



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: 201510050
Release Date: 3/6/2015

Date: December 10, 2014

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

UIL: 4941.00-00

Partnership =
DP =
Sister =
Foundation =
Date =

Dear :

This is in response to your letter dated September 25, 2014 in which you requested certain rulings with respect to I.R.C. § 4941.

Background:

You are exempt under § 501(c)(3), and you are characterized as a private foundation under § 509(a). You own a 49.9 percent income interest in Partnership, which owns nearly 6,000 acres of farmland and wetland, almost entirely consisting of wetlands. The other partners in Partnership with you include a disqualified person (DP), owning .1 percent of the partnership, who is a substantial contributor to you; Sister, owning 3.56 percent of the partnership, who is the sister of DP; and Foundation, owning 46.44 percent of the partnership, to which Sister is a substantial contributor. Both you and Foundation were founded by DP's and Sister's mother, who is a substantial contributor to both foundations.

DP and Sister are also partners in several other partnerships all owning a total of approximately 16,000 acres of land, including the land discussed above. DP and Sister have been unable to determine the appropriate use of the land held by these partnerships for a number of years. The inability to agree led to years of contentious court battles over the appropriate use and disposition of the land held by these partnerships. After years of litigation, the court issued an order that all the partnerships are to be liquidated and all of the land held by them is to be sold as one unit. The proceeds from such a sale will be divided among the partners in accordance with their income share and total acreage owned by their particular partnership. The appointed Special Master has determined that these lands will be sold in a public auction after Date. The auction will be conducted by the local county where the land is located.

DP proposes to bid in the public auction in an attempt to buy the full amount of the land, including the 6,000 acres owned by Partnership. Should DP have the highest bid he will purchase the land from

Partnership with proceeds going to both you and Foundation in proportion to the foundations' income interests in the land.

Ruling Requested:

The sale of the underlying assets of the partnership to DP, should he get the winning bid, will not result in "self-dealing" as defined in § 4941.

Law:

I.R.C. § 507(d)(2) provides that a substantial contributor means any person who contributed or bequeathed an aggregate amount of more than \$5,000 to the private foundation, if such amount is more than two percent of the total contributions and bequests received by the foundation.

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

I.R.C. § 4941(d)(1) defines self-dealing as the direct or indirect sale or exchange of property between a private foundation and a disqualified person, the direct or indirect furnishing of goods, services, or facilities between a disqualified person and a private foundation, and the direct or indirect payment of compensation by a private foundation to a disqualified person among other things.

I.R.C. § 4946(a)(1) provides that a "disqualified person," with respect to a private foundation, includes a substantial contributor, as defined under section 507(d)(2); a foundation director, trustee, or officer; and any spouse, ancestor, child, grandchild, great grandchild, and any spouse of a child, grandchild, or great grandchild of that contributor, director, or officer.

Treas. Reg. § 53.4941(d)-1(a) provides that it is immaterial whether a transaction results in a benefit or a detriment to the private foundation in determining whether the transaction is an act of self-dealing.

Treas. Reg. § 53.4941(d)-1(b)(5) provides 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 a person's relationship 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. The "controlled" organization need not be a private foundation.

Treas. Reg. § 53.4941(d)-2(a) provides two examples of acts of self-dealing through a sale or exchange. The examples include the sale of incidental supplies by a disqualified person to a private foundation regardless of the amount paid to the disqualified person and the sale of stock or other securities by a disqualified person to a private foundation in a "bargain sale" regardless of the amount paid for such stock or other securities.

Revenue Ruling 76-158, 1976-1 C.B. 354, A private foundation, owning thirty-five percent of the

voting stock of a corporation and having a foundation manager personally owning the remaining sixty-five percent but not holding a position of authority in the corporation by virtue of being foundation manager, does not control the corporation for purposes of the self-dealing provisions of § 4941.

Analysis:

Section 4941 defines self-dealing as, among other things, the direct or indirect sale or exchange of property between a private foundation and a disqualified person. Such a transaction between a private foundation and a disqualified person will constitute an act of direct self-dealing, while a similar transaction between a disqualified person and an organization controlled by the private foundation will constitute an act of indirect self-dealing.

For purposes of determining whether an organization is controlled by a private foundation, § 53.4941(d)-1(b)(5) provides that an organization is considered to be controlled by a private foundation if any one of four circumstances exist: (1) if the private foundation alone can control the organization; (2) if the private foundation, by aggregating its votes or positions of authority with those of one or more foundation managers (acting only in such capacity) can control the organization; (3) if a foundation manager (acting only in such capacity) alone can control the organization; or (4) if the foundation managers (acting only in such capacity), by aggregating their votes or positions of authority with one another, can control the foundation. Here, you have demonstrated that you do not control the partnership owning the land in the ways defined under § 53.4941(d)-1(b)(5). First, you do not control the partnership on your own as you do not own over fifty percent of the voting stock of the partnership. Second, there is no foundation manager that owns a voting interest in the partnership in their capacity as a foundation manager so you cannot aggregate your shares with any such disqualified person. See Rev. Rul. 76-158, supra. This fact means that you do not meet any of the others of these four tests.

Section 53.4941(d)-1(b)(5) also provides that 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 a 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. Here, you do not meet this test either since such test only includes the shares of DP and not those of Sister since sister is not a covered relationship status under §§ 4946(a)(1)(C) through (G). By combining your voting interest with that of DP you and DP control exactly half of the voting interest of the partnership. Given that the other fifty percent is held by Sister and Foundation, it can be shown through repeated disputes between Sister and DP over the direction of the partnership and the land it owns that neither Foundation and Sister on the one hand or you and DP on the other hand exercises control over the organization.

Additionally, you have many factors on your side to indicate that the sale of property is not controlled by you, and that such sale is done in an arm's length manner. The sale of the property is a result of a court order by an impartial court after years of contested litigation. These proceedings make clear that Sister, who controls the other half of the partnership and receives the other half of the income created from the sale, is seeking the highest price and greatest return from the sale. The sale will be conducted by a third party government official through an auction format, which will result in the highest market price given that only the highest bid will win. These factors all indicate that the transaction will occur at arm's length and in the absence of control by one of the parties.

Given that you do not control the partnership within the meaning of § 53.4941(d)-1(b)(5), there can be no indirect self-dealing. And since you are not disposing of the property yourself there is no direct self-dealing.

Ruling:

The sale of the underlying assets of the partnership to DP, should he get the winning bid, will not result in "self-dealing" as defined in § 4941.

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. Specifically, this ruling does not reach any conclusion as to the qualifying distribution status of your proposed transfer under § 4942(g)(3). 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,

Mary Jo Salins
Acting Manager, Exempt Organizations

Enclosure
Notice 437