



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201441020**
Release Date: 10/10/2014
Date: July 14, 2014
Uniform Issue List:
4941.00-00

Contact Person:
Identification Number:
Telephone Number:
Employer Identification Number:

Legend:

Decedent =
Property 1 =
Property 2 =
Daughter =
Son =

Dear :

This is in response to your ruling request, dated June 14, 2013, requesting a ruling under I.R.C. § 4941 regarding a transaction during the administration of an estate.

FACTS

You are a charitable trust recognized as an organization exempt from federal income tax under § 501(c)(3) and are classified as a private foundation within the meaning of § 509(a). You are organized and operated exclusively for charitable, religious, literary, scientific, and educational purposes within the meaning of § 501(c)(3). Decedent, a substantial contributor to you under § 507(d) and therefore a disqualified person under § 4946(a), owned several contiguous parcels of land, including Property 1 and Property 2.

Pursuant to her will, Decedent gave a life estate in Property 1 to two of her children Daughter and Son, as long as either of them makes Property 1 his or her primary residence. Decedent gave the remainder interest in Property 1 to you. Daughter disclaimed her interest in Property 1. Decedent gave Property 2 to you in fee simple. Decedent's will appointed Son and another individual as executors of her estate. Son is also one of your trustees.

You state that you wish to receive cash in lieu of your remainder interest in Property 1 and your fee simple interest in Property 2 in order to have the liquidity to support your ongoing charitable operations. You represent that, because of Son's life estate, the condition of the property, and the property's location, the market of available purchasers for your remainder interest in Property 1 is substantially limited. You state that the only likely potential purchaser of your remainder interest in Property 1 at the highest value is the owner of the life estate, Son. You also represent that, because Property 1 and Property 2 are contiguous parcels and are also

contiguous to other real estate owned by Son, there may be limited purchasers for Property 2. You state that Son wishes to purchase the remainder interest in Property 1 and to purchase Property 2 from the executors of Decedent's estate for the fair market value of these interests.

You represent that under state law controlling this transaction, an executor is granted the right to take possession and control of a parcel of real estate if the executor determines that it is in the best interests of the administration of the estate and if it is approved by the appropriate court. You also state that Decedent's will grants the executors the power to sell real property. You indicate that the executors have determined, and you and Son agree, that a proposed sale of the property interests is in the best interests of the administration of Decedent's estate.

You state that you will obtain the necessary approval for the sale from the court having jurisdiction over the Decedent's estate and/or you before the sale occurs. You also represent that the executors will obtain a third-party independent appraisal of the fair market of Property 2 and the remainder interest in Property 1. You state that once these appraisals are completed, the executors will sell the property interests to Son for cash in the amount of the fair market value of these interests and then distribute the proceeds to you. Finally, you represent that Decedent's estate has not been terminated for income tax purposes and will remain open through the time of the proposed sale and distribution.

RULING REQUESTED

The sale of the interest in Property 2 and the remainder interest in Property 1 to Son by the executors of Decedent's estate will not be considered an act of self-dealing under § 4941.

LAW

I.R.C. § 507(d)(2)(A) provides that the term "substantial contributor" means any person who contributed or bequeathed an aggregate amount of more than \$5000 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. § 4941(a) provides for the imposition of tax on each act of self-dealing between a disqualified person and a private foundation.

I.R.C. § 4941(d)(1)(A) provides that the term "self-dealing" means any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person.

I.R.C. § 4946(a)(1) provides 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 (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.

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(b)(1) provides that the term "foundation manager" means, with respect to any private foundation, an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation).

I.R.C. § 4946(d) provides, for purposes of subsection (a)(1), that 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)-1(b)(3) provides, with respect to transactions during the administration of an estate or revocable trust, that the term "indirect self-dealing" shall not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if –

- i. The administrator or executor of an estate or trustee of a revocable trust either –
 - a) Possesses a power of sale with respect to the property,
 - b) Has the power to reallocate the property to another beneficiary, or
 - c) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);
- ii. Such transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the private foundation);

- iii. Such transaction occurs before the estate is considered terminated for Federal income tax purposes pursuant to paragraph (a) of § 1.641(b)-3 of this chapter (or in the case of a revocable trust, before it is considered subject to § 4947);
- iv. The estate (or trust) receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and
- v. With respect to transactions occurring after April 16, 1973, the transaction either
 - a) Results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,
 - b) Results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or
 - c) Is required under the terms of any option which is binding on the estate (or trust).

ANALYSIS

Section 4941(a) provides for the imposition of a tax on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(A) provides that the term "self-dealing" means any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person. Son is disqualified person under § 4946(a)(1)(D) as a family member of Decedent, a disqualified person by virtue of being a substantial contributor to you under § 4946(a)(1)(A). In addition, as one of your trustees, Son is also a disqualified person as a foundation manager under § 4946(a)(1)(B). Therefore, barring an exception to the self-dealing rules, the sale of your interests in Property 1 and Property 2 to Son would constitute self-dealing under § 4941(d)(1)(A).

One exception to the self-dealing rules is found in § 53.5941(d)-1(b)(3) (the "estate administration exception"). This section provides, with respect to transactions during the administration of an estate or revocable trust, that the term "indirect self-dealing" shall not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if five requirements are met.

The first requirement is that the administrator or executor of an estate or trustee of a revocable trust either: a) possesses a power of sale with respect to the property; b) has the power to reallocate the property to another beneficiary; or c) is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust). You represent and warrant that, under state law and the terms of Decedent's will, the executors of Decedent's estate possess the power of sale with respect to the property interests in Property 1 and Property 2. Thus, you meet the first requirement.

The second requirement is that the transaction is approved by the probate court having jurisdiction over the estate, or by another court having jurisdiction over the estate (or trust) or over the private foundation. You represent that you will obtain the necessary approval for the sale from the court having jurisdiction over the estate and/or you before the sale occurs and therefore, if the court approves the sale, you will meet the second requirement.

The third requirement is that the transaction must occur before the estate is considered terminated for Federal income tax purposes. You state Decedent's estate is currently open and that the proposed sale of property interests will occur before the estate is considered terminated for federal income tax purposes. You therefore meet the third requirement.

The fourth requirement is that the estate receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate. You state that you will obtain a third-party independent appraisal of the property interests and will sell them to Son for their fair market. Thus, you meet the fourth requirement. We have not determined whether the methodology to be used to determine fair market value interests is proper. We have merely accepted your representation that the appraisal and sale will reflect fair market value.

The fifth, and final, requirement is that with respect to transactions occurring after April 16, 1973, the transaction either: a) results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up; b) results in the foundation receiving an asset related to the active carrying out of its exempt purposes; or c) is required under the terms of any option which is binding on the estate. You state that you will receive cash for the sale of the property interests. Therefore, as you are receiving an asset more liquid than the property interests you are giving up, you meet the fifth requirement.

Based on the information and representations you have provided, you meet all five requirements of the estate administration exception to self-dealing contained in § 53.5941(d)-1(b)(3).

RULING

The sale for fair market value of your interest in Property 2 and your remainder interest in Property 1 to Son for cash by the executors of Decedent's estate will not be considered an act of self-dealing under § 4941.

The facts in your submission indicate that the sale will be a cash transaction and no promissory note will be used as consideration for the purchase. This ruling is conditioned on the absence of a promissory note in the transaction.

This ruling will be made available for public inspection under § 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. § 6110(k)(3) 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