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4941.04-00

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

200238053

Date:
JUN 24 2002

Contact Person:

Identification Number:

Telephone Number:

T:ED:B3

Employer Identification Number:

LEGEND: M =
N =
O =

Dear Sir or Madam:

This is in reply to your request for a ruling regarding your proposal to pay fees to a related management company in return for certain services it will be providing you.

You were established by M to help carry on his charitable giving program. You have been recognized as exempt under section 501(c)(3) of the Internal Revenue Code and are a private foundation within the meaning of section 509(a) of the Code.

M established N, a revocable grantor trust. N is the sole owner of O, a privately held management company.

O's current activities include the provision of personal services required to meet the business needs of M, his family and various for-profit business enterprises in which he holds ownership interests. The services currently provided are, accounting, bookkeeping, asset management, business travel, tax investment, secretarial, and administrative and support services. O provides similar services to you and, in addition, it provides various support services related to your particular operations and other services related to the preservation and handling of your assets for charitable use. It also serves as liaison with outside advisors, such as legal counsel, tax and accounting advisors, banks, and various consultants, including consultants hired by it to assist you in accomplishing your charitable programs. Currently, M pays all of the expenses related to the services provided all of his various interests.

O now proposes to provide personal services to you and M's other family interests pursuant to a cost sharing service agreement. The agreement will provide that each party will pay O directly for their allocable share of O's operating expenses, based on time incurred by the employees of O at the actual direct and indirect costs of the services provided by O's employees. Pursuant to the proposed amended service agreements, which were forwarded to

our office on February 18, 2002, these services will include accounting, bookkeeping, coordination of tax matters, investment management, business travel, administrative support, coordination with outside advisors, including legal counsel, tax advisors, and various consultants and administrative assistance for your charitable programs. Secretarial services, previously performed by O, will not be included in the service agreements. You will not be charged for any services performed on your behalf, other than those directly in furtherance of your exempt purpose, nor will you pay rent or make lease payments of any type to O.

The services to be provided are represented as being necessary for the carrying out of your exempt purposes, including the management of your assets and the administration of your charitable activities. In addition, it has been represented that the fees charged for these services will be reasonable. To ensure that the charges are reasonable and fair O will continue to contract with an independent consultant who specializes in employee benefits and human resources issues to review both the service agreements and the salary of each employee.

A ruling has been requested that the payments by you to O for services, provided through the proposed service agreements as described above will not be an act of self-dealing as that term is defined in section 4941(d)(1) of the Code and the regulations thereunder.

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, educational and religious 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)(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.

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Section 53.4941(d)-2(d)(l) of the regulations provides that except as provided in subparagraph 2 or 3 of this paragraph of 53.4941(d)-3(b) [which refers to certain services provided without charge] the furnishing of goods, services, or facilities between a private foundation and a disqualified person shall constitute an act of self-dealing. This subparagraph shall apply, for example, to the furnishing of goods, services, or facilities such as office space, automobiles, auditoriums, secretarial help, meals, libraries, publications, laboratories, or parking lots.

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. This paragraph applies without regard to whether the person who receives the compensation (or payment or reimbursement) is an individual.

Section 53.4941(d)-3(c)(2) of the regulations provides several examples illustrating when the payment of compensation to disqualified persons is not an act of self dealing.

> Example (1) describes a situation in which M, a partnership is a firm of 10 lawyers engaged in the practice of law. A and B, partners in M, serve as trustees to private foundation W and therefore are disqualified persons. In addition, A and B own more than 35 percent of the profits interest in M, thereby making M a disqualified person. M performs various legal services for W from time to time as such services are requested. The payment of compensation by W to M shall not constitute an act of self-dealing if the service performed are reasonable and necessary for the carrying out of W's exempt purposes and the amount paid by W for such services is not excessive.
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> Example (2) describes a situation in which, 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.
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> Example (3) of describes as situation in which M, a commercial bank, serves as a trustee for private foundation Y. In addition to M's duties as trustee M maintains Y's checking and savings accounts and rents a safety deposit box to Y. The use of the funds by M and the payment of compensation by Y to M for such

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> general banking services shall be treated as the payment of compensation for the performance of personal services which are reasonable and necessary to carry out the exempt purposes of Y if such compensation is not excessive.

Section 4946(a)(l)(A) of the Code defines the term "disqualified persons" with respect to a private foundation as including a substantial contributor within the meaning of section 507(d)(2).

Section 507(d)(2)(A)(1) of the Code defines the term substantial contributor as any person who contributed or bequeathed an aggregate amount of more than $5,000 to a private foundation, if such amount is more than 2 percent of the total contributions received during the taxable year in which the contribution is made. It also means the creator of a trust.

Section 4946(a)(l)(E) of the Code provides that the term disqualified person includes a corporation of which persons described in subparagraph (A) owns more than 35 percent of the total combined voting power.

Section 4946(a)(1)(G) of the Code provides that the term disqualified person includes a trust or estate in which persons described in subparagraph (A) holds more than 35 percent of the beneficial interest.

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

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.

You are a private foundation within the meaning of section 509(a). You and N were established by M. Therefore, M is a disqualified person as defined in section 4946(a)(l)(A) of the Code. O is also a disqualified person within the meaning of section 4946(a)(l)(E) by reason of its relationship to M and N. O proposes to charge you for various services as outlined in the submitted proposed service agreement.

It has been represented that, O will provide these services to you on an allocable basis. O will use an independent consultant with experience in employee benefits and human resources to ensure that the fees charged will be reasonable. It has been represented that these services are directly and indirectly related to accomplishing the purposes for which you have been recognized as exempt. Therefore, we have concluded that this arrangement is analogous to the situations described in examples one, two and three 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, O can charge you for the specific personal services enumerated in the proposed service agreement which was submitted to this office on February 18, 2002, without engaging in an act of self-dealing within the meaning of section 4941 of the Code.

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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 O 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 877-829-5500 (a toll free number).

Sincerely yours,

/S/

Joseph Chasin
Acting Manager,
Exempt Organizations
Technical Group 2