200241048

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

Date: JUL 15 2002

Contact Person:

Identification Number:

Telephone Number:

UIL: 4941.04-00

T:ED:B2

Employer Identification Number:

LEGEND: M =
N =
O =
P =
R =
T =
U =

Dear Sir or Madam:

This is in reply to your letter of November 8, 2001, concerning the payment of certain fees to disqualified persons for services they are providing you and N.

You were established as a charitable lead trust under the will of M. Under the will you received a percent of the assets of O. N has been recognized as exempt under section 501(c)(3) of the Internal Revenue Code and is a private foundation within the meaning of section 509(a) of the Code.

You are to provide annual annuity payments to support N and at the end of the annuity term you will terminate and your remaining assets will be distributed to M's then living issue. N also received a separate bequest from M through 0.

O and P hold, through various partnerships, limited liability companies, and corporations, certain interests in rental real properties. The properties include operating lease properties and net lease properties. In many instances independent third parties hold substantial interests in these properties.

R is a property management company. It is an S corp all the shares of which are owned by P. R provides various management services for the properties held by O and P. These services include, collecting rent, paying property expenses, seeking new tenants for vacancies, negotiating leases and amendments and renewals of leases, arranging for repairs, bookkeeping and computer services, and arranging for property services from unrelated persons for insurance or pest control. You have submitted a copy of the proposed management agreement you will enter into with R.

Re:

T, one of the current property interests, is to transfer its property holdings to a new partnership, U. O is to have the majority interest in U. The remaining interests in U are held by P and a related company owned by P's children. O is to partially fund you with its interest in U. It is contemplated that R will manage the rental property.

Under the proposed management agreement, R will solicit and negotiate leases, locate tenants, collect rent, arrange for the employment and engagement of independent contractors, arrange for insurance, arrange for utility and tax payments and other services. The management agreement spells out in detail how R's compensation will be determined and has clauses prohibiting conflicts of interests.

As a general rule, R will not contract for any services from a related person or contract for any services pursuant to an arrangement under which such services are also provided for the operation of other real properties owned by related persons. However, there will be two exceptions to this policy. First, for convenience, insurance polices will be obtained covering both U's properties and properties of related persons with all parties paying their allocable share of the premiums. The second exception is that R will retain persons to prepare rent registration forms for U and other properties it manages. As represented in your letter of April 2, 2002, no charges will be allocated to U for the preparation of these forms. Thus U will merely be paying the rent registration fees attributable to its properties directly to an agency of the local government.

It has been represented that all fees charged will be reasonable. Furthermore, you have represented that the issuance of insurance policies that cover both U's properties and properties owned by related persons will not result in lower insurance costs for such persons compared to having such properties insured through individual policies. Finally, none of the properties held by U are debt financed properties within the meaning of section 514 of the Code.

You have requested a ruling that your payments to R for personal services to be rendered by its employees on your behalf will not be considered an act of self-dealing as that term is described in 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 charitable purposes.

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)(1)(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.

Re:

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)-1(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(d)(3) of the regulations 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 they are furnished without charge.

Section 53.4941(d)-2(f)(2) of the regulations provides, in part, that 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.

Section 53.4941(d)-3(c)(1) 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.

Section 4946(a)(1) 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(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 4947(a) of the Code provides that certain trusts which are not exempt under section 501(a) of the Code are treated as private foundations and, with certain exceptions, are subject to the excise taxes imposed by Chapter 42. Such trusts include split interest trusts which are described in section 4947(a)(2) as a trust not all of the unexpired interests in which are devoted to one or more purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 20555, 2106(a)(2) or 2522.

Re:

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. 74-287, 1974-1 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)(1) 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.

You are a charitable lead trust and are subject to the section 4941 excise tax imposed on acts of self-dealing. R is a disqualified person within the meaning of section 4946(a) with respect to both you and N by reason of its relationship to P and P's relationship to you and N.

R is to provide various services to you and manage your real estate interest in U pursuant to the terms of a proposed management agreement you have submitted. As a general rule it will not contract for any services from a related person or contract for any services pursuant to an arrangement under which such services are also provided for the operation of other real property owned by related persons. However, insurance policies are to be obtained covering both U's properties and properties of related persons. Under the terms of these agreements, all parties will pay their allocable share of the premiums. R will also prepare rent registration forms for U, but there will be no charges for this service.

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 person. It is not pertinent whether the transaction is beneficial or detrimental to the private foundation.

However, the provision of personal services by a disqualified person which are reasonable and necessary to carrying out the exempt purposes of a private foundation shall not be an act of self-dealing if such compensation (or payment or reimbursement) is not excessive. See section 53.4941(d)-3(c)(1) of the regulations. In addition a transaction does not result in an act of self-dealing where any benefit to a disqualified person is incidental or tenuous. See section 53.4941(d)-2(f)(2) of the regulations.

The information you have submitted establishes that the services you are to receive from R, through this management contract, are excepted from the definition of self-dealing because they are reasonable and necessary to the carrying out of your exempt purposes. Therefore, as long as the payment for these services is reasonable, as you have represented, an act of self-dealing is not present. Further, any benefit received by disqualified persons through the inclusion of U's properties in an insurance policy with the other related property interests is merely for convenience and is incidental and tenuous and hence not considered an act of self-dealing. This is based on your representation that the combining of properties in the policy would not result in a lower insurance cost compared to having such properties insured through individual policies.

Finally, as represented in your letter of April 2, 2002, no charges will be allocated to U for the preparation of certain rental forms. Accordingly, an act of self-dealing will not be present because the provision of services by a disqualified person to a private foundation at no cost is not an act of self-dealing.

Accordingly, based on the information submitted and the representations you have made, we conclude that your payments to R for personal services to be rendered by its employees on your behalf will not be considered an act of self-dealing as that term is described in section 4941 of the Code. Furthermore, the payment of U's allocable portion of an insurance policy which is also insuring properties held by disqualified persons will not constitute an act of self-dealing.

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 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 R 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 TE/GE Customer Service office at

Sincerely yours,

/S/

Joseph Chasin
Acting Manager,
Exempt Organizations
Technical Group 2