TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200149040

UIL Numbers: 4941.00-00
4946.02-00
7520.00-00

Date: JUL 30 2001

Contact Person:

Identification Number:

Telephone Number:

T:EO:B3

Employer Identification Number:

Legend:

Foundation =
x =
y =

Dear Sir or Madam:

We have considered ruling request of Foundation dated April 17, 2001, and supplemental information letter dated July 2, 2001 in which Foundation requested a ruling that contributions by Foundation and the life tenant of a proportional share of the total cost of proposed improvements to Foundation property ("Property") will not constitute acts of self-dealing under section 4941(d) of the Internal Revenue Code ("Code") or result in the imposition of taxes under section 4941(a) of the Code.

Property consists of a single parcel of land and a house. Property includes a single-family residence, which is approximately fifty years old and is in need of significant improvement. The life tenant's husband conveyed Property to Foundation, subject to a life estate in himself and his spouse, the life tenant, by deeds of gift. The life tenant's husband died over six years ago. Property has continuously been the life tenant's principal place of residence since her marriage to her husband in x. The life tenant is over 90 years old and is a disqualified person within the meaning of section 4946(a)(1)(D) of the Code.

Foundation was created in y, and received a determination letter recognizing it as an exempt organization under section 501(c)(3) of the Code and a private foundation under section 509(a). Foundation's exempt status has not been revoked.

Foundation and the life tenant have agreed, subject to a favorable response to this ruling request, to make expenditures for improvements to Property, and to share the expenditures

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between them on an actuarially determined basis, using the factors prescribed pursuant to section 7520 of the Code.

Foundation has represented that the improvements to Property will constitute real property, and will be of a nature chargeable to principal, under applicable state law. The improvements will include replacement of the driveway, central air conditioner, and water heater.

Chapter 42 of the Code subjects private foundations described in section 509(a) and disqualified persons described in section 4946 to certain excise tax provisions including section 4941.

Section 4941(a) of the Code imposes excise taxes on acts of self-dealing between a disqualified person (including a foundation manager) 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;...(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 4946(a)(1) of the Code provides, in part, that the term "disqualified person" means, with respect to a private foundation, a person who is – (A) a substantial contributor to the foundation, (B) a foundation manager, ... (D) a member of the family of any individual described in subparagraphs (A), (B), or (C), ...(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest.

Section 7520(a) of the Code provides that the value of an annuity, an interest for life, an interest for a term of years, a remainder interest, and a reversionary interest is determined by use of tables and an interest rate (rounded to the nearest two-tenths of one percent) that is equal to 120 percent of the applicable federal midterm rate for the month in which the valuation date falls.

Section 53.4941(d)-2(f)(2) of the Foundation and Similar Excise Taxes Regulations ("regulations") provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its assets will not, by itself, make such use an act of self-dealing.

Rev. Rul. 73-407, 1973-2 C.B. 383 and examples (1) and (4) of section 53.4941(d)-2(f)(4) of the regulations provide examples of potential self-dealing situations which provide only an incidental benefit to the disqualified person. They all have in common the actual giving of a charitable gift of broad public benefit by the disqualified person though the disqualified person may receive public recognition and benefit either through the naming of the foundation or a recreation center after the person, or the improvement of the area in which the disqualified person conducts business.

In this case, Foundation holds the Property subject to a life estate in the life tenant, a disqualified person with respect to Foundation. If Foundation were to bear the entire cost of the improvements to the Property, it could be argued that the value of the life tenant's interest in the Property would be increased and Foundation would arguably be making a direct or indirect transfer of its income or assets for the use of the life tenant within the meaning of section 4941(d)(1)(E) of the Code. Conversely, payment of all costs by the life tenant would logically constitute a gift by her to Foundation to the extent of the Foundation's remainder interest in the resulting improvements. In this case, each party proposes to bear a proportional share of the total cost of the improvements to Property equal to the present value of that party's interest in the improvements at the time of the improvements, as determined using the tables prescribed in section 7520. As a result, the life tenant will not receive anything in excess of the fair market value of her life interest, and consequently there is no direct or indirect transfer of Foundation assets to her.

In any case, the proposed capital improvements to Property are necessary to maintain the condition of Property, a valuable Foundation asset. Moreover, the life tenant is over 90 years old. Under the particular facts and circumstances, any benefits the disqualified person receives would be incidental or tenuous within the meaning of section 53.4941(d)-2(f)(2) of the regulations.

Accordingly, contributions by Foundation and the life tenant of a proportional share of the total costs of the proposed improvements to Property, equal to the present value of each party's interest in the contributions at the time the contributions are made, as determined by reference to the actuarial tables prescribed by section 7520, will not constitute acts of self-dealing under section 4941(d) of the Code or result in the imposition of taxes on the life tenant or Foundation's managers under section 4941(a).

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

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

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.

Sincerely,

Robert C. Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

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