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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:EEE:EOET:EO3
PLR-113447-20

Date:
February 12, 2021

Foundation =
State =
Region =
Foreign Country =
A =
B =
C =

Dear :

This letter responds to a letter from your authorized representative, dated May 29, 2020, and subsequent correspondence requesting rulings under sections 501, 508, 4941, 4942, and 4945¹ with respect to certain grants planned to be made by Foundation, as more fully set forth below.

FACTS

Foundation is a State not-for-profit corporation that is recognized as an organization described in section 501(c)(3) and classified as a private foundation under section 509(a). Foundation is a non-member entity that is governed by a board of directors.

Foundation’s purposes include improving the health and welfare of economically disadvantaged elders and promoting education and access to the arts. Foundation

¹ Sections 501, 508, 4941, 4942, and 4945 of the Internal Revenue Code of 1986, as amended, to which all subsequent “section” references are made unless otherwise indicated.

engages with charitable organizations and religious communities in Region, primarily Foreign Country, that are involved in activities that have similar purposes and help populations similar to those targeted by Foundation. Foundation is a calendar year taxpayer.

Though Foundation previously has made grants directly to organizations engaged in such activities, Foundation intends to establish a new grant program as its primary manner of carrying out its charitable purposes. The new grant program involves making grants to A, B, and C (each individually a "Foreign Organization," and collectively, the "Foreign Organizations"), which are located in Foreign Country ("Grants"). The Foreign Organizations will use the Grants to make their own grants to organizations ("Secondary Grantees") in Foreign Country to fund projects similar to those Foundation previously funded directly, including projects that promote the protection, welfare, care, health and recreation of vulnerable, economically disadvantaged elderly people; projects that promote education, access to artistic activities and cultural expressions for economically disadvantaged children and teenagers belonging to lower income families; and projects that assist and support disadvantaged individuals in the areas of education, medical care, and economic provision for daily subsistence.

Each Foreign Organization will require potential Secondary Grantees to undergo a comprehensive pre-grant inquiry, under which a potential Secondary Grantee must demonstrate that its mission is consistent with the mission of the Foreign Organization. An approved Secondary Grantee may then submit a grant request for a specific project. If the grant request is approved, the Foreign Organization will enter into a grant agreement with the Secondary Grantee under which the grant funds may only be used for the approved project and the Foreign Organization may closely monitor the use of the funds. Each Secondary Grantee will submit periodic reports to the Foreign Organization making the grant, must maintain records of receipts and expenditures and, must make its books available to the Foreign Organization for examination.

Foundation represents that the Foreign Organizations are registered charitable organizations in good standing in Foreign Country and are exempt from tax under the laws of Foreign Country. Foundation further represents that the Foreign Organizations are operated exclusively for charitable purposes and are not expressly permitted to engage in non-charitable purposes other than as an insubstantial part of their activities; that no part of the net earnings of the Foreign Organizations inures to the benefit of any private shareholder or individual; that no substantial part of the activities of the Foreign Organizations involves the carrying on of propaganda, or otherwise attempting, to influence legislation; and that none of the Foreign Organizations participates in, or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of section 501(c)(3). Each of the Foreign Organizations is governed by a board of directors. Though some of the members of the board of directors of Foundation serve on the boards of directors of the Foreign Organizations, such individuals represent a minority of the members of the boards of each Foreign Organization.

None of the Foreign Organizations has applied for or received a determination letter from the Internal Revenue Service that it is an organization described in section 501(c)(3) or in section 4942(j)(3). Foundation has not made a good faith determination (as described in Treas. Reg. § 53.4942(a)-3(a)(6)(i)) that any of the Foreign Organizations is an organization described in section 509(a)(1), (a)(2), or (a)(3) or in section 4942(j)(3); however, Foundation has represented that it has reviewed the formation and governance documents for each of the Foreign Organizations and has researched all of the officers and directors for each Foreign Organization, including on the Office of Foreign Asset Control Sanctions List Search, to ensure that none of them appears on that list. Foundation also has represented that it has knowledge of the management, activities, and practices of the Foreign Organizations as a result of having a number of its directors also serving as directors of each of the Foreign Organizations.

For each Grant, Foundation will enter into an expenditure responsibility agreement with the recipient Foreign Organization consistent with the requirements of section 4945(h) and Treas. Reg. § 53.4945-5. Each expenditure responsibility agreement will provide that the grant funds awarded must be used exclusively for purposes described in section 170(c)(2)(B) and that the Foreign Organization must maintain the grant funds in a separate fund dedicated to one or more purposes described in section 170(c)(2)(B). The expenditure responsibility agreement also will provide that the recipient Foreign Organization will not use any of the funds to make any grant that would constitute a taxable expenditure within the meaning of section 4945(d).

Foundation represents that it will not earmark the use by a Foreign Organization of any Grant and that Foundation does not have any agreement, oral or written, whereby Foundation may cause the selection of Secondary Grantees. Each Foreign Organization will retain discretion and control over the use of funds received from Foundation consistent with the expenditure responsibility agreements.

RULINGS REQUESTED

Based on the stated facts and representations, Foundation has requested the following rulings:

1. The Grants represent in each case amounts paid for a charitable purpose.
2. The Grants will be qualifying distributions within the meaning of section 4942.
3. The Grants will not be taxable expenditures within the meaning of section 4945.
4. The Grants will not create any acts of self-dealing under section 4941.
5. Rulings 2 and 3 will not be adversely affected by the failure of the Foreign Organizations and Secondary Grantees to comply with notice requirements of section 508.

LAW AND ANALYSIS

Ruling 1 – Whether the Grants will represent amounts paid for a charitable purpose.

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

Section 501(c)(3) describes organizations organized and operated exclusively for charitable and other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(i) includes “charitable” in the list of purposes for which an organization described in section 501(c)(3) may be organized and operated.

Treas. Reg. § 1.501(c)(3)-1(d)(2) provides that the term “charitable” is used in section 501(c)(3) in its generally accepted legal sense, and includes “relief of the poor and distressed or of the underprivileged” and “advancement of education.”

Rev. Rul. 72-124, 1972-1 C.B. 145, considers whether an organization formed for the purpose of establishing and operating a home for the elderly is organized and operated exclusively for charitable purposes. In concluding that the organization is exempt from federal income tax under section 501(c)(3), the Service recognized that the elderly, as a class, are highly susceptible to unique forms of distress due to their special needs in advanced age, and said that satisfaction of these special needs, which contributes to the prevention and elimination of the causes of these unique forms of distress, may, in the proper context, constitute charitable purposes or functions.

The Foreign Organizations effectuate charitable purposes by providing resources to Secondary Grantees engaged in projects that promote the protection, welfare, care, health, and recreation of vulnerable, economically disadvantaged elderly people; that promote education, access to artistic activities, and cultural expressions for economically disadvantaged children and teenagers belonging to lower income families; and that assist and support disadvantaged individuals in the areas of education, medical care, and economic provision for daily subsistence. Accordingly, Grants represent amounts paid for a charitable purpose.

Ruling 2 - Whether the Grants will be qualifying distributions within the meaning of section 4942.

Section 4942(a) imposes a tax on the undistributed income of a private foundation for any taxable year.

Section 4942(c) defines “undistributed income” to mean, with respect to any private foundation for any taxable year as of any time, the amount by which (1) the distributable

amount for such taxable year exceeds (2) the qualifying distributions made before such time out of such distributable amount.

Section 4942(g)(1)(A) defines “qualifying distribution” to mean, in part, any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons.

Section 170(c)(2)(B) lists the following purposes: “religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition ..., or for the prevention of cruelty to children or animals.” These purposes are the same purposes listed in section 501(c)(3) (excluding testing for public safety).

Treas. Reg. § 53.4942(a)-3(a)(3) states that “an organization is ‘controlled’ by a foundation or one or more disqualified persons with respect to the foundation if any of such persons may, by aggregating their votes or positions of authority, require the donee organization to make an expenditure, or prevent the donee organization from making an expenditure, regardless of the method by which the control is exercised or exercisable.”

Treas. Reg. § 53.4942(a)-3(c)(4) provides that where a donee of a private foundation uses contributed funds to make a subsequent payment to a “secondary donee,” such subsequent payment will not be treated as a contribution by the private foundation to the “secondary donee if the distributing foundation does not earmark the use of the contribution for any named secondary donee and does not retain power to cause the selection of the secondary donee by the [original donee].” Even where the private foundation “has reason to believe” that a secondary donee would benefit from a contribution, the foundation will not be deemed to have made a contribution to such secondary donee “so long as the original donee organization exercises control, in fact, over the selection process and actually makes the selection completely independently of such foundation.”

Foundation has represented that Grants will not be earmarked for the use of any Secondary Grantees and Foundation will not retain any power to cause the selection of any Secondary Grantee by any of the Foreign Organizations. Foundation has also represented that it does not directly or indirectly control any of the Foreign Organizations within the meaning of Treas. Reg. § 53.4942(a)-3(a)(3) because the members of Foundation’s board of directors (i.e., disqualified persons with respect to Foundation) only represent a minority of the members of the boards of directors of each Foreign Organization and do not have the power to require any of the Foreign Organizations to make an expenditure or prevent any of the Foreign Organizations from making an expenditure. Finally, Foundation has represented that each Foreign Organization will exercise control, in fact, over its Secondary Grantee selection process and make its selection decisions completely independently of Foundation. Accordingly,

the Grants will be treated as grants from Foundation to the Foreign Organizations and not grants from Foundation to Secondary Grantees.

As established above in Ruling 1, the Grants will represent amounts paid for a charitable purpose under section 501(c)(3). Thus, they will be made exclusively for section 170(c)(2)(B) purposes. Further, because the Foundation does not, and will not, directly or indirectly control the Foreign Organizations, the Grants will be qualifying distributions.

Ruling 3 - Whether the Grants will be taxable expenditures under section 4945.

Section 4945 generally imposes a tax on taxable expenditures made by a private foundation.

Section 4945(d)(4) provides that a grant by a private foundation to an organization (other than a grant to a public charity described in section 509(a)(1) or (2), to a supporting organization described in section 509(a)(3) (other than one described in clause (i) or (ii) of section 4942(g)(4)(A)), or to an exempt operating foundation described in section 4940(d)(2)) will be a “taxable expenditure” unless the private foundation exercises expenditure responsibility over the grant pursuant to section 4945(h). In addition, section 4945(d)(5) provides that a “taxable expenditure” includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 4945(h) provides that expenditure responsibility referred to in section 4945(d)(4)(B) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures (1) to see that the grant is spent solely for the purpose for which made, (2) to obtain full and complete reports from the grantee on how funds are spent, and (3) to make full and detailed reports with respect to such expenditures to the Secretary.

Treas. Reg. § 53.4945-5(b)(2)(i) provides that before making a grant to an organization with respect to which expenditure responsibility must be exercised, a private foundation should conduct a limited inquiry concerning the potential grantee. Such inquiry should be complete enough to give a reasonable individual assurance that the grantee will use the grant for the proper purposes. The inquiry should concern itself with matters such as: (a) the identity, prior history, and experience (if any) of the grantee organization and its managers; and (b) any knowledge which the private foundation has (based on prior experience or otherwise) of, or other information which is readily available concerning, the management, activities, and practices of the grantee organization.

Treas. Reg. § 53.4945-5(b)(3) states that “in order to meet the expenditure responsibility requirements of section 4945(h), a private foundation must require that each grant to an organization, with respect to which expenditure responsibility must be exercised under this section, be made subject to a written commitment signed by an

appropriate officer, director, or trustee of the grantee organization. Such commitment must include an agreement by the grantee:

- (i) to repay any portion of the amount granted which is not used for the purposes of the grant,
- (ii) to submit full and complete annual reports on the manner in which funds are spent and the progress made in accomplishing the purposes of the grant, except as provided in paragraph (c)(2) of [Treas. Reg. § 53.4945-5],
- (iii) to maintain records of receipts and expenditures and to make its books and records available to the grantor at reasonable times, and
- (iv) not to use any of the funds ... to make any grant which does not comply with the requirements of section 4945(d)(3) or (4)."

Foundation has represented that it has conducted an inquiry into the identity, prior history, and experience of the Foreign Organizations and their managers based on a review of all information that was readily available to Foundation concerning the management, activities, and practices of each Foreign Organization. Foundation has further represented that Foundation will exercise expenditure responsibility with respect to grants to the Foreign Organizations in accordance with the requirements of section 4945(h) and Treas. Reg. § 53.4945-5(b)(3). Pursuant to expenditure responsibility agreements, Foundation will require each Foreign Organization to maintain the grant funds in a separate fund dedicated to purposes described in section 170(c)(2)(B), in accordance with Treas. Reg. § 53.4945-6(c).

Therefore, the Grants will not be taxable expenditures because Foundation will conduct a pre-grant inquiry, the Grants will be made exclusively for section 170(c)(2)(B) purposes, and Foundation will exercise expenditure responsibility with respect to each of the Grants.

Ruling 4 – Whether the Grants will create any act of self-dealing under section 4941.

Section 4941 imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(E) 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.”

Section 4946(a)(1)(B) defines the term “disqualified person” to include, with respect to a private foundation, a foundation manager. Section 4946(b) provides that a “foundation manager” includes an officer, director, or trustee of a foundation.

Section 4946(a)(1)(D) defines the term “disqualified person” to include a member of the family of a foundation manager. Section 4946(d) provides that for purposes of section 4946(a)(1), family members include only spouses, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

Treas. Reg. § 53.4941(d)-2(f)(2) states, in part, 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, and specifically notes that the public recognition a person may receive arising from the charitable activities of a private foundation with which they are associated are incidental and tenuous benefits not giving rise to self-dealing.

In Rev. Rul. 77-371, 1977-2 C.B. 388, a private foundation gave a grant to a public charity to establish a student loan guarantee program. Under the terms of the program, the public charity agreed to guarantee loans only for children of the private foundation’s employees, some of whom were disqualified persons. The IRS held that “[e]ach time a loan made to a disqualified person is guaranteed with funds granted by the private foundation, the income or assets of the foundation are being used indirectly to satisfy the legal obligation of a disqualified person.”

The members of the board of directors of Foundation are disqualified persons with respect to Foundation because they are foundation managers. Those family members of such foundation managers specified in section 4946(d) are also disqualified persons with respect to Foundation because of their familial relationships with the foundation managers. If Foundation assets are used or transferred through the Grants to the Foreign Organizations for the benefit of the directors of Foundation or their specified family members, such a transaction would be an act of self-dealing under section 4941(d)(1)(E). The Foreign Organizations and the Secondary Grantees are not disqualified persons as they do not fall within any of the categories of persons set forth in section 4946(a).

While neither the Internal Revenue Code nor the Treasury Regulations contain a definition of “indirect self-dealing,” an indirect act of self-dealing can occur where grants to intermediaries result in private foundation assets being transferred for the use or benefit of a disqualified person. In this instance, Foundation represents that none of the board members of Foundation or their specified family members, the only disqualified persons with respect to the grants by the Foundation to the Foreign Organizations, will receive any benefit from the proposed grants, other than possible public recognition arising from their association with the charitable work performed. Public recognition is only an incidental benefit that does not give rise to self-dealing. Accordingly, under the stated facts and representations, the making of the Grants will not result in any acts of self-dealing under section 4941.

Ruling 5 – Whether Rulings 2 and 3 will be adversely affected by the failure of the Foreign Organizations and Secondary Grantees to comply with notice requirements of section 508.

Section 508(a) of the Code generally prohibits an organization from being treated as described in section 501(c)(3) unless it has filed notice with the Secretary of the Treasury that it is applying for recognition of such status. The Secretary prescribes the method for filing the notice.

A foreign grantee should be treated as an organization described in section 501(c)(3) or as a private foundation under section 509(a) only if (1) the foreign grantee has received a ruling or determination letter recognizing such status, or (2) the grantor private foundation has made a good faith determination of such status. Neither the Internal Revenue Code nor the Treasury Regulations require a private foundation to make such a determination.

If a private foundation makes a grant to a foreign charity for one or more purposes described in section 170(c)(2)(B) and exercises expenditure responsibility with respect to the grant in accordance with the requirements of section 4945(h) and the regulations thereunder, then the grant will be a qualifying distribution under section 4942 and not a taxable expenditure under section 4945.

As established in ruling 2, the Grants will be made exclusively for section 170(c)(2)(B) purposes and Foundation does not, and will not, directly or indirectly control the Foreign Organizations or Secondary Grantees within the meaning of section 4942(g)(1). Further as determined in Ruling 3, Foundation will conduct a pre-grant inquiry and will exercise expenditure responsibility with respect to each of the Grants to the Foreign Organizations in accordance with the requirements of section 4945(h) and the regulations thereunder. The conclusions of rulings 2 and 3 are not affected by the failures of the Foreign Organizations and Secondary Grantees to comply with the requirements of section 508 because, under the circumstances, such noncompliance is not inconsistent with rulings 2 and 3..

RULINGS

Based solely on the facts and representations submitted in the request for rulings and supplemental submissions, we rule as follows:

1. The Grants in each case will be amounts paid for a charitable purpose.
2. The Grants will be qualifying distributions within the meaning of section 4942.
3. The Grants will not be taxable expenditures within the meaning of section 4945.
4. The Grants will not create any self-dealing under section 4941.
5. Rulings 2 and 3 will not be adversely affected by the failure of the Foreign Organizations and Secondary Grantees to comply with notice requirements of section 508.

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Foundation and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2020-1, 2020-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for rulings, 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. 2020-1, § 11.05.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the proposed transaction under any other provision of the Internal Revenue Code or Treasury Regulations.

This letter is directed only to Foundation. 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 Foundation's authorized representatives.

Sincerely,

Mike Repass
Senior Technician Reviewer
Exempt Organizations Branch 3
(Employee Benefits, Exempt Organizations,
and Employment Taxes)

cc: