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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Identification Number:

Telephone Number:

UIL: 4941.00

Legend:

Y	=
Foundation	=
Museum	=
A	=
B	=

Dear :

This is in reply to your request for a ruling with respect to the tax consequences under I.R.C. § 4941 of a proposed transaction involving storing art loaned by a disqualified person to two private foundations.

Facts:

You and Y own a substantial personal collection of works of art. The primary purpose of Foundation is to make contemporary works of art available for viewing by the general public by lending art works from its own sizable collection to museums. The primary purpose of Museum is to construct and own a museum facility, primarily for the exhibition of Foundation's art, in order to expand the art available for public viewing. It is not anticipated that Museum will own any significant number of works of art.

Museum and Foundation are recognized as private foundations under §§ 501(c)(3) and 509(a). You represented that you and Y are each a disqualified person with respect to Museum and to Foundation under § 4946(a). Foundation is a disqualified person with respect to Museum under § 4946(a).

You and Y propose to loan works of art from your personal collection free of charge to

Foundation and to Museum. In some cases, the works, already on loan to Foundation, will be loaned by Foundation to Museum under the same arrangement. The loan agreements will be standard loan agreements for works of art to museums. Insurance and maintenance costs for the art while on loan (except costs resulting from damage due to negligence of Foundation or Museum) will be paid for by the respective owner of the art, if the respective owner chooses to insure the art.

You and Y will bear the costs of packing and moving art that they own. The costs of packing and moving art, owned by Foundation, to Museum will be borne by Foundation. You anticipate that A% of the total collection will either be loaned or be on view at the Museum on an ongoing basis. You estimate that over a five to seven year period, B% of the total art will have been loaned or be on view at the Museum.

Storage of yours, Y's, and Foundation's art on Museum's premises will facilitate Museum's access to the art in both collections in the least expensive manner which is least injurious to the art, and will facilitate access of the public to the art. It will also consolidate works currently stored in multiple, inaccessible locations, thus facilitating access to the works by scholars and art professionals. Some of the works not on display will be stored in specially designed racks to allow viewing by the public through viewing windows, and study by the scholars and professionals. You and Y have represented that storing yours and Y's personally-owned works of art at Museum will not increase the cost to Museum as it was designed to accommodate Foundation's works as well as other works on loan to it.

Ruling Requested:

The storage of your personally owned works of art at Museum's facility while on loan to Foundation or Museum will not be an act of self-dealing under § 4941.

Law:

I.R.C. § 501(c)(3) provides, in part, for an exemption from federal income tax for corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

I.R.C. § 4941 imposes an excise tax on a disqualified person for each direct or indirect act of self-dealing between the disqualified person and a private foundation, based on the amount involved.

I.R.C. § 4941(d)(1) 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;

(D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to 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.

I.R.C. § 4941(d)(2)(C) states that the furnishing of goods, services, or facilities by a private foundation to a disqualified person shall not be an act of self-dealing if such furnishing is made on a basis no more favorable than that on which such goods, services, or facilities are made available to the general public.

I.R.C. § 4946(a)(1) of the Code provides, in part, that for purposes of this subchapter, 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 (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, and

(H) only for purposes of § 4943, a private foundation--

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question.

I.R.C. § 4946(a)(2) provides that for purposes of paragraph (1), the term "substantial contributor" means a person who is described in § 507(d)(2).

I.R.C. § 4946(d) provides that for purposes of subsection (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.

Treas. Reg. § 53.4941(d)-2(d)(3) provides, in part, that the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if they are furnished without charge. For purposes of this subparagraph, a furnishing of goods shall be considered without charge even though the private foundation pays for transportation, insurance, or maintenance costs it incurs in obtaining or using the property, so long as the payment is not made directly or indirectly to the disqualified person.

Treas. Reg. § 53.4941(d)-2(f)(2) 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.

Analysis:

Storage of a portion of the art collection on loan to Museum or to Foundation furthers Museum's and Foundation's respective charitable and educational purposes. Any benefit to you and Y from Museum's or Foundation's storage of the art collection is merely incidental to the achievement of their § 501(c)(3) purposes.

The reasonable expenditures of the Foundation and the Museum in storing yours and Y's personally-owned works while they are on loan to either the Foundation or the Museum will not change the character of the loans. They will still be considered "furnished without charge" within the meaning of §53.4941(d)-2(d)(3), because the payment by a private foundation for transportation, insurance or maintenance costs is not considered a charge, so long as it is not made directly or indirectly to the disqualified person. Further, while you and Y may receive benefits from such expenditures by the Foundation and the Museum, they are merely incidental to achieving the exempt purpose of expanding public access to the works. § 53.4941(d)-2(f)(2). Mere incidental benefit could be exceeded if art was stored without intention of being made available for use for the charitable purpose of the Foundation or Museum, but you have estimated that approximately A% will be in use for charitable purposes at any given time, and that B% will be in use for charitable purposes over a five to seven year period.

Rulings:

Accordingly, based on the information submitted, we rule that the storage of your personally owned works of art at Museum's facility while on loan to Foundation or Museum will not be an act of self-dealing under § 4941.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Any changes that may have a bearing upon your tax status should be reported to the Service. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records. Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Except as we have specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions or under any other provision of the Code.

This ruling will be made available for public inspection under § 6110 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.

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

The ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. 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. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If there are any questions about this ruling, 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 yours,

Mary J. Salins
Manager, Exempt Organizations
Technical Group 4

Enclosure
Notice 437