Rev. Rul. 82-136, 1982-2 C.B. 300

Self-dealing; grant by foundation to a second foundation; common trustee. A grant by a private foundation to a second private foundation does not constitute an act of self-dealing within the meaning of section 4941 of the Code even though a banking institution serves as sole trustee of both foundations. Rev. Rul. 75-42 clarified.

ISSUE

In the situation described below, does a grant by one private foundation to a second private foundation constitute an act of self-dealing within the meaning of section 4941 of the Internal Revenue Code where a banking institution is trustee, and thus a disqualified person within the meaning of section 4946, of both foundations?

FACTS

A banking institution is the sole trustee of private foundation P, and is also the sole trustee of private foundation Q. Both organizations are exempt from federal income tax under section 501(c)(3) of the Code.

P's board of trustees has authorized a large grant to Q for the purpose of providing funding for the expansion of Q's scholarship grant program.

LAW AND ANALYSIS

Section 4941(d)(1)(E) of the Code provides that the term 'self-dealing' includes the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation. Under section 4946(b), the term 'disqualified person' includes a trustee.

Section 53.4941(d)-2(f)(2) of the Foundation Excise Tax Regulations 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. As an example, a grant by a private foundations to a section 509(a)(1), (2) or (3) organization will not be an act of self-dealing merely because one of the section 509(a)(1), (2), or (3) organization's officers, directors, or trustees is also a manager of or a substantial contributor to the foundation.

Rev. Rul. 75-42, 1975-1 C.B. 359, holds that a grant authorized by a private foundation to a hospital exempt from federal income tax under section 501(c)(3) of the Code and described in sections 170(b)(1)(A)(iii) and 509(a)(1) for modernization, replacement, and expansion does not constitute an

act of self-dealing within the meaning of section 4941 even though two individuals serve as trustees of both organizations.

In this case, as in the situation described in Rev. Rul. 75-42, any benefit received by the disqualified person (the banking institution) is merely incidental to private foundation P's use of its funds for a charitable purpose.

HOLDING

Because any benefit to disqualified persons is incidental, the grant from private foundation P to private foundation Q does not constitute an act of self-dealing within the meaning of section 4941 of the Code.

EXPENDITURE RESPONSIBILITY

Even though the grant from private foundation P to private foundation Q does not constitute an act of self-dealing under section 4941 of the Code, P must exercise expenditure responsibility over the grant as required by sections 4945(d)(4) and 4945(h) and the regulations thereunder.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 75-42 is clarified.