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No Third Party
Contact
4941.00-00

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

Date:
NOV 24 1999

OP:E:EO:T:4

Contact Person:

ID Number:

Telephone Number:

EIN:

Legend:

B =
C =
D =
E =
F =
G =
H =
I =
J =

Dear Sir or Madam:

This is in response to your request, dated July 30, 1999, for a ruling on whether the purchase by "B" of three condominium units from "G" constitutes an act of direct or indirect self-dealing under section 4941(d) of the Internal Revenue Code.

"D" was created on July 8, 1987, and on November 30, 1987, the Internal Revenue Service ruled that "D" met the requirements of a charitable remainder unitrust under section 664 of the Code. "D" is a split interest trust described in section

4947(a)(2), and therefore is subject to section 4941. On April 22, 1988, the Service ruled that "D" would be excluded from the application of section 4943 during the lifetime of "B" and for a reasonable period thereafter for the settlement of "D." "B" and "E" are disqualified persons, as defined in section 4946 of the Foundation and Excise Taxes Regulations as these persons own more than 35 percent of the combined voting power of "F." "F" is also a disqualified person with respect to "D".

"C" died in 1988 and left a Last Will and Testament that was admitted to probate. "B" is a trustee of, and the income beneficiary of the "D." The Will provides that, after the distribution of certain specific bequests, the entire residuary estate is to pass to "D." "E" owns 7,664,402 shares of voting common stock of "F", or 89.48% of the total shares issued and outstanding.

"F" was incorporated on December 17, 1962. "F" is a closely held holding company and the common Parent Corporation of an affiliated group of corporations. "G" is a limited partnership all of whose partners are indirect wholly-owned subsidiaries of "F." "B" is also a shareholder, director (Chairman of the Board), and the chief executive officer of "F." She owns 401,425 shares of voting common stock of "F," or 4.69% of the total shares issued and outstanding. As a shareholder and director of "F" "E" is a disqualified person as defined in section 4946.

"B" and "I" are Independent Co-Executors of the Will and the Estate of "C." "I" is a trustee of "D" and a director of "F." "B" is a trustee of, and the income beneficiary, of the "D."

In a ruling issued on October 31, 1991, the Service held that "D" did not exercise control over activities of "F" while the "F" and "H" stocks are held by "E" for purposes of section 53.4941(d)-1(b)(5) of the Foundation and Similar Excise Taxes Regulations. Therefore, we ruled that the business transactions between "F" and "H," including business transactions between subsidiaries of "F" and subsidiaries of "H" would not constitute indirect acts of self dealing within the meaning of section 4941(d) of the Code while the "F" and "H" was in "E."

In a ruling issued on October 18, 1993, the Service held that ordinary course of business transactions between "F" and its subsidiary organizations and between "H" and its subsidiary organizations that occur after "E" has distributed the "F" and "H" shares to "D" will not be treated as acts of direct or indirect self-dealing under section 4941(d) of the Code.

"G" owns a "J" complex which is being converted to a high-rise condominium

consisting of 133 units. The condominium units are being offered for sale to the public. "B" proposes to purchase three condominium units from "G" at the fair market value and in cash at the time of closing.

You have represented that:

(1) the Co-Executors of "E" have a power of sale with respect to "F's" shares;

(2) the consummation of the proposed transaction will be approved by the Probate Court or another court having jurisdiction over the state;

(3) the proposed transaction will be consummated before "E" is considered terminated for federal income tax purposes;

(4) "G" will receive fair market value from the condominium unit at the time of closing; and

(5) "E's" interest in "F" will be the same after the proposed transaction as before.

Section 4947(a)(2) of the Code provides that section 4941 shall apply to charitable remainder unitrusts as if such trusts were private foundations.

Section 4941 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) of the Code provides, in part, 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; and
(E) transfer to, or use by or for the benefit of a disqualified person of the income or assets of a private foundation.

Section 54.4941(d)-1(b)(3) of the Foundation and Similar Excise Taxes Regulations provides that the term "indirect self-dealing" shall not include any

transaction with respect to a private foundation's interest or expectancy in property held by an estate (or revocable trust) regardless of when title to the property vests under local law, if:

(i) the administrator or executor of an estate or trustee of a revocable trust either:

(a) possesses a power of sale with respect to the property,
(b) has the power to reallocate the property to another beneficiary, or
(c) is required to sell the property under the terms of any option subject to which the property was acquired by the estate;

(ii) such transaction is approved by the probate court having jurisdiction over the estate;
(iii) such transaction occurs before the estate is considered terminated for Federal income tax purposes;
(iv) the estate receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction taking into account the terms of any option subject to which the property was acquired y the estate; and
(v) with respect to a transaction occurring after April 1973l the transaction either

(a) results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,
(b) results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or
(c) is required under the terms of any option which is binding on the estate (or trust).

You have represented that the executors possess a power of sale with respect to option assets held by "E;" a court having jurisdiction over the matter will approve the sale; and the sale will occur before "E" is terminated for federal income purposes. You have also stated the sale will be equal to the fair market value of the assets.

Reg. 53.4941(d)-1(b)(3) excludes transactions after 1973 from self-dealing when the foundation receives an interest or expectancy at least as liquid as the one it gave up. In this case "G" will receive fair market value in cash for the condominiums, plus the 5-part test of Reg. 53.4941(d)-1(b)(3) is met. The value of "E's" interest in "F" will be the same as, and therefore as least as liquid, after the proposed transaction as before.

Accordingly, based upon the facts as represented and assuming that the transactions will occur in the manner described, we rule that:

The proposed purchase by "B" of three condominium units from "G" will not constitute an act of direct or indirect self-dealing under section 4941(d) of the Code.

This ruling does not purport to rule under any provision of the Internal Revenue Code ether before or after "E" is considered terminated for Federal income tax purposes other than the ruling provided herein under section 4941(d). This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code states that it may not be used or cited as precedent.

A copy of this ruling is being sent to the Ohio EP/EO key district office. Because this letter could help resolve questions you should keep this copy in your permanent records.

If there are any questions about this ruling, please contact Ms. Berkovsky. For other matters, including questions concerning reporting requirements, please contact the Ohio EP/EO Customer Service office at 877-829-5500 (a toll free number) or correspond with that office at: Internal Revenue Service, EP/EO Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Rulings Branch 4

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