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Person To Contact:
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Telephone Number:

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PLR-134257-17

Date:
May 02, 2018

Legend:

Foundation =
Trust =
Trustor =
Spouse =
Date1 =
Date2 =
Date3 =

Dear :

This letter responds to Trust's November 8, 2017, request for rulings regarding excise tax issues in connection with the administration and planning for termination of Trust under section 4947.¹

Facts

According to the information provided by Trust, Trust is an irrevocable trust created under a revocable living trust agreement dated Date1 by Trustor, as amended by a first amendment dated Date2 (together, the "Trust Agreement"). Trust was created after the death of Trustor. Executors of Trustor's estate elected to treat all the assets of Trust as qualified terminable interest property (QTIP) pursuant to section 2056(b)(7)(B)(v). Trust represents that no deductions were allowable or taken under sections 170, 545(b), 642(c), 2055, 2106(a)(2), or 2522 with respect to any assets transferred to Trust at Trustor's death, nor has Trust set aside any funds for which it has claimed a charitable deduction.

¹ All section references are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

Under the Trust Agreement, Trustor's spouse (Spouse) is entitled to receive during Spouse's lifetime all the net income of Trust and distributions from principal within the discretion of the trustees for Spouse's care, support, health, and maintenance. The assets of Trust remaining at Spouse's death are distributable to Foundation. At Spouse's death, all the assets of Trust will be includible in Spouse's gross estate pursuant to section 2044 and deductible from Spouse's taxable estate pursuant to section 2055.

Under the Trust Agreement, the trustees of Trust have the authority to sell or exchange trust property and to acquire by purchase or exchange such property as the trustees may deem advisable.

Foundation is recognized as exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3) and is classified as a private foundation under section 509(a). Foundation was created under a charitable trust agreement dated Date3 by Trustor and Spouse as donors.

Rulings Requested

Trust requests the following rulings:

1. During the lifetime of Spouse, Trust will not be a split-interest trust subject to section 4947(a)(2), and the provisions of sections 4941, 4943, 4944, and 4945 shall not apply.
2. During the lifetime of Spouse, the direct and indirect self-dealing rules of section 4941 and the regulations thereunder will not apply to Trust.
3. After the death of Spouse and upon the resulting termination of Spouse's interest in Trust, for purposes of Treas. Reg. § 53.4947-1(b)(2)(v), Trust will not be a nonexempt charitable trust described in section 4947(a)(1) or be subject to the provisions of sections 4941, 4943, 4944, and 4945 for a reasonable period of settlement, so that the trustees of Trust may perform the ordinary duties of administration necessary for the settlement of Trust.

Law

Section 501(a) exempts from federal income taxation organizations described in section 501(c).

Section 501(c)(3) describes organizations organized and operated exclusively for charitable purposes.

Section 509(a) provides that, unless specifically excepted, any organization described in section 501(c)(3) is a private foundation.

Section 4941(a) imposes an excise tax on disqualified persons (as defined in section 4946) for each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1) defines “self-dealing” as any direct or indirect (1) sale or exchange, or leasing, of property between a private foundation and a disqualified person, (2) lending of money or other extension of credit between a private foundation and a disqualified person, (3) furnishing of goods, services, or facilities between a private foundation and a disqualified person, (4) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person, or (5) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4946(a)(1) provides that a “disqualified person,” with respect to a private foundation, includes:

- (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 section 4946(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.

Section 4946(a)(2) provides that the term “substantial contributor” means a person who is described in section 507(d)(2) (i.e., a 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; and, in the case of a trust, the creator of the trust).

Section 4947(a)(1) provides that, for purposes of chapter 42, a trust which is not exempt from tax under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 652(c), 2055,

2106(a)(2), or 2522, shall be treated as an organization described in section 501(c)(3).

Section 4947(a)(2) provides in part that, in the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 652(c), 2055, 2106(a)(2), or 2522, certain Code provisions, including section 4941, shall apply as if such trust were a private foundation. This paragraph does not apply with respect to (1) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(8), 2055(e)(2)(8), or 2522(c)(2)(8), (2) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 652(c), 2055, 2106(a)(2), or 2522, if such amounts are segregated from amounts for which no deduction was allowable, or (3) any amounts transferred in trust before May 27, 1969.

Treas. Reg. § 53.4941(d)-1(b)(3) provides 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 Treas. Reg. § 1.641(b)-3(a) (or in the case of a revocable trust, before it is considered subject to section 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).

Treas. Reg. § 1.641(b)-3(b) provides that the determination of whether a trust has terminated depends on whether the property held in trust has been distributed to the persons entitled to succeed to the property upon termination of the trust rather than upon the technicality of whether or not the trustee has rendered its final accounting. A reasonable time is permitted after such event for the trustee to perform the duties necessary to complete the administration of the trust. Thus, if pursuant to the terms of the governing instrument, the trust is to terminate upon the death of the life beneficiary and the corpus is to be distributed to the remainder beneficiary, the trust continues after the death of the life beneficiary for a period reasonably necessary to a proper winding up of the affairs of the trust.

Treas. Reg. § 53.4947-1(a) provides that the basic purpose of section 4947 is to prevent trusts which are not exempt from tax under section 501(a), all or part of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which have amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, from being used to avoid the requirements and restrictions applicable to private foundations. For purposes of this section, a trust shall be presumed (in the absence of proof to the contrary) to have amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 652(c), 2055, 2106(a)(2), or 2522 if a deduction would have been allowable under one of these sections.

Treas. Reg. section 53.4947-1(b)(1)(i) provides that, for purposes of this section and Treas. Reg. § 53.4947-2, a “charitable trust,” within the meaning of section 4947(a)(1), is a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522. A charitable trust (as defined in this paragraph) shall be treated as an organization described in section 501(c)(3), and, if it is determined under section 509 that the trust is a private foundation, then Chapter 42, including section 4941, shall apply to the trust.

Treas. Reg. § 53.4947-1(b)(2)(i) provides that an estate from which the executor or administrator is required to distribute all of the net assets in trust to charitable beneficiaries will not be considered a charitable trust under section 4947(a)(1) during the period of estate administration or settlement, except as provided in paragraph (b)(2)(ii) of that section. A charitable trust created by will shall be considered a charitable trust under section 4947(a)(1) as of the date of death of the decedent-grantor, except as provided in paragraph (b)(2)(v) of this section (relating to certain revocable and testamentary trusts which wind up).

Treas. Reg. § 53.4947-1(b)(2)(ii) provides that when an estate from which the executor or administrator is required to distribute all of the net assets in trust for charitable beneficiaries, or free of trust to such beneficiaries, is considered terminated

for federal income tax purposes under Treas. Reg. § 1.641(b)-3(a), then the estate will be treated as a charitable trust under section 4947(a)(1) between the date on which the estate is considered terminated under Treas. Reg. § 1.641(b)-3(a) and the date final distribution of all the net assets is made to or for the benefit of the charitable beneficiaries.

Treas. Reg. § 53.4947-1(b)(2)(iv) provides, in part, that the term “reasonable period of settlement” means that period reasonably required (or, if shorter, actually required) by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust. These duties include, for example, the collection of assets, the payment of debts, taxes, and distributions, and the determination of the rights of the subsequent beneficiaries.

Treas. Reg. § 53.4947-1(b)(2)(v) provides that a revocable trust that becomes irrevocable upon the death of the decedent-grantor, or a trust created by will, from which the trustee is required to distribute all of the net assets in trust for, or free of trust to, charitable beneficiaries is not considered a charitable trust under section 4947(a)(1) for a reasonable period of settlement (within the meaning of paragraph (b)(2)(iv)) after becoming irrevocable. After that period, the trust is considered a charitable trust under section 4947(a)(1).

Treas. Reg. § 53.4947-1(b)(2)(vi) provides that a revocable trust that becomes irrevocable upon the death of the decedent-grantor, in which all of the unexpired interests are charitable and under the terms of the governing instrument of which the trustee is required to hold some or all of the net assets in trust after becoming irrevocable solely for charitable beneficiaries, is not considered a trust under section 4947(a)(1) for a reasonable period of settlement (within the meaning of paragraph (b)(2)(iv) of this section) after becoming irrevocable except that section 4941 may apply if the requirements of Treas. Reg. § 53.4941(d)-1(b)(3) are not met. After that period, the trust is considered a charitable trust under section 4947(a)(1).

Treas. Reg. § 53.4947-1(c)(1)(i) provides that for purposes of this section and Treas. Reg. § 53.4947-2, a “split interest trust,” within the meaning of section 4947(a)(2), is a trust which is not exempt from taxation under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522. A trust is one which has amounts in trust for which a deduction was allowed under section 642(c) within the meaning of section 4947(a)(2) once a deduction is allowed under section 642(c) to the trust for any amount permanently set aside.

Treas. Reg. § 53.4947-1(c)(6)(ii)(A) provides that when an estate from which the executor or administrator is required to distribute all of the net assets in trust or free of trust to both charitable and non-charitable beneficiaries is considered terminated for federal income tax purposes under Treas. Reg. § 1.641(b)-3(a), then the estate will

be treated as a split-interest trust under section 4947(a)(2) (or a charitable trust under section 4947(a)(1), if applicable) between the date on which the estate is considered terminated under Treas. Reg. § 1.641(b)-3(a) and the date on which the final distribution of the net assets to the last remaining charitable beneficiary is made.

Treas. Reg. § 53.4947-1(c)(6)(iii) provides that a revocable trust that becomes irrevocable upon the death of the decedent-grantor under the terms of the governing instrument of which the trustee is required to hold some or all of the net assets in trust after becoming irrevocable for both charitable and non-charitable beneficiaries is not considered a split-interest trust under section 4947(a)(2) for a reasonable period of settlement after becoming irrevocable, except that section 4941 may apply if the requirements of Treas. Reg. § 53.4941(d)-1(b)(3) are not met. After that period, the trust is considered a split-interest trust under section 4947(a)(2). The term “reasonable period of settlement” means that period reasonably required (or, if shorter, actually required) by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust. These duties include, for example, the collection of assets, the payment of debts, taxes, and distributions, and the determination of rights of the subsequent beneficiaries.

Analysis

Rulings 1 and 2.

During Spouse’s lifetime, Trust is neither a charitable trust within the meaning of section 4947(a)(1) and Treas. Reg. § 53.4947-1(b)(1)(i), nor a split-interest trust within the meaning of section 4947(a)(2) and Treas. Reg. § 53.4947-1(c)(1)(i).

Trusts described in either section 4947(a)(1) or section 4947(a)(2) have unexpired interests or amounts in trust for which a charitable deduction has been allowed for federal tax purposes. Treas. Reg. section 53.4947-1(a) provides that the basic purpose of section 4947 is to prevent trusts which are not exempt from tax under section 501(a), all or part of the unexpired interests in which are devoted to charitable purposes and which have amounts in trust for which a charitable deduction was allowed, from being used to avoid the requirements and restrictions applicable to private foundations, including sections 4941, 4943, 4944 and 4945.

Here, no charitable deductions were allowable or taken with respect to any assets transferred to Trust at Trustor’s death, and no such charitable deduction will be allowable to Trust prior to its termination at the death of Spouse. Trust thus is not subject to section 4947 at any time during Spouse’s lifetime. Similarly, for the same reasons, sections 4941, 4943, 4944, and 4945 are not applicable to Trust as an entity described in section 4947(a)(1) or (2) during Spouse’s lifetime.

Because section 4947 is inapplicable to Trust during Spouse’s lifetime by reason of the fact that no charitable deductions are allowable or will be taken until after Spouse’s death, the direct and indirect self-dealing rules of section 4941 and the regulations

thereunder will not apply to Trust as an entity described in section 4947(a)(1) or (2) during Spouse's lifetime. We are not ruling on any transaction Trust may engage in during Spouse's lifetime with Foundation or other private foundation or whether Trust is a disqualified person with respect to a private foundation.

Ruling 3.

Upon Spouse's death, all the assets of Trust will be includible in Spouse's gross estate pursuant to section 2044 and deductible from Spouse's taxable estate pursuant to section 2055. Subsequently, at such time as no non-charitable interests continue to exist and amounts have been deducted under section 2055 with respect to amounts held in Trust, Trust generally would become described as a nonexempt charitable trust under section 4947(a)(1) and be subject to the provisions of sections 4941, 4943, 4944, and 4945.

However, the regulations under section 4947 provide that, in the case of a trust created by will, from which the trustee is required to distribute all the assets in trust for or free of trust to charitable beneficiaries, the restrictions imposed by section 4947(a)(1) do not apply for a reasonable period of settlement. Treas. Reg. §§ 53.4947-1(b)(2)(v). The term "reasonable period of settlement" means that period reasonably required (or, if shorter, actually required) by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust. These duties include, for example, the collection of assets, the payment of debts, taxes, and distributions, and the determination of rights of the subsequent beneficiaries. Only after a reasonable period of settlement is a trust described in Treas. Reg. § 53.4947-1(b)(2)(v) considered a charitable trust under section 4947(a)(1).

We note, however, that during this reasonable period of settlement, transactions with respect to Foundation's interest or expectancy in Trust may result in indirect self-dealing between Foundation and a disqualified person with respect to Foundation if the requirements of Treas. Reg. 53.4941-1(b)(3) are not met. We are not ruling whether the proposed transaction will meet these requirements.

Rulings

Based solely on the facts and representations submitted by Trust, we rule as follows:

1. During the lifetime of Spouse, Trust will not be a split-interest trust subject to section 4947(a)(2), and the provisions of sections 4941, 4943, 4944, and 4945 shall not apply.
2. During the lifetime of Spouse, the direct and indirect self-dealing rules of section 4941 and the regulations thereunder will not apply to Trust.
3. After the death of Spouse and upon the resulting termination of Spouse's interest in Trust, for purposes of Treas. Reg. § 53.4947-1(b)(2)(v), Trust will not become a nonexempt charitable trust subject to section 4947(a)(1) and the

provisions of sections 4941, 4943, 4944, and 4945 for a reasonable period of settlement, so that the trustees of Trust may perform the ordinary duties of administration necessary for the settlement of Trust.

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Trust and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2018-1, 2018-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate Office will revoke or modify a letter ruling and apply the revocation retroactively if: (1) there has been a misstatement or omission of controlling facts; (2) the facts at the time of the transaction are materially different from the controlling facts on which the ruling is based; or (3) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction. See Rev. Proc. 2018-1, § 11.05.

No ruling is granted as to whether Foundation qualifies as an organization described in section 501(c) or section 509(a). Except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any aspects of any transaction or item of income described in this letter ruling.

This letter is directed only to Trust. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Trust's authorized representatives.

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.

Sincerely,

Mary Jo Salins
Chief
Exempt Organizations Branch 1
(Tax Exempt & Government Entities)

cc: