Internal Revenue Service

Number: **202601005**
Release Date: 1/2/2026

Index Number: 4941.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:
CC:EEE:EOET:EO1
PLR-108906-25

Date:
October 06, 2025

LEGEND

Foundation	=
Founder	=
Corporation	=
County	=
State	=
Son	=
W	=
X	=
Y	=
Z	=
Date	=

Dear :

This letter responds to a letter dated April 11, 2025, and subsequent correspondence, in which Foundation's authorized representative requested on behalf of Foundation rulings under section 4941 of the Internal Revenue Code (Code).[1]

FACTS

Foundation is a tax-exempt organization described in section 501(c)(3) and classified as a private foundation under section 509(a). Founder was an initial creator of Foundation. Son, Founder's son, is one of Foundation's members, directors, and officers, and thus is a disqualified person with respect to Foundation.

[1] Unless otherwise noted, all references in this letter ruling to "section" refer to the Internal Revenue Code of 1986, as amended.

Through her revocable trust (Trust), Founder owned various real estate interests and ventures held through limited liability companies (collectively, the LLCs). The real estate holdings of the LLCs are primarily complex land holdings within County that require changes in legal or physical status, environmental conditions, or zoning entitlements before any commercial or residential use is achievable. Each LLC functions as a real estate holding entity and does not operate an active trade or business, provide goods or services to the public for profit, or engage in commercial or industrial operations.

Corporation is a State corporation owned by Son, and thus is also a disqualified person with respect to the Foundation. Son and Corporation worked with Founder for more than X years to develop the real estate holdings held by Trust and to obtain the highest and best value for them. Through this decades-long involvement with the properties, Son and Corporation have developed extensive knowledge of the physical, legal, and political characteristics of each parcel. In addition, Son has established long-standing relationships with the municipal officials, regulatory staff, and political leadership across the jurisdictions most critical to the real estate holdings held by Trust. Son and Corporation are actively coordinating with prospective buyers of some of the properties, and, with respect to some of the properties, are engaged in ongoing negotiations with the appropriate municipal authorities to obtain development agreements.

The LLCs and Trust have six service agreements (the Service Agreements) with Corporation. Under these service agreements, Corporation is responsible for every stage of the real estate development lifecycle, including initial strategic planning and feasibility assessments, determining the highest and best use for each parcel based on zoning, environmental constraints, and market conditions, and preparing and positioning the properties for sale. Corporation is responsible for all political interfacing and stakeholder negotiations, including working with elected officials, municipal staff, and regulatory agencies to secure necessary entitlements, zoning changes, overlays, variances, and other land use approvals. Corporation coordinates with land use attorneys, engineers, environmental consultants, and permitting authorities to ensure that technical and regulatory milestones are achieved in a timely and cost-effective manner. Corporation leads direct buyer engagement efforts, manages inquiries, conducts property tours, and negotiates purchase and sale agreements. Once a transaction is approaching closing, Corporation continues to serve as project lead, overseeing escrow management, legal coordination, final inspections, lien resolution, and execution of closing documents. Corporation also ensures compliance with all conditions tied to development agreements and municipal approvals. Corporation has represented that the real estate development services it provides do not include construction in any form.

The six Service Agreements provide three different methods of compensating Corporation for its services. Under three of the agreements, Corporation is compensated only if the closing sales price is above a commercially determined value (CDV) for the underlying real estate. If Corporation does not obtain more than the CDV, Corporation is not compensated. If Corporation obtains more than the CDV, the

difference between the closing price and the CDV is split between Corporation and the seller, with W% going to Corporation. The CDV for each property is determined based on a combination of appraisals, valuations, and real estate professional guidance. Under a different service agreement, Corporation will receive a fee equal to Y% of the increase in property value created by a zoning and development agreement to be negotiated and obtained by Corporation. Under the other two Service Agreements, Corporation is to receive a fee equal to Z% of the gross transaction value upon the disposition of the real estate. This fee applies to various forms of disposition, including, but not limited to direct sales, leases, or other similar transactions. Corporation has represented that under all six Service Agreements, its compensation has been delayed in order to incentivize Corporation to oversee, develop, and market the properties in order to maximize their value.

Founder died on Date. As a result of Founder's death, the interests in the LLCs currently owned by Trust will be distributed to Foundation following a reasonable period of trust administration and will become part of Foundation's investment portfolio. Foundation intends to treat all of the LLCs distributed to it as disregarded entities. Foundation also intends to continue to hold the interests in the LLCs as the underlying real estate projects develop and sell because there are several ongoing projects. The decisions related to the LLCs are managed by the LLC managers and by Foundation's board of directors. Son is both an officer of the LLCs and a member, director, and officer of Foundation.

Foundation and Corporation have represented that the services provided by Corporation under the Service Agreements are reasonable and necessary to carrying out Foundation's exempt purposes, and that the compensation provided to Corporation is reasonable and not excessive.

RULINGS REQUESTED

1. Payments by Foundation, or by disregarded entities owned by Foundation, of fees to Corporation pursuant to the Service Agreements will not be an act of self-dealing between Foundation and a disqualified person (Corporation) because they are payments for personal services that are reasonable and necessary to carrying out the exempt purposes of Foundation.

2. Son will be able to serve as a member, officer, and director of Foundation and will be able to continue to serve as a member, officer, and/or owner of Corporation (or as an officer of disregarded entities owned by Foundation) without violating the provisions against direct or indirect self-dealing transactions with Foundation within the meaning of section 4941.

3. The payments to Corporation, Son's service as a member and/or director and/or officer of Foundation, and the continuance of the services provided pursuant to the Service Agreements further the tax-exempt purposes of Foundation.

LAW & ANALYSIS

Section 4941(a)(1) imposes a tax on each act of self-dealing between a disqualified person and a private foundation. This tax is imposed on the disqualified person, and, in certain circumstances, is imposed on the foundation manager(s) participating in the act or acts.

Section 4941(d)(1)(D) provides that the term “self-dealing” includes any direct or indirect payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person.

Section 4941(d)(2)(E) provides, however, that, except in the case of a government official (as defined in section 4946(c)), the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

Section 4946(a)(1) provides, in pertinent part, that the term “disqualified person” includes a person who is a substantial contributor to the foundation, a foundation manager (within the meaning of subsection (b)(1)), a member of the family (as defined in subsection (d)) of a substantial contributor, and a corporation of which otherwise disqualified persons own more than 35 percent of the total combined voting power.

Section 4946(b)(1) defines the term “foundation manager” to include an officer, director, or trustee of a foundation, or an individual having powers or responsibilities similar to officers, directors, or trustees of the foundation.

Section 4946(d) provides that the family of a disqualified person includes only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

Treas. Reg. § 53.4941(d)-3(c) identifies several examples of activities that constitute “personal services” for purposes of section 4941(d)(2)(E), including foundation manager services, legal services, investment counseling, general banking services, and the services of a broker serving as agent for the private foundation.

In *Madden v. Commissioner*, T.C. Memo. 1997-395, the Tax Court construed the term “personal services” in section 4941(d)(2)(E) narrowly to include services that are “professional and managerial in nature.” Citing section 4941’s legislative history, the Court noted that one of Congress’s stated goals in enacting section 4941 was to minimize the need for an arm’s length standard by generally prohibiting self-dealing transactions between private foundations and disqualified persons. Accordingly, the Court concluded that general maintenance, janitorial, and custodial services do not fall within the definition of “personal services” for purposes of section 4941(d)(2)(E).

As a result of Founder's death, the LLCs will be distributed from Trust to Foundation. The LLCs will be treated by Foundation as disregarded entities, and therefore, for purposes of the analysis under section 4941, compensation paid by the LLCs pursuant to the Service Agreements will be treated as compensation paid directly by Foundation.[2]

Son is a disqualified person with respect to Foundation because he is the family member of a substantial contributor, and because he is a member, officer, and director of Foundation. Because Son is such a disqualified person and owns Corporation, Corporation is also a disqualified person with respect to Foundation. *See* section 4946(a)(1)(E). Accordingly, unless an exception applies, compensation paid by Foundation (or by disregarded entities owned by Foundation) to Corporation pursuant to the Service Agreements would constitute an act of self-dealing under section 4941(d)(1)(D).

Section 4941(d)(2)(E) provides an exception to the self-dealing rules for the payment of compensation by a private foundation to a disqualified person for personal services which are reasonable and necessary to carry out the exempt purpose of the private foundation. Any compensation paid under this exception must not be excessive. Examples of personal services that fall within this exception include legal services, investment counseling services, and the services of a broker serving as agent for the foundation. In *Madden v. Commissioner*, the Tax Court construed the term "personal services" narrowly to include services that are professional and managerial in nature and to exclude general maintenance, janitorial, and custodial services.

Pursuant to the Service Agreements, Corporation and Son will provide property management, rezoning, real estate development, and broker services to LLCs owned by Foundation. These services are professional and managerial in nature and are analogous to the investment management, legal, and broker services identified as personal services in the regulations. Under the facts as represented, Corporation's personal services are reasonable and necessary to manage and develop Foundation's complex land holdings to maximize their value to Foundation, and therefore these services further the Foundation's exempt purposes.

Foundation and Corporation have represented that the three different compensation structures identified in the Service Agreements provide for compensation that is reasonable and not excessive in relation to the services provided by Corporation. Although Corporation is compensated under each of the Service Agreements based on a percentage of sales revenue or property value, Foundation and Corporation have represented that this arrangement aligns Corporation's interests with those of the Foundation and incentivizes Corporation to maximize the value ultimately received by Foundation. Assuming, as represented, that compensation paid under the Service

[2] Because the activities of the LLCs will be attributed to Foundation and will be treated in the same manner as if conducted by Foundation itself, the exception for indirect self-dealing in Treas. Reg. § 53.4941(d)-1(b)(1) would not apply to the compensation paid to Corporation pursuant to the Service Agreements.

Agreements is reasonable and not excessive, the payment of compensation to Corporation by Foundation (or by the LLCs) will not constitute an act of self-dealing under section 4941 because such payments are compensation for personal services within the meaning of section 4941(d)(2)(E).[3]

Because compensation paid to Corporation by Foundation (or by the LLCs) pursuant to the terms of the Service Agreements will not constitute an act of self-dealing under section 4941, Son will be able to continue to serve as a member, officer, and director of Foundation, as an officer of the LLCs, and as a member, officer, and/or owner of Corporation without violating the provisions against direct or indirect self-dealing within the meaning of section 4941.

Any personal services provided under section 4941(d)(2)(E) must be reasonable and necessary to carrying out the private foundation's exempt purpose. The personal services provided by Corporation and Son assist Foundation with the management and development of its complex land holdings to maximize their value to Foundation and by doing so further Foundation's exempt purposes.

RULINGS

Based on the foregoing, and assuming the accuracy of the facts and representations set forth herein, we rule as follows:

1. Payments by Foundation, or by disregarded entities owned by Foundation, of fees to Corporation pursuant to the Service Agreements will not be an act of self-dealing between Foundation and a disqualified person (Corporation) because they are payments for personal services that are reasonable and necessary to carrying out the exempt purposes of Foundation.

2. Son will be able to serve as a member, officer, and director of Foundation and will be able to continue to serve as a member, officer, and/or owner of Corporation (or as an officer of disregarded entities owned by Foundation) without violating the provisions against direct or indirect self-dealing transactions with Foundation within the meaning of section 4941.

3. The payments to Corporation, Son's service as a member and/or director and/or officer of Foundation, and the continuance of the services provided pursuant to the Service Agreements further the tax-exempt purposes of Foundation.

[3] Because the Service Agreements provide an incentive for Corporation to maximize the value ultimately received by Foundation upon disposition of the real estate holdings in furtherance of Foundation's exempt purposes, and assuming, as represented, that the Service Agreements provide reasonable compensation, we believe that compensating Corporation based on a percentage of sales revenue or increase in property value would not, by itself, result in private inurement or impermissible private benefit.

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Foundation, including that the amount of compensation paid under the Service Agreements is reasonable and not excessive, 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. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination. The Associate Office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. *See* Rev. Proc. 2025-1, section 11.05, 2025-1 I.R.B. 1.

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, and, except as expressly provided in this letter, no opinion is expressed or implied concerning the tax consequences of any aspects of any transaction or item of income discussed or referenced in this letter.

Because it could help resolve questions concerning federal income tax status, this letter should be kept in Foundation's permanent records.

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if Foundation files a return electronically, this requirement may be satisfied by attaching a statement to the 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 Foundation's authorized representative.

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

Sincerely,

Ward L. Thomas
Senior Counsel
Exempt Organizations Branch 1
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: