



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

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4941.04-00

4946.01-00

4947.02-00

7520.00-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Settlor =

Spouse =

Trust Agreement =

Foundation =

Residence =

Date a =

Dear :

This is in reply to your request for a ruling as to whether a certain proposed transaction will constitute an indirect act of self-dealing under section 4941 of the Internal Revenue Code ("Code").

Facts

You were established by Settlor as a revocable trust and became irrevocable upon Settlor's death. Pursuant to the terms of the Trust Agreement, Settlor's spouse ("Spouse") and a non-family member were appointed as co-trustees ("Trustee"). The Trust Agreement governs the disposition of the Settlor's assets upon death and provides that the residue of the Settlor's estate is distributable to Foundation. Foundation is a charitable organization classified as a private foundation under section 509(a) of the Code.

You represent that because Settlor was a "substantial contributor" to Foundation, and thus a "disqualified person" with respect to Foundation, Spouse is also a "disqualified person" with respect to Foundation, within the meaning of section 4946 of the Code.

Under the terms of the Trust Agreement, if Spouse survives Settlor by thirty days, Residence would be distributed to Spouse for life, and upon Spouse's death, to Foundation. This condition has occurred, and as a result, Spouse obtained a life estate interest in Residence and Foundation obtained a remainder interest in Residence.

The Trust Agreement gives Trustee full power to sell, exchange, transfer, or otherwise deal with all real property upon such terms and conditions as Trustee deems proper. On Date a, Trustee,

entered into a contract to sell Residence to an unrelated third party. The sale of Residence has been completed. You represent that based on the advice of a professional broker and as a result of the sale of Residence on the open market to an unrelated third party, the selling price represented its fair market value on the date of sale. Under Trustee's authority in the Trust Agreement, Trustee proposes to allocate and distribute to Spouse and Foundation the net sale proceeds from the sale of Residence in lieu of their respective interests in Residence.

Your state Attorney General and the state Probate Court have approved the sale of Residence and the allocation and distribution to Spouse and Foundation of the net sale proceeds. You state you will allocate and distribute the net sale proceeds to Spouse and to Foundation in the amounts determined under the actuarial tables prescribed under section 7520(a)(1) of the Code and using the interest rate prescribed under section 7520(a)(2).

The Settlor's Estate is still in the administration stage and is not yet in a position to close and distribute its assets to its beneficiaries. Following the receipt of this letter ruling, you plan to make a final distribution to Spouse and to Foundation and the Estate will be closed.

#### Ruling Requested

The proposed allocation and distribution to Spouse and Foundation of the net sale proceeds from the sale of Residence will not constitute an indirect act of self-dealing between Spouse and Foundation under section 4941 of the Code because this transaction qualifies for the estate administration exception in section 53.4941(d)-1(b)(3) of the regulations.

#### Law

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

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

Section 4946(a)(1) of the Code provides that the term "disqualified person" with respect to a private foundation includes, among others, a person who is a substantial contributor to the foundation, a foundation manager, and a member of the family of a disqualified person.

Section 4947(a)(2) of the Code defines the term "split-interest" trust.

Section 53.4941(d)-1(a) of the Foundation and Similar Excise Tax Regulations ("regulations") provides that the term "self-dealing" means any direct or indirect transaction described in section 53.4941(d)-2.

Section 53.4941(d)-1(b)(3) of the regulations provides, in pertinent part, that the term "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 revocable trust, including a trust that has become irrevocable on the grantor's death), if:

- i. The trustee of a revocable trust either possesses a power of sale with respect to the property, or has the power to reallocate the property to another beneficiary;
- ii. The transaction is approved by the probate court having jurisdiction over the trust;
- iii. The transaction occurs before a revocable trust is considered subject to section 4947;
- iv. The trust receives an amount that equals or exceeds the fair market value of the private foundation's interest or expectancy in the property at the time of the transaction; and
- v. The transaction results in the private foundation receiving an interest or expectancy at least as liquid as the one it gave up.

Section 53.4941(d)-2 of the regulations describes specific acts of self-dealing.

Section 53.4947-1(c)(6)(iii) of the regulations states that the term "reasonable period of settlement" means that period reasonably required by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust, including, for example, the collection of assets, the payment of debts, taxes, and distributions, and the determination of the rights of the subsequent beneficiaries.

Section 53.4947-1(c)(6)(iv) of the regulations states, in pertinent part, that a revocable trust that becomes irrevocable upon the death of the decedent-grantor, from which the trustee is required to distribute all of the net assets in trust free of trust to both charitable and non-charitable beneficiaries, is not considered a split-interest trust under section 4947(a)(2) of the Code for a reasonable period of settlement after becoming irrevocable.

Section 7520(a) of the Code states that "[f]or purpose of this title [the Internal Revenue Code], the value of any annuity, any interest for life or a term of years, or any remainder or reversionary interest shall be determined (1) under tables prescribed by the Secretary, and (2) by using an interest rate . . . equal to 120 percent of the Federal midterm rate in effect under section 1274(d)(1) for the month in which the valuation date falls."

### Analysis

Section 4941(a)(1) of the Code imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. The term "self-dealing" includes any direct or indirect sale or exchange of property between a private foundation and a disqualified person.

See section 4941(d)(1)(A) and section 53.4941(d)-1(a) of the regulations. Once such occurs, the exception under section 53.4941(d)-1(b)(3) will apply.

Section 53.4941(d)-1(b)(3) of the regulations (sometimes referred to as the "estate administration exception") provides a limited exception to the self-dealing rules to permit the orderly administration of an estate or trust, allowing flexibility to shift assets to carry out the decedant's intent under the will or trust, providing all of the conditions in the regulation are met.

The Trust Agreement gives Trustee full power to sell, exchange, transfer, or otherwise deal with all real property upon such terms and conditions as Trustee deems proper. This power complies with section 53.4941(d)-1(b)(3)(i) of the regulations. The state Probate Court has approved the sale of Residence and the allocation and distribution to Spouse and Foundation of the net sale proceeds. This approval complies with section 53.4941(d)-1(b)(3)(ii).

The Estate is still in the administration stage and is not in a position to close and distribute its assets to its beneficiaries. Trustee is continuing to perform the ordinary duties of administration necessary for settlement. During this "reasonable period of settlement," you are not considered a split-interest trust under section 4947(a)(2) of the Code. See sections 53.4947-1(c)(6)(iii) and 53.4947-1(c)(6)(iv) of the regulations. This status complies with section 53.4941(d)-1(b)(3)(iii) of the regulations.

Residence was sold to an unrelated third party for an amount that represented its fair market value on the date of sale. Your state Attorney General and the state Probate Court have approved the sale of Residence and the distribution to Spouse and Foundation of the net sale proceeds. You state you will allocate and distribute the net sale proceeds to Spouse and Foundation in the amounts determined under the actuarial tables prescribed under section 7520(a)(1) of the Code and using the interest rate prescribed under section 7520(a)(2). The receipt of this amount complies with section 53.4941(d)-1(b)(3)(iv) of the regulations because Foundation will receive an amount that is at least equal to the fair market value of its interest or expectancy in Residence at the time of its sale.

The sale of Residence and the allocation and distribution of the net sale proceeds to Foundation and Spouse will result in Foundation receiving cash in lieu of its remainder interest in residential property. The receipt of this amount complies with section 53.4941(d)-1(b)(3)(v) of the regulations because Foundation will receive an interest or expectancy at least as liquid as the one it gave up.

For the foregoing reasons, we conclude that the proposed allocation and distribution to Spouse and Foundation of the net sale proceeds from the sale of Residence in lieu of their respective interests in Residence complies with all the requirements of the estate administration exception in section 53.4941(d)-1(b)(3) of the regulations, and therefore will not constitute an indirect act of self-dealing under section 4941 of the Code between Spouse and Foundation.

Ruling

The proposed allocation and distribution to Spouse and Foundation of the net sale proceeds from the sale of Residence will not constitute an indirect act of self-dealing between Spouse and Foundation under section 4941 of the Code because this transaction qualifies for the estate administration exception in section 53.3941(d)-1(b)(3) of the regulations.

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 organization that 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.

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,

Steven Grodnitzky  
Manager, Exempt Organizations  
Technical Group 1

Enclosure:  
Notice 437