aggregating their votes or positions of authority with that of the foundation, require the organization to engage in such a transaction.

Section 53.4941(d)-2(f)(2) of the regulations states that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Thus, the public recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous. For example, a grant by a private foundation to a section 509(a)(1), (2), or (3) organization will not be an act of self-dealing merely because such organization is located in the same area as a corporation which is a substantial contributor to the foundation, or merely because one of the section 509(a)(1), (2), or (3) organization’s officers, directors, or trustees is also a manager of or substantial contributor to the foundation.

Section 53.4941(d)-2(f)(9), Example (1), of the regulations, states that there is only an incidental and tenuous benefit to a disqualified person where a private foundation makes a grant to a city to alleviate slum conditions in the city neighborhood where the disqualified person is located.

Section 53.4941(d)-2(f)(9), Example (4), of the regulations, states that there is only an incidental and tenuous benefit to a disqualified person where a disqualified person contributes real estate for the purpose of building a recreation center to a private foundation on condition that the recreation center is named after the disqualified person.

Section 4946(a)(1) of the Code defines “disqualified person” with respect to a private foundation, as a person who is:

- (A) a substantial contributor to the private 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.

Section 4946(a)(2) of the Code states that a “substantial contributor” means a person who is described in section 507(d)(2) of the Code.

Section 507(d)(2) of the Code defines the term “substantial contributor” as “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)(1) of the Code states that a “foundation manager” means “an officer, director, or trustee of a foundation (or an individual having power or responsibilities similar to those of officers, directors, or trustees of the foundation).”

As stated above, the transaction contemplates the L making a grant to a school district to assist them financially in order that they can participate in the N. The program is directed to school districts that are composed of “at risk”, low-income, minority students. Although the grant is being made to the school district, it may provide incidental indirect benefits both to M and O, a Director of the L and a senior vice president at M. We conclude that there is no direct or indirect act of self-dealing with respect to M under section 4941 of the Code because M is not a disqualified person as defined in section 4946. Additionally, there is no act of self-dealing under section 4941 of the Code between O, a disqualified person, and the L because any benefits O may receive due to the proposed transaction are incidental and tenuous within the meaning of section 53.4941(d)-2(f)(2) of the regulations.

Accordingly, based on the information set forth above and other representations you have made we, rule that:

1. A charitable contribution to school districts participating in N will not be acts of self-dealing subject to tax under section 4941(d) of the Code.

2. While the availability of the N is sometimes a consideration in a school district's decision to choose to contract with M and that may provide incidental economic benefit to O, the transactions provide only incidental and tenuous benefits and thus are not an act of self-dealing under section 4941(d).

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.

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.

Sincerely,

/s/

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

cc: