TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Contact Person:

Number: **201448027**
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Identification Number:

Telephone Number:

Employer Identification Number:

Date: September 4, 2014

UIL: 4941.04-00

Legend:

B =
C =
D =
E =
F =
M =

Dear :

This responds to your request for rulings under § 4941 of the Internal Revenue Code and related Foundation and Similar Excise Taxes Regulations. This letter replaces our letter dated August 13, 2014.

Facts

(1) Business and Relationship of Interested Parties

The parties interested in this request are M, B, C, D, E, and F (the "Interested Parties").

M is a non-profit corporation exempt from federal income tax under § 501(a) as an organization described in § 501(c)(3), and is classified as a private foundation within the meaning of § 509(a). M provides funding to other non-profit organizations described in § 501(c)(3).

B is a son of one of M's founders. C is the wife of B. D is the widow of B's deceased brother. E is the widower of a daughter of one of M's founders. F is the wife of E.

Substantial contributors to M include descendants of M's founders, their spouses, and trusts of which one or more of them were grantors or beneficiaries. Accordingly, B, C, D, E, and F, the living descendants of M's founders and their spouses (each a "Family Member" and, collectively, the "Family" or the "Family Members"), trusts in which such individuals hold more than 35 percent of the beneficial interests (collectively, the "Family Trusts"), corporations in which such individuals own more than 35 percent of the total combined voting power (each a

"Family Corporation" and, collectively, the "Family Corporations"), and partnerships and limited liability companies in which such individuals own more than 35 percent of the profits interest (each a "Family Partnership" and, collectively, the "Family Partnerships"), are all disqualified persons (within the meaning of § 4946(a)) with respect to M.

The Family Corporations and Family Partnerships are each sometimes called a "Family Company" and are, collectively, the "Family Companies." The Family Companies, Family Members, and Family Trusts are each sometimes called a "Family Party" and are, collectively, the "Family Parties."

(2) Description of the Transactions

(a) Proposed Estate Plans

B and C have created a trust which will be funded on the death of the first of B and C to die, and which will be held for the benefit of the survivor (the "B/C Trust"). By its terms, the B/C Trust will qualify as a qualified terminable interest property trust, or QTIP Trust, if the required QTIP election is made under § 2056(b)(7). The survivor will have a limited testamentary power of appointment over the assets of the B/C Trust. At the survivor's death, the assets of the B/C Trust over which the survivor has not exercised a power of appointment will pass to M.

D's late spouse created a trust under his will for D's benefit which qualified for the marital deduction for estate tax purposes (the "D Trust"). D has a general power of appointment over the D Trust. Under D's current estate plan, she exercises her general power of appointment over the D Trust in favor of her estate. After the payment of certain specific bequests and all debts, expenses, and taxes, the residue of D's estate will pass to M.

E has created a trust (the "E Trust"), which will receive assets on the death of E, regardless of whether his spouse, F, survives him. If F survives E, the E Trust will qualify as a QTIP Trust if a QTIP election is made with respect thereto. At the death of the survivor of E and F, substantially all of the remaining balance of the E Trust will pass to M.

Hereinafter, the B/C Trust and, if F survives E, the E Trust are referred to, collectively, as the "QTIP Trusts" and, individually, as a "QTIP Trust."

(b) Transactions at Death

(i) Cash Redemptions

(A) Redemptions of Units in Investment Funds

Each of B, C, D, E, and the D Trust is an investor in one or both of two general partnerships in which Family Parties pool their excess cash and invest for the long term (each an "Investment Fund"). Each Investment Fund's assets are all, or substantially all, cash, cash equivalents, and marketable securities. Each investor in an Investment Fund is a partner in the Fund, and his or her ownership interest in the Investment Fund is represented by units (the "Units"). Income of

each Investment Fund is distributed monthly among its partners promptly after the last business day of the applicable month.

i. Required Redemptions on Death

The partnership agreement for each Investment Fund requires the Investment Fund to redeem all of the Units owned by a deceased partner's Estate or a QTIP Trust if those Units, or the proceeds of sale thereof, would otherwise pass to M following the death of such deceased partner or the death of the primary beneficiary of such QTIP Trust, in each case at the net asset value per Unit as of the date of such decedent's death. Payment to a deceased partner's Estate or a QTIP Trust may be made in cash or marketable securities (valued at the date of payment), or partly in each, as the managing partners of the Investment Fund determine, includes interest from the date of the decedent's death at a rate equal to the greater of the mid-term applicable Federal rate under § 1274(d) (the "Mid-Term AFR") as of the date of such decedent's death or the date of payment, and must be made no later than the date the deceased partner's Estate is terminated for Federal income tax purposes (or in the case of a trust, no later than the date the trust is considered subject to § 4947).

ii. Elective Redemptions

At all times when redemption of a deceased partner's or QTIP Trust's Units is not required, the partnership agreement for each Investment Fund allows every partner to elect to have the Investment Fund redeem any one or more of the partner's Units, and allows the Investment Fund to elect to redeem all of every partner's Units, in either case as of the end of any month, at the net asset value per Unit. Payment for the Units redeemed may be made in cash or marketable securities (valued at the date of payment), or partly in each, as the managing partners of the Investment Fund determine, and must be made within seven business days of the end of the applicable month. A partner is not entitled to profits earned on redeemed Units after the end of the month with respect to which such redemption occurs.

(B) Other Cash Redemptions

To provide greater flexibility, the governing documents of one or more Family Corporations may be amended, either before or after the death of any of the Interested Parties, to provide that the Family Corporation will offer to redeem any interest held by the decedent or by a trust of which such decedent is a primary beneficiary, and to redeem all of the securities of the same class as that held by the decedent or trust, in a transaction which is intended to constitute a redemption within the meaning of § 4941(d)(2)(F) and § 53.4941(d)-3(d). The purchase price payable by any Family Corporation to a redeeming shareholder for each share of stock being redeemed will be equal to the fair market value of all of the shares of the same class of stock as such share divided by the number of all of the shares of the same class of stock outstanding (the "Redemption Price"), together with interest from the date of the decedent's death to the date of payment at the greater of the Mid-Term AFR at the date of the decedent's death or the Mid-Term AFR at the date of payment. The Redemption Price of each share of stock payable pursuant to such redemption will be the same, regardless of the percentage of the outstanding shares of such class of stock owned by the redeeming owner.

(ii) Sale of Optioned Assets

(A) Optioned Assets

i. Demand Loans

Each of B, C, D, E, and the D Trust has made loans to a Family Partnership which acts as a depository of the lenders' excess cash and invests the borrowed funds in short-term debt instruments and other loans approved by its manager (the "Cash Fund"). Each loan to the Cash Fund is repayable on demand (each a "Demand Loan"). Every lender to the Cash Fund may require repayment of any or all of the amount loaned, together with accrued interest, at any time, and the Cash Fund may elect to repay the amount owed to every or any lender at any time. In addition, there exists with respect to each Demand Loan an agreement granting the Cash Fund the option to purchase that Demand Loan upon the lender's death (or, in the case of a trust, upon the death of the primary beneficiary thereof).

ii. Restricted Securities and Family Assets

B, C, D, and E, individually or through revocable trusts that become irrevocable at death, and the D Trust, each currently owns some or all of the following assets with respect to each of which there exists an agreement (each an "Option Agreement") granting one or more Family Parties the option to purchase that asset: stock in a publicly traded corporation in which one or more Family Members serve on the board of directors (each a "Restricted Security" and, collectively, the "Restricted Securities"), an equity interest in a Family Company which is substantially or entirely owned by Family Parties (each a "Family Interest"), a non-controlling, non-marketable interest in a closely held partnership or limited liability company which is substantially owned by individuals or entities which are not Family Parties (each a "Non-Family Interest"), an interest in real estate (each a "Real Estate Interest") or an interest in tangible personal property (each a "Tangible Personal Property Interest") (each Family Interest, Non-Family Interest, Real Estate Interest, and Tangible Personal Property Interest which is subject to such an agreement is sometimes called a "Family Asset," and all such interests are sometimes collectively called the "Family Assets"). In several cases where a Family Asset is an interest in a Family Partnership, the option holder under the applicable Option Agreement is the Family Partnership and the Family Partnership's option to purchase that interest constitutes a right of redemption. Generally, the option holder with respect to each Restricted Security and each Family Asset may transfer the option to one or more other Family Parties, subject to any restrictions on transfer imposed under any agreement that is binding on the option holder. The Option Agreements do not restrict lifetime sales of any Restricted Security or Family Asset.

(B) Exercise of Options

Each option on a Demand Loan, Restricted Security, or Family Asset is exercisable beginning on the date of death of the owner thereof (or, if owned by the D Trust, the B/C Trust, or the E Trust, on the date of D's, B's, C's, E's, or F's death, respectively).

The period during which each option on a Demand Loan may be exercised ends 60 days after the Cash Fund has been notified by the Estate representative of the outstanding balance thereof (including principal and accrued unpaid interest) and of the interest rate to be used in determining the per diem interest from the date such notice is given.

Each option on a Restricted Security, which, because of restrictions imposed by the Federal securities law, may be sold only during certain limited time periods (each a "Window Period"), is exercisable within 120 days after the decedent's death, and the sale must take place on the first business day of the first Window Period that is at least 10 days after the date the option is exercised.

The period during which each option on a Family Asset may be exercised ends 60 days after the option holder has been notified of the filing of the Federal estate tax return for the decedent's estate.

When an option is exercised, the Estate representative is required to sell the Demand Loan, Restricted Security, or Family Asset to which the option applies (the "Optioned" Demand Loan, Restricted Security, or Family Asset) in accordance with the terms of the applicable option, and the sale must be closed within 30 days after the exercise. It is expected that each option on a Demand Loan, Restricted Security, or Family Asset will be exercised in a timely manner; thus, the exercise of these options is part of the proposed transaction.

(C) Purchase Price

The purchase price for each Optioned Demand Loan is the outstanding balance, principal, and accrued unpaid interest as of the date the required notice is given by the Estate representative to the Cash Fund, plus per diem interest accruing from the date such notice is given until the date the sale is closed.

The purchase price for each Optioned Restricted Security is the fair market value of the Restricted Security on the day the sale is closed determined as provided in § 20.2031-2 and without any discount due to the restrictions that limit sales to Window Periods.

The purchase price for each Optioned Family Asset (whether it is sold or redeemed) is equal to the fair market value of the Family Asset as finally determined for Federal estate tax purposes. Initially the purchase price is based on the value of the Optioned Family Asset as reported on the estate tax return, with a later adjustment, upwards or downwards, if the value as so reported differs from the value of that Family Asset as finally determined. If the Optioned Family Asset is an interest in a pass-through entity, the purchase price is adjusted to reflect any cash transactions (such as capital contributions made by the decedent's estate, distributions made to the decedent's estate, and income tax payments made by the decedent's estate with respect to its distributive share of income accrued after the decedent's death) that occur between the date of the decedent's death and the date of closing so that, as nearly as possible, the parties will be in the same economic position as if the sale had occurred on the date of the decedent's death.

(D) Payment of Purchase Price

If an option to purchase a Demand Loan, Restricted Security, Real Estate Interest, or Tangible Personal Property Interest is exercised, the purchase price is payable solely in cash.

Upon the exercise of an option to purchase a Family Interest or a Non-Family Interest, the transaction is effective as of the date of the decedent's death, and the purchase price is payable at the election of the purchaser either in cash or in equal, annual installments under the purchaser's negotiable promissory note, with the first payment due on the date of the closing and the remaining payments due annually for 9 or 29 years, respectively. A note issued pursuant to a redemption of a Family Interest or a Non-Family Interest is referred to as a "Company Note." Any other note issued with respect to a Family Interest or Non-Family Interest is referred to as a "Family Note."

(E) The Notes

The Family Notes and the Company Notes (each a "Note" and, collectively, the "Notes") all bear interest from the date of the closing of the transaction, payable annually. Interest that accrues from the date of the decedent's death through the date of the closing is payable at the closing. In the case of a note with a 9-year term, the interest rate is equal to the greater of ten percent, the long-term applicable Federal rate under § 1274(d) (the "Long-Term AFR") at the decedent's death, or the Long-Term AFR on the date the Note is delivered to the seller. In the case of a note with a 29-year term, the interest rate is equal to the following: (A) for the first five years after the date of the decedent's death, at the greater of (1) the Long-Term AFR at the date of the decedent's death or (2) the Long-Term AFR on the date the Note is delivered to the seller; (B) for the next five years (i.e., years 6 through 10), at the greater of the rate under clause (A) or eight percent; (C) for the next ten years (i.e., years 11 through 20), at the greater of the rate under clause (A) or ten percent; and (D) for the next nine years (i.e., years 21 through 29), at the greater of the rate under clause (A) or twelve percent. The increasing interest rate is intended to encourage prepayment of the Note by the obligor.

If the fair market value of any Optioned Family Asset as reported on the decedent's Federal estate tax return differs from the fair market value thereof as finally determined for Federal estate tax purposes, then the purchase price for that Optioned Family Asset, and the remaining annual payments due under any Note with respect to the purchase, are adjusted accordingly. In addition, in the case of an increase in the purchase price, the purchaser will make an immediate cash payment to the seller equal to the excess of the cash that the purchaser would have paid through the date of payment if the initial purchase price would have been equal to the increased purchase price, over the cash the purchaser has actually paid.

Each Note may be prepaid in whole or in part at any time, without any premium or penalty. The obligor under each Family Note is required to pay to the holder of that Note, as a mandatory prepayment of the principal due on that Note, (A) fifty percent of any ordinary cash distribution received with respect to the Family Interest or Non-Family Interest purchased, (B) one hundred percent of any extraordinary cash distribution received with respect to that Interest, and (C) one hundred percent of the cash received from any sale or exchange of that Interest.

Each Family Note is secured by a pledge of the Family Interest or Non-Family Interest that is being purchased and contains customary commercial terms to protect the Note holder if the Note goes into default.

Each Company Note is an unsecured obligation of the purchasing Company.

(3) Representations

For purposes of this ruling request, the Interested Parties represent that:

(a) Under the current estate plans of B, C, D, and E, M will have an "interest or expectancy" (as that term is used in § 53.4941(d)-1(b)(3)) in property held by his or her Estate.

(b) No charitable deduction was claimed by, or allowed to, the estate of the late spouse of D with respect to property that passed to the D Trust. Under D's current estate plan, M will have an "interest or expectancy" in the D Trust beginning on the date of her death on account of her exercise of her general power of appointment over the assets thereof in favor of her Estate.

(c) Under the current estate plans of B and C, (i) M will have an "interest or expectancy" in the B/C Trust during the lifetime of the survivor and at the survivor's death, and (ii) no deduction will be allowable under § 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 with respect to any assets passing to the B/C Trust on account of the death of the first to die.

(d) Under E's current estate plan, (i) M will have an "interest or expectancy" in the E Trust during F's lifetime and at her death (if F survives E), and (ii) no deduction will be allowable under § 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 with respect to any assets passing to the E Trust on account of E's death if F survives E.

(e) In any redemption of Units in an Investment Fund, payment will be made to the redeeming Estate or Trust during the calendar year with respect to which the redemption occurs, and there will be no extension of credit between the Investment Fund and such redeeming Estate or Trust on January 1 of the year after which the redemption occurs.

(f) Where the parties are relying on § 53.4941(d)-1(b)(3) in order for a transaction between a Family Party (on the one hand) and the Estate of B, C, D, or E following his or her death, the D Trust following D's death, the B/C Trust following the death of the survivor of B and C, or the E Trust following the death of the survivor of E and F (on the other), not to constitute indirect self-dealing with respect to M's interest or expectancy in property held by such Estate or Trust—

(i) The executor of the Estate or the trustee of such Trust will either:
  (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 such Estate or Trust;
(ii) Such transaction will be submitted to the probate court having jurisdiction over such

Estate or Trust (or to another court having jurisdiction over such Estate or Trust, or over M) for court approval;
(iii) Such transaction will occur before such Estate is considered terminated for Federal income tax purposes pursuant to paragraph (a) of § 1.641(b)-3 (or, in the case of a Trust, before it is considered subject to § 4947);
(iv) Such Estate or Trust will receive an amount which equals or exceeds the fair market value of M's interest or expectancy in the property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by such Estate or Trust; and
(v) The transaction will either:
(A) Result in M receiving an interest or expectancy at least as liquid as the one it gave up; or
(B) Be required under the terms of any option which is binding on such Estate or Trust.

Rulings Requested

M, on its own behalf and on behalf of the other Interested Parties, requests the following rulings:

1. The redemption by any Family Corporation of the interest in such Family Corporation held by the decedent's Estate or the D Trust, the B/C Trust, or the E Trust for the Redemption Price will constitute a redemption within the meaning of § 4941(d)(2)(F) and § 53.4941(d)-3(d), and will not be an act of self-dealing under § 4941, so long as such Family Corporation offers to redeem all interests held by others that are of the same class as that held (prior to the redemption) by such Estate or Trust on the same terms, such Estate or Trust receives no less than fair market value for the interest redeemed, and there is no extension of credit between such Family Corporation and such Estate or Trust on January 1 of the year after the year in which the redemption occurred.

2. The estate administration exception to indirect self-dealing set forth in § 53.4941(d)-1(b)(3) will be available:
   a. Following the death of each of B, C, D, E, and F, to such decedent's Estate;
   b. Following the death of D, to the D Trust;
   c. Following the death of the survivor of B and C, to the B/C Trust; and
   d. Following the death of the survivor of E and F, to the E Trust.

3. Where the executor of a decedent's Estate or the trustee of the D Trust, the B/C Trust, or the E Trust is required to sell Units in an Investment Fund or any Demand Loan, Restricted Securities, Family Asset, or other property held by such decedent's Estate or Trust pursuant to an option or redemption agreement subject to which such property was acquired by the Estate or Trust which is binding thereon, the redemption of the property or sale of the property to the option holder will not constitute an act of indirect self-dealing under § 4941 if the transaction is approved by the probate court having jurisdiction over the Estate or by another court having jurisdiction over the Estate, such Trust, or M, the transaction occurs before such decedent's Estate is considered terminated for Federal income tax purposes pursuant to paragraph (a) of § 1.641(b)-3

(or in the case of a Trust, before it is considered subject to § 4947), and the transaction results in the decedent's Estate or such Trust receiving cash or a Note, or both, with an aggregate value equal to or exceeding the fair market value of M's interest or expectancy in such property at the time of the transaction, taking into account the terms of the option subject to which the property was acquired by the Estate or Trust.

4. The distribution from a decedent's Estate to M of any Note which was received by such Estate during the administration thereof in a transaction meeting all of the requirements of § 53.4941(d)-1(b)(3) and M's receipt of the same, its holding of any such Note, and its receipt of any payments under such Note will not constitute an act of direct or indirect self-dealing under § 4941.

5. None of the following will constitute an act of direct or indirect self-dealing under § 4941:
   a. The distribution from a decedent's Estate to a QTIP Trust and the receipt by such Trust of a Note which was received by such Estate during the administration thereof in a transaction meeting all the requirements of § 53.4941(d)-1(b)(3), such Trust's holding of such Note during the lifetime of the surviving spouse, or the receipt by such Trust of any payments under such Note; or
   b. The distribution from such Trust to M of any Note which was received by such Trust during the administration of an Estate, in a transaction meeting all of the requirements of § 53.4941(d)-1(b)(3), and M's receipt of the same, its holding of any such Note, or its receipt of any payments under any such Note.

Law

I.R.C. § 501(a) of the Internal Revenue Code exempts from Federal income taxation organizations described in § 501(c).

I.R.C. § 501(c)(3) describes organizations organized and operated exclusively for charitable and other specified exempt purposes.

I.R.C. § 509(a) provides that, unless specifically excepted, any organization described in § 501(c)(3) is a private foundation.

I.R.C. § 4941(a) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. The initial tax is equal to ten percent of the amount involved in the act of self-dealing for each year (or part thereof) in the taxable period.

I.R.C. § 4941(b) imposes an additional tax equal to 200 percent of the amount involved in the act of self-dealing if the act is not corrected within the taxable period.

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

I.R.C. § 4941(d)(1)(B) provides that the term "self-dealing" means any direct or indirect lending of money or other extension of credit between a private foundation and a disqualified person.

I.R.C. § 4941(d)(2)(F) provides that, for purposes of paragraph (1), any transaction between a private foundation and a corporation which is a disqualified person (as defined in § 4946(a)), pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value.

I.R.C. § 4946(a)(1) 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,
    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),
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, and
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(a)(2) provides that the term "substantial contributor" means a person who is described in § 507(d)(2), (i.e., a person who contributed or bequeathed an aggregate amount of more than $5,000 to the 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. § 4946(b)(1) provides that the term "foundation manager" means, with respect to any private foundation, 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).

I.R.C. § 4946(d) 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.

I.R.C. § 4947(a)(1) provides that, for purposes of Chapter 42, a trust which is not exempt from tax under § 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in § 170(c)(2)(B), and for which a deduction was allowed under § 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, shall be treated as an organization described in § 501(c)(3).

I.R.C. § 4947(a)(2) provides, in part, that, in the case of 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 of the purposes described in § 170(c)(2)(B), 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, certain provisions of the Code, including § 4941, shall apply as if such trust were a private foundation. This paragraph shall not apply with respect to—

A. any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under § 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B);
B. any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such other amounts are segregated from amounts for which no deduction was allowable; or
C. any amounts transferred in trust before May 27, 1969.

Treas. Reg. § 53.4941(d)-1(a) provides that, for purposes of § 4941, the term "self-dealing" means any direct or indirect transaction described in § 53.4941(d)-2.

Treas. Reg. § 53.4941(d)-1(b)(3) 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 § 1.641(b)-3 (or in the case of a revocable trust, before it is considered subject to § 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).

Treas. Reg. § 53.4941(d)-1(b)(7) provides that the term "indirect self-dealing" does not include a

transaction involving one or more disqualified persons to which a private foundation is not a party, in any case in which the private foundation, by reason of § 4941(d)(2), could itself engage in such a transaction.

Treas. Reg. § 53.4941(d)-1(b)(8) provides examples to illustrate the provisions of this paragraph (b). In *Example (4)*, A, a substantial contributor to P, a private foundation, bequeathed one-half of his estate to his spouse and one-half of his estate to P. Included in A's estate is one-third interest in AB, a partnership. The other two-thirds interest in AB is owned by B, a disqualified person with respect to P. The one-third interest in AB was subject to an option agreement when it was acquired by the estate. The executor of A's estate sells the one-third interest in AB to B pursuant to such option agreement at the price fixed in such option agreement in a sale which meets the requirements of § 53.4941(d)-1(b)(3). Under these circumstances, the sale does not constitute an indirect act of self-dealing between B and P.

Treas. Reg. § 53.4941(d)-2(c)(1) provides that, except in the case of the receipt and holding of a note pursuant to a transaction described in § 53.4941(d)-1(b)(3), an act of self-dealing occurs 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.

Treas. Reg. § 53.4941(d)-3(d)(1) provides that, for purposes of § 4941(d)(2)(F), any transaction between a private foundation and a corporation which is a disqualified person will not be an act of self-dealing if such transaction is engaged in pursuant to a liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, so long as all the securities of the same class as that held (prior to such transaction) by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value. For purposes of this paragraph, all of the securities are not subject to the same terms unless, pursuant to such transaction, the corporation makes a bona fide offer on a uniform basis to the foundation and every other person who holds such securities.

Treas. Reg. § 53.4941(d)-3(d)(2) provides examples to illustrate the provisions of the previous paragraph. In *Example (2)*, private foundation Y, which is on a calendar year basis, acquires 60 percent of the class A preferred stock of corporation N by will on January 10, 1970. N, which is also on a calendar year basis, is a disqualified person with respect to Y. In 1971, N offers to redeem all of the class A preferred stock for a consideration equal to 100 percent of the face amount of such stock by the issuance of debentures. The offer expires January 2, 1972. Both Y and all other holders of the class A preferred stock accept the offer and enter into the transaction on January 2, 1972, at which time it is determined that the fair market value of the debentures is no less than the fair market value of the preferred stock. The transaction on January 2, 1972, shall not be treated as an act of self-dealing for 1972. However, because under § 53.4941(e)-1(e)(1)(i) an act of self-dealing occurs on the first day of each taxable year or portion of a taxable year that an extension of credit from a foundation to a disqualified person goes uncorrected, if such debentures are held by Y after December 31, 1972, except as provided in § 53.4941(d)-4(c)(4), such extension of credit shall not be excepted from the definition of an act of self-dealing by reason of the January 2, 1972, transaction.

Treas. Reg. § 53.4941(e)-1(e)(1)(i) provides that if a transaction between a private foundation

and a disqualified person is determined to be self-dealing (as defined in § 4941(d)), for purposes of § 4941 there is generally one act of self-dealing. If, however, such transaction relates to the leasing of property, the lending of money or other extension of credit, other use of money or property, or payment of compensation, the transaction will generally be treated (for purposes of § 4941 but not § 507 or § 6684) as giving rise to an act of self-dealing on the day the transaction occurs plus an act of self-dealing of the first day of each taxable year or portion of a taxable year which is within the taxable period and which begins after the taxable year in which the transaction occurs.

Treas. Reg. § 53.4941(e)-1(f) provides that, for purposes of §§ 53.4941(a)-1 through 53.4941(f)-1, fair market value shall be determined pursuant to the provisions of § 53.4942(a)-2(c)(4).

Treas. Reg. § 53.4947-1(a) provides that the basic purpose of § 4947 is to prevent trusts which are not exempt from tax under § 501(a), all or part of the unexpired interests in which are devoted to one or more of the purposes described in § 170(c)(2)(B), and which have amounts in trust for which a deduction was allowed under § 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522, from being used to avoid the requirements and restrictions applicable to private foundations. For purposes of this section, a trust shall be presumed (in the absence of proof to the contrary) to have amounts in trust for which a deduction was allowed under § 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 if a deduction would have been allowable under one of these sections.

Treas. Reg. § 53.4947-1(b)(1)(i) provides that, for purposes of this section and § 53.4947-2, a "charitable trust," within the meaning of § 4947(a)(1), is a trust which is not exempt from taxation under § 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in § 170(c)(2)(B), and for which a deduction was allowed under § 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522. A charitable trust (as defined in this paragraph) shall be treated as an organization described in § 501(c)(3), and, if it is determined under § 509 that the trust is a private foundation, then Chapter 42, including § 4941, shall apply to the trust.

Treas. Reg. § 53.4947-1(b)(2)(ii)(A) provides that when an estate from which the executor or administrator is required to distribute all of the net assets in trust for charitable beneficiaries, or free of trust to such beneficiaries, is considered terminated for Federal income tax purposes under § 1.641(b)-3(a), then the estate will be treated as a charitable trust under § 4947(a)(1) between the date on which the estate is considered terminated under § 1.641(b)-3(a) and the date final distribution of all of the net assets is made to or for the benefit of the charitable beneficiaries.

Treas. Reg. § 53.4947-1(b)(2)(iv) provides, in part, that, for purposes of this paragraph, the term "reasonable period of settlement" means that period reasonably required (or, if shorter, actually required) by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust. These duties include, for example, the collection of assets, the payment of debts, taxes, and distributions, and the determination of the rights of the subsequent beneficiaries.

Treas. Reg. § 53.4947-1(b)(2)(v) provides that a revocable trust that becomes irrevocable upon the death of the decedent-grantor, or a trust created by will, from which the trustee is required to distribute all of the net assets in trust for, or free of trust to, charitable beneficiaries is not considered a charitable trust under § 4947(a)(1) for a reasonable period of settlement (within the meaning of paragraph (b)(2)(iv) of this section) after becoming irrevocable. After that period, the trust is considered a charitable trust under § 4947(a)(1).

Treas. Reg. § 53.4947-1(b)(2)(vi) provides that a revocable trust that becomes irrevocable upon the death of the decedent-grantor in which all of the unexpired interests are charitable and under the terms of the governing instrument of which the trustee is required to hold some or all of the net assets in trust after becoming irrevocable solely for charitable beneficiaries is not considered a trust under § 4947(a)(1) for a reasonable period of settlement (within the meaning of paragraph (b)(2)(iv) of this section) after becoming irrevocable except that § 4941 may apply if the requirements of § 53.4941(d)-1(b)(3) are not met. After that period, the trust is considered a charitable trust under § 4947(a)(1).

Treas. Reg. § 53.4947-1(c)(1)(i) provides that, for purposes of this section and § 53.4947-2, a "split-interest trust," within the meaning of § 4947(a)(2), is a trust which is not exempt from taxation under § 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in § 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under § 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522.

Treas. Reg. § 53.4947-1(c)(1)(ii) provides that a split-interest trust is, with certain exceptions, subject to the provisions of § 4941 in the same manner as if such trust were a private foundation.

Treas. Reg. § 53.4947-1(c)(6)(ii) provides that when an estate from which the executor or administrator is required to distribute all of the net assets in trust or free of trust to both charitable and non-charitable beneficiaries is considered terminated for Federal income tax purposes under § 1.641(b)-3(a), then the estate will be treated as a split-interest trust under § 4947(a)(2) (or a charitable trust under § 4947(a)(1), if applicable) between the date on which the estate is considered terminated under § 1.641(b)-3(a) and the date on which final distribution of the net assets to the last remaining charitable beneficiary is made.

Treas. Reg. § 53.4947-1(c)(6)(iii) provides that a revocable trust that becomes irrevocable upon the death of the decedent-grantor under the terms of the governing instrument of which the trustee is required to hold some or all of the net assets in trust after becoming irrevocable for both charitable and non-charitable beneficiaries is not considered a split-interest trust under § 4947(a)(2) for a reasonable period of settlement after becoming irrevocable, except that § 4941 may apply if the requirements of § 53.4941(d)-1(b)(3) are not met. After that period, the trust is considered a split-interest trust under § 4947(a)(2). For the purposes of this (iii), the term "reasonable period of settlement" means that period reasonably required (or, if shorter, actually required) by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust. These duties include, for example, the collection of assets, the payment of debts, taxes, and distributions, and the determination of rights of the subsequent beneficiaries.

Analysis

M is a private foundation, within the meaning of § 509(a), by reason of the nature of its support. Each of the Family Parties is a disqualified person, within the meaning of § 4946(a), with respect to M.

Section 4941(a) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(A) and (B) provide that self-dealing includes a direct or indirect sale or exchange, or leasing, of property, or lending of money or other extension of credit, between a private foundation and a disqualified person. While neither the Code nor the regulations defines the term "indirect self-dealing," § 53.4941(d)-1(b) describes certain transactions that are specifically excluded from indirect self-dealing.

Ruling (1)

I.R.C. § 4941(d)(2)(F) and Treas. Reg. § 53.4941(d)-3(d)(1) provide that a stock redemption between a private foundation and a corporation is not an act of self-dealing so long as the corporation makes a bona fide offer on a uniform basis to redeem the stock held by the foundation and the stock of the same class held by every other stockholder, and the foundation receives no less than the fair market value of its stock.

Under the provisions of § 53.4941(d)-1(b)(7), a disqualified person may do whatever a private foundation could do by reason of § 4941(d)(2)(F) without being in violation of indirect self-dealing under § 4941(d)(1).

The redemption by any Family Corporation of the interest in that Corporation held by a decedent's Estate, the D Trust, the B/C Trust, or the E Trust will not constitute an act of indirect self-dealing and need not comply with § 53.4941(d)-1(b)(3) so long as the Corporation offers to redeem all interests held by every other person that are of the same class as that held (prior to the redemption) by the Estate or Trust on the same terms, the Estate or Trust receives the Redemption Price for its interest, and there is no extension of credit with respect to the redeemed interest between the Estate or such Trust and such Family Corporation on January 1 of the year following the year in which the redemption occurred.

Ruling (2)

Treas. Reg. § 53.4941(d)-1(b) describes certain transactions that will not be treated as indirect self-dealing, among which are certain transactions during the administration of an estate or trust. Specifically, § 53.4941(d)-1(b)(3), commonly referred to as the "estate administration exception," provides that indirect self-dealing does not include a transaction with respect to a private foundation's interest or expectancy in property held by an estate or a revocable trust that has become irrevocable at the grantor's death if the following five conditions are satisfied: (i) the administrator or executor of the estate or the trustee of the trust either possesses a power of sale with respect to the property, has the power to allocate the property to another beneficiary, or is required to sell the property under the terms of any option subject to which the property

was acquired by the estate (or trust); (ii) 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); (iii) the transaction occurs before the estate is considered terminated for Federal income tax purposes (or before the trust is considered subject to § 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) the transaction results in the foundation either receiving an interest or expectancy at least as liquid as the one it gave up or an asset related to the active carrying out of its exempt purposes, or is required under the terms of any option which is binding on the estate (or trust).

This estate administration exception applies to transactions with respect to a private foundation's "interest or expectancy" in property held by an estate (or a revocable trust that has become irrevocable at the grantor's death). The reference in § 53.4941(d)-1(b)(3) to a "revocable trust, including a trust which has become irrevocable on a grantor's death," is intended to include certain other trusts where the assets of the trust are included in the decedent's gross estate. On D's death, the D Trust will be included in D's gross estate. The B/C Trust will be included in the gross estate of the survivor of B and C. Likewise, the E Trust will be included in the gross estate of the survivor of E and F.

The regulations do not address the issue of when a private foundation has an "interest or expectancy" in property held by an estate or a trust. Therefore, solely for purposes of this ruling request, and based on the understanding that the determination of when M will have an "interest or expectancy" in property held by the Estate of any Interested Party or by the D Trust, the B/C Trust, or the E Trust is to be made under the law of the state of M's incorporation, each of B, C, D, and E has represented that, under his or her current estate plan, M will have an "interest or expectancy" in property held by his or her Estate, D has represented that M will have an "interest or expectancy" in property held in the D Trust after her death, B and C have represented that M will have an "interest or expectancy" in the B/C Trust during the lifetime of the survivor of B and C and after his or her death, and E has represented that M will have an "interest or expectancy" in the E Trust beginning with E's death.

In order for a transaction between the D Trust, the B/C Trust, or the E Trust and a disqualified person with respect to M to meet the estate administration exception under § 53.4941(d)-1(b)(3), the transaction must occur before the trust is considered subject to § 4947. Section 4947 apples to only two types of trusts: charitable trusts described in § 53.4947-1(b)(1)(i) and split-interest trusts described in § 53.4947-1(c)(1)(i). A charitable trust is a trust for which, among other requirements, a deduction was allowed under § 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522. A split-interest trust is a trust which, among other requirements, has amounts in trust for which a deduction was allowed under § 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522. The element common to both charitable trusts and split-interest trusts is that it has amounts in trust for which a charitable deduction has been allowed, whether it be for income, gift, or estate tax purposes. Section 4947 does not apply to a trust for which no charitable deduction has been allowed.

D has represented that no charitable deduction was claimed by, or allowed to, her late

husband's estate with respect to property that passed to the D Trust. Therefore, the D Trust is not subject to § 4947 during D's lifetime. Likewise, each of B, C, and E has represented that if he or she is survived by his or her spouse, no charitable deduction will be claimed by, or allowable to, his or her estate with respect to any property that passes to his or her spouse's QTIP Trust. Therefore, the B/C Trust will not be subject to § 4947 during the lifetime of the survivor of B and C, and the E Trust will not be subject to § 4947 during F's lifetime.

On the death of the survivor of B and C, unless he or she designates otherwise, the B/C Trust will be distributable solely to charitable beneficiaries. Under § 53.4947-1(b)(2)(v), the B/C Trust will not be considered a charitable trust under § 4947(a)(1) for a reasonable period of settlement after the survivor's death. Likewise, the E Trust will not be considered a charitable trust under § 4947(a)(1) for a reasonable period after the death of the survivor of E and F.

Thus, based on the above representations, the estate administration exception to indirect self-dealing under § 53.4941(d)-1(b)(3) will be available with respect to any property held in the Estate of each of B, C, D, and E, the D Trust following D's death, the B/C Trust following the death of the survivor of B and C, and the E Trust following the death of the survivor of E and F.

Ruling (3)

Where the sale of property from a decedent's estate or a trust to a disqualified person meets all of the requirements of § 53.4941(d)-1(b)(3), § 53.4941(d)-2(c)(1) specifically excepts the receipt and holding of the purchaser's note by a private foundation from the definition of self-dealing.

The Interested Parties have represented that in the case of any transaction between a Family Party (on the one hand) and an Estate, the D Trust following D's death, the B/C Trust following the death of the survivor of B and C, or the E Trust following the death of the survivor of E and F (on the other) which would otherwise constitute indirect self-dealing, all of the requirements of § 53.4941-1(b)(3) will be met.

With respect to each transaction meeting the requirements of § 53.4941(d)-1(b)(3) where the executor or trustee is required to sell a Demand Loan, Units in an Investment Fund, any Restricted Securities, or any Family Asset or other property pursuant to an option or redemption agreement subject to which such property was acquired by the Estate or Trust and which is binding on the Estate or Trust, the Interested Parties have represented that the Estate or Trust will receive, in exchange, cash or the purchaser's Note, or both, in an amount which equals or exceeds the fair market value of M's interest or expectancy in such property at the time of the transaction, taking into account the terms of the option subject to which such property was acquired by the Estate or Trust.

Based on these representations, the proposed transactions, including the sale or redemption of any property held in an Estate, the D Trust, the B/C Trust, or the E Trust to the option holder for cash or the purchaser's Note, or both, each of which is required under an option or redemption agreement which is binding on such Estate or Trust, will meet all of the five conditions specified in § 53.4941(d)-1(b)(3) and, therefore, none of said transactions will be treated as an act of indirect self-dealing between M and a disqualified person.

Rulings (4) and (5)

I.R.C. § 53.4941(d)-2(c)(1) provides that, except in the case of the receipt and holding of a note pursuant to a transaction described in § 53.4941(d)-1(b)(3), an act of self-dealing occurs 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.

The Interested Parties have represented that each transaction by the executor of a decedent's Estate, or by the trustee of the D Trust, the B/C Trust, or the E Trust, with respect to M's interest or expectancy in property held by such Estate or Trust whereby the Estate or such Trust receives in exchange a note the obligor of which is a disqualified person with respect to M will meet all of the requirements of § 53.4941(d)-1(b)(3). Based on these representations, the distribution by an Estate, the D Trust, the B/C Trust, or the E Trust to M of any Family Note or Company Note, M's receipt of the same, and the holding of and receipt by M of payments under any such Note, will not constitute an act of direct or indirect self-dealing under § 4941.

Similarly, the distribution by the Estate of the first to die of B and C or by E's Estate to, and the receipt by, the B/C Trust or the E Trust, respectively, of any Family Note or Company Note, the holding of and the receipt of payments under any such Note by such QTIP Trust, and the distribution by such QTIP Trust to M of any such Note, M's receipt of the same, and its receipt and holding of payments under such Note, will not constitute an act of direct or indirect self-dealing under § 4941 where the transaction has been approved by a local state court and is otherwise excepted from self-dealing under § 53.4941(d)-1(b)(3).

Conclusion

In light of the above, we rule as follows:

1. The redemption by any Family Corporation of the interest in such Family Corporation held by the decedent's Estate or by the D Trust, the B/C Trust, or the E Trust for the Redemption Price will constitute a redemption within the meaning of § 4941(d)(2)(F) and § 53.4941(d)-3(d), and will not be an act of self-dealing under § 4941, so long as such Family Corporation offers to redeem all interests held by others that are of the same class as that held (prior to the redemption) by such Estate or Trust on the same terms, such Estate or Trust receives no less than fair market value for the interest redeemed, and there is no extension of credit between such Family Corporation and such Estate or Trust on January 1 of the year after the year in which the redemption occurred.

2. The estate administration exception to indirect self-dealing set forth in § 53.4941(d)-1(b)(3) will be available:
    a. Following the death of each of B, C, D, E, and F, to such decedent's Estate;
    b. Following the death of D, to the D Trust;
    c. Following the death of the survivor of B and C, to the B/C Trust; and
    d. Following the death of the survivor of E and F, to the E Trust.

3. Where the executor of a decedent's Estate or the trustee of the D Trust, the B/C Trust, or the E Trust is required to sell Units in an Investment Fund or any Demand Loan, Restricted Securities, Family Asset, or other property held by such decedent's Estate or Trust pursuant to an option or redemption agreement subject to which such property was acquired by the Estate or Trust which is binding thereon, the redemption of the property or sale of the property to the option holder will not constitute an act of indirect self-dealing under § 4941 if the transaction is approved by the probate court having jurisdiction over the Estate or by another court having jurisdiction over the Estate, such Trust, or M, the transaction occurs before such decedent's Estate is considered terminated for Federal income tax purposes pursuant to paragraph (a) of § 1.641(b)-3 (or in the case of a Trust, before it is considered subject to § 4947), and the transaction results in the decedent's Estate or such Trust receiving cash or a Note, or both, with an aggregate value equal to or exceeding the fair market value of M's interest or expectancy in such property at the time of the transaction, taking into account the terms of the option subject to which the property was acquired by the Estate or Trust.

4. The distribution from a decedent's Estate to M of any Note which was received by such Estate during the administration thereof in a transaction meeting all of the requirements of § 53.4941(d)-1(b)(3) and M's receipt of the same, its holding of any such Note, and its receipt of any payments under such Note will not constitute an act of direct or indirect self-dealing under § 4941.

5. None of the following will constitute an act of direct or indirect self-dealing under § 4941:
    a. The distribution from a decedent's Estate to a QTIP Trust, and the receipt by such Trust of a Note which was received by such Estate during the administration thereof in a transaction meeting all the requirements of § 53.4941(d)-1(b)(3), such Trust's holding of such Note during the lifetime of the surviving spouse, or the receipt by such Trust of any payments under such Note; or
    b. The distribution from such QTIP Trust to M of any Note which was received by such Trust either from a decedent's Estate during the administration thereof or during the administration of the QTIP Trust after the surviving spouse's death in a transaction meeting all of the requirements of § 53.4941(d)-1(b)(3), and M's receipt of the same, its holding of any such Note, or its receipt of any payments under any such Note.

This private letter ruling request was submitted prior to the issuance of Revenue Procedure 2011-4, Section 6, in which a no-rule position was announced with regard to self-dealing issues involving the issuance of a promissory note by a disqualified person during the administration of an estate or trust.

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 person who 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