



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

Identification Number:

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Employer Identification Number:

UIL: 4941.00-00; 4941.04-00; 4946.01-00; 4946.04-00

Legend:

Foundation =
Settlor 1 =
Settlor 2 =
Trust =

Dear :

We have considered your ruling request dated December 17, 2013, as amended on March 28, 2014, requesting a ruling under Internal Revenue Code (I.R.C.) § 4941.

FACTS

You (the "Foundation") are a charitable trust and grant-making organization recognized under § 501(c)(3) and classified as a private foundation under § 509(a).

Settlor 1 and Settlor 2 (collectively, "the Settlers") were a married couple. You state that the Settlor 2 is a substantial contributor within the meaning of § 507(d)(2) with respect to you.

The Settlers created the Trust, which provides for the allocation of certain assets between you and Settlor 2's children (or their descendants) after the Settlers' deaths. Specifically, Settlor 2's children (or their descendants) will receive a greater percentage and you will receive a lesser percentage of the Settlers' aggregate estate. The Trust generally defines "aggregate estate" as the net fair market value of the residue of (1) either Settlor 2's survivor trust or Settlor 2's assets, depending on which settlor survives, and (2) the assets in Settlor 2's life insurance trust. This allocation appears in three sections of the Trust (the "Remainder Clauses").

In a subsequent amendment to the Trust, the Settlers requested a change to this allocation (the "revised allocation"). Specifically, the revised allocation reduced the percentage of the aggregate estate you will receive upon the Settlers' death and increased the percentage of those assets that Settlor 2's children (or their descendants) will receive at that time.

However, due to an inadvertent clerical error, the revised allocation appeared only in two of the three Remainder Clauses. Settlor 2 (the "Decedent") died prior to the discovery of this error. After the Decedent's death, the Trust became irrevocable. Accordingly, the Trust petitioned the court for an order interpreting the Remainder Clauses as a consistent whole and confirming that the unrevised Remainder Clause was to be treated as conforming to the two revised Remainder Clauses. The court granted the Trust's petition and issued an order interpreting the Trust provisions as a consistent whole. Additionally, the order found that the Trust's trustees—Settlor 1 and a financial institution—consented to the granting of the petition and that good cause existed for granting the petition. Furthermore, your State Attorney General, as a governmental representative, consented to the court's order.

RULING REQUESTED

Reformation of the Trust is not an act of self-dealing between Settlor 1 and the Decedent's children (or their descendants), as disqualified persons, and the Foundation under § 4941.

LAW

I.R.C. § 4941(a) imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

I.R.C. § 4941(d)(1)(E) 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.

Treas. Reg. § 53.4941(d)-2(f) provides that a transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation shall constitute an act of self-dealing.

I.R.C. § 4946(a)(1)(A) defines the term "disqualified person" as, with respect to a private foundation, a person who is substantial contributor to the foundation. Section 4946(a)(1)(D) includes a member of the family (as defined in § 4946(d)) of any individual described in § 4946(a)(1)(A).

I.R.C. § 4946(a)(2) provides that the term "substantial contributor" means a person who is described in § 507(d)(2). That section defines "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. In the case of a trust, the term "substantial contributor" also means the creator of the trust.

I.R.C. § 4946(d) provides that, for the purposes of § 4946(a)(1), the family of an individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

ANALYSIS

Section 4941 imposes a tax on each act of self-dealing between a disqualified person and a private foundation. With respect to a private foundation, § 4946(a)(1) defines "disqualified person" as a person who is a substantial contributor to the foundation and also as any member of that person's family, including that person's spouse and children. I.R.C. §§ 4946(a)(1)(A), (a)(1)(D), and (d). You affirm that the Decedent is a substantial contributor with respect to you. Accordingly, Settlor 1, as the Decedent's spouse, and the Decedent's children, as the Decedent's lineal descendants, are also disqualified persons with respect to you. Therefore, unless an exception exists, each act of self-dealing between the Foundation and Settlor 1, the Decedent, or the Decedent's children will trigger the § 4941 tax.

Section 4941(d)(1)(E) provides that 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 is an act of self-dealing. Judicial reformation of the clerical error in the Trust amendment increases the amount of Trust assets to be received by disqualified persons (i.e., Decedent's children) and decreases the amount you will receive. The reduction of Trust assets to be received by you may be considered a transfer to, or use by or for the benefit of, a disqualified person of income or assets of a private foundation. Accordingly, the judicial reformation may result in an act of self-dealing.

However, the facts and circumstances indicate that no act of self-dealing occurred. The Settlers amended the Trust prior to Decedent's death, when the Trust was revocable. The clerical error was not discovered until after Decedent's death, once the Trust became irrevocable. Your State court determined that the Settlers intended all three Remainder Clauses to be consistent. Furthermore, the court found all interested parties consented to the reformation. Additionally, your State Attorney General consented to the court's order. Therefore, no act of self-dealing within the meaning of § 4941 occurred as a result of the judicial reformation of the Trust.

CONCLUSION

Reformation of the Trust is not an act of self-dealing between Settlor 1 and the Decedent's children (or their descendants), as disqualified persons, and the Foundation under § 4941.

If the judicial reformation affected the amount of any deduction taken under § 2055 with respect to amounts going to the Foundation, the taxpayer(s) should amend the return(s) for the taxable year(s) in question to reflect resulting change.

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.

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 by others as precedent.

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. 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 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,

Michael Seto
Manager, EO Technical

Enclosure
Notice 437