

Private foundation; self-dealing; church membership dues. Payment by a private foundation of a disqualified person's church membership dues in order to maintain that person's church membership is an act of self-dealing under section 4941(d)(1)(E) of the Code.

The Internal Revenue Service has been asked whether, under the circumstances described below, payment by a private foundation of a disqualified person's membership dues constitutes an act of self-dealing within the meaning of section 4941(d)(1)(E) of the Internal Revenue Code of 1954.

Members of a congregation (classified as a church under section 170(b)(1)(A)(i) of the Code) pay dues for the purpose of supporting the congregation. As a result, the members are entitled to hold office, vote in congregational meetings to elect officers and conduct other business, and otherwise participate in the religious activities of the congregation.

A member of the congregation maintained his membership status in the congregation by virtue of dues paid on his behalf by a private foundation. The member is a disqualified person with respect to the private foundation.

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

Under section 4941(d)(1)(E) of the Code, the term 'self-dealing' includes 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)-2(f)(2) of the Foundation Excise Tax Regulations provides 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.

Rev. Rul. 73-407, 1973-2 C.B. 383, holds that a contribution by a private foundation to a public charity does not constitute an act of self-dealing even though the contribution is conditioned upon the agreement of the public charity to change its name to that of a substantial contributor to the foundation. The Ruling is based upon section 53.4941(d)-2(f)(2) of the regulations and indicates that the resulting benefit to the substantial contributor is incidental and tenuous.

Other Revenue Rulings have considered the question of when a charitable contribution deduction will be allowed under section 170 of the Code for membership fees or dues. Rev. Rul. 68-432, 1968-2 C.B. 104, notes that whether such fees or dues paid to an organization described in section 170(c) are deductible is a question of fact and will depend on such considerations as the objectives and activities of the organization and the nature and extent of the benefits or privileges conferred upon its members. If any reasonably commensurate return privileges or facilities are made available by reason of the membership payment, such payment is not a charitable contribution. If, however, the rights and privileges of membership are incidental to making the organization function according to its charitable purposes and the only return benefit thereby attainable is the satisfaction of participating in furthering the charitable cause, the membership fee is a charitable contribution under section 170(c).

In Rev. Rul. 70-47, 1970-1 C.B. 49, the Service held that pew rents, building fund assessments, and periodic dues paid to a church (an organization described in section 170(c) of the Code) are all methods of making contributions to the church, and such payments are deductible as charitable contributions within the limitations set out in section 170.

Under Rev. Rul. 68-432 and Rev. Rul. 70-47, dues payments of the type described above, if paid directly by the disqualified person, would be deductible charitable contributions under section 170(c) of the Code. The dues confer no significant rights on the individual members, and are paid for the purpose of supporting the congregation and furthering its religious activities.

Although any rights or benefits that the disqualified person receives from the church by reason of that person's membership status might be described as incidental or tenuous, it cannot be said that the benefit to the disqualified person by reason of the private foundation's payment of the membership dues is incidental or tenuous within the meaning of section 53.4941(d)-2(f)(2) of the regulations. The foundation's payment results in a direct economic benefit to the disqualified person because that person would have been expected to pay the membership dues had they not been paid by the foundation.

Membership dues and fees, by their very nature, are usually paid by individuals on a continuing basis. Even where no benefits are conferred on the individual by reason of the payment of dues, the member is afforded the opportunity to participate in the charitable program of the church or other section 170(c) organizations to which the payments are made.

When membership fees or dues are paid by a private foundation on behalf of a disqualified person, it may be presumed that the disqualified person is being relieved of the obligation, whether or not legally enforceable, to make such payment. The benefit conferred on the individual is not incidental or tenuous, but is

direct and economic in nature.

The payment of membership fees or dues by a private foundation on behalf of a disqualified person may be distinguished from the making of a grant such as that described in Rev. Rul. 73-407. Although the grant may result in public recognition of a disqualified person, it is not a substitute for an obligation of the disqualified person. Thus, the benefit derived is tenuous, and is not economic in nature.

Accordingly, the payment of membership dues by the private foundation on behalf of the disqualified person is an act of self-dealing under section 4941(d)(1)(E) of the Code.