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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201421023**
Release Date: 5/23/2014
Date: February 25, 2014
U.I.L.: 4941.00-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

H =
W =
H Trust =
W Trust =
R =
$y =
$f =
$g =
$h =
$i =
date1 =
date2 =
date3 =

Dear :

We have considered your ruling request as amended concerning whether distributions of annuity payments by irrevocable testamentary charitable lead annuity trusts ("CLATS") pursuant to the terms of previously executed charitable pledge agreements will constitute acts of self-dealing under I.R.C. § 4941.

Facts:

H and W are husband and wife. H is the settlor of H Trust, a revocable living trust, and H and W are both trustees. W is the settlor and trustee of W trust, a revocable living trust. H Trust and W Trust become irrevocable at, respectively, the deaths of H and W. Individually, H Trust and W Trust each provides for testamentary CLATs to be created and funded at the time of its settlor's death to satisfy the terms of previously executed and still outstanding charitable pledge agreements as set forth below.

H provided documentation and representations that provisions for testamentary CLATs to be created at his death were included in the H Trust dating from the time of Fund Agreement, as described below, to the present. W has provided documentation and representations that provision for testamentary CLATs to be created at her death were included in the W Trust dating from the time of Museum Agreement, as described below.

H and W are also trustees of the H and W Charitable Foundation ("Foundation"). Foundation is tax-exempt as an organization described in § 501(c)(3) and classified as a private foundation under § 509(a). After H submitted this ruling request, H passed away. At that time the H Trust became irrevocable. The H Trust provided for the CLATs to be established at his death. R, the personal representative of the estate of H, is substituted as a party to this ruling request and the taxpayer identification number of the estate is substituted for that of H.

Various members of H and W's extended family, including siblings and children, agreed to donate monies to support the development of a new hospital facility. In recognition, the hospital facility will be named for the extended family. Members of the extended family entered into a multi-part Fund Agreement with several charities ("Fund Agreement") in various capacities, either personally or as trustees of different charitable foundations. The obligation of each party is set forth separately and described in the Fund Agreement.

The Fund Agreement specifies that the Foundation will donate a total of $f made up of ten equal annual installments of $g beginning on date1 and continuing until date2. Separately, and in addition, H agreed to contribute an additional $y under the Fund Agreement by funding, during his lifetime or as part of his estate, an irrevocable CLAT in an amount calculated to provide lead annuity payments to hospital facility of $h each year for eight years, payable in equal annual installments beginning on or before the first anniversary of the death of H. The Fund Agreement states that the funding by H of the CLAT will satisfy his entire obligation to contribute the additional $y under the Fund Agreement.

In a Confirmatory Endowment Gift and Donor Intent Agreement ("Museum Agreement"), H and W, as co-trustees of the Foundation, and W, as trustee of the W Trust, agreed to donate certain sums to a museum. In honor of the generosity of these gifts, museum will name a staff position for H and W. The Foundation commited to give museum a total of $f. Foundation will make ten annual installments of $g beginning no later than date3. Separately, the W Trust will make a gift of a total of $f through an irrevocable testamentary CLAT created and funded upon W's death. W represents that the testamentary CLAT is described in Rev. Proc. 2007-46. The CLAT will make equal annual payments of $i to museum, in cash or marketable securities, over a period of five years, with the first annual installment to be made no later than twelve months after the death of W.

<u>Requested Rulings</u>:

1. That the distribution of payments pursuant to the Fund Agreement by an irrevocable CLAT created at the time of H's death will not constitute an act of self-dealing under § 4941(a)(1).

2. The distribution of payments pursuant to the Museum Agreement by an irrevocable

CLAT created at the time of W's death, will not constitute an act of self-dealing under § 4941(a)(1).

Law:

I.R.C. § 507(d)(2) provides that in the case of a trust, the term "substantial contributor" includes the creator of the trust.

I.R.C. § 4941(a)(1) imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Under I.R.C. § 4941(d)(1)(E), the term "self-dealing" includes 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.

I.R.C. § 4946(a)(1) defines disqualified person, for purposes of the private foundation excise tax provisions, as including a substantial contributor to a private foundation and family members of the substantial contributor set forth in § 4946(d). Section 4946(a)(2) provides that for this purpose, substantial contributor means a person described in § 507(d)(2).

I.R.C. § 4947(a)(2) describes, in part, a split-interest trust as a trust which is not exempt from tax under § 501(a), not all of the unexpired interests in which are devoted to one or more § 170(c)(2)(B) purposes, and which has amounts in trust for which a deduction was allowed under §§ 170, 545(b)(2), 642(c), 2055, 2106(a)(2) or 2522. Such a split-interest trust is treated, unless an exception applies, as if it were a private foundation such that §§ 507 (termination), 508(e) (governing instrument), 4941 (self-dealing), 4943 (excess business holdings), 4944 (jeopardizing investments), and 4945 (taxable expenditures) apply.

I.R.C. § 4947(b)(3) provides certain exceptions wherein §§ 4943 and 4944 shall not apply to a split-interest trust under § 4947(a)(2).

Treas. Reg. § 53.4941(d)-2(f)(1) provides that if a private foundation makes a grant or other payment which satisfies a legal obligation of a disqualified person, that payment or grant will normally constitute an act of self-dealing. A transition rule is provided for grants or payments which satisfy a pledge, enforceable under local law, to an organization described in § 501(c)(3), which pledge is made on or before April 16, 1973, so long as the disqualified person obtains no substantial benefit, other than the satisfaction of his obligation, from such grant or payment.

Treas. Reg. § 53.4941(d)-2(f)(2) 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. 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.

Treas. Reg. § 53.4941(e)-1(a)(2) provides that an act of self-dealing occurs on the date on which all the terms and conditions of the transaction and the liabilities of the parties have been fixed.

Rev. Proc. 2007-46, 2007-29 I.R.B. 102 describes requirements a trust must meet in order to be deemed to be a charitable lead annuity trust.

Rev. Rul. 73-407, 1973-2 C.B. 383, provides that a contribution by a private foundation to a public charity made on the condition that the public charity change its name to that of a substantial contributor to the foundation and agree not to change the name again for 100 years does not constitute an act of self-dealing under § 4941(d)(1)(E).

Analysis:

Pursuant to the Fund Agreement, H and W, as trustees of the Foundation, agreed that the Foundation would donate $g to hospital each year for ten years beginning on date1 and continuing until date2. Separately, and in addition, H agreed to fund, during his lifetime or as part of his estate, an irrevocable CLAT to contribute an additional $y to hospital. Under the terms of the Fund Agreement, the CLAT would make eight annual payments of $h with the first installment payable on or before the first anniversary of the date of death of H. According to the Fund Agreement, "the funding by H of the CLAT so described satisfies his entire obligation to contribute the additional $y under the [F]und [A]greement."

The Fund Agreement clearly specifies the separate obligations to hospital of the Foundation and of a CLAT to be funded during the lifetime of H or as part of his estate to make payments to the hospital. The H Trust is the mechanism to satisfy the obligation of the CLAT. The H Trust, as of the date of the Fund Agreement and until the death of H, provided for the creation of a testamentary CLAT to pay this outstanding charitable pledge to the hospital facility. That provision of the H Trust became irrevocable at the time of H's death. The Fund Agreement represents a multi-part pledge: one part with the Foundation and a second part with the CLAT funded within the H Trust. H and W are parties to the Fund Agreement in their capacities as trustees of both the Foundation and the H trust.

Under §§ 4946(a)(1)(A), (B), and (D), H and W are disqualified persons with respect to the Foundation because they are substantial contributors, spouses, and trustees. H and W are also disqualified persons with respect to the H Trust, as Settlor, spouse, and trustees.

The CLATs established under the H Trust are split-interest trusts as described in§ 4947(a)(2) because they are not exempt from tax under § 501(a), not all of their unexpired interests are devoted to § 170(c)(2)(B) purposes, and they hold amounts in trust for which a deduction under §§ 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 is allowed. Such trusts are treated as private foundations and subject to excise taxes under §§ 4941, 4943, 4944, and 4945. As creator of the H Trust, H is also deemed to be a substantial contributor to the CLATs pursuant to § 507(d)(2)(A). As his spouse, W is also a disqualified person with regard to the CLATs created on H's death under the H Trust.

Accordingly, H and W are disqualified persons with regard to both the Foundation and the CLATs. Section 4941(a)(1) imposes a tax on each act of self-dealing between a disqualified person and a private foundation. Under § 4941(d)(1)(E) , the term self-dealing includes 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)(1) provides that if a private foundation makes a grant or other payment which satisfies a legal obligation of a disqualified person, that payment or grant will normally constitute an act of self-dealing. Thus, we must examine whether the specified payments by Foundation or CLATs established by the H Trust either (1) are direct or indirect uses of private foundation assets by or for the benefit of a disqualified person, or (2) satisfy legal obligations of H, W, or other disqualified persons.

The Fund Agreement is between the Foundation and the hospital. H and W were acting in their capacities as trustees in entering into the Fund Agreement. This obligation runs from the Foundation to the hospital. It does not personally obligate H or W. Therefore, payment of this obligation does not constitute self-dealing.

The second issue concerns the obligation to fund a CLAT to make specified payments to the hospital for a term of years. The Fund Agreement describes the requirements of the CLAT and the H Trust provided for such a CLAT from that time until the death of H. The documentation submitted establishes that this portion of the obligation runs from the CLAT to the hospital through the trustees of the H Trust. It does not personally obligate H or W. Therefore, payment does not constitute self-dealing by H or W.

In addition to specifying the financial obligations of the Foundation and a CLAT, Fund Agreement also provides that the hospital will be named for the extended family of H and W. Section 53.4941(d)-2(f)(2) 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. 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. Rev. Rul. 73-407, 1973-2 C.B. 383, further interprets the regulation to exclude from self-dealing naming rights by a disqualified person in conjunction with a contribution from a private foundation to a charity as merely an incidental or tenuous benefit to the disqualified person. Therefore, the naming rights are merely incidental or tenuous benefits to disqualified persons and do not constitute acts of self-dealing by H or W under § 4941(a)(1).

Under Museum Agreement, H and W, as trustees, agreed that the Foundation would contribute ten annual installments of $g beginning no later than date3. In addition W, as trustee of the W Trust and settlor of the irrevocable CLAT created in and funded by the W Trust upon W's death, also agreed that the CLAT will make five annual payments of $i to museum beginning within one year of her death. The museum will name a fund for H and W.

The CLAT created in the W Trust is treated as a private foundation under §§ 4941, 4943, 4944, and 4945 and W and H are disqualified persons with regard to such CLAT created upon W's death under the W Trust. Similar to our analysis above, parties to this Agreement are H and W, as trustees of the Foundation, and W, as trustee of the W Trust and settlor of a CLAT described in Rev. Proc. 2007-46. H and W are not personal obligors under the Museum Agreement. While H and W are disqualified persons with respect to the Foundation, payment by the

Foundation does not satisfy a legal obligation of either H or W. Thus, payments pursuant to the Museum Agreement, whether by the Foundation or by a CLAT established in the W Trust, will not constitute acts of self-dealing by H or W under § 4941(a)(1). Naming rights are an incidental and tenuous benefit to H and W pursuant to § 53.4941(d)-2(f)(2) and do not constitute acts of self-dealing by H or W under § 4941(a)(1).

Rulings:

1. The distribution of payments pursuant to the Fund Agreement by an irrevocable CLAT created at the time of H's death will not constitute an act of self-dealing by H or W under § 4941(a)(1).

2. The distribution of payments pursuant to the Museum Agreement by an irrevocable CLAT created at the time of W's death, will not constitute an act of self-dealing by H or W under § 4941(a)(1).

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. If the facts vary in important ways at the time of actual transactions, the involved parties may wish to consider whether a ruling is necessary at that time. 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 does not address the applicability of excise taxes pursuant to §§ 4943 or 4944. It also does not address whether the charitable lead annuity trusts referenced in this ruling meet the requirements under Rev. Proc. 2007-46, 2007-29 I.R.B. 102, or other sections of the Code not within the jurisdiction of this office. 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,

Mary Jo Salins
Manager, Exempt Organizations
Technical Group 4

Enclosure
Notice 437