



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

NUMBER: **200628038**

RELEASE: 7/14/06

Date: April 18, 2006

Uniform Issue List Number: 4941.04-00

Contact Person:

Contact's Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

D =

E =

F =

L =

x =

Dear _____ :

This is in reply to your request of October 18, 2005, forwarded to our office, for a ruling that the estate E's sale of real property L to disqualified person D in return for the fair market value in cash to private foundation devisee F will not be any act of self-dealing under section 4941 of the Internal Revenue Code and section 53.4941(d)-1(b)(8), Example 5, of the Foundation and Similar Excise Tax Regulations.

Facts:

E is the estate, still pending in probate court, of the last spouse of the founder of F.

F, a nonprofit charitable corporation, is exempt from federal income tax under section 501(c)(3) of the Code, and is a private foundation under section 509(a) of the Code.

D, son of the founder of F, is a disqualified person as to F under section 4946 of the Code.

In this transaction, E will sell real property L to D in return for cash for L's fair market value of approximately x dollars. E has obtained a detailed appraisal of L by appropriate certified appraisers.

Law:

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for charitable and/or other exempt purposes stated in that section.

Section 509(a) of the Code describes private foundations exempt from federal income tax under section 501(c)(3) of the Code and subject to the private foundation provisions of the Code, including section 4941 of the Code.

Section 4941 of the Code imposes excise tax on any act of self-dealing between a private foundation and any of its disqualified persons as defined under section 4946 of the Code.

Section 4946 of the Code and section 53.4946-1(b) of the Foundation and Similar Excise Taxes Regulations provide that a disqualified person with respect to a private foundation includes a substantial contributor, a foundation manager, and any disqualified person's spouse, parents, children, and grandchildren, but not brothers, sisters, nieces or nephews.

Section 53.4941(d)-1(b)(3) of the regulations, concerning administration of estates, provides that an act of self-dealing does not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate, regardless of when title to the property vests under local law, if the five requirements below are met:

- (i) The administrator or executor of the estate 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.
- (ii) Such transaction is approved by the probate court having jurisdiction over the estate or by another court having jurisdiction over the estate or over the private foundation.
- (iii) Such transaction occurs before the estate is considered terminated for federal income tax purposes pursuant to section 1.641(b)-3(a) of the Income Tax Regulations.
- (iv) The estate 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.
- (v) The transaction either:
 - (a) results in the private 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.

Section 53.4941(d)-1(b)(8), Example 5, of the regulations states:

A bequeathed \$100,000 to his wife and a piece of unimproved real estate of equivalent value to private foundation Z, of which A was the creator and a foundation manager. Under the laws of State Y, to which the estate is subject, title to the real estate vests in the foundation upon A's death. However, the executor has the power under State law to reallocate the property to another beneficiary. During a reasonable period for administration of the estate, the executor exercises this power and distributes the \$100,000 cash to the foundation and the real estate to A's wife. The probate court having jurisdiction over the estate approves the executor's action. Under these circumstances, the executor's action does not constitute an indirect act of self-dealing between the foundation and A's wife.

Section 53.4941(e)-1(f) of the regulations provides that, for purposes of the regulations under section 4941 of the Code, fair market value shall be determined pursuant to section 53.4942(a)-

2(c)(4), in which section 53.4942(a)-2(c)(4)(b) indicates that a real property valuation appraisal can be made during a 5-year period even if the actual value changes during such period..

Analysis:

In your case, the five requirements of the estate administration exception to self-dealing under section 53.4941(d)-1(b)(3) of the regulations, stated above, will be met with respect to the sale by the estate E of private foundation F's interest in land L to D who is a disqualified person of F. First, the executor of E possesses a power of sale with respect to the estate property L. Second, the sale will be approved by a probate court having jurisdiction over the estate. Third, the sale will occur before the estate is considered terminated for federal income tax purposes under section 1.641(b)-3(a) of the regulations. Fourth, neither the estate nor the private foundation will lose any fair market value in this sale. Fifth, the interest of the estate and the private foundation under the sale will remain at least as liquid as their interests were before this sale. We note that this sale is similar to Example 5 of the regulation, cited above, in that equal fair market value of cash is provided for property, during the probate time period, with the executor's transaction being subject to the probate court's approval.

Conclusion:

Accordingly, we rule, as you request, that estate E's proposed sale of real property L to disqualified person D in return for L's fair market value in cash for private foundation devisee F will not be any act of self-dealing under section 4941 of the Code.

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 letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions about this ruling letter, please contact the person whose name and telephone number are shown in the heading of this letter. Because this ruling letter could help to resolve any questions, please keep it in your permanent records.

Sincerely,

Debra J. Kawecki
Manager, Exempt Organizations
Technical Group 2

Enclosure: Notice 437