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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201145026**
Release Date: 11/10/11
Date: August 19, 2011
UIL Code: 4941.00-00
4941.04-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Decedent =
Unitrust =

Dear

We have considered your ruling request dated June 1, 2010 requesting a ruling that the proposed sale of limited partnership interests qualifies for the estate administration exception to self-dealing as contained in section 4941 of the Internal Revenue Code ("Code").

Facts

You are the estate of the Decedent. During Decedent's lifetime she established the Unitrust, a testamentary charitable lead unitrust. All but one of Decedent's heirs are trustees of the Unitrust. You have represented that Unitrust will be allowed a deduction under section 2055 of the Code with respect to the charitable interests. During her life and at the time of her death, Decedent was a beneficiary of her marital trust. The marital trust owned interests in four limited partnerships. Your executor proposes to cause the sale of such specific property interest owned by the Decedent's marital trust to each respective limited partnership at fair market value, and to pay the cash proceeds of those sales to the trustees of Unitrust. You have represented that the sale will be completed prior to your termination.

The marital trust was created by the will of the Decedent's husband which made her the sole beneficiary and granted her a general power of appointment over the undistributed income and principal of this trust. She exercised that general power of appointment pursuant to her will to bequeath a percentage of the limited partnership interests to the trustees of Unitrust, subject to the terms of any buy-sell agreements with respect to the limited partnership interests (the "Buy-Sell Provisions"). Those percentage amounts are the amounts that have a fair market value equal to the bequeathed values stated in her will. The bequeathed values are fixed dollar amounts.

Each partnership agreement includes the Buy-Sell Provisions which are triggered when a partner makes certain bequests of all or part of a partner's partnership interests to an organization described in section 501(c)(3) of the Code. The Buy-Sell Provisions then require your executor to sell the limited partnership interests and that the limited partnerships buy them, for cash or other partnership property. You have represented that the limited partnerships will pay one hundred percent of the purchase price in cash for your limited partnership interests. The amount of limited partnership interests sold is the percentage amounts which have fair market values equal to the bequeathed values. Fair market value is determined by an independent appraiser selected by the executor. The manager of each limited partnership may also select an independent appraiser. If the two appraisers cannot agree they select a third appraiser and fair market value is determined by a majority vote. The Buy-Sell Provisions also include a positive/negative adjustor should a court of competent jurisdiction or U.S. administrative agency make final determination for Federal tax purposes that the fair market value was different than that determined by the appraiser(s). You have represented that the Buy-Sell Provisions in conjunction with the will require your executor to sell the limited partner interests. Unitrust and each beneficiary have consented to the sales and distribution of the cash proceeds to Unitrust.

The state probate court with jurisdiction over you issued an order admitting the will and appointing your executor as an independent executor pursuant to the will. The same court has jurisdiction over Unitrust. State statute limits the power of the court to require pre-approval of acts of the independent executor except as expressly authorized by the statute. The statute requires filing of inventory, appraisement, and list of claims, but does not require court pre-approval to the sale of limited partnership interests. The statute does not limit the beneficiaries' right to obtain ex ante court rulings on acts of an independent executor. Thus, Unitrust has obtained a ruling from the state probate court with jurisdiction over it recognizing that the Buy-Sell Provisions of the will require the executor of the estate to sell the limited partnership interests to the limited partnerships, and approving the transaction.

Rulings Requested

That the proposed sales of limited partnership interests by the executor to the limited partnerships qualify for the estate administration exception in section 53.4941(d)-1(b)(3) of the regulations and thus do not constitute acts of self-dealing within the meaning of section 4941 of the Code.

Law

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for exempt purposes.

Section 507(d)(2)(A) of the Code defines substantial contributor to include and person who contributes or bequeaths an aggregate amount of more than $5,000 to a private foundation, if such amount is more than 2 percent 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. In the case of a trust, the term "substantial contributor" also means the creator of a trust.

Section 4941(a)(1) of the Code provides for the imposition of tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(A) of the Code provides that the term "self-dealing" means any direct or indirect sale or exchange, or leasing of property between a private foundation and disqualified person.

Section 4946(a)(1) of the Code defines the term "disqualified person" with respect to a private foundation to include a person who is: (A) a substantial contributor to the foundation; (B) a foundation manager; (C) an owner of more than 20 percent of any entity that is a substantial contributor to the foundation; or (D) a member of the family (defined in subsection (d) as spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren) of a substantial contributor or foundation manager; (F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest.

Section 4947(a)(2) of the Code provides that some chapter 42 Code sections including section 4941 (relating to taxes on self-dealing) shall be applied to trusts as if they were a private foundation if the trust is not exempt from tax under section 501(a) of the Code, not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B) of the Code, and it has amounts in trust for which a deduction was allowed under section 2055 of the Code to the extent applicable to a trust described in this paragraph.

Section 53.4941(d)-1(b)(3) of the regulations provides that the term "indirect self-dealing" shall not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if--

(i) The administrator or executor of an estate or trustee of a revocable trust either--
  (a) Possesses a power of sale with respect to the property,
  (b) Has the power to reallocate the property to another beneficiary, or
  (c) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);

(ii) Such transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the private foundation);

(iii) Such transaction occurs before the estate is considered terminated for Federal income tax purposes pursuant to paragraph (a) of Sec. 1.641(b)-3 of this chapter (or in the case of a revocable trust, before it is considered subject to section 4947);
(iv) The estate (or trust) receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and,
(v) With respect to transactions occurring after April 16, 1973, the transaction either--
    (a) Results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,
    (b) Results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or
    (c) Is required under the terms of any option which is binding on the estate (or trust).

In Estate of Bernard J. Reis v. Commissioner, 87 T.C. 1016 (1986), the tax court held that self-dealing with respect to property of an estate will also be regarded as self-dealing with respect to the assets of a private foundation that has a beneficial interest in the estate's property.

Analysis

As a charitable lead unitrust under section 664(d) of the Code, Unitrust is a split interest trust described in section 4947(a)(2) and, therefore, subject to section 4941 which imposes an excise tax on each act of self-dealing. Section 4941(d)(1) provides that the term "self-dealing" includes an indirect sale or exchange of property between a private foundation and a disqualified person.

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 substantial contributor, a foundation manager, or a member of the family either of the above. Section 507(d)(2) defines a "substantial contributor" as one who, in the case of a trust, is the creator of the trust. The Decedent is a disqualified person with respect to Unitrust under section 507(d)(2)(A) because she is the creator and a substantial contributor. All of decedent's heirs are disqualified persons with respect to Unitrust under section 4946(a)(1)(D) because they are family members of a disqualified person.

The limited partnerships are each a disqualified person with respect to Unitrust under section 4946(a)(1)(F) of the Code because the Decedent owned more than a percent profits interest in each limited partnership. A partnership is a disqualified person within the meaning of section 4946(a)(1)(F) if a substantial contributor, foundation manager, or member of a family of a disqualified person owns more than percent of the profits interest. All of the partnership interests of each limited partnerships are owned between the Decedent and the respective heir. Accordingly, under section 4946(a)(1)(F) each limited partnership is a disqualified person.

The sales of the limited partnership interests are indirect acts of self dealing under section 4941(d)(1) of the Code unless an exclusion applies. Section 4941(d)(1) defines self-dealing to include any indirect sale of property between a private foundation and a disqualified person. In

Estate of Bernard J. Reis the tax court held that where a private foundation has a beneficial interest in estate property and that estate sells that property to a disqualified person with respect to that private foundation, then such sale will be an act of indirect self-dealing unless an exclusion applies. The limited partnership interests are property of the estate because the will names Unitrust as a beneficiary and directs you to contribute the limited partnership interests to Unitrust subject to the Buy-Sell Provisions. This conditional bequest creates a beneficial interest in the limited partnership interests by Unitrust. Accordingly, any sale of the limited partnership interests by you to the limited partnerships is an act of indirect self-dealing between a private foundation.

However, transactions during the administration of an estate regarding the private foundation's interest or expectancy in property held by such estate are not self-dealing if all five conditions set forth in section 53.4941(d)-1(b)(3) of the regulations are met. This exclusion to the self-dealing rules is commonly referred to as the "estate administration exception."

The first requirement of the estate administration exclusion is section 53.4941(d)-1(b)(3)(i) of the regulations, which provides in part, that the administrator of an estate must (a) possess a power of sale with respect to the property; (b) have the power to reallocate the property to another beneficiary; or (c) be required to sell the property under the terms of any option subject to which the property was acquired by the estate. Generally, powers of sale are granted in a will or trust agreement. Here, the bequest of limited partnership interests to Unitrust in the will is expressly subject to the Buy-Sell Provisions which in turn provide for the sale of limited partnership interests. You have represented that the buy-Sell Agreements in conjunction with the will obligate your executor to sell the limited partnership interests to the partnerships. All beneficiaries, including Unitrust, have consented to the sales. Accordingly, your executor has a power of sale.

The second requirement is that the transaction is approved by the probate court having jurisdiction over the estate or by another court having jurisdiction over the estate (or trust) or over the private foundation. See section 53.4941(d)-1(b)(3)(ii) of the regulations. You are an independent estate and your executor is an independent executor under state law. While court power to intervene sua sponte in acts of independent executors is limited by state statute to filing of inventory, appraisement, and list of claims, that statute does not limit the right of Unitrust seek the court approval required by section 53.4941(d)-1(b)(3)(ii) of the regulations. Thus, Unitrust obtained a court order decreeing that your executor is required by the will to sell the limited partnership interests, and approving the transaction.

The third requirement, pursuant to section 53.4941(d)-1(b)(3)(iii) of the regulations, provides that such transaction occurs before the estate is considered terminated for Federal income tax purposes. Here, according to the facts you have represented that the transaction will occur before you are considered terminated for federal income tax purposes. Thus, the third condition has been met.

The fourth requirement described in section 53.4941(d)-1(b)(3)(iv) of the regulations is that the estate receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust). This requirement is satisfied because (i) Unitrust will receive the bequeathed values in cash, (ii) its expectancy is in amounts of limited partnership interests with fair market values equal to the bequeathed values, and (iii) the fair market values will be determined by appraisal that is subject to a positive/negative adjustor should a court of competent jurisdiction or U.S. administrative agency make final determination for Federal tax purposes that the fair market value was different then that determined by the appraisal. We have not determined whether the methodology to be used to determine fair market value of the limited partnership interests is proper. Therefore, based solely on your representation we assume that the appraisal will reflect fair market value.

The final requirement described in section 53.4941(d)-1(b)(3)(v) of the regulations is that the transaction either--(a) results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up, (b) results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or (c) is required under the terms of any option which is binding on the estate. Unitrust will receive cash and give up an expectancy in limited partnership interests. Cash is more liquid than limited partnership interests, which satisfies section 53.4941(d)-1(b)(3)(v) of the regulations.

Ruling

The proposed sales of the limited partnership interests by your executor to the limited partnerships do not constitute acts of self-dealing within the meaning of section 4941 of the Code.

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.

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 is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. 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. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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,

Theodore R. Lieber
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437

cc:

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number:
Release Date: 11/10/11
Date: August 19, 2011
UIL Code: 4941.00-00
4941.04-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Decedent =
Unitrust =

Dear

We have considered your ruling request dated June 1, 2010 requesting a ruling that the proposed sale of limited partnership interests qualifies for the estate administration exception to self-dealing as contained in section 4941 of the Internal Revenue Code ("Code").

Facts

You are the estate of the Decedent. During Decedent's lifetime she established the Unitrust, a testamentary charitable lead unitrust. All but one of Decedent's heirs are trustees of the Unitrust. You have represented that Unitrust will be allowed a deduction under section 2055 of the Code with respect to the charitable interests. During her life and at the time of her death, Decedent was a beneficiary of her marital trust. The marital trust owned interests in four limited partnerships. Your executor proposes to cause the sale of such specific property interest owned by the Decedent's marital trust to each respective limited partnership at fair market value, and to pay the cash proceeds of those sales to the trustees of Unitrust. You have represented that the sale will be completed prior to your termination.

The marital trust was created by the will of the Decedent's husband which made her the sole beneficiary and granted her a general power of appointment over the undistributed income and principal of this trust. She exercised that general power of appointment pursuant to her will to bequeath a percentage of the limited partnership interests to the trustees of Unitrust, subject to the terms of any buy-sell agreements with respect to the limited partnership interests (the "Buy-Sell Provisions"). Those percentage amounts are the amounts that have a fair market value equal to the bequeathed values stated in her will. The bequeathed values are fixed dollar amounts.

Each partnership agreement includes the Buy-Sell Provisions which are triggered when a partner makes certain bequests of all or part of a partner's partnership interests to an organization described in section 501(c)(3) of the Code. The Buy-Sell Provisions then require your executor to sell the limited partnership interests and that the limited partnerships buy them, for cash or other partnership property. You have represented that the limited partnerships will pay one hundred percent of the purchase price in cash for your limited partnership interests. The amount of limited partnership interests sold is the percentage amounts which have fair market values equal to the bequeathed values. Fair market value is determined by an independent appraiser selected by the executor. The manager of each limited partnership may also select an independent appraiser. If the two appraisers cannot agree they select a third appraiser and fair market value is determined by a majority vote. The Buy-Sell Provisions also include a positive/negative adjustor should a court of competent jurisdiction or U.S. administrative agency make final determination for Federal tax purposes that the fair market value was different than that determined by the appraiser(s). You have represented that the Buy-Sell Provisions in conjunction with the will require your executor to sell the limited partner interests. Unitrust and each beneficiary have consented to the sales and distribution of the cash proceeds to Unitrust.

The state probate court with jurisdiction over you issued an order admitting the will and appointing your executor as an independent executor pursuant to the will. The same court has jurisdiction over Unitrust. State statute limits the power of the court to require pre-approval of acts of the independent executor except as expressly authorized by the statute. The statute requires filing of inventory, appraisement, and list of claims, but does not require court pre-approval to the sale of limited partnership interests. The statute does not limit the beneficiaries' right to obtain ex ante court rulings on acts of an independent executor. Thus, Unitrust has obtained a ruling from the state probate court with jurisdiction over it recognizing that the Buy-Sell Provisions of the will require the executor of the estate to sell the limited partnership interests to the limited partnerships, and approving the transaction.

Rulings Requested

That the proposed sales of limited partnership interests by the executor to the limited partnerships qualify for the estate administration exception in section 53.4941(d)-1(b)(3) of the regulations and thus do not constitute acts of self-dealing within the meaning of section 4941 of the Code.

Law

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for exempt purposes.

Section 507(d)(2)(A) of the Code defines substantial contributor to include and person who contributes or bequeaths an aggregate amount of more than $5,000 to a private foundation, if such amount is more than 2 percent 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. In the case of a trust, the term "substantial contributor" also means the creator of a trust.

Section 4941(a)(1) of the Code provides for the imposition of tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(A) of the Code provides that the term "self-dealing" means any direct or indirect sale or exchange, or leasing of property between a private foundation and disqualified person.

Section 4946(a)(1) of the Code defines the term "disqualified person" with respect to a private foundation to include a person who is: (A) a substantial contributor to the foundation; (B) a foundation manager; (C) an owner of more than 20 percent of any entity that is a substantial contributor to the foundation; or (D) a member of the family (defined in subsection (d) as spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren) of a substantial contributor or foundation manager; (F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest.

Section 4947(a)(2) of the Code provides that some chapter 42 Code sections including section 4941 (relating to taxes on self-dealing) shall be applied to trusts as if they were a private foundation if the trust is not exempt from tax under section 501(a) of the Code, not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B) of the Code, and it has amounts in trust for which a deduction was allowed under section 2055 of the Code to the extent applicable to a trust described in this paragraph.

Section 53.4941(d)-1(b)(3) of the regulations provides that the term "indirect self-dealing" shall not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if--

(i) The administrator or executor of an estate or trustee of a revocable trust either--
  (a) Possesses a power of sale with respect to the property,
  (b) Has the power to reallocate the property to another beneficiary, or
  (c) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);

(ii) Such transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the private foundation);

(iii) Such transaction occurs before the estate is considered terminated for Federal income tax purposes pursuant to paragraph (a) of Sec. 1.641(b)-3 of this chapter (or in the case of a revocable trust, before it is considered subject to section 4947);
(iv) The estate (or trust) receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and,
(v) With respect to transactions occurring after April 16, 1973, the transaction either--
  (a) Results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,
  (b) Results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or
  (c) Is required under the terms of any option which is binding on the estate (or trust).

In Estate of Bernard J. Reis v. Commissioner, 87 T.C. 1016 (1986), the tax court held that self-dealing with respect to property of an estate will also be regarded as self-dealing with respect to the assets of a private foundation that has a beneficial interest in the estate's property.

Analysis

As a charitable lead unitrust under section 664(d) of the Code, Unitrust is a split interest trust described in section 4947(a)(2) and, therefore, subject to section 4941 which imposes an excise tax on each act of self-dealing. Section 4941(d)(1) provides that the term "self-dealing" includes an indirect sale or exchange of property between a private foundation and a disqualified person.

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 substantial contributor, a foundation manager, or a member of the family either of the above. Section 507(d)(2) defines a "substantial contributor" as one who, in the case of a trust, is the creator of the trust. The Decedent is a disqualified person with respect to Unitrust under section 507(d)(2)(A) because she is the creator and a substantial contributor. All of decedent's heirs are disqualified persons with respect to Unitrust under section 4946(a)(1)(D) because they are family members of a disqualified person.

The limited partnerships are each a disqualified person with respect to Unitrust under section 4946(a)(1)(F) of the Code because the Decedent owned more than a percent profits interest in each limited partnership. A partnership is a disqualified person within the meaning of section 4946(a)(1)(F) if a substantial contributor, foundation manager, or member of a family of a disqualified person owns more than percent of the profits interest. All of the partnership interests of each limited partnerships are owned between the Decedent and the respective heir. Accordingly, under section 4946(a)(1)(F) each limited partnership is a disqualified person.

The sales of the limited partnership interests are indirect acts of self dealing under section 4941(d)(1) of the Code unless an exclusion applies. Section 4941(d)(1) defines self-dealing to include any indirect sale of property between a private foundation and a disqualified person. In

Estate of Bernard J. Reis the tax court held that where a private foundation has a beneficial interest in estate property and that estate sells that property to a disqualified person with respect to that private foundation, then such sale will be an act of indirect self-dealing unless an exclusion applies. The limited partnership interests are property of the estate because the will names Unitrust as a beneficiary and directs you to contribute the limited partnership interests to Unitrust subject to the Buy-Sell Provisions. This conditional bequest creates a beneficial interest in the limited partnership interests by Unitrust. Accordingly, any sale of the limited partnership interests by you to the limited partnerships is an act of indirect self-dealing between a private foundation.

However, transactions during the administration of an estate regarding the private foundation's interest or expectancy in property held by such estate are not self-dealing if all five conditions set forth in section 53.4941(d)-1(b)(3) of the regulations are met. This exclusion to the self-dealing rules is commonly referred to as the "estate administration exception."

The first requirement of the estate administration exclusion is section 53.4941(d)-1(b)(3)(i) of the regulations, which provides in part, that the administrator of an estate must (a) possess a power of sale with respect to the property; (b) have the power to reallocate the property to another beneficiary; or (c) be required to sell the property under the terms of any option subject to which the property was acquired by the estate. Generally, powers of sale are granted in a will or trust agreement. Here, the bequest of limited partnership interests to Unitrust in the will is expressly subject to the Buy-Sell Provisions which in turn provide for the sale of limited partnership interests. You have represented that the buy-Sell Agreements in conjunction with the will obligate your executor to sell the limited partnership interests to the partnerships. All beneficiaries, including Unitrust, have consented to the sales. Accordingly, your executor has a power of sale.

The second requirement is that the transaction is approved by the probate court having jurisdiction over the estate or by another court having jurisdiction over the estate (or trust) or over the private foundation. See section 53.4941(d)-1(b)(3)(ii) of the regulations. You are an independent estate and your executor is an independent executor under state law. While court power to intervene sua sponte in acts of independent executors is limited by state statute to filing of inventory, appraisement, and list of claims, that statute does not limit the right of Unitrust seek the court approval required by section 53.4941(d)-1(b)(3)(ii) of the regulations. Thus, Unitrust obtained a court order decreeing that your executor is required by the will to sell the limited partnership interests, and approving the transaction.

The third requirement, pursuant to section 53.4941(d)-1(b)(3)(iii) of the regulations, provides that such transaction occurs before the estate is considered terminated for Federal income tax purposes. Here, according to the facts you have represented that the transaction will occur before you are considered terminated for federal income tax purposes. Thus, the third condition has been met.

The fourth requirement described in section 53.4941(d)-1(b)(3)(iv) of the regulations is that the estate receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust). This requirement is satisfied because (i) Unitrust will receive the bequeathed values in cash, (ii) its expectancy is in amounts of limited partnership interests with fair market values equal to the bequeathed values, and (iii) the fair market values will be determined by appraisal that is subject to a positive/negative adjustor should a court of competent jurisdiction or U.S. administrative agency make final determination for Federal tax purposes that the fair market value was different then that determined by the appraisal. We have not determined whether the methodology to be used to determine fair market value of the limited partnership interests is proper. Therefore, based solely on your representation we assume that the appraisal will reflect fair market value.

The final requirement described in section 53.4941(d)-1(b)(3)(v) of the regulations is that the transaction either--(a) results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up, (b) results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or (c) is required under the terms of any option which is binding on the estate. Unitrust will receive cash and give up an expectancy in limited partnership interests. Cash is more liquid than limited partnership interests, which satisfies section 53.4941(d)-1(b)(3)(v) of the regulations.

Ruling

The proposed sales of the limited partnership interests by your executor to the limited partnerships do not constitute acts of self-dealing within the meaning of section 4941 of the Code.

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.

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 is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. 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. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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,

Theodore R. Lieber
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437

cc: