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

Date:

OCT 28 1999

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T:2
UIL: 501.00-00
509.00-00
4941.00-00
4946.00-00

Employer Identification Number:

LEGEND: A =
B =
C =
D =

Dear Sir or Madam:

This is in reply to your request for several rulings concerning the distribution of assets during the administration of an estate.

C has been recognized as exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code and is a private foundation within the meaning of section 509(a) of the Code. A was a substantial contributor to C.

A is deceased and his will is currently under the jurisdiction of the local probate court. The co-executors of B are A's wife and one of his children.

A's wife is the beneficiary of a marital trust established through B. Cash and other specific property are distributable outright to A's wife and one of his children. The co-executors of B have obtained a Declaratory Judgment approving the non-pro rata distribution of the assets of B. His two other children and certain trusts are currently beneficiaries under B. C is the beneficiary of a portion of the residual estate remaining after distributions have been made to the designated beneficiaries. D is the beneficiary of a set amount of the assets held by B.

A's wife and two of children whose trusts are residuary beneficiaries of the Estate and are officers and directors of the C, the foundation.

The co-executors of B have submitted an Agreement as to the partial settlement of B to the local court for approval. Under this agreement they propose to allocate assets in a manner that will satisfy the regulatory requirements of fair market value set forth in section 53.4941(d)-1(b)(3)(iv) and of liquidity as required in section 53.4941(d)-1(b)(3)(v) of the Foundation and Similar Excise Tax Regulations.

Re:

The following rulings have been requested:

1. The distribution to a marital trust of certain listed assets in satisfaction of the trust's right to receive assets valued at a certain amount will not constitute direct or indirect self-dealing under the Code.

2. The distribution of certain listed assets to D in satisfaction of its right to receive a certain amounts of assets will not constitute direct or indirect self-dealing under the Code.

3. The non-pro rata distribution of the Estate's residuary assets as selected by its Independent Co-executors and in accordance with the submitted Agreement will not constitute direct or indirect self-dealing under the Code provided that the Agreement is approved by the Court of proper jurisdiction.

The following representations have been made regarding this transaction:

I. The independent Co-Executors of the estate are granted the power to sell the estate's property and to reallocate the estate's property to another beneficiary;

2. The Agreement has been submitted to and been approved by a Court having jurisdiction over the Foundation;

3. The estate will not be considered terminated within the meaning of section 641 of the Code and the applicable treasury regulations prior to the distributions contemplated in the Agreement;

4. The Foundation will receive an interest or expectancy at least as liquid as the one it gave up;

5. The assets allocated to the Foundation in the non-pro rata distribution will be fairly representative of the appreciation and depreciation in the assets available for distribution; and

6. The Foundation will receive an amount which equals or exceeds fair market value of the Foundation's interest or expectancy in such property at the time of the transaction.

Section 501(c)(3) of the Code exempts from Federal income tax organization organized and operated exclusively for charitable or educational purposes.

Section 509(a) of the Code provides that, unless specifically excepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

Section 4941(a) of the Code imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(I) of the Code defines self-dealing as including a sale or exchange of property or the extension of credit between a foundation and a disqualified person whether done directly or indirectly.

Re:

Section 53.4941(d)-l(a) of the regulations provides that for the purposes of section 4941, the term "self-dealing" means any direct or indirect transaction described in section 53.4941(d)-2 of the regulations.

Section 53.4941(d)-l(b)(l) of the regulations states that indirect self-dealing includes any transaction between a disqualified person and an organization controlled by a private foundation.

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

(i) The administrator or executor of an estate or trustee of a revocable trust either -

(a) Possesses a power of sale with respect to the property,

(b) Has the power to reallocate the property to another beneficiary, or

(c) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);

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

(iii) Such transaction occurs before the estate is considered terminated for Federal income tax purposes pursuant to paragraph (a) of section l.641(b)-3 of this chapter (or in the case of a revocable trust, before it is considered subject to section 4947);

(iv) The estate (or trust) receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and

(v) With respect to transaction occurring after April 16, l973, 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).

Section 53.4941(d)-2(a)(l) of the regulations provides that in general the sale or exchange of property between a private foundation and a disqualified person shall constitute an act of self-dealing.

Section 4946(a)(l) defines the term "disqualified persons" with respect to a private foundation as including a substantial contributor to the foundation, a foundation manager, and an owner of

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more than 20 percent of the total combined voting power of a corporation which is a substantial contributor to the foundation. It also includes a member of the family of any individual described above. It also includes a partnership in which persons described above and a trust or estate in which persons described in above hold more than 35 percent of the beneficial interest in.

Section 4946(b) defines the term foundation manager as including 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.

Section 4946(d) states that the term "a member" of the family of a disqualified person includes the spouse, children of and grandchildren of a disqualified person.

Section 53.4946-l(a)(8) of the regulations provides that for purposes of section 4941 only, the term disqualified person shall not include any organization which is described in section 501(c)(3) other than an organization which is described in section 509(a)(4).

Section 507(d)(2)(A) of the Code 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. In the case of a trust, the term substantial contributor also means the creator of the trust.

A is a disqualified person because he was a substantial contributor to C. His wife, and all of his children and their related trusts are disqualified persons within the meaning of section 4946 of the Code. D is a public charity within the meaning of section 509(a) of the Code. A's wife and one of his children as the co-executors of B are also disqualified persons by reason of their relationship to A. In addition, they and one other of A's children are foundation managers of C. As co-executors they have the responsibility to pick and choose the assets to be used in satisfaction of the pro rata bequests made through A's estate. They are also responsible for distributing the assets in A's estate which have been specifically granted to an individual or a trust. Therefore unless otherwise excluded, a direct or indirect act of self-dealing could occur when the co-executors make pro rata distributions of the assets to the various beneficiaries or distributions which affect the amount another organization might receive.

However, section 53.4941(d)-l(b)(3) of the regulations provides a specific exception to the rules regarding self-dealing where the transaction involves situations which take place during the administration of an estate or revocable trust. The submitted information and representations you have made establish that the conditions described in the regulations have been or will be satisfied. You have obtained an order from the local court having jurisdiction over this matter approving the non-pro rata distribution of the assets of B. You have also submitted an Agreement to the court governing the manner in which assets are to be distributed and evaluated.

Accordingly, based on the representations you have made we have concluded that:

1. The distribution to a marital trust of certain listed assets in satisfaction of the trust's right to receive assets valued at a certain amount will not constitute direct or indirect self-dealing under the Code.

Re:

2. The distribution of certain listed assets to D in satisfaction of its right to receive a certain amounts of assets will not constitute direct or indirect self-dealing under the Code.

3. The non-pro rata distribution of the Estate's residuary assets as selected by its Independent Co-executors and in accordance with the submitted Agreement will not constitute direct or indirect self-dealing under the Code provided that the Agreement is approved by the Court of proper jurisdiction.

This ruling is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

In this ruling we have not determined whether the methodology you are using to determine fair market value of the assets is proper.

We are informing your key District Director of this ruling. Because this letter could help resolve any question about your exempt status, you should keep it in your permanent records.

If you have any question about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact your key District Director.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2