



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

20 0425051

Date:

MAR 16 2004

Contact Person:

Identification Number:

Telephone Number:

U.I.L.: 4941.00-00

T:EO:B4

Employer Identification Number:

Legend:

B=

C=

D=

E=

F=

G=

H=

Dear Sir or Madam:

This is in reply to a letter dated August 11, 2003, requesting a ruling under sections 4941, 4942 and 4945 of the Internal Revenue Code with respect to certain proposed activities.

In a separate communication we have determined that B is tax-exempt under section 501(c)(3) of the Code and classified as a private foundation under section 509(a).

B was formed by execution of its Deed of Trust on \_\_\_\_\_ B's activities and operations will be funded by contributions made by C and D in amounts yet to be determined, although such amounts will be sufficient to fund the obligations of B and enable it to fulfill its charitable mission and goals.

The primary (and possibly exclusive) activities of B will be entering into, and making payments under, a production agreement with a qualified television producer to provide essential assistance to C, B's trustee, to produce unique public service television programs to be broadcast in a public service manner to achieve B's charitable and educational purpose of providing instruction to the public (especially senior citizens) on subjects useful to individuals (especially senior citizens) and beneficial to the community. The programs will be exclusively of

an educational nature, will deal primarily with healthcare and behavioral subjects of particular interest to senior citizens, and will be broadcast over cable television outlets for public viewing. C has a keen awareness of, and ability to select for program production, appropriate and important topics of interest to senior citizens.

In the past, C created numerous episodes of the program, E, which pertained to such topics and which were broadcast by F on two channels over its cable network. The costs associated with such prior episodes were paid for with private funding, most recently provided by C and D. C and D (and members of their family) are substantial shareholders of F, and certain family members are executive employees of F. B, however, will have no contracts, agreements or other arrangements with F. Nevertheless, it is expected that the programs produced with funding from B will continue to be broadcast over F's cable network, which will be absolutely essential in order to most effectively communicate the information provided in the programs to B's target audience.

The important mission of B will be to continue to fund the production of programs of substantially the same nature as prior programs, all for the benefit of the public, and especially senior citizens. C will serve, as she has in the past, as the host of all programs, which will continue to be known as E. The programs will continue to include interviews with well-known experts in the fields germane to the subject matters covered. In addition, B will sponsor a website, and will maintain the website available to all members of the public without charge for easy access to the most important information concerning the subjects of the various programs to be funded by B.

Although B will have no direct contractual relationship with F, it is certainly expected that the future programs produced with funding from B will continue to be broadcast by F's cable network, although the exact scheduling and frequency of broadcasts may change. These programs will also be offered or made available to other cable networks that desire to include the programs as part of their programming primarily as a service to the general public, and especially the elderly.

When B commences its operations, F (as well as any other cable network) will be prohibited from marketing advertising spots directly in connection with its broadcast of episodes of E. It is understood, however, that F intends to continue its practice of placing spots for advertisers who qualify for the bonus program which may result in the same being broadcast adjacent to or during an episode of E, and to continue to place its own promotional spots adjacent to or during its broadcast of E. In a letter dated January 27, 2004, F has represented that it does not receive any formal remuneration for an agreement to place commercial spots adjacent to or within any of its broadcasts of any episodes of E. F further represents that it has no intention to attempt to sell, or to sell, any commercial advertising in connection with its broadcast of episodes of E.

When B commences its operations it will receive no advertising or other form of commercial revenue from the broadcast of episodes of E. While it is possible that in the future B will solicit, and may receive, qualified sponsorship payments for its acknowledgement of any sponsorship provided to assist with the production of episodes of the program, no agreements

concerning such sponsorship have been made or are in place. Other than possible qualified sponsorship payments, B will receive no net income from its production of episodes of the program, and will receive no payments in connection with their broadcast, except for the possibility of the receipt of payments from broadcasters and others desiring copies of the programs to reimburse B for the costs of providing "dubs" of the programs.

In order to fund the production of the E program, B will enter into a production agreement with G. While it is understood that G will enter into an agreement with F for the broadcast of episodes of E which are funded by B, G also will make future episodes of E available for broadcast to other cable service providers and any other interested broadcast outlets for use as public service programming on substantially the same basis upon which G is permitted to make the program available to F for broadcast. All rights to the episodes of E produced with funding provided by B will be owned by B.

The production agreement between B and G will require the use of all amounts paid there under by B exclusively for the charitable, educational purposes described in the production agreement, and will also require that G produce detailed written periodic reports describing the actual use of all amounts paid to G by B under the terms of the production agreement.

G is a sole proprietorship owned and operated by H. H previously has served as the executive producer and director of episodes of E and is highly qualified to continue in that role under the terms of the production agreement with B. H is an independent businesswoman, and neither she nor G has any other relationship to B, its trustees, or any other "disqualified person" with respect to B. G's agreement with B will be negotiated at arm's-length, and all payments made by B to G under the production agreement will reflect fair market value in consideration for the production services to be rendered by G and H to B.

In addition to the production and direction of future episodes of E, H and the staff of G will assist C in researching subjects for episodes. Moreover, although C, as in the past, will exercise responsibility for identifying program topics, H and G's staff will provide assistance in identifying subject matter experts to be interviewed during future programs. Among other things, G will conduct videotaped interviews of several prospective participants for future episodes, and, together with C, will view the taped interviews to select the person or persons who will participate in future episodes. Emphasizing that the primary aim of E is provide important and useful information to senior citizens, H has noted that even the pace and tempo at which the program is produced and directed for viewing is slower and more deliberative than it would be if the target audience were younger, and that this done solely to enhance the ability of senior citizens to understand and absorb the information being provided by the program. G will be responsible for all other aspects of filming, editing, and broadcast details of all future episodes of E, including contracting with F and all other broadcast facilities.

C will receive no compensation for the services she provides to B, including her participation in the production and broadcast of B's programs. The only benefit to C will be in the form of personal satisfaction from the ability to provide important healthcare and other similar information to the public in a manner that she believes currently is not being made available by any other service.

In a letter dated March 10, 2004, you have represented that F is not a "disqualified person" with respect to B within the meaning of section 4946 of the Internal Revenue Code.

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

Section 4941(d)(1)(E) of the Code includes in the definition of self-dealing any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4942 of the Code requires a private foundation to make specified distributions of income for each taxable year.

Section 4945 of the Code provides for the imposition of taxes on each taxable expenditure of a private foundation.

Section 53.4941(d)-2(f)(2) of the Foundation and Similar Excise Taxes Regulations provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a private foundation of its income or assets will not, by itself, make such use an act of self-dealing.

Section 53.4942(a)-3(a)(2) of the regulations defines "qualifying distributions" to include amounts paid to accomplish one or more purposes described in section 170(c)(1) or section 170(c)(2)(B).

Section 53.4946-1(a)(1) of the regulations provides that the following are disqualified persons with respect to a private foundation: (i) A substantial contributor to the foundation, as defined in section 507(d)(2) and the regulations thereunder (ii) All foundation managers of the foundation as defined in section 4946(b)(1) and paragraph (f)(1)(i) of this section.

You have represented that C and D are disqualified persons with regard to B. However, the provision of services by C to B would not be considered an act of self-dealing because the services are being furnished without charge exclusively for the charitable, educational purposes of B, which are specified in section 501(c)(3). Furthermore, you have represented that F is not a disqualified person with respect to B.

Moreover, the provision of goods, services, or facilities by B to C is not an act of self-dealing because the value of such furnishing is reasonable and necessary to the performance by C of her tasks in carrying out the charitable, educational purposes of B and, is not excessive. Under the circumstances, any benefit to C would be both incidental and tenuous, within the meaning of section 53.4941(d)(2)-2(f)(2) of the regulations.

Lastly, the expenditures made by B in the form of payments to G under the terms of the proposed production agreement for the charitable, educational purposes of B constitute direct charitable acts, and qualify for treatment as "qualifying distributions" because the payments are made to accomplish one or more purposes described in section 170(c)(2)(B). Moreover, such

payments are not "taxable expenditures" because under the proposed production agreement the funds will be used exclusively for the production of episodes that would be instructive of the public (and primarily senior citizens) on subjects useful to the individual and beneficial to the community, and for no other purpose. Therefore, these payments would count as "qualifying distributions" within the meaning of section 4942(g) and do not constitute "taxable expenditures" within the meaning of section 4945 of the Code.

Accordingly, based on the above stated facts and circumstances, we rule as follows:

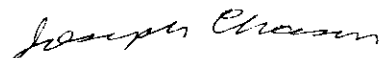
1. The furnishing of services by C to B is not an act of self-dealing under section 4941(d) of the Code because the subject services are being provided without charge and exclusively for purposes specified in section 501(c)(3).
2. The furnishing of goods, services, or facilities by B to C is not an act of self-dealing under section 4941(d)(1)(C) because the value of such furnishing is reasonable and necessary to the performance by C of her services in carrying out the exempt purposes of B and, is not excessive, and because, under the circumstances, any benefit to C is not more than incidental.
3. The expenditures to be made by B in the form of payments to a non-section 501(c)(3) organization under the proposed production agreement will constitute direct charitable acts of the type that qualify for treatment as "qualifying distributions" under section 4942(g) of the Code because they are paid to accomplish one or more purposes described in section 170(c)(2)(B), and are not "taxable expenditures" under section 4945.

We are informing the TE/GE office of this action. Please keep a copy of this ruling with your organization's permanent records.

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 as precedent.

If you any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



Joseph Chasin  
Acting Manager, Exempt  
Organizations Technical Group 4