

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:EO3
PLR-129196-16

Date:
March 13, 2017

Legend

- Corporation =
- Foundation =
- Charity =
- Date 1 =
- Year 1 =
- Program 1 =
- Program 2 =
- State 1 =
- State 2 =
- State 3 =
- State 4 =

Dear :

This is in response to the letter dated September 16, 2016, and additional submissions in which your representative requested rulings under section 4941, section 4942, and section 4945 of the Internal Revenue Code (Code) with respect to your matching donation programs.¹

Background

Based on the documents and representations submitted, we construe the facts as follows:

¹ The Internal Revenue Code of 1986, as amended, to which all subsequent "section" references are made unless otherwise indicated.

Corporation is the sole contributor to Foundation. Foundation is described in section 501(c)(3) and is classified as a private foundation under section 509(a). Corporation and Foundation have the same officers and directors.

Corporation provides its employees with two matching donation programs. Foundation represents that Corporation's matching donation programs are not employee benefits. Foundation further represents that Corporation has no legal obligation to continue the matching donation programs and could discontinue either or both of them at any time.

Under Program 1, when a Corporation employee makes a charitable contribution to a public charity described in section 501(c)(3), Corporation makes a corresponding charitable contribution to Charity, which is a public charity described in section 501(c)(3), in an amount equal to 50 percent of the individual's contribution.

Under Program 2, when a Corporation employee performs volunteer service hours for a public charity described in section 501(c)(3), Corporation contributes a certain amount to a section 501(c)(3) public charity selected by the employee, which could be the service-recipient organization. The amount of Corporation's contribution depends on the number of hours volunteered by the employee and is subject to an annual limit. Corporation uses a third party vendor to verify the public charity status of the service-recipient organization.

Corporation intends to cease maintaining its matching donation programs, except with respect to contributions to organizations located in State 1, State 2, State 3, and State 4, and Foundation will then began matching donation programs for contributions by Corporation's employees to organizations in all other jurisdictions. The matching donation programs maintained by Foundation will be identical to the programs maintained by Corporation, and will contain the following requirements: (1) Foundation will not satisfy an employee's pledge of a donation; (2) Foundation will not make any donations to any organization that it controls or that is controlled by one or more disqualified persons (with respect to Foundation); (3) the recipient organization must have an IRS determination letter that it is tax-exempt as an organization described under section 501(c)(3), and is a public charity that is not a supporting organization; (4) Foundation has the discretion to refuse to make a matching donation and may modify or end the matching donation programs at any time; and (5) employee contributions are not eligible for Foundation's matching donation programs when the employee receives anything in return for the donation. Foundation will add the following additional restrictions to its matching donation programs: (1) Foundation will not match any donations that were made under the Corporation's matching donation programs; and (2) Foundation will not match any employee donations made pursuant to the portion of Corporation's matching donation programs retained by Corporation for donations to organizations located in State 1, State 2, State 3, and State 4. A third-party vendor will verify the public charity status of the organizations involved.

Corporation will continue to conduct its matching donation programs with respect to contributions to organizations located in State 1, State 2, State 3, and State 4 pursuant to existing contractual commitments with third parties and certain governmental officials.

Corporation previously maintained a third matching donation program for its employees, but Foundation has maintained that program for Corporation's employees since Year 1. On Date 1, the IRS issued a private letter ruling to Foundation regarding its commencement and Corporation's cessation of the third matching donation program. Foundation is seeking the current ruling because it hopes to capitalize on efficiencies by having a single entity operate all three matching donation programs.

Rulings Requested, Law, and Analysis

Requested Ruling 1:

1. *The donations made through the matching donation programs that are currently provided by Corporation for its employees and that will be provided by Foundation for Corporation's employees do not constitute self-dealing under section 4941.*

Section 507(d)(2)(A) defines a substantial contributor as any person who contributed or bequeathed an aggregated amount of more than \$5,000 to a 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.

Section 4941(a) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Taxes are imposed on both the self-dealers involved in an act of self-dealing and on any foundation managers who knowingly participate in an act of self-dealing. Even though section 4941 does not impose a tax on a private foundation when an act of self-dealing occurs, a foundation with respect to which there has been an act of self-dealing is required to report it on its annual information return, which is the Form 990-PF in this case.

Section 4941(d)(1) provides that 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. The term self-dealing includes the furnishing of goods, services, or facilities between a disqualified person and a private foundation. The term also includes the payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person.

Section 4946(a)(1) provides, in part, that the term disqualified person includes, with respect to a private foundation, a person who is a substantial contributor to the foundation,

foundation manager, or a member of the family of a substantial contributor or foundation manager.

Section 4946(a)(2) provides that the term substantial contributor means a person who is described in section 507(d)(2).

Section 4946(b) defines a foundation manager as an officer, director, or trustee of a private foundation, and with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

Treas. Reg. § 53.4941(d)-2(f)(1) provides that if a private foundation makes a grant or other payment which satisfies the legal obligation of a disqualified person, such grant or payment shall ordinarily constitute an act of self-dealing.

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. 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 because generally the benefit is incidental and tenuous. For example, a grant by a private foundation to an organization described in section 509(a)(1), (2), or (3) will not be an act of self-dealing merely because one of the organization's officers, directors, or trustees is also a manager of or a substantial contributor to the foundation.

Treas. Reg. § 53.4941(d)-2(f)(9), Example 2, gives the following situation. Private foundation X established a program to award scholarship grants to the children of employees of corporation M, a substantial contributor to X. After disclosure of the method to carrying out such program, X received a determination letter from the IRS stating that X is exempt under section 501(c)(3), that contributions to X are deductible under section 170, and that X's scholarship program qualifies under section 4945(g)(1). A scholarship grant to a person not a disqualified person with respect to X paid or incurred by X in accordance with such program shall not be an indirect act of self-dealing between X and M.

Rev. Rul. 73-407, 1973-2 C.B. 383, holds that a contribution by a private foundation to a public charity made on the condition that the public charity change its name to that of the foundation's substantial contributor for at least 100 years does not constitute an act of self-dealing.

Rev. Rul. 77-160, 1977-1 C.B. 351, concerns the issue of whether payment by a private foundation of a disqualified person's church membership dues constitutes an act of self-dealing. The revenue ruling holds that the payment is not an incidental or tenuous benefit within the meaning of Treas. Reg. § 53.4941(d)-2(f)(2), because the foundation's payment results in a direct economic benefit to the disqualified person. The foundation's payment

of the membership dues was a substitute for an obligation belonging to the disqualified person. As a result of the payment, the disqualified person was entitled to participate in the activities of the congregation. Consequently, the payment of the membership dues by the private foundation is an act of self-dealing under section 4941(d)(1)(E).

Rev. Rul. 80-310, 1980-2 CB 319, holds that private foundation grants to an educational institution for engineering instruction are not an act of self-dealing, even though a corporation, a disqualified person, intended to hire graduates of the engineering program and to encourage its employees to participate in the engineering program. The revenue ruling notes that an incidental or tenuous benefit occurs when a disqualified person's general reputation or prestige is enhanced by public acknowledgement of some specific donation by such person, when a disqualified person receives some other relatively minor benefit of an indirect nature, or when a disqualified person merely participates to a wholly incidental degree in the fruits of some charitable program that is of broad public interest to the community. The revenue ruling states that, because the engineering program is of broad public interest to the community, and because the corporation competes on an equal basis for the program's graduates and its employees compete with the general public for admission, the corporation receives only an incidental or tenuous benefit from the grant by the private foundation to the educational institution.

Rev. Rul. 85-162, 1985-2 C.B. 275, concludes that self-dealing does not occur where a private foundation makes loans to public charities for construction projects in disadvantaged areas where the contractors doing the construction could be ordinary customers of a bank, that is a disqualified person with respect to the foundation. The ruling states that the bank would receive only an incidental or tenuous benefit if the public charities used the loan proceeds to pay the contractors who might be ordinary customers of the bank.

In this case, Corporation is the sole contributor to Foundation. Accordingly, Corporation is a disqualified person under section 4946(a)(1)(A), and any use of Foundation's assets by, or for the benefit of, Corporation would be an act of self-dealing. Foundation stipulates that it will not make any grants to an organization which it controls or which is controlled by a disqualified person. Foundation also stipulates that it will not match any donation that was made under a donation matching program maintained by Corporation. Foundation further stipulates that the donations made by Corporation under Corporation's matching donation programs are not employee benefits and Corporation is not and has never been obligated to continue its matching donation programs. Foundation also stipulates that only organizations described in section 501(c)(3) and that are classified as public charities are eligible to receive donations under the matching donation programs.

Section 53.4941(d)-2(f)(2) of the Regulations states that an act of self-dealing does not occur when a disqualified person receives an incidental or tenuous benefit from a private foundation's use of its income or assets, absent other facts. The regulations also state that the public recognition a disqualified person may receive from a private foundation's

charitable activities does not, by itself, result in an act of self-dealing because, generally, such benefit is incidental and tenuous.

Pursuant to the stipulations made by Foundation, it will not match any donation that was made under a donation matching program maintained by Corporation. Most of the benefit from Foundation's matching donation programs will go to the public charities that receive the matched donations. Corporation will nevertheless benefit from Foundation's matching donation programs because it will receive favorable public recognition and good will. It may also experience a happier and more loyal work force. These benefits, however, are similar to the incidental or tenuous benefits described in Treas. Reg. § 53.4941(d)-2(f)(2). Thus, they do not, by themselves, constitute self-dealing.

Requested Ruling 2:

2. *The donations provided by Foundation through its matching donation programs for Corporation's employees will be "qualified distributions" under section 4942(g) of the Code.*

Section 4942(a) generally imposes a tax on the undistributed income of a private foundation (other than an operating foundation under section 4942(j)(3)) for any taxable year, that has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year.

Section 4942(c) defines undistributed income for any taxable year as the amount by which the distributable amount for such taxable year, exceeds the qualifying distributions made out of such distributable amount for such taxable year.

Section 4942(g)(1) defines qualifying distribution as (A) any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons, or (ii) a private foundation which is not an operating foundation, except as otherwise provided; or (B) any amount paid to acquire an asset used directly in carrying out one or more purposes described in section 170(c)(2)(B).

Treas. Reg. § 53.4942(a)-3(a)(2) defines the term qualifying distribution, in relevant part, as any amount (including program related investments and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(1) or (2)(B), other than any contribution to a private foundation which is not an operating foundation or to an organization controlled (directly or indirectly) by the contributing private foundation or one or more disqualified persons with respect to such foundation.

Under section 4942, a qualifying distribution includes any amount paid to a public charity that is not controlled by the contributing private foundation in order to accomplish

one or more purposes described in section 170(c)(1) or (2)(B). Foundation represents that it will only match contributions made to an organization that has received an IRS determination letter that it is tax-exempt as an organization described under section 501(c)(3) and is a public charity under sections 509(a)(1) or (a)(2). Foundation also represents that it will not make any matching contributions to any organization that it controls or that is controlled by its disqualified persons. Accordingly, based on these representations, Foundation's contributions under its matching donation programs will constitute qualifying distributions.

Requested Ruling 3:

3. *The donations provided by Foundation through its matching donation programs for Corporation's employees will not be "taxable expenditures" under section 4945(d) of the Code.*

Section 4945(a) imposes a 20 percent tax on each taxable expenditure of a private foundation.

Section 4945(d) defines taxable expenditure as any amount paid or incurred by a private foundation as a grant to an organization unless such organization is described in section 509(a)(1) or (a)(2), or the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h). Section 4945 further defines taxable expenditure as any amount paid for any purpose other than one specified in section 170(c)(2)(B).

Treas. Reg. § 53.4945-5(a)(1) provides that the term taxable expenditure includes any amount paid or incurred by a private foundation as a grant to an organization (other than an organization described in section 509(a)(1), (2), or (3) (other than one described in section 4942(g)(4)(A)), unless the private foundation exercises expenditure responsibility with respect to such grant.

Under section 4945(d), taxable expenditures include any amount paid or incurred by a private foundation as a grant to an organization (other than an organization described in section 509(a)(1), (2), (3)). Section 509(a)(1) refers to organizations described in section 170(b)(1)(A) (other than vii and viii). Section 509(a)(2) refers to organizations that are publically supported. Foundation represents that it will only make matching contributions to a recipient organization that has received an IRS determination letter that it is tax-exempt as an organization described under section 501(c)(3) and is a public charity under sections 509(a)(1) or (a)(2). Accordingly, Foundation's contributions made under its matching donation programs will not constitute taxable expenditures.

Conclusion

Based on the foregoing, and assuming the accuracy of the facts and representations described herein, we rule as follows with respect to Program 1 and Program 2:

1. The donations that Foundation makes pursuant to its matching donation programs will not constitute self-dealing under section 4941.
2. The donations that Foundation makes pursuant to its matching donation programs will be qualified distributions for Foundation under section 4942(g).
3. The donations that Foundation makes pursuant to its matching donation programs will not constitute taxable expenditures under section 4945(d).

This letter does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections specifically described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

This letter will be made available for public inspection under section 6110 after certain deletions of identifying information are made. For details, please read the enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with the deletions we intend to make available for public inspection is attached to the Notice 437. If you disagree with our proposed deletions, you should follow the instructions in the Notice 437.

The rulings contained in this letter are based upon information and representations submitted by Foundation and accompanied by a penalty of perjury statement executed by an individual with authority to bind Foundation and upon the understanding that there will be no material changes in the facts. This office has not verified any of the materials submitted in support of the request for rulings, and such material is subject to verification on examination.

This letter is directed only to Foundation. Section 6110(k)(3) provides that it may not be used or cited by others as precedent. This letter does not apply to the matching donation programs retained by Corporation for the donations occurring in State 1, State 2, State 3, and State 4.

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if Foundation files its returns electronically, it may satisfy this requirement by attaching a statement to its return that provides the date and control number of this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

If you have any questions about this ruling, please contact the person whose name and phone number are shown in the heading of this letter.

Sincerely,

Kenneth M. Griffin
Chief
Exempt Organization Branch 3
(Tax Exempt & Government Entities)

Enclosure: Notice 437, Notice of Intention to Disclose
Redacted copy of this letter