

Internal Revenue Service

Department of the Treasury

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Person To Contact:

, ID No.

Telephone Number:

In Re: Letter Ruling Regarding Activities
Under I.R.C. Section 4941

Refer Reply To:

CC:TEGE:EOEG:EO2

PLR-116677-16

Date:

January 31, 2017

LEGEND

Foundation =

Program =

Company =

X =

Dear :

This letter responds to a letter submitted from your authorized representative dated May 20, 2016, and subsequent submissions dated June 29, 2016, October 20, 2016, November 29, 2016, and December 22, 2016, on behalf of Foundation, requesting a ruling on the proper treatment of Program under § 4941 of the Internal Revenue Code (hereafter the "Code") of 1986, as amended. Foundation represents the facts as follows.

FACTS

Foundation is a tax-exempt private foundation described in § 501(c)(3) of the Code. Foundation was formed and is funded by Company. Foundation states that its purpose is to strengthen the fabric of the local community by providing support in the areas of leadership development, education, environment, economic development, diversity, and human needs.

Company is a for-profit corporation located in the same community as Foundation. Foundation states that Company is a disqualified person with respect to Foundation

because it is a substantial contributor to Foundation. Currently, Company operates a summer employment jobs training program for high school and college age youths in the same local community as that in which Foundation is located.

Foundation intends to establish Program to further its exempt purpose. Program will provide on-the-job training and education to at-risk, underserved, and under-exposed youths living in the local community. Program will teach the basic skills needed to obtain and hold an entry level job, thereby reducing poverty and improving the employment prospects of this at-risk population. Participants will receive training in skills with widespread application (e.g. management, information technology, human resources, marketing, design, and support) in addition to soft skills. Foundation states that to make its Program more effective it intends to model its Program after Company's job training program and intends to do so by utilizing Company's resources in the operation of Program.

Program participants will be nominated to Program by local charitable organizations. Nominated participants will be selected based upon prior academic performance, performance on tests designed to measure ability and aptitude for higher education, recommendations from instructors or other individuals not related to applicants, financial need and personal interviews. Employees and relatives of either Foundation or Company are ineligible to participate in Program. Program will be for a term of three months during the summer or eight months during the school year.

Foundation states that it will fund the direct operating costs of Program. This includes the hiring of Foundation employees, as necessary, to handle the human resources and other administrative costs of operating Program, other than the employee time and resources donated by Company discussed below. Foundation states any purchases it makes in connection with operating Program will be from independent third parties. Foundation will provide participants with bi-weekly grants, with the total amount of grants a Program participant may receive being dependent upon a qualitative assessment of Program participant's charitable need. Foundation represents that it will enter into a Memorandum of Understanding with Company that Company will not hire or make any offer to hire any Participant for a period of X years after Participant exits Program.

Foundation states Company will host Program participants free of charge at its facilities and will donate both the employee time and resources involved in hosting Program. This includes the supervision, training and mentoring, and any goods such as office supplies and other training materials used in connection with Program. Furthermore, Company will place participants in a sponsoring department at Company as determined by Foundation. Foundation represents that any goods or services provided by Company, in connection with Program, will be provided free of charge, and that such goods or services will be used by Foundation exclusively for charitable and educational purposes within the meaning of § 501(c)(3) of the Code. Foundation also states that it

will not make any distributions to Company, including any payment or reimbursement of expenses.

RULING REQUESTED

The Program will not involve any acts of self-dealing by Foundation under § 4941 of the Code.

LAW

Section 501(c)(3) of the Code defines organizations exempt from taxation to include a foundation organized and operated exclusively for religious, charitable, scientific, educational purposes, or for the prevention of cruelty to children or animals, provided no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

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

Section 4941(d) (1) of the Code provides that the term “self-dealing” means any direct or indirect (A) sale or exchange, or leasing, of property between a private foundation and a disqualified person; (B) lending of money or other extension of credit between a private foundation and a disqualified person; (C) furnishing of goods, services, or facilities between a private foundation and a disqualified person; (D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person; (E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4941(d)(2)(C) of the Code provides that the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for purposes specified in § 501(c)(3).

Treas. Reg. § 53.4941(d)-2(f)(2) excludes certain “incidental or tenuous” benefits from the definition of self-dealing. The fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Thus, the public recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous. For example, a grant by a private

foundation to a § 509(a) (1), (2), or (3) organization will not be an act of self-dealing merely because such organization is located in the same area as a corporation which is a substantial contributor to the foundation, or merely because one of the § 509(a) (1), (2), or (3) organization's officers, directors, or trustees is also a manager of or a substantial contributor to the foundation.

Treas. Reg. § 53.4941(d)-2(f)(9) illustrates an incidental benefit in two examples. In Example (1), M, a private foundation, makes a grant of \$50,000 to the governing body of N City for the purpose of alleviating the slum conditions which exist in a particular neighborhood of N. Corporation P, a substantial contributor to M, is located in the same area in which the grant is to be used. Although the general improvement of the area may constitute an incidental and tenuous benefit to P, such benefit by itself will not constitute an act of self-dealing. In Example (4), A, a disqualified person with respect to private foundation S, contributes certain real estate to S for the purpose of building a neighborhood recreation center in a particular underprivileged area. As a condition of the gift, S agrees to name the recreation center after A. Since the benefit to A is only incidental and tenuous, the naming of the recreation center, by itself, will not be an act of self-dealing.

ANALYSIS

Foundation represents that it will not make any payments or distributions to Company, a disqualified person, for Company's costs associated with Program, and all purchases made by Foundation will be made from independent parties. Foundation states that Company will donate free of charge both the use of its facilities and employees to train Program participants, and the use of any office supplies or material necessary for Program. Foundation also states that the provision of goods, services, and facilities by Company, in connection with Program, will be used by Foundation exclusively for purposes described within § 501(c)(3) of the Code. In addition, pursuant to the Memorandum of Understanding, Company agrees that it will not hire or make any offer to hire, any Participant for a period of X years after the Participant exits Program.

Based on the facts represented, there is no sale or exchange between the Foundation and Company, and any furnishing of goods or services by Company to Foundation is done without charge and used by Foundation exclusively for exempt purposes. See § 4941(d)(2)(C) of the Code. Additionally, any insubstantial or accompanying benefit to Company for its donations to Foundation in connection with the Program--such as public recognition to Company from assisting Foundation in operating Program or tangential benefit from the work of the Program participants during and as part of the training and education in the Program--is an incidental or tenuous benefit and thus excepted from the definition of self-dealing under Treas. Reg. § 53.4941(d)-2(f)(2). See also, § 53.4941(d)-2(f)(2)(9) Examples (1) and (2). Accordingly, Foundation's Program as described does not involve acts of self-dealing under § 4941(d)(1) of the Code.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2017-1, 2017-1 I.R.B. 1, § 7.01(15)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2017-1, § 11.05.

No ruling is granted as to whether Taxpayer qualifies as an organization described in § 501(c)(3) and, except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income described in this letter ruling.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your representation.

Sincerely,

Andrew F. Megosh, Jr.
Senior Tax Law Specialist
(Tax Exempt & Government Entities)