TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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U.I.L. – 4941.03-00; 4946.01-00

No Third Party Contacts

Date: May 17, 2006

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

A =
B =

X =
Y =

$ =
a =

Centers =
State =

Dear :

This is in response to your ruling request dated January 27, 2006 under section 4941 of the Internal Revenue Code (the Code).

A is an organization exempt under section 501(c)(3) of the Code and is a private foundation under section 509(a). A's Articles of Incorporation provide that it is organized for charitable and other exempt purposes, including making charitable grants and awards to certain specific organizations, as well as to other organizations or individuals for exempt purposes.

B is an educational organization exempt under section 501(c)(3) of the Code and is publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi). B's key program areas are innovative learning centers on teen education (the Centers), parent education, literacy, technology, youth development, and mentoring. B's annual budget for its most recent year is approximately 8a and its funding is derived from grants and contributions from the general public.

A is governed by a 4-member Board of Directors that include X. X is a daughter of the founder and sole contributor of A. X is married to Y.
B is governed by a Board of Director composed of a large number of directors. Y is a salaried employee of B, not a director. As an employee and non-executive officer of B, Y's authority is limited to fundraising and other development activities. Y is not in a position to exercise substantial influence over B's affairs or expenditures. In addition, B has no director, officer, employee or a person in a position to exercise substantial influence over its affairs or expenditures who is a disqualified person with respect to A (within the meaning of section 4946 of the Code).

The Centers operated by B provide a business-like learning environment for academic innovation where students undertake and complete assignments with assistance from one or more learning facilitators. Each Center is staffed by 1 academic coordinator, 5 teachers, 1 service coordinator, and 1 administrative assistant. Teachers or counselors will refer student to a Center who are: behind in credits; absent in inordinate number of days; at risk of dropping out of school; not meeting grade level competencies; in need of flexible academic programming in order to overcome personal obstacles; and reading at a 6th grade level or higher (recommended by not necessary required).

B received a substantial amount of grant from an unrelated public charity to expand the Centers throughout State. The grant would allow B to rollout 25 Centers but requires matching funds needed for equipment and other capital costs for the Centers.

A proposes to make a grant of $ to B in support of the Centers (the Proposed Grant). A has historically made many grants similar in size and nature to other educational organizations and institutions.

B has executed an affidavit stating that any decision by A with regards to the Proposed Grant would have no affect on the salary, compensation, and/or bonuses paid by B and that Y would not derive any benefit Y is not otherwise entitled to receive. In addition, A will require, as a condition of the grant, that B agrees (1) to use the grant funds exclusively for the Centers and (2) not to pay any portion of Y's salary, compensation, or bonuses from such grant funds.

A may also make future grants to B for charitable purposes (the Future Grants). Any such grants would be limited and conditioned as follows: The aggregate funds to be granted in any calendar year may not exceed 7.5% of A's "distributable amount" as defined in section 4942(d) of the Code for that calendar year. The grant must be determined by A's Board as consistent in nature and amount with similar grants in the immediately preceding three years. A will require B to provide written assurance that no disqualified persons with respect to A will participate in any decisions regarding the use of the grant funds. Further, the grant will be used exclusively for B's charitable programs and will not be used for general operating expenses, compensation of any disqualified person with respect to A, or to fund an activity or program in which a disqualified person with respect to A is expected to participate as a beneficiary.

Section 4941(a) of the Code imposes taxes on acts of self-dealing between a private foundation and a disqualified person.

Section 4941(d)(1)(D) of the Code defines an act of "self-dealing" to include any direct or indirect payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person.

Section 4941(d)(1)(E) of the Code defines an act of "self-dealing" to include 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 53.4941(d)-2(f)(2) of the Foundation and Similar Taxes Regulations provides that the receipt by a disqualified person of an incidental or tenuous benefit from the use of a foundation of its income or assets will not, by itself, cause such use to be 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 since generally the benefit is incidental and tenuous. For example, a grant by a private foundation 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."

Section 4946(a)(1) of the Code provides that the term “disqualified person” means, with respect to a private foundation, a person who is--

(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, and which is a substantial contributor to the foundation,

(D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),

Section 507(d)(2) of the Code defines the term "substantial contributor" with respect to a private foundation as any person who contributed or bequeathed an aggregate of more than $5,000 to the foundation, if such amount is more than 2% 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 4946(b)(1) of the Code defines the term "foundation manager" with respect to any foundation to include an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the 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).

Section 4946(d) of the Code provides that for purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

Section 53.4946-1(a)(8) of the regulations provides that for purposes of section 4941 only, the term “disqualified person” shall not include an organization described in section 501(c)(3) (other than an organization described in section 509(a)(4) --- which pertains to an organization organized and operated exclusively for testing for public safety).

Rev. Rul. 75-42, 1975-1 C.B. 359, held that a grant by a private foundation to a public charity for its exempt purposes did not constitute an act of self-dealing within the meaning of section 4941 of the Code even though two individuals serve as trustees of both organizations. The ruling held that any benefit to disqualified persons (two trustees herein) is incidental or tenuous under the provisions of section 53.4941(d)-2(f)(2) of the regulations.

The Proposed Grant and Future Grants (collectively the Grants) will be considered acts of self-dealing if granted by A to, or use by or for the benefit of, a disqualified person. The Grants will be made to B, which is an organization exempt under section 501(c)(3) and described in section 509(a)(1). As B is not a disqualified person pursuant to section 53.4946-1(a)(8) of the regulations, the Grants by A to B will not be for the benefit of, a disqualified person, and do not constitute acts of self-dealing under section 4941(d)(1)(E) of the Code

As X and Y are both disqualified persons with respect to A under the provisions of section 4946(a)(1)(A), (B) and (D). As A’s foundation manager, X has authority in the disposition of A’s grants to B, including specifying the use of the grants for compensation and other benefits of Y. However, the terms and conditions of the Grants provide that the grant funds are to be used exclusively for the Centers, and no portion be used to provide any forms of compensation or benefits to Y, or for B’s general operating expenses other than the Centers that could include payments to Y.

Because the Grants will not be used either directly or indirectly to pay compensation of a disqualified person, the Grants will not constitute acts of self-dealing within the meaning of Section 4941(d)(1)(D) of the Code. Any benefit to either X or Y will be incidental or tenuous.

Based on the foregoing and representations, we rule as follows:

1. The Proposed Grant of $ by A to B for the Centers will not result in self-dealing as defined in section 4941 of the Code and the underlying regulations.

2. Future Grants from A to B, as described above, will not result in self-dealing as defined in section 4941 of the Code and the underlying regulations provided that B is a publicly supported organization described in section 509(a)(1) or 509(a)(2) of the Code.

This ruling is conditioned on the understanding that there will be no material change in the facts upon which it is based. We express no opinion as to the tax consequences of the transactions under other provisions of the Code.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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

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,

Debra J. Kawecki
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437