

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:EEE:EOEG:EO3

PLR-103843-19

Date:

July 15, 2019

Legend

Taxpayer =

H =

W =

Trust A =

Trust B =

Trust C =

Trust D =

Corporation =

a% =

#Stock =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to Taxpayer's request dated March 4, 2019, for a letter ruling that the proposed transfer of assets from a trust to an estate, as described below, will not be an indirect act of self-dealing described in section 4941 of the Internal Revenue Code.¹

FACTS

Taxpayer is a non-profit organization operated exclusively for educational, religious, scientific, and charitable purposes. Taxpayer is recognized as being described in section 501(c)(3) and exempt from federal income tax under section 501(a). Taxpayer also is classified as a private foundation described in section 509(a).

H and W, husband and wife, respectively, created Taxpayer. H and W have been the only contributors to Taxpayer.

H created Trust A, a revocable trust, in Date 1. Trust A provides, in relevant part, that during H's life, H was to receive all of Trust A's income and that upon the death of H, all of the assets remaining in Trust A would be distributed to Foundation. Trust A became irrevocable upon H's death in Date 2.

W created Trust B, a revocable trust, in Date 3. At the time of W's death in Date 4, a% of Trust B assets consisted of Corporation stock. Trust B became irrevocable upon W's death. Trust B provides, in relevant part, that during W's life, all income was to be paid as directed by her, and then after she dies, H had the right to receive all of Trust B's income. Upon the death of H, approximately one half of the assets remaining in Trust B are to be distributed to Trust A and the other half distributed to Trusts C and D for the benefit of W's children and grandchildren, respectively. Taxpayer represents that Trust B was structured to qualify as a so-called QTIP trust under section 2056 and that the election to treat its assets as qualified terminable interest property under section 2056(b)(7)(B)(v) was made.

Trust B directs its trustee(s) to reimburse H's estate for any estate taxes imposed upon H's estate that are attributable to assets held by Trust B at the time of W's death.

Trust A contains a corresponding provision directing H's personal representative to recover from Trust B any estate taxes imposed on H's estate that are attributable to the inclusion of Trust B assets in H's estate.

Trust A and Trust B are presently in probate administration. No assets have been distributed from Trust A or from Trust B to Taxpayer. A small portion of the Trust B assets has been distributed through Trust D to W's grandchildren.

¹ All section references are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

H's estate is subject to a significant estate tax. The entire amount of such estate tax is attributable to the inclusion in H's estate of assets remaining in Trust B at the time of W's death. None of the tax on H's estate is attributable to the assets in Trust A because substantially all of those assets were distributable to Taxpayer and deductible under section 2055. H's estate plans to pay the estate tax and obtain reimbursement from Trust B ("Reimbursement Transaction").

Trust B requires the trustee of Trust B to pay all expenses associated with the administration of Trust B, including any estate taxes owed by H's estate that are attributable to the inclusion in H's estate of Trust B assets before making any distributions to beneficiaries. Trust B further requires the trustee of Trust B to make any payment or distribution required by Trust B, in cash or in kind. Trust B does not have liquidity to reimburse H's estate in cash for the estate tax H's estate must pay with respect to the Trust B assets. However, Trust B has sufficient non-liquid assets with which to reimburse H's estate, including the Corporation stock.

The Probate Court in the cases involving Trust B and the administration of H's estate has held that the estate tax that H's estate is required to pay is caused by the inclusion of the Trust B assets in the estate of H. The Probate Court has issued an order, pursuant to the provisions of Trust B, that Trust B is required to reimburse H's estate the estate tax H's estate has to pay that is attributable to the inclusion of the Trust B assets in H's estate. The Probate Court, also pursuant to the provisions of Trust B, has ordered the trustee of Trust B to transfer #Stock to the personal representative of H's estate to satisfy the reimbursement obligation. Pursuant to the Probate Court's order, the trustee of Trust B has conditionally transferred #Stock to the personal representative of H's estate. Taxpayer has represented that the value of #Stock equals the amount of the estate tax imposed on H's estate.

H's estate has requested a payment plan under section 6166 from the Internal Revenue Service. The payment plan request is still pending before the Service. Taxpayer represents that H's estate will have sufficient cash to pay the estate tax if the Service grants H's estate the section 6166 payment plan request.

RULING REQUESTED

Taxpayer requests a ruling that Trust B's reimbursement of H's estate with stock of Corporation equal in value to the amount of estate tax to be paid by H's estate will not constitute an indirect act of self-dealing under section 4941(d)(1)(E).

LAW

Section 4941(a)(1) imposes a tax on any act of self-dealing between a disqualified person as defined in § 4946(a)(1) and a private foundation. Section 4941(d)(1)(E)

defines "self-dealing," in part, as 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.

In *Estate of Reis v. Commissioner*, 87 T.C. 1016 (1986), one of the executors of Mark Rothko's estate, who also was a director of the Mark Rothko Foundation and an officer and employee of the Marlborough Gallery, with the other executors, entered into a contract for Marlborough Gallery to be the exclusive sales agent for the estate of the artworks in Mr. Rothko's estate for 12 years, with a commission of 50 percent of the proceeds from the sale of each painting. The foundation was the residuary beneficiary of the estate, following certain bequests to family members. Numerous state lawsuits filed by the family against the executors, the estate, and the gallery resulted in removal of the executors, voiding of the contract with the gallery, and the awarding of monetary damages to the estate. Subsequently, the IRS asserted that there had been indirect self-dealing under section 4941(d)(1)(E) between the executor, who also was an officer and employee of the gallery, and the foundation.

The executor argued that there could have been no self-dealing because the artwork was owned by the estate, not by the foundation. The IRS replied that because the foundation was a residuary beneficiary under Mark Rothko's will, the foundation had a vested beneficial interest in the property of the estate, contending that the executor's acts with respect to the property of the estate simultaneously and adversely affected the foundation's beneficial interest therein and thereby constituted an indirect use by or for the benefit of the executor of the assets of the foundation. IRS cited § 53.4941(d)-1(b)(3) as authority for the general proposition that acts of self-dealing with respect to property of an estate also will be regarded as acts of self-dealing with respect to assets of a private foundation that has a beneficial interest in the property of the estate. The Tax Court agreed, stating, in part, that "acts of self-dealing with respect to property of an estate may also constitute acts of self-dealing with respect to assets of a private foundation which is a beneficiary of the estate." 87 T.C. at 1021. See also, *Rockefeller v. United States*, 718 F.2d 290 (8th Cir., 1983). The court concluded that "the expectancy interest the foundation had in the estate is treated as an asset of the foundation, and transactions affecting property of the estate are treated as affecting assets of the foundation." 87 T.C. at 1022-3.

ANALYSIS

Taxpayer has requested a ruling as to whether the Reimbursement Transaction, described above, amounts to an act of self-dealing. We conclude that the transaction does not amount to an act of self-dealing under section 4941.

H's estate will pay an estate tax that results from the inclusion of the assets of Trust B in H's estate for tax purposes. Trust B, pursuant to the Trust B trust agreement and the order of the probate court, is reimbursing H's estate, in kind, with Corporation stock having a fair market value equal to the estate tax resulting from the inclusion of the Trust B assets in H's estate.

Trust B requires the trustee of Trust B to reimburse H's estate for the estate taxes resulting from the inclusion of the assets of Trust B in H's estate before making any distributions to beneficiaries. Thus, the reimbursement by Trust B to H's estate in the form of Corporation shares pursuant to Trust B trust agreement is payment of a necessary expense associated with the administration of Trust B. Taxpayer's only interest in Trust B is as a residuary beneficiary. Thus, while under *Reis*, supra, Taxpayer has an interest in the Trust B residuary assets, Taxpayer has no interest in the stock transferred to H's estate to satisfy Trust B's reimbursement obligation because, by definition, it is not part of the Trust B residuary.

Accordingly, because Taxpayer has no interest in the stock that is used to satisfy the reimbursement obligation, section 4941(d)(1)(E) is not applicable, and the transfer of such stock will not constitute an indirect act of self-dealing.

RULING

Based on Taxpayer's representations, we rule that the transfer of the described stock as reimbursement by Trust B to H's estate of H's estate tax attributable to the inclusion of Trust B assets in H's taxable estate is not an act of self-dealing under section 4941. This ruling is contingent on the following:

1. This ruling does not address what is the fair market value of #Stock.
2. This ruling does not address whether the number of Corporation shares (i.e., #Stock) transferred from Trust B to H's estate is equal in value to the amount of estate tax due.

The ruling contained in this letter is based upon information and representations submitted by or on behalf of Taxpayer and accompanied by a penalties-of-perjury statement executed by an individual with authority to bind Taxpayer and upon the understanding that there will be no material changes in the facts. While this office has not verified any of the material submitted in support of the request for this ruling, it 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. 2019-1, § 11.05.

No opinion is expressed concerning the federal tax consequences under any Code provision other than the provisions specifically cited above. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. No ruling is granted as to whether Taxpayer qualifies as an organization described in section 501(c)

or section 509(a). This ruling concerns only the federal private foundation excise tax treatment of the proposed transaction and may not be cited or relied upon by any other taxpayer.

This ruling is directed only to Taxpayer. Code § 6110(k)(3) 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 Taxpayer's authorized representative.

Sincerely,

Mike Repass
Senior Technician Reviewer
(CC:EEE:EOET:EO3)

cc: