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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

UIL: 4941.04-00; 4945.04-06; 4942.03-05

Date: MAR 11 2003

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

LEGEND:

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Dear Sir or Madam:

This is in response to ruling requests involving issues under sections 507, 4941, 4942 and 4945 of the Code. Specifically, we are responding to your ruling requests relating to the reorganization of two private foundations in existence at the time of your ruling request.

X and Z were both formed by A, who died in y. X was incorporated by A in a as a nonprofit corporation under the law of state n. X is a tax-exempt organization under section 501(c)(3) of the Code and classified as a private foundation under section 509(a).

Z was created soon after A's death in y as a charitable trust pursuant to Article VI of A's last will and testament (Will). Z is a tax-exempt organization under section 501(c)(3) of the Code and a private foundation under 509(a) with its situs in state p.

Article VII of A's Will created a non-charitable trust benefiting certain descendants of A (hereafter, Article VII Trust). Under Article XI of A's Will, an Audit Committee was created and charged with the following tasks relating to Z as well as the Article VII Trust:

1. Select the auditor;
2. Periodically consulting with the trustees and advise them on the administration of the trusts;
3. Summarize the auditor's report for distribution to A's descendants prior to an "annual meeting" more fully described hereafter;
4. Request an accounting if one had not been filed within 5 years or if the audit committee believes there has been a breach of trust by a trustee;
5. Recommend the annual compensation paid to trustees for their services to the respective trusts;
6. Select the number of descendants of A who may attend the annual meeting; and
7. Request a trustee to continue to serve after attaining the age of 65 years.

One of A's sons was B, now deceased. Three of the current trustees of X are adult children of B. One trustee of X is nephew of A. Two other trustees of X are unrelated parties. X has a total of six trustees.

Another of A's sons is C, who is a trustee of Z, as is C's daughter and her husband. A fourth trustee of Z is unrelated to A.

The current members of the Audit Committee are either lineal descendants of A or a spouse of a lineal descendant.

Numerous disputes have arisen between X and Z, their respective trustees, and the Audit Committee. Many of the disputes center on disagreements between some or all of the trustees of X and some or all of the trustees of Z. Such disputes have resulted in litigation in certain state courts, including courts of state p, as well as federal courts. The various parties, including the Attorney Generals of two states, have executed a settlement agreement dated u in order to resolve the litigation. The conditions for settlement require rulings from the Internal Revenue Service.

The basic structure of the settlement agreement is that a new foundation (referred to hereafter as New Foundation) will be created by order of the court and its directors will be the four trustees of Z and a fifth director appointed by them. Z's current assets and liabilities will be transferred to New Foundation. Two trustees of X will become the new trustees of Z, and the current trustees will resign. X will then transfer to Z, which is also referred to at any time after the completion of the transactions as the Article VI Trust, assets that are equal in value to the value of the Z assets being transferred to New Foundation. X will also transfer the sum of v to New Foundation. The X trustees, the Z trustees, and the Audit Committee have executed a settlement agreement, with the approvals of the Attorneys General of two states.

There were or are a number of conditions of the settlement agreement. For purposes of this letter, the following conditions are relevant to our rulings:

1. New Foundation has received a determination letter from the Service stating that New Foundation is an organization described in section 501(c)(3) of the Code and a private foundation within the meaning of section 509(a).
2. The parties will receive all of the IRS rulings requested in this private letter ruling request except for the ruling as to whether the cash transfer from X to New Foundation is a "qualifying distribution," which is desired, but is not a prerequisite to closing.
3. X, the Article VI Trust (formerly referred to as Z), and the New Foundation shall make presentations about their philanthropic work and practices at the bi-annual (biennial) meeting of A's adult lineal descendants and their spouses. These presentations will be made during the charitable "business" portions of these meetings, which would also include the election of members of the Article VI (and Article VII) Audit Committee. The costs of the charitable "business" portion of these meetings (such as meeting space rent, audiovisual, and duplicating costs, and food costs) will be paid 50 percent by X, 12.5 percent by the Article VI Trust, 12.5 percent by the Article VII Trust, and 25 percent by New Foundation. The individual attendees will pay their own travel costs (transportation, meals, lodging, etc.) for attending the meetings.
4. X will pay the salaries and benefits of potentially three summer interns who are chosen from the descendants of A, and New Foundation will pay the salaries and benefits of potentially one summer intern. These interns will be chosen objectively on their merits from applicants who are descendants of A and his spouse (a certain identified spouse) and are at least 16 years of age and not more than 22 years of age, with each descendant only eligible to be an intern once. The interns will be paid no more than reasonable compensation, and no less than the legally required minimum wage, and will be required to contribute to the charitable activities of the foundation for which they are working to prepare them for the leadership roles they will likely have with one or more of these foundations during their lives.
5. The Z trustees will file accountings with and receive approval thereof by court T for the years 1999 through closing of the settlement agreement.
6. The Z trustees will file a tax return for the year 2001.

Steps required subsequent to closing that are a part of the settlement agreement and that are relevant to this ruling request include the following:

1. New Foundation will indemnify X and X trustees against any liability of Z existing before or as of the closing or arising out of activities that occurred before the closing, and against any liability arising from the breach of certain provisions of the Settlement Agreement by Z or the Z trustees.
2. X will indemnify Z and Z trustees against any liability arising out of the breach of certain provisions of the Settlement Agreement by X or the X trustees.

In a subsequent letter to this office, dated December 4, 2002, X and Z have presented additional facts and representations. It is represented that the interns hired by the parities, pursuant to the Settlement Agreement, would be paid nominal salaries, computed with reference to the minimum wage for similar positions, which the parties believe to be reasonable

and necessary for the services provided. The parties expect that the interns would normally work full-time for approximately 8 to 12 weeks during the summer, but would be willing to consider an intern who wished only to work part-time (for proportionately lower salary) for a shorter period of time. The salary may need to be adjusted to reflect the interns' age, education, and work experience.

The work assigned to interns will depend on the intern's age, education, and work experience. Their work will be closely supervised. It is asserted that the interns will provide useful services to the private foundations and further the charitable foundations' endeavors.

With respect to the annual family meetings, described above, it is represented that the meetings will be held once every two years, and the costs, which do not include the attendees' transportation, meals or lodging costs, are not expected to be significant. It is represented that the Attorney General for State p believes that the allocation of expenses for this meeting, described above, is reasonable.

The letter of December 4, 2002, also requested revisions of some of the ruling requests. Originally, Ruling 8. (b), included a requested ruling that X's transfer of assets to the Article VI Trust is a capital endowment grant under section 53.4945-5(c)(2) of the regulations and is, therefore, a "qualifying distribution" by X under section 4942. By a letter dated January 14, 2003, X and Z through their authorized representatives, withdrew the original ruling 8. (b) and replaced it with the revised ruling 8. (b) as it reads below.

X and Z have requested the following rulings:

1. Z's transfer of all of its assets to New Foundation will not constitute an act of self-dealing under section 4941.
2. X's transfer of cash in the amount of v to New Foundation will not constitute an act of self-dealing under section 4941.
3. X's transfer of the value of the Z assets and liabilities to Z will not constitute an act of self-dealing.
4. Subsequent to Z's transfer of all of its assets and liabilities to New Foundation, New Foundation will be treated as a successor to Z for purposes of chapter 42 and sections 507 through 509.
5. Post-closing expenditures by New Foundation with respect to preparing and filing a final accounting and tax returns for Z (its predecessor) or necessitated by indemnifications provided in the Settlement Agreement or by indemnifications of directors of New Foundation or employees relating to their conduct as Z trustees or employees prior to the closing date will not constitute acts of self-dealing under section 4941 and will not constitute taxable expenditures under section 4945.
6. Post-closing expenditures by X, if any, necessitated by indemnifications provided in the Settlement Agreement will not constitute acts of self-dealing under section 4941 and will not constitute taxable expenditures under section 4945.
7. With respect to the transfer in ruling 1, section 4945 will not be implicated and neither X, Z, nor New Foundation will be required to comply with the expenditure

responsibility rules under section 4945(d)(4) and 4945(h). With respect to the transfer in ruling 2, New Foundation and X will be required to comply with the expenditure responsibility rules under section 4945(d)(4) and 4945(h), but section 4945 will not otherwise be implicated. With respect to the transfer in ruling 3, the Article VI Trust and X will be required to comply with the expenditure responsibility rules under section 4945(d)(4) and 4945(h), but section 4945 will not be otherwise implicated.

8. (a) X's transfer of v to New Foundation is a capital endowment grant under section 53.4945-5(c)(2) and is, therefore, a "qualifying distribution" by X under section 4942. Such tax characterization does not affect in any way the timing or amount of New Foundation's qualifying distributions (under section 4942) and does not require New Foundation to distribute such sum within any fixed time period (i.e., the v transfer is not a flow-through grant under section 53.4942(a)-3(c)(1)). (b) X's transfer of property to the Article VI Trust is a capital endowment grant under section 53.4945-5(c)(2).
9. The payment by New Foundation, Z, and X of nominal salaries, computed with reference to the minimum wage for similar positions and under no circumstances constituting more than reasonable compensation, to interns for services actually provided to the respective entity as ordinary and necessary expenses pursuant to the Settlement Agreement will not constitute an act of self-dealing under section 4941 and will not constitute a taxable expenditure under section 4945.
10. The payments by New Foundation, Z, and X of the costs of the charitable "business" portion of the bi-annual family meeting pursuant to the Settlement Agreement have been reasonably allocated among the Parties, are necessary expenditures in that they will permit the extended family to learn about the charitable activities of the organizations, and will not constitute an act of self-dealing under section 4941 and will not constitute a taxable expenditure under section 4945.
11. The payments by Z of the Audit Committee's legal fees and chairman's fee pursuant to the Settlement Agreement, which will have been determined by a probate court to be reasonable and necessary, will not constitute an act of self-dealing under 4941 and will not constitute a taxable expenditure under section 4945.
12. The transactions pursuant to the Settlement Agreement are reasonable and necessary to implement the Settlement Agreement and will not subject the foundation managers of X, Z, or New Foundation to any liability under sections 4941 or 4945, including any taxes imposed on foundation managers.
13. New Foundation will be treated as the successor to Z for purposes of Chapter 42 (sections 4940 et seq.). Accordingly, New Foundation will calculate its qualifying distributions obligation under section 4942 for the calendar year of closing by basing the calculation on (i) its investment assets for the remainder of the calendar year after closing and (ii) Z's investment assets for the beginning of the calendar year before closing. New Foundation would be treated as having made any qualifying distributions made by Z in the calendar year of closing prior to closing. After closing, Z (which will then be known as the Article VI Trust) would be treated as if it were a new entity for purposes of these sections. Thus, the Article VI Trust would calculate its qualifying distributions obligation for the remainder of the year in which the closing occurs by only taking into account the investment assets held by it for the remainder

of the calendar year after closing and by using an applicable percentage of 5% multiplied by a fraction the numerator of which the number of days remaining in the calendar year and the denominator of which is 365.

LAW AND ANALYSIS:

Ruling 1, 2, and 3 -

Section 4941(a) of the Code imposes certain excise taxes on direct and indirect acts of self-dealing between a disqualified person and a private foundation, and also imposes a separate excise tax on the participation by any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, unless such participation is not willful and is due to reasonable cause.

Section 4941(d)(1)(E) of the Code defines the term self-dealing to include the 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)(B) of the Code defines a disqualified person to include a foundation manager.

Section 4946(a)(1)(D) of the Code defines a disqualified person to include a member of the family of a substantial contributor to the foundation.

Section 53.4946-1(h)(3) of the Foundation and similar excise regulations (regulations) defines member of the family for purposes of section 4946 of the Code to include a lineal descendant.

Section 53.4946-1(a)(8) of the regulations provides that for purposes of section 4941 only, the term "disqualified person" shall not include any organization described in section 501(c)(3).

The transfers from X to New Foundation and the transfers from X to the Article VI trust (formerly Z) are transfers to section 501(c)(3) organizations, which are not treated as disqualified persons for purposes of section 4941 by virtue of the authority contained in section 53.4946-1(a)(8) of the regulations. We note that the Service has recently issued a determination to New Foundation that it is an organization exempt under section 501(c)(3) of the Code and is classified as a private foundation. Accordingly, the transfer of assets from Z to New Foundation is also not a transfer to a disqualified person. Thus, the transfers do not constitute self-dealing transactions and are not subject to tax under 4941.

Ruling 4 –

Section 507(a)(1) of the Code provides that a private foundation may voluntarily terminate its private foundation status by submitting to the Secretary a statement of its intention to terminate its private foundation status and paying the termination tax imposed under section 507(c).

Section 507(b)(2) of the Code provides that in the case of a transfer of assets by any private foundation to another private foundation, pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee private foundation shall not be treated as a newly created organization.

Section 1.507-1(b)(6) of the Income Tax Regulations (Regulations) provides that if a private foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in section 507(b)(2) and 1.507-3(c), such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Section 1.507-3(a)(1) of the Regulations provides that in the case of a transfer of assets of any private foundation to another private foundation in a transaction described in section 507(b)(2) of the Code, a transferee organization will not be treated as a newly created organization. Thus, in the case of a significant disposition of assets to one or more private foundations within the meaning of section 1.507-3(c), the transferee organization shall not be treated as a newly created organization. The transferee organization is treated as possessing those attributes and characteristics of the transferor organization which are described in section 1.507-3(a)(2), (3), and (4).

Section 1.507-3(a)(9)(i) of the Regulations provides that if a private foundation transfers all of its net assets to one or more private foundations that are effectively controlled, directly or indirectly, by the same person or persons that effectively control the transferor private foundation, the transferee private foundation will be treated as if it were the transferor private foundation for purposes of chapter 42 and sections 507 through 509.

Section 1.507-3(c)(1) of the Regulations provides that a transfer of assets is described in section 507(b)(2) of the Code if it is made by a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization. This shall include any organization or reorganization described in subchapter C of chapter 1. The phrase adjustment, organization, or reorganization shall include any significant disposition of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income.

Section 1.507-3(c)(2) of the Regulations provides that the term "significant disposition of assets to one or more private foundations" shall include a disposition of assets where the total disposition for the taxable year is 25 percent or more of the fair market value of the transferor foundation's net assets at the beginning of such taxable year.

In situation 2 of Rev. Rul. 2002-28, 2002-20 I.R.B. 942, T a charitable trust, is recognized as exempt from federal tax under section 501(c)(3) and is classified as a private foundation under section 509(a). The Trustees of T determine that T's charitable purposes can

be more effectively accomplished by operating in corporate form. The Trustees of T create W, a not-for-profit corporation, for the purpose of carrying on T's activities. W is recognized as exempt from federal tax under section 501(c)(3) and is classified as a private foundation under section 509(a). T transfers all of its assets and liabilities to W. The Ruling holds that because the transferor foundation transfers all of its assets to one or more private foundations effectively controlled by the same persons that effectively control the transferor, the transferee foundations are treated as though they were the transferor foundation for various purposes of chapter 42.

Section 507(b)(2) applies to any transfer of assets by a private foundation pursuant to a merger or recapitalization described in subchapter C of chapter 1 or other adjustment, organization or reorganization which includes "any other significant disposition of assets to one or more private foundations." Z's transfer of all of its assets and liabilities to New Foundation, which is a section 501(c)(3) private foundation, is a section 507(b)(2) transfer. See situation 2 of Rev. Rul. 2002-28, 2002-20 I.R.B. 942. Further, in that the transfer is the subject of a settlement agreement of extensive litigation between the parties and approved by a court having jurisdiction over the litigation, the transfer of such assets could be considered as a court mandated "other adjustment, organization, or reorganization. It constitutes a section 507(b)(2) transfer. In that Z will transfer all of its assets and liabilities to New Foundation, the transfer clearly constitutes "a significant disposition of assets" within the meaning of section 1.507-3(c)(1) and (2) of the Regulations.

Since the same directors who control Z will also control New Foundation (the four directors of Z will constitute 4 of 5 directors of New Foundation and the original four appoint the fifth), the New Foundation is effectively controlled by the same persons that controlled Z. Accordingly, pursuant to the authority of section 1.507-3(a)(9)(i) of the Regulations, for purposes of chapter 42 of the Code and section 507 through 509, it is appropriate to treat the New Foundation as if it were the transferor (Z). See situation 2 of Rev. Rul. 2002-28, supra.

We reach this conclusion notwithstanding the fact that under the settlement agreement, the old Z (now the Article VI Trust) will be receiving the assets from X almost simultaneously with the transfer of assets to the New Foundation. Thus, one may question whether Z has transferred "all of its net assets to one or more private foundations" within the meaning of section 1.507-3(a)(9)(i) of the Regulations. Based on all the facts of this case, it is clear that the parties intend a sharp and defined delineation between Z prior to the settlement agreement and the Article VI Trust (formerly Z) after the terms of the settlement agreement have been completed. Such conclusion is supported by the following factors: (1) the settlement agreement is intended to resolve the litigation between the parties. (2) there is a separation in the old and new trust evidenced by the importance of the sequence of the transfer in the settlement agreement; the transfer of the assets from Z to New Foundation precede the transfer of the assets from X to old Z; (3) the trustees of Z all resign and are replaced by a completely new set of trustees; (4) the name of Z is changed to the "Article VI Trust" after the asset transfer and the change in trustees; (5) the value of the assets is approximately the same but the actual assets held by the Article VI trust are entirely different from the assets held by Z. (6) the charitable purposes pursued by the trustees of the Article VI Trust will be significantly different from the charitable purposes previously conducted by the trustees of old Z. The fact that the asset transfers and change in trustees is pursuant to a settlement agreement related to extended

litigation between the parties is critical. In summary, there is a clear and sharp delineation between the two trusts that supports treatment under section 1.507-3(a)(9)(i) of the Regulations despite the closeness in time of the assets received from X as well as the interdependence of the transactions.

Rulings 5, and 6 –

Section 53.4941(d)-(2)(f)(3) of the regulations provides that section 4941(d)(1) shall not apply to the indemnification by a private foundation of a foundation manager, with respect to the manager's defense in any civil judicial or civil administrative proceeding arising out of the manager's performance of services (or failure to perform services) on behalf of the foundation, against all expenses (other than taxes, including taxes imposed by chapter 42, penalties, expenses of correction) including attorney's fees, judgments and settlement expenditures if – (A) Such expenses are reasonably incurred by the manager in connection with such proceedings; and (B) The manager has not acted willfully and without reasonable cause with respect to the act or failure to act which led to such proceeding or to liability for tax under chapter 42.

Section 53.4941(d)-2(f)(4)(i) of the Regulations provides that the indemnification by a private foundation of a foundation manager for compensatory expenses shall be an act of self-dealing under this paragraph unless when such payment is added to other compensation paid to such manager the total compensation is reasonable under chapter 42.

Generally, under section 53.4945-6(a) and (b), expenditures of a private foundation for reasonable administrative expenses will not be treated as taxable expenditures under section 4945 of the Code.

Payments in the nature of post closing expenditures by New Foundation with respect to preparing and filing a final account and tax returns for Z as required in the Settlement Agreement will not constitute acts of self-dealing under section 4941 or taxable expenditures under section 4945. Obligations to file accountings are generally necessary of trusts. Further, filing tax returns is a requirement of private foundations. Since, as indicated in the preceding section, it is appropriate to treat New Foundation as if it were Z, the payments (assuming that they are reasonable and not excessive) by New Foundations of its predecessor's obligations in this regard would be a necessary and appropriate action.

Post closing expenditures by X and Z to each foundation's respective trustees will not constitute acts of self-dealing if (1) such expenses are reasonably incurred by the manager in connection with respect to the manager defense in a civil or judicial proceeding and (2) the manager has not acted willfully and without reasonable cause with respect to the act leading to the proceeding. Indemnification of trustees, other than as stated in the preceding paragraph, will not constitute self-dealing under section 4941 of the Code only if such payment, when added to other compensation paid to the respective trustees, is reasonable under chapter 42.

Ruling 7 –

Section 4945(a) of the Code imposes an excise tax on "taxable expenditures."

Section 4945(d)(4) of the Code defines the term "taxable expenditure" to include a grant to an organization unless such organization is a public charity described in section 509(a)(1), (2), or (3) of the Code or an exempt operating foundation as described in section 4940(d)(2).

Because Z is transferring all of its assets to New Foundation, New Foundation will be treated as though it is the transferor for purposes of section 4945. See section 1.507-3(a)(9)(i) of the Regulations. Because New Foundation is treated as the transferor foundation there is no transfer of assets for purposes of chapter 42, or to state it another way, New Foundation is considered as transferring assets to itself. Thus, there is no grant to an organization for purposes of section 4945 of the Code. Further, in that the transfer qualifies as a section 507(b)(2) transfer, the transfer of funds is precluded from being characterized as a grant under section 4945 of the Code in that the section 507(b)(2) transfer is characterized as an organization, reorganization, or other adjustment of assets.

X is transferring the sum of v to New Foundation and an amount to Z that is equal to the value of the assets of Z transferred to New Foundation. Both transfers are made pursuant to a settlement agreement that has resulted from extensive and extended litigation between various parties mentioned previously. It is the parties who are voluntarily determining how to settle their affairs. The transfer of property by X to the Article VI Trust and New Foundation is equivalent to a grant from one private foundation to another within the meaning of section 4945(d)(4) and section 4945(h).

Ruling 8 –

Section 4942(a) of the Code imposes a tax on the undistributed income of a private foundation. However, under section 4942(c), such tax is only imposed to the extent that the distributable amount for the taxable year exceeds qualifying distributions made out of the distributable amount.

Section 4942(g) of the Code provides, in part, that for purposes of this section, the term "qualifying distribution" means (A) any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons with respect to the foundation.

Section 53.4942(a)-3(a)(2)(i)(b) of the regulations, in essence, follows the language of section 4942(g) as to an organization controlled by the foundation, and makes reference to section 53.4942(a)-3(c).

Section 53.4942(a)-3(a)(3) provides, in part, that an organization is "controlled" by a foundation or one or more disqualified persons with respect to the foundation if any such persons may, by aggregating their votes or positions of authority, require the donee organization to make an expenditure, or prevent the donee organization from making an expenditure.

Section 53.4945-5(c) of the Regulations provides, in essence, that for endowment grants to exempt private foundations, the grantor foundation shall exert expenditure responsibility and require reports from the grantee private foundation for three years.

The distribution of v by X to New Foundation is by definition a distribution for a charitable purpose as specified in section 170(c)(2)(B), and hence one which constitutes a qualifying distribution under section 4942(g) of the Code. The foundation managers of X and New Foundation are not only different persons, but have been adverse parties in the litigation leading to the settlement agreement described above.

Such tax characterization does not affect in any way the timing or amount of New Foundation's qualifying distributions (under section 4942) and does not require New Foundation to distribute such sum within any fixed time period (i.e., the distribution of v by X to New Foundation is not a flow-through grant under section 53.4942(a)-3(c)(1)).

Further, the distribution of v by X to New Foundation will not constitute a taxable expenditure under section 4945, provided expenditure responsibility as required under section 4945(h) and section 53.4945-5(c)(2) of the Regulations with respect to a capital endowment grant is exercised by X for the taxable year in which the grant is made and the two following taxable years.

Additionally, X's transfer of assets to the Article VI Trust is a capital endowment grant under section 53.4945-5(c)(2) of the regulations.

Ruling 9 –

Section 4941(d)(1)(D) of the Code defines an act of self-dealing as payment of compensation by a private foundation to a disqualified person.

Section 4941(d)(1)(E) of the Code defines an act of self-dealing as 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, in part, that the payment of compensation by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation is not excessive.

Section 4946 of the Code defines the term disqualified person.

Section 4946(a)(1)(D) defines a disqualified person to include a member of the family of any substantial contributor to the Foundation.

Section 4946(a)(1)(B) defines a disqualified person to include a foundation manager.

Section 4946(b) defines the term foundation manager to include a director of the foundation.

Section 53.4941(d)-3(c) of the regulations provides that the payment of compensation by a private foundation to a disqualified person for the performance of personal services which are reasonable and necessary to carry out the exempt purpose of the private foundation shall not be an act of self-dealing if such compensation is not excessive.

It is represented that X will have at least three summer interns chosen from the descendants of the substantial contributor. Similarly, New Foundation will have at least one summer intern also from the descendants of the substantial contributor, A. It is represented that the summer interns will provide useful services to X and New Foundation, furthering each organization's charitable endeavors at a reasonable cost. Thus, assuming that the payment of compensation to such interns is reasonable and necessary within the meaning of section 53.4941(d)-3(c) of the Regulations, the payment of compensation will not constitute acts of self-dealing.

Ruling 10 –

The substantial contributor, A, as expressed in his will, envisaged broad family participation in the bi-annual family meetings. It is represented that the parties believe that based on the relative size of X and New Foundation and the Article VI Trust (formerly Z), the meetings costs are reasonably allocated, reasonable in amount, and necessary expenditures to the respective organizations. It is also represented that the meeting is to be held once every two years. It is represented that the costs of such meeting, which does not include the attendees' transportation, meals or lodging, is not expected to be significant. It is represented that the Attorney General of p believes that the allocation of costs is reasonable. Thus, assuming that the costs of the meeting is reasonable and necessary to carrying out the function of the respective organizations, payment of such costs by such organizations does not constitute acts of self-dealing by reason of constituting ordinary and necessary business expenses.

Ruling 11 –

The Audit Committee was created under Article Eleventh of A's Will. The Audit Committee is authorized in the Will to (1) to consult from time to time with the Trustees and advise them concerning the administration of the trusts; (2) to audit the receipts and disbursements of the trusts; (3) to designate the number of adult lineal descendants and spouses who may attend the annual or bi-annual meeting; and (4) recommend to the trustees the annual compensation such trustees receive for their services. The Audit Committee serves both the Article VI Trust (formerly Z) and the Article VII trust which serves entirely private purposes. Assuming the appropriate allocation of a portion of the costs of the activities of the Audit Committee to the Article VI Trust, and assuming that the cost of such activities of the Audit Committee is necessary and reasonable for the operation and functioning of the Article VI Trust, the payments of such costs will not constitute acts of self-dealing under section 4941 nor taxable expenditures under section 4945.

Ruling 12 –

The transactions pursuant to the Settlement Agreement which were ruled on favorably in the proceeding rulings will not subject X, Z, or New Foundation, or the respective foundation managers, to any liability under section 4941 or 4945, including taxes imposed on foundation managers.

Ruling 13 -

For purposes of Chapter 42 of the Code, New Foundation will be the successor to Z. See section 1.507-3(a)(9)(i) of the Regulations. Accordingly, New Foundation will calculate its qualifying distributions obligation under section 4942 of the Code for the calendar year of closing by basing the calculation on (i) its investment assets for the remainder of the calendar year after closing and (ii) Z's investment assets for the beginning of the calendar year before closing. New Foundation will be treated as having made any qualifying distributions made by Z in the calendar year of closing for distributions made before closing.

After closing, the Article VI Trust (formerly Z) will be treated as if it were a new entity for these sections. Thus, the Article VI Trust would calculate its qualifying distributions obligation for the remainder of the year in which closing occurs only by taking into account the investment assets held by for the remainder of the calendar year after closing and by using an applicable percentage of 5 percent multiplied by a fraction, the numerator of which is the number of days remaining in the calendar year and the denominator of which is 365. See section 53.4942(a)-2(c)(5)(iii) of the Regulations regarding short taxable periods.

For example, if the closing were to occur on February 1, 2003, the Article VI Trust would be responsible for making qualifying distributions (including reasonable administrative expenses) of at least 334/365 of 5 percent of the average monthly balance of the Article VI Trust's investment assets for the period February 1, 2003, to December 31, 2003.

As an example of the New Foundation's responsibility for qualifying distributions using the same February 1, 2003, closing date, New Foundation would make qualifying distributions (including reasonable administrative expenses) of at least 5 percent of the average monthly balance of the following assets: (i) Z's investment assets for the month of January, 2003, (taking into account any Z qualifying distributions and reasonable administrative expenses for such month), and (ii) New Foundation's investment assets for the period February 1, 2003, to December 31, 2003. However, any qualifying distributions and reasonable administrative expenses paid by Z in January 2003, would be counted toward New Foundation's 2003 obligation (as if New Foundation had paid them).

Based on the facts and representations submitted, we rule as follows:

(1) Z's transfer of all of its assets to New Foundation will not constitute an act of self-dealing under section 4941 of the Code.

(2) X's transfer of cash in the amount of v to New Foundation will not constitute an act of self-dealing under section 4941 of the Code.

(3) X's transfer of the value of the Z assets and liabilities to the Article VI Trust (formerly Z) will not constitute an act of self-dealing under section 4941 of the Code.

(4) Subsequent to Z's transfer of all of its assets and liabilities to New Foundation, New Foundation will be treated as a successor to Z for purposes of chapter 42 and sections 507 through 509 of the Code.

(5) Post-closing expenditures by New Foundation with respect to preparing and filing a final accounting and tax returns for Z (its predecessor) or necessitated by indemnifications provided in the Settlement Agreement or by indemnifications of directors of New Foundation or employees relating to their conduct as Z trustees or employees prior to the closing date will not constitute acts of self-dealing under section 4941 of the Code and will not constitute taxable expenditures under section 4945.

(6) Post-closing expenditures by X, if any, necessitated by indemnifications provided in the Settlement Agreement will not constitute acts of self-dealing under section 4941 of the Code and will not constitute taxable expenditures under section 4945.

(7) With respect to the transfer in ruling 1, section 4945 will not be implicated and neither X, Z, nor New Foundation will be required to comply with the expenditure responsibility rules under sections 4945(d)(4) and 4945(h) of the Code. With respect to the transfer in ruling 2, New Foundation and X will be required to comply with the expenditure responsibility rules under section 4945(d)(4) and 4945(h), but section 4945 will not otherwise be implicated. With respect to the transfer in ruling 3, the Article VI Trust and X will be required to comply with the expenditure responsibility rules under section 4945(d)(4) and 4945(h), but section 4945 will not be otherwise implicated.

(8) (a) X's transfer of v to New Foundation is a capital endowment grant under section 53.4945-5(c)(2) and is, therefore, a "qualifying distribution" by X under section 4942. Further, the distribution of v by X to New Foundation will not constitute a taxable expenditure under section 4945, provided expenditure responsibility as required under section 4945(h) and section 53.4945-5(c)(2) of the Regulations, with respect to a capital endowment grant is exercised by X for the taxable year in which the grant is made and the two following taxable years. (b) X's transfer of assets to the Article VI Trust is a capital endowment grant under section 53.4945-5(c)(2) of the regulations.

(9) The payment by New Foundation and X of nominal salaries to interns for services actually provided to the respective entities will not constitute self-dealing under section 4941 of the Code assuming that such expenditures are reasonable and

necessary and not excessive and will not constitute a taxable expenditure under section 4945.

(10) The payments by New Foundation, Z, and X of the costs of the charitable "business" portion of the bi-annual family meeting pursuant to the Settlement Agreement, assuming such payments are ordinary and necessary expenses, having been reasonably allocated among the Parties, will not constitute acts of self-dealing under section 4941 of the Code and will not constitute taxable expenditures under section 4945.

(11) The payments by Z of the Audit Committee's legal fees and chairman's fee pursuant to the Settlement Agreement, which will have been determined by a probate court to be reasonable and necessary, will not constitute acts of self-dealing under 4941 of the Code and will not constitute taxable expenditures under section 4945 of the Code.

(12) If the payment of compensation is reasonable and necessary and not excessive, the transactions pursuant to the Settlement Agreement necessary to implement such Agreement will not subject the foundation managers of X, Z, and New Foundation to any liability under sections 4941 or 4945 of the Code, including any taxes imposed on foundation managers.

(13) New Foundation will be treated as the successor to Z for purposes of Chapter 42 (sections 4940 et seq.). Accordingly, New Foundation will calculate its qualifying distributions obligation under section 4942 of the Code for the calendar year of closing by basing the calculation on (i) its investment assets for the remainder of the calendar year after closing and (ii) Z's investment assets for the beginning of the calendar year before closing. New Foundation would be treated as having made any qualifying distributions made by Z in the calendar year of closing prior to closing. After closing, Z (which will then be known as the Article VI Trust) would be treated as if it were a new entity for purposes of these sections. Thus, the Article VI Trust would calculate its qualifying distributions obligation for the remainder of the year in which the closing occurs by only taking into account the investment assets held by it for the remainder of the calendar year after closing and by using an applicable percentage of 5% multiplied by a fraction the numerator of which the number of days remaining in the calendar year and the denominator of which is 365.

This letter does not purport to address whether X's transfer of assets to the Article VI Trust constitutes a qualifying distribution under section 4942 of the Code, nor any other issue not specifically addressed in this letter.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

This ruling is directed only to the person that requested it. Internal Revenue Code section 6110(k)(3) provides that it may not be used or cited as precedent. This ruling does not purport to rule on any other issue or Code section not addressed herein.

Sincerely,

(signed) Robert C Harper, Jr

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