TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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UIL Number: 4941.04-00
4943.03-00
4944.05-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:
Date1 =
Date2 =
Date3 =
Spouse1 =
Spouse2 =
Corporation =
Partnership =
Territory =
LLC =
$X1 =
$X2 =
$X3 =
Z percent =

Dear :

We have considered your ruling request dated January 9, 2014, submitted by your authorized representative, requesting rulings under I.R.C. §§ 4941, 4943 and 4944.

Facts

You are an organization formed on Date1. On Date2, you received recognition of exemption under § 501(c)(3) and private foundation status under § 509(a). On Date3, your exempt status was automatically revoked for failure to file Form 990-PF for three consecutive years. You have applied for reinstatement of your exempt status, and your application is currently pending. Your purposes are exclusively charitable, scientific, educational and religious. For purposes of this ruling we are assuming that your exemption will be reinstated.

Your sole funders are Spouse1 and Spouse2, a married couple (collectively "Funders"). Funders also serve as your trustees. Once you receive reinstatement of your exempt status, Funders will donate $X1 to you. This sum will be the entirety of your assets. You will use this sum to invest $X1 in Corporation. Corporation is a company incorporated under the laws of Territory and treated as a corporation for U.S. tax purposes. Corporation is a "feeder fund," meaning that multiple investors invest in it with the intent that their money will be invested further. Corporation has represented to you that 95 percent of its income is from interest, dividends, or gains or losses from the sale, exchange, or other disposition of property. Corporation has only voting, participating shares of stock, called Class Y shares. You will buy Class Y shares of stock. Corporation invests nearly all of its assets in Partnership, a company incorporated under the laws of Territory and treated as a partnership for U.S. tax purposes. Partnership holds broadly diversified holdings in fixed securities.

Corporation has net assets of $X2, and Partnership has net assets of $X3. Your proposed investment of the sum of $X1 in Corporation and Partnership amounts to less than Z percent of the net assets of both Corporation and Partnership.

Corporation employs the investment management services of LLC. Customarily, LLC receives a fee from Corporation for its provision of investment management services. Usually, LLC receives 1 percent of the value of the Class Y shares in Corporation and 20 percent of the annual increase in value of the Class Y shares. However, LLC will waive this fee with respect to your investment in Corporation. Thus, Corporation will not pay LLC for LLC's investment management services of your investment.

Spouse1 has ownership interests in Corporation, Partnership, and LLC. An individual retirement account owned by her owns .05 percent of the profit interests, through Class Y shares, in Corporation. Further, an individual retirement account owned by her father owns .1 percent of the profit interests in Corporation. Also, Spouse1 owns 2.7 percent of the profit interests in Partnership. Further, Spouse1, her father, and her descendants hold beneficial interests in trusts that indirectly invest in Partnership. These trusts hold less than 1 percent of the profit interests of Partnership.

Finally, Spouse1 owns, through her holdings in other entities, 30 percent of the profit interests in LLC. First LLC's managing member is a partnership. The general partner of that partnership is a corporation. Spouse1 owns 50 percent of the voting stock in that corporation. Second, she has ownership interests in two other entities that are members of LLC.

Rulings Requested

1) That your acquisitions of Class Y shares in Corporation will not constitute direct or indirect acts of self-dealing within the meaning of § 4941.

2) That direct or indirect co-investment in Corporation by you will not constitute direct or indirect acts of self-dealing within the meaning of § 4941.

3) That your interest in Corporation will not constitute an interest in a business enterprise and therefore will not be "excess business holdings," all within the meaning of § 4943.

4) That our acquisition of Class Y shares in Corporation will not jeopardize the carrying out of any of your exempt purposes within the meaning of § 4944.

Law

I.R.C. § 507(d)(2)(A) defines a substantial contributor as any person who contributed or bequeathed an aggregated 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.

I.R.C. § 512(b)(1) provides that there shall be excluded all dividends, interest, payments with respect to securities loans (as defined in subsection (a)(5)), amounts received or accrued as consideration for entering into agreements to make loans, and annuities, and all deductions directly connected with such income.

I.R.C. § 512(b)(5) excludes in general all gains or losses from the sale, exchange, or other disposition of property.

I.R.C. § 4941 imposes an excise tax on private foundations and foundation managers for each act of self-dealing and between a private foundation and a disqualified person.

I.R.C. § 4941(d)(1) defines self-dealing to include the furnishing of goods, services, or facilities between a disqualified person and a private foundation, the payment of compensation by a private foundation to a disqualified person, or use of the private foundation's assets, by or for the benefit of a disqualified person.

I.R.C. § 4943(a) imposes a ten percent excise tax on the excess business holdings of any private foundation in a business enterprise.

I.R.C. § 4943(c)(1) defines "excess business holdings" as the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

I.R.C. § 4943(c)(2)(A) defines "permitted holdings" as twenty percent of the voting stock of any corporation reduced by the percentage of stock owned by all disqualified persons and states that if disqualified persons together do not own more than 20 percent of the voting stock of an incorporated business enterprise, nonvoting stock held by the private foundation shall also be treated as permitted holdings.

I.R.C. § 4943(c)(2)(B) provides that the permitted holdings are 35 percent if one or more third persons who are not disqualified persons have effective control of the corporation.

I.R.C. § 4943(d)(3) stipulates that "business enterprise" does not include a trade or business where at least ninety-five percent of the gross income is derived from passive sources. For purposes of this section, passive income includes income from the sources described in §§ 512(b)(1), (2), (3), and (5).

I.R.C. § 4944(a)(1) imposes a tax on any amount invested by a private foundation in a manner that jeopardizes the carrying out of any of the foundation's exempt purposes.

I.R.C. § 4946(a)(1) provides, in part, 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,
(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, which is a substantial contributor to the foundation,
(D) a member of the family of any individual described in subparagraph (A), (B), or (C),
(E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,
(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,
(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest.

I.R.C. § 4946(d) defines family member to include a person's spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

Treas. Reg. § 53.4941(d)-1(b)(5) provides in part that an organization is controlled by a private foundation if the foundation or one or more of its foundation managers (acting only in such capacity) may, only by aggregating their votes or positions of authority, require the organization to engage in a transaction which if engaged in with the private foundation would constitute self-dealing.

Treas. Reg. § 53.4941(d)-2(d)(3) provides that the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if they are furnished without charge.

Treas. Reg. § 53.4944-1(a)(2)(i) provides in part an investment shall be considered to jeopardize the carrying out of the exempt purposes of a private foundation if it is determined that the foundation managers, in making such investment, have failed to exercise ordinary business care and prudence, under the facts and circumstances prevailing at the time of making the investment, in providing for the long- and short-term financial needs of the foundation to carry out its exempt purposes. In the exercise of the requisite standard of care and prudence the foundation managers may take into account the expected return (including both income and appreciation of capital), the risks of rising and falling price levels, and the need for diversification within the investment portfolio (for example, with respect to type of security, type of industry, maturity of company, degree of risk and potential for return). The determination whether the investment of a particular amount jeopardizes the carrying out of the exempt purposes of a foundation shall be made on an investment by investment basis, in each case taking into account the foundation's portfolio as a whole. No category of investments shall be treated as a per se violation of § 4944.

Analysis

Ruling 1: That your initial acquisition of Class Y shares in Corporation will not constitute direct or indirect acts of self-dealing within the meaning of § 4941.

Under § 4941(d)(1), self-dealing is defined as the furnishing of goods, services, or facilities between a disqualified person and a private foundation, the payment of compensation by a private foundation to a disqualified person, or use of the private foundation's assets, by or for the benefit of a disqualified person. Your acquisitions of Class Y shares in Corporation will not be acts of self-dealing

Spouse1 and Spouse2 are disqualified persons with respect to you. They donated to you an amount of more than $5,000 that represented more than 2 percent of your total contributions during a recent fiscal year. Thus, under § 507(d)(2)(A), they are substantial contributors, and under § 4946(a)(1)(A) they are disqualified persons. Under, § 4946(f), Spouse1's father and her descendants are disqualified persons as well. Finally, under § 4946(a)(1)(G), trusts benefiting these individuals are disqualified persons.

Corporation is not a disqualified person with respect to you. Under § 4946(a)(1)(E), a corporation in which substantial contributors hold 35 of the voting power is a disqualified person. You represented that Spouse1 owns only .05 percent of profit interests through her indirect ownership of Class Y shares of voting stock. Further, you represented that Spouse1's father has indirect ownership in Corporation amounting .1 percent of the profit interests. You also represent that Corporation issues only voting shares of stock, called Class Y shares, meaning that that a stockholder's profit interests is equal his or her voting rights. Since Spouse1's and her father's combined ownership of voting rights in Corporation is under 35 percent, Corporation is not a disqualified person.

Further, we find that Corporation is not controlled by you under the definition in Treas. Reg. § 53.4941(d)-1(b)(5). You do not have adequate votes or positions of authority with respect to Corporation to cause Corporation to engage in a transaction that, if you undertook, would be an act of self-dealing. Further, LLC's relationship with Corporation does not render Corporation as under LLC's or Spouse1's control. LLC's relationship with Corporation is contractual, involving fee for services, and not a delegation of authority.

Also, Partnership and LLC are not disqualified persons with respect to you. Under § 4946(a)(1)(F), a partnership in which substantial contributors hold 35 of the profits interest is a disqualified person. You represented that Spouse1 owns 2.7 percent of the profits interest in Partnership. You further represented that Spouse1's father and descendants have ownership interests amounting to under 1 percent of the profit interests in Partnership. Since Spouse1's, Spouse1's father's, and Spouse1's descendants' ownership of the profits interest in Partnership combined is under 35 percent, Partnership is not a disqualified person. Further, you represented that Spouse1 owns 30 percent of the profits interest in LLC. Since Spouse1's ownership of the profits interest in LLC is under 35 percent, LLC is not a disqualified person.

You are proposing to buy shares of stock in Corporation. In doing so, you will engage in financial transactions with Corporation. Since Corporation is not a disqualified person, these transactions are not acts of self-dealing.

Also, Corporation will invest in Partnership. This investment amounts to an indirect financial transaction between you and Partnership. Since Partnership is not a disqualified person, this transaction is not an act of indirect self-dealing.

Corporation will pay LLC for its investment management services. Since LLC is not a disqualified person, this transaction is not an act of self-dealing. Further, since LLC intends to waive any fees with respect to your investments, under § 53.4941(d)-2(d)(3), your proposed transaction is not self-dealing.

Your proposal to buy shares of Class Y stock in Corporation does not involve your transacting business with any disqualified person. Accordingly, these actions will not be self-dealing.

Ruling 2: That direct or indirect co-investment in Corporation by you will not constitute direct or indirect acts of self-dealing within the meaning of § 4941.

Under § 4941(d)(1) self-dealing is the furnishing of goods, services, or facilities between a disqualified person and a private foundation, the payment of compensation by a private foundation to a disqualified person, or use of the private foundation's assets, by or for the benefit of a disqualified person. As stated above, Spouse1 and Spouse2 are disqualified persons. Financial transactions between and either of them and you would be self-dealing. However, your plan does not include transactions between yourself and Spouse1 or Spouse2. Rather, you will invest directly and indirectly in entities, in which Spouse1 holds interests. These investments by you as outlined above will not be self-dealing

Ruling 3: That your interest in Corporation will not constitute an interest in a business enterprise and therefore will not be "excess business holdings," all within the meaning of § 4943.

Your plan does not involve your ownership of excess business holdings. Under § 4943(a), a private foundation is subject an excise tax on its excess holdings in a business enterprise. Your holdings in Corporation will not subject you to this tax. Under § 4943(d)(3), the term "business enterprise" does not include an entity where at least ninety-five percent of the gross income is derived from passive sources, and the term passive sources means sources described in §§ 512(b)(1), (2), (3), and (5). Sections 512(b)(1) and (5) exclude all dividends, interest, and gains or losses from the sale, exchange, or other disposition of property. You have represented that Corporation invests substantially all of its income in Partnership and it earns at least ninety-five percent of its gross income from passive sources. Accordingly, Corporation is not a business enterprise for purposes of § 4943 and your ownership in it will not be excess business holdings.

Ruling 4: That our acquisition of Class Y shares in Corporation will not jeopardize the carrying out of any of your exempt purposes within the meaning of § 4944.

Under § 4944(a)(1), a private foundation is subject to tax an if it invests its assets in a manner that jeopardizes its ability to carry out its exempt purposes. Your purchase of stock in Corporation will not subject you to this tax. Section 53.4944-1(a)(2)(i) states that no category of investments is per se jeopardizing. Further, the regulation states that a jeopardizing investment occurs if the foundation managers, in making such investment, failed to exercise ordinary business care and prudence. You indicated that that you will purchase stock in Corporation which will then invest your assets in Partnership. You stated that Partnership has broad diversity of reasonable investments and given the information in the file you have indicated that your trustees have exercised ordinary business care and prudence in their investment of your assets.

Rulings

1) Your initial acquisition of Class Y shares in Corporation will not constitute direct or indirect acts of self-dealing within the meaning of § 4941.

2) Direct or indirect co-investment in Corporation by you will not constitute direct or indirect acts of self-dealing within the meaning of § 4941.

3) Interest in Corporation will not constitute an interest in a business enterprise and therefore will not be "excess business holdings," all within the meaning of § 4943.

4) Your acquisition of Class Y shares in Corporation will not jeopardize the carrying out of any of your exempt purposes within the meaning of § 4944.

These rulings are based on the assumption of your receiving recognition of exemption under § 501(c)(3).

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,

Michael Seto
Manager,
EO Technical

Enclosure
Notice 437