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

200217056

Date: JAN 30 2002

Contact Person:

Identification Number:

Telephone Number:

UIL: 4941.04-00

Employer Identification Number

LEGEND: M =

N =

Dear Sir or Madam:

This is in reply to your letter of May 4, 2001, as modified by your letters of July 19, 2001, and your Amended and Restated Service Agreement, which was submitted with your letter of November 7, 2001, concerning the payment of certain fees to disqualified persons for services they are providing you.

You have been recognized as exempt under section 501(a) of the Internal Revenue Code and are a private foundation within the meaning of section 509(a) of the Code.

You were established to carry out the charitable intentions of M. N was established to serve as a support office for M. It was designed to be a resource center that provides assistance to family members with respect to financial as well as personal and family matters. It is operated on a cost basis. Members of M use the services of N. All of your directors are members of M.

N provides certain financial services to M. These services include cash management; custody of assets; investments; preparation and review of financial statements; direction of short term investments; review of investment position; making estimated tax deposits, preparation of tax returns; check preparation, bill payment, bank deposits and bank account reconciliations; financial, bookkeeping, accounting, legal and tax matters, including the coordination of professional service providers necessary with respect to such matters. Many similar services are also provided to you at no cost. In order to defray some of the costs, N desires to pass through to you some of its operating expenses that are directly and indirectly related to providing services to you. You have entered into an agreement outlining the terms of how costs will be charged to you. As modified in your letter of July 19, 2001, you have indicated that costs shall be reasonable and that compensation will not exceed reasonable costs. On November 7, 2001, you submitted an Amended and Restated Service Agreement which sets forth the services which will be provided you by N for a fee and which specifically precludes secretarial services.

You have requested a ruling that N can charge you for personal services that are rendered by its employees on your behalf without engaging in an act of self-dealing within the meaning of section 4941 of the Code.

Section 501(c)(3) of the Code provides, in part, for exemption from federal income tax for a corporation organized and operated exclusively for educational purposes.

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Re:

Section 509(a) of the Code provides that, unless specifically excepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

Section 4941(a) imposes a tax on each act of self-dealing between a private foundation and a disqualified person (as defined in section 4946(a)).

Section 4941(d)(l)(E) of the Code provides that the term "self-dealing" includes 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 4941(d)(2)(E) of the Code provides that the payment of compensation by a private foundation to a disqualified person for personal services which are reasonable and necessary to carry out the exempt purpose of the foundation shall not be an act of self-dealing if the compensation is not excessive.

Section 53.4941(d)-l(a) of the Foundation and Similar Excise Tax Regulations provides that for purposes of section 4941, the term "self-dealing" means any direct or indirect transaction described in section 53.4941(d)-2. For purposes of this section it is immaterial whether the transaction results in a benefit or detriment to the private foundation.

Section 53.4941(d)-2(c)(4) of the regulations provides that the performance by a bank or trust company, which is a disqualified person, of trust functions and certain general banking services for a private foundation is not an act of self-dealing, where the banking services are reasonable and necessary to carrying out the exempt purposes of the private foundation, if the compensation paid to the bank or trust company, taking into account the fair interest rate for the use of the funds by the bank or trust company, for such services is not excessive. The general banking services allowed by this subparagraph are: (l) checking accounts, as long as the bank does not charge interest on any withdrawals; (2) savings accounts, as long as the foundation may withdraw its funds on no more than 30-days notice without subjecting itself to a loss of interest on its money for the time during which the money was on deposit; and (3) safekeeping activities.

Section 53.4941(d)-3(c)(l) of the regulations provides that the payment of compensation (and the payment or reimbursement of expenses, including reasonable advances for expenses anticipated in the immediate future) by a private foundation to a disqualified person for the performance of personal services which are reasonable and necessary to carry out the exempt purposes of the private foundation shall not be an act of self-dealing if such compensation (or payment or reimbursement) is not excessive. For purposes of this subparagraph the term "personal services" includes the services of a broker serving as agent for the private foundation, but not the services of a dealer who buys from the private foundation as principal and resells to third parties. For the determination whether compensation is excessive, see section l.l62-7 of the regulations. This paragraph applies without regard to whether the person who receives the compensation (or payment or reimbursement) is an individual.

Example (2) of section 53.4941(d)-3(c)(2) of the regulations provides as follows:

> C, a manager of private foundation X (and hence a disqualified person with respect to X), owns an investment counseling business. Acting in his capacity as an investment counselor, C manages X's investment portfolio for which he receives an amount which is determined not to be excessive. The payment of such compensation to C shall not constitute an act of self-dealing.

Re:

Section 4946(a)(l) defines the term "disqualified persons" with respect to a private foundation as including a substantial contributor to the foundation, a foundation manager, and an owner of more than 20 percent of the total combined voting power of a corporation which is a substantial contributor to the foundation. It also includes a member of the family of any individual described above.

Section 4946(b) of the Code defines a foundation manager as: an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

Section 4946(d) provides that the term "a member" of the family of a disqualified person include the spouse, children of and grandchildren of a disqualified person.

Section 7701(a)(l) of the Code defines the term "person" as including an individual, a trust, estate, partnership, association, company or corporation.

Rev. Rul. 67-5, l967-1 CB 123 holds that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities that were beneficial to them, but detrimental to the foundation. This resulted in the foundation's ownership of a non-income producing assets which prevented it carry on a charitable program commensurate in scope with its financial resources. The ruling concludes that the foundation was operated for a substantial non-exempt purpose and served the private interest of the creator and his family and therefore was not entitled to exemption under section 50l(c)(3) of the Code.

Rev. Rul. 74-287, l974-1 C.B. 327 provides that the employees of a bank designated as the trustee of a private foundation, who have been delegated the responsibility for the day-to-day administration and distribution of the trust funds, are foundation managers within the meaning of section 4946(b)(l) of the Code and are disqualified persons as defined in section 4946(a)(l)(B) even though they are ultimately responsible to the bank directors and officers for their actions with respect to the trust.

Rev. Rul. 77-259, l977-2 C.B. 387, holds that the purchase by a private foundation of a mortgage from a bank which is a disqualified person engaged in the normal course of its business in acquiring and selling mortgages is not within the exception for general banking services under section 53.4941(d)-2(c)(4) of the regulations and constitutes an act of self-dealing.

Generally, an act of self dealing may be present where the assets of a private foundation are transferred to or used by or for a disqualified persons. It is not pertinent whether the transaction is beneficial or detrimental to the private foundation. Similarly, an abuse of the assets of a private foundation could lead to revocation of tax exempt status. See the holding in Rev. Rul. 67-5, supra.

It is also well established that a bank or financial institute or its employees may be considered disqualified parties, where that organization or individual is responsible for the day-to-day administration of trust funds. See Rev. Rul. 74-287, supra and Rev. Rul. 77-259, supra. Following the regulations, exceptions are provided to the definition of self-dealing where the organization only performs trust functions and certain limited general banking services, the services are reasonable and necessary to carrying out the exempt purposes of the private foundation and the compensation paid to the individual or the bank is not excessive. The Service has consistently strictly interpreted the term general banking services to include only checking accounts, saving accounts, and safekeeping activities. Trust functions historically include investment functions.

Re:

In this situation, you have represented that, N will provide general trust services to you for a reasonable fee. You have represented that these services are directly and indirectly related to accomplishing the purposes for which you have been recognized as exempt. This is analogous to the situation described in Example (2) of section 53.4941(d)-3(c)(2) of the regulations.

Accordingly, based on the information submitted and the representations you have made, we conclude that, N can charge you for the specific personal services described personal services that are rendered by its employees on your behalf without engaging in an act of self-dealing within the meaning of section 4941 of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any such change should be reported to the Ohio TE/GE Customer Service office. Because this letter could help resolve any questions concerning your federal income tax status, it should be kept in your permanent records.

Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the transactions described above under any other provision of the Code. In addition, we express no opinion concerning whether the payments to N are reasonable in amount.

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 have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact the Ohio TE/GE Customer Service office at 877-829-5500 (a toll free number).

Sincerely yours,
Terrell M. Berkovsky

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

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