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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend
Foundation =
M =
N =
O =
P =
R =
S =
Date a =
x =

Dear :

This is in reply to your ruling request dated November 29, 2006, submitted by your authorized representative, requesting a ruling under section 4941 of the Internal Revenue Code concerning your receipt of certain promissory notes from a trust.

Facts

The Foundation received a determination letter from the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code and as a private foundation under section 509(a). The Foundation's primary purpose is making grants to other section 501(c)(3) organizations supporting their activities. M is one of the Foundation's six trustees and serves as its President. M is the father of N and the father-in-law of O, who are the owners of P.

R and his wife established an inter vivos trust (the "Trust"). Upon the death of the survivor, the Trust became irrevocable. The Trust is part of the survivor's Estate (the "Estate"). The Estate has filed a Federal Estate Tax Return and has recently received a Closing Letter from the Internal Revenue Service determining its net estate tax.

Under the terms of the Trust, upon the death of the survivor, the Trust's assets, consisting of specific bequests and the remaining assets, became distributable. At the time of the survivor's death, the Trust owned all of the stock of S. S's assets included several Notes Receivable from P totaling $x ("Notes"). On Date a, S liquidated and transferred the Notes to the Trust. As a remainder beneficiary under the Trust, the Foundation will receive a distribution of the Notes from the Trust.

The trustees of the Trust have filed a petition with the probate court having jurisdiction over the Trust seeking approval of the proposed transfer of the Notes to the Foundation.

With respect to this proposed transfer, the Foundation represents:

a. Under the terms of the Trust, the trustees possess the power of transfer with respect to the Notes; and

b. The transfer will not take place until it has been approved by the probate court having jurisdiction over the Trust. In fact, the probate court has approved the transfer.

Ruling Requested

The Foundation's receipt of the Notes from the Trust will not constitute an act of self-dealing to the Foundation under section 4941(d) of the Code.

Law

Section 4941(a)(1) of the Code imposes a tax on acts of self-dealing between a disqualified person as defined in section 4946(a)(1) and a private foundation.

Section 4941(d)(1) of the Code provides that the term "self-dealing" includes any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person; and 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) of the Code provides that the term "disqualified person" includes, with respect to a private foundation, a person who is: a foundation manager, a member of the family of a disqualified person, or a partnership in which a disqualified person holds more than 35 percent of the beneficial interest.

Section 4946(b) of the Code provides that a "foundation manager" is an officer, director, or trustee of a foundation.

Section 4946(d) of the Code provides that for purposes of section 4946(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 4947 of the Code provides that certain excise taxes, including the excise taxes described in section 4941, apply to certain "split-interest" trusts.

Section 53.4941(d)-2 of the Foundation and Similar Excise Tax regulations provides that, in general, the term "self-dealing" includes where a note, the obligor of which is a disqualified person, is transferred by a third party to a private foundation which becomes the creditor under the note. There is an exception to this rule, however, for transactions that occur during the administration of a revocable trust, including a trust that has become irrevocable upon the death of the grantor. Section 53.4941(d)-1(b)(3) of the regulations provides that the term "indirect self-dealing" does not include a transaction with respect to a private foundation's interest or expectancy in property held by a revocable trust, including a trust that has become irrevocable on the grantor's death, if:

i. The trustee of the trust possesses a power of sale with respect to the property or has the power to reallocate the property to another beneficiary;

ii. The transaction is approved by the probate court having jurisdiction over the trust;

iii. In the case of a revocable trust, the transaction occurs before it is considered subject to section 4947;

iv. The trust receives an amount that equals or exceeds the fair market value of the private foundation's interest or expectancy in the property at the time of the transaction; and

v. The transaction results in the private foundation receiving an interest or expectancy at least as liquid as the one it gave up.

Section 53.4947-1(b)(2)(v) of the regulations provides that a revocable trust that becomes irrevocable upon the death of the decedent-grantor, from which the trustee is require to distribute all of the net assets in trust free of trust to charitable beneficiaries, is not considered a charitable trust under section 4941(a)(1) for a "reasonable period of settlement" (within the meaning of section 53.4947-1(b)(2)(iv) after becoming revocable.

Section 53.4947-1(b)(2)(iv) of the regulations provides that the term "reasonable period of settlement" means that period reasonably required by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust, including the collection of assets, the payment of debts, taxes and distributions, and the determination of the rights of the subsequent beneficiaries.

In Rockefeller v. U.S., 718 F.2d 290 (8th Cir. 1983), cert. den., 104 S.Ct. 2180 (1984), the Court of Appeals affirmed a lower court decision holding that the purchase of stock from an estate by a son of the decedent constituted an indirect act of self dealing between a disqualified person and a private foundation that was established by a decedent's bequest.

Analysis

M is a disqualified person with respect to the Foundation within the meaning of section 4946(a)(1)(B) of the Code, because M is a trustee (and thus, foundation manager) and President of the Foundation.

N and O are disqualified persons with respect to the Foundation, within the meaning of section 4946(a)(1)(D) of the Code, because they are the daughter and son-in-law, respectively, of M.

N and O own 100 percent of the stock of P. Section 4946(a)(1)(E) of the Code states that a corporation is a disqualified person if more than 35 percent of the total combined voting power is owned by another disqualified person. Therefore, P is a disqualified person with respect to the Foundation.

As a remainder beneficiary under the Trust, the Foundation will receive a distribution of the Notes from the Trust. Therefore, under section 53.4941(d)-2 of the regulations, the Foundation's receipt of the Notes from the Trust would constitute an indirect act of self-dealing under section 4941(d)(1) of the Code. See also, Rockefeller v. U.S., supra. However, the Foundation's receipt of the Notes from the Trust will not constitute an indirect act of self-dealing under section 4941(d)(1) of the Code if all the requirements of section 53.4941(d)-1(b)(3) of the regulations are met.

i. Under the terms of the trust, the trustees possess the power of transfer with respect to the Notes and the power to reallocate the property to another beneficiary. Therefore, the requirement in section 53.4941(d)-1(b)(3)(i) has been met.

ii. The transfer of the Notes from the Trust to the Foundation will not take place without the approval of the probate court having jurisdiction over the Trust. In fact, the probate court has approved the transfer. Therefore, the requirement in section 53.4941(d)-1(b)(3)(ii) of the regulations has been met.

iii. A revocable trust that becomes irrevocable upon the death of the decedent-grantor, from which the trustee is required to distribute all of the net assets in trust free of trust to charitable beneficiaries, is not considered a charitable trust under section 4947(a)(1) of the Code for a "reasonable period of settlement" after becoming irrevocable. Section 53.4947-1(b)(2)(v) of the regulations. The term "reasonable period of settlement" means that period reasonably required by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust. Section 53.4947-1(b)(2)(iv).

    The Estate, which includes the Trust, has filed a federal Estate Tax Return on a timely basis and received a Closing Letter from the Internal Revenue Services. In addition, the Trust will not distribute the Notes until it has received approval from the probate court. Because distribution from the Trust will occur during a "reasonable period of settlement" within the meaning of section 53.4947-1(b)(2)(iv) of the regulations, under section 53.4947-1(b)(2)(v), the Trust will not become a charitable trust subject to section 4947 of the Code before the Trust distributes the Notes to the Foundation. Therefore, the requirement in section 53.4941(d)-1(b)(3)(iii) has been met.

iv. By transferring the Notes to the Foundation as remainder beneficiary under the terms of the Trust, the Trust will be relieved of its fiduciary obligation to distribute the Notes to the Foundation. Therefore, the requirement of section 53.4941(d)-1(b)(3)(iv) of the regulations has been met.

v. By receiving a distribution of the Notes from the Trust as remainder beneficiary under the Trust, the Foundation will receive an interest or expectancy at least as liquid as the one it gave up. Therefore, the requirement of section 53.4941(d)-1(b)(3)(v) of the regulations has been met.

In conclusion, the Foundation's receipt of the Notes from the Trust will not constitute an indirect act of self-dealing under section 4941(d)(1) of the Code because all the requirements of section 53.4941(d)-1(b)(3) of the regulations have been met.

Ruling

The Foundation's receipt of the Notes from the Trust will not constitute an act of self-dealing to the Foundation under section 4941(d) of the Code.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides 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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Steven B. Grodnitzky
Manager, Exempt Organizations
Technical Group 1

Enclosure:
Notice 437