TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200224033

Date: MAR 15 2002

Contact Person:

Identification Number:

Uniform Issue List: 4941.04-00

Telephone Number:

T:EO:B2

Legend:
B =
C =
L =
M =
N =
P =
Q =
R =
S =
T =
W =
x =

Dear Sir or Madam:

We have considered your ruling request dated August 17, 2001, in which your requested rulings under section 4941 of the Internal Revenue Code (the "Code") with respect to certain proposed sales of real and personal property as described below.

B created a revocable trust, M, in 1951. B died testate in 1999. Article IV of B's Will (the "Will") provides that the entire residue of L passes to M. Article IV of the Revocable Deed of Trust provides that the residue of M is to pass to N.

B created N in 1986 for the purpose of making contributions to charitable organizations and engaging in activities for exempt purposes within the meaning of section 501(c)(3) of the Code. In 1987, the Internal Revenue Service (the "Service") recognized N as exempt from federal income tax under section 501(c)(3) of the Code and determined N to be a private foundation under section 509(a).

Pursuant to Article XI of N deed, the trustees of N formed a nonprofit corporation named R and plan to transfer all of the assets of N to R. The court having jurisdiction over N has issued a final adjudication approving this transfer. The trustees have received a ruling from the Service

211

approving the transfer of assets from N to R. Therefore, any reference in this letter to N includes a reference to R.

At B's death, B owned the following properties: (1) ten parcels of real estate located in S (the "S Real Estate"); (2) one parcel of real estate located in T (the "T Real Estate"); (3) tangible personal property situated in S and T, including items consisting of books, deeds, maps, and other items of historic value (the "Historic Collection"); and (4) shares of common stock in W (the "Common Stock").

The parties to the proposed transactions are as follows:

1. M is the proposed seller of the S Real Estate and the T real estate.

2. L is the proposed seller of the Historic Collection and the Common Stock.

3. C, a child of B, is the proposed buyer of eight parcels of the S Real Estate, the Historic Collection, and the Common Stock.

4. P is the proposed buyer of two parcels of the S Real Estate. Under Article III of the Will, B exercised B's power of appointment existing under a 1940 deed of trust (the "P"). B directed all of the principal and income of P to be distributed to B's grandchildren living on each distribution date for 21 years following the death of the last surviving issue of B's parents living in 1940, then to any then-living grandchildren, or if no grandchildren, then to B's then-living sons.

5. Q is the proposed buyer of the T Real Estate. In 1976, B created an irrevocable trust (the "Q") for the benefit of B's then-living grandchildren. Article III of the Q deed provides that it will terminate upon the earlier of (i) the death of B's last surviving child living on the date of the Q deed; or (ii) December 31, 2016, if there are no living grandchildren on that date. Article II of the Q deed provides that upon the trust's termination, if there are no living grandchildren or issue of grandchildren, B's then-living children will receive an equal share of the trust's principal and income. Thus, B's children are potential beneficiaries under Q.

Expert appraisers have appraised the S Real Estate, the T Real Estate, the Common Stock, and the Historic Collection to determine their fair market values as of the date of B's death.

Article XI of the Will authorizes the executors to sell any real or personal property. Pursuant to Article IV of the Will, the executors transferred to M the S Real Estate and the T Real Estate, which remain unsold. Unless the real estate is disposed of by M, it will pass to N pursuant to Article IV of the Revocable Deed of Trust.

Article II of the Will grants B's sons the right to purchase from the executors certain items of the Historic Collection at their fair market values. If the Historic Collection is sold, the proceeds are added to the residue of L, which, in turn, passes to M under Article IV of the Will, and ultimately passes to N under Article IV of the Revocable Deed of Trust. Article II of the Will provides that, if the Historic Collection is not sold by the executors, it passes to two historical

societies.

The following sales are proposed:

1. C proposes to purchase for cash:
(a) From M, parcels of the S Real Estate for $ x, their fair market value as determined by the appraisal;
(b) From L, the Historic Collection for $ x, its fair market value as determined by two appraisals;
(c) From L, 1x shares of Common Stock for $ x, their fair market value as determined by the appraisal;

2. P proposes to purchase for cash, from M, parcels of the S Real Estate for $ x, their fair market value; and,

3. Q proposes to purchase for cash, from M, the T Real Estate for $ x, its fair market value.

The court having jurisdiction over L in S has issued a decree approving the sale of the S situs items of the Historic Collection from the L to C, subject to receipt of a ruling from the Service that such sale does not violate the prohibition against self-dealing between R and C.

The court having jurisdiction over M in S has issued a decree approving the sale of eight parcels of the S Real Estate from M to C and two parcels of the S Real Estate from M to P, subject to receipt of a ruling from the Service that such sale does not violate the prohibition against self-dealing between R, C and P.

The court having jurisdiction over L and M in T has issued an order approving (i) the sale of the T Real Estate from M to Q, (ii) the sale of the T situs items of the Historic Collection from L to C, and (iii) the sale of the Common Stock from L to C, all conditioned upon the receipt of a ruling from the Service that such sales will not constitute a transaction prohibited by section 4941 of the Code.

With respect to the proposed transactions, the Taxpayer represents the following:

1. The executors and trustee possess the power of sale with respect to the S Real Estate, the T Real Estate, the Historic Collection, and the Common Stock;

2. The transactions shall occur before L is considered terminated for Federal income tax purposes under section 1.641(b)-3(a) of the Income Tax Regulations (the "regulations"), or before M is considered subject to section 4947 of the Code;

3. L and M will receive interests or expectancies at least as liquid as the ones they give up;

4. L and M will receive amounts which equal the fair market value of their interests in the

S Real Estate, the T Real Estate, the Historic Collection, and the Common Stock.

The following rulings are requested:

1. The sale of the parcels of the S Real Estate by M to C will not constitute an act of self-dealing under section 4941(d) of the Code;

2. The sale of the Historic Collection by L to C will not constitute an act of self-dealing under section 4941(d) of the Code;

3. The sale of 1x shares of the Common Stock by L to C will not constitute an act of self-dealing under section 4941(d) of the Code;

4. The sale of parcels of the S Real Estate by M to P will not constitute an act of self-dealing under section 4941(d) of the Code;

5. The sale of the T Real Estate by M to Q will not constitute an act of self-dealing under section 4941(d) of the Code; and,

6. Neither L, M, Q, P, nor C, will be subject to taxes under section 4941 of the Code with respect to the proposed transactions.

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

In any case in which a tax is imposed by section 4941(a)(1), section 4941(a)(2) of the Code imposes a tax on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, unless such participation is not willful and is due to reasonable cause.

Section 4946(a)(1) of the Code provides in relevant 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, (D) a member of the family of any individual described in (A) or (B), and (G) a trust or estate in which persons described in (A), (B), or (D) hold more than 35 percent of the beneficial interest.

Section 4946(a)(2) of the Code provides that the term "substantial contributor" means a person who is described in section 507(d)(2).

Section 507(d)(2) of the Code provides that, in the case of a trust, the term "substantial contributor" also means the creator of the trust.

Section 4946(b) of the Code provides that the term "foundation manager" means, with respect to any private foundation, an officer, director, or trustee of a foundation.

Section 4946(d) of the Code provides that, for purposes of section 4946(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.

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

Section 53.4941(d)-1(b)(3) of the Foundation and Similar Excise Taxes Regulations (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 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 possesses a power of sale with respect to the property;

(ii) Such transaction is approved by the probate court having jurisdiction over the estate or over the private foundation (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 1.641(b)-3 of the regulations (or in the case of a revocable trust, before it is considered subject to section 4947 of the Code);

(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 receiving an interest or expectancy at least as liquid as the one it gave up.

Because B was the creator and sole donor of N, B is a substantial contributor. Moreover, B's child, C, would be treated as a disqualified person by virtue of being a member of B's family. Therefore, both B and C are disqualified persons with respect to N. Q and P are also disqualified persons with respect to N because B's children hold more than .% of the beneficial interests in them. Accordingly, without an exception to the self-dealing rules, the sales of property by L and M to C, Q, and P would be indirect sales of property between N and disqualified persons because of N's interest or expectancy in the S Real Estate, the T Real Estate, the Historic Collection, and the Common Stock.

Under the facts presented, however, we find that the proposed transactions will satisfy the "estate administration" exception to self-dealing set forth in section 53.4941(d)-1(b)(3) of the regulations. The executors and trustee possess the power of sale over the real and personal property pursuant to Article XI of the Will and Article XIII of the Revocable Deed of Trust. The transactions have been approved by the courts having jurisdiction over L and M. L and M represent that the transactions will occur before L is considered terminated for Federal income tax purposes under section 1.641(b)-3(a) of the regulations or before M is considered subject to section 4947 of the Code. L and M represent that they will receive cash equal to the fair market values of their interests in the S Real Estate, the T Real Estate, the Historic Collection, and the Common Stock.

Accordingly, we rule as follows:

1. The sale of the parcels of the S Real Estate by M to C will not constitute an act of self-dealing under section 4941(d) of the Code;

2. The sale of the Historic Collection by L to C will not constitute an act of self-dealing under section 4941(d) of the Code;

3. The sale of 1x shares of the Common Stock by L to C will not constitute an act of self-dealing under section 4941(d) of the Code;

4. The sale of parcels of the S Real Estate by M to P will not constitute an act of self-dealing under section 4941(d) of the Code;

5. The sale of the T Real Estate by M to Q will not constitute an act of self-dealing under section 4941(d) of the Code; and,

6. Neither L, M, Q, P, nor C, will be subject to taxes under section 4941 of the Code with respect to the proposed transactions.

This ruling is limited to the applicability of the provisions of the estate administration exception from self-dealing under section 53.4941(d)-1(b)(3) of the regulations and does not purport to rule on any facts that were not represented in the ruling request or any changes of those facts. Also, in this ruling, we have not determined whether the methodology you or your independent appraisers are using to determine fair market value is proper. We merely have accepted your representations.

This ruling letter is directed only to C, L, M, P, and Q. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Because this ruling letter could help resolve any questions about the application of the Code to their activities, C, L, M, P, and Q should keep a copy of this ruling in their permanent records.

Sincerely,

(signed) Terrell M. Berkovsky

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2