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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

Date: SEP 16 2003

Contact Person:

Identification Number:

Telephone Number:

T:EO:BR 3

Employer Identification Number:

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Dear Sir or Madam:

We have considered your letter dated July 18, 2002, and subsequent correspondence, requesting a ruling that a proposed partition of timberlands will not constitute self-dealing within the meaning of section 4941 of the Internal Revenue Code (the "Code").

The predecessor to M was a trust created on , by H, the wife of G, and was funded primarily by H in and in . In response to a Petition in Equity filed by the Trustees, the court, in , ordered the predecessor to M to transfer certain funds to a separate trust and the court further ordered M to hold the balance of the trust property under the terms and conditions of the original trust. In addition, M's name was slightly modified. The

Service has ruled that M is an organization exempt from taxation under section 501(c)(3) of the Code, which is a private foundation within the meaning of section 509(a). The Trustees of M are A, B, C, D, and E.

G died in leaving a Will and codicils to the Will. In his Will, G created a trust for the benefit of his descendants and the spouses of certain descendants. Ultimately, the trust property vests in G's grandchildren in equal shares free of trust. If none of G's grandchildren are living at the termination of the trust, the trust is distributed to various charitable and non-charitable interests. This trust is identified as N.

In , G created three separate trusts for the benefit of his three children with the remainders subject to a limited power of appointment in each. If the children fail to exercise such powers, the trust property is left to various individuals. The trusts created are O, P, and Q.

In , a trust was created for the benefit of G. When G died in , a controversy arose among various potentially interested parties regarding the disposition of the trust assets. The Parties agreed to settle the matter pursuant to an agreement of compromise dated . A portion of the trust was left to H and a portion was left for the benefit of H's three children. Each child has a limited power of appointment and if each or any should fail to exercise the power, the portion of the trust property is passed to various individuals. This compromise trust is identified as R.

In over acres of timberland was left to two branches of the family of which G was a descendant. Currently, Z, a limited partnership owns an approximately percent undivided interest in the timberland. Z is controlled by the K branch of the family. The remaining portion of the undivided interest in the timberland is held by G's side of the family under various trusts as follows: M holds percent; N holds percent; O, P, and Q, collectively hold percent; and R holds percent. The timberland is held in a large number of parcels and the undivided ownership of each parcel does not coincide with the percentages set forth in the preceding sentences. Such percentages reflect overall ownership of each interest in all parcels. Further, neither Z nor M nor the GH trusts own an interest in each and every parcel of timberland, but each owns an interest in most parcels of the timberland.

At present, the K family through Z on one side and M and the GH trusts on the other side (representing the G side of the family) each hold an interest in a corporation, Y, in proportion to each respective partnership or trusts' ownership of the timberland. Y, through its wholly owned subsidiary, X, currently harvests the timberland.

The undivided interest in the timberlands represents a large percentage of the total assets of M as well as the trusts identified above and collectively called the GH family trusts. The Trustees of M and the GH family trusts wish to diversify their holdings. With the agreement of the K interests, M and the GH family trusts propose to partition the timberland interests. Pursuant to the proposed partition set forth in your ruling request, each party currently holding an interest as undivided tenants in common in the timberlands would have received a divided interest in the timberlands that is equal in value to its current undivided interest in accordance with values determined by an independent third-party appraisal to be performed by a qualified

and independent appraiser. Your initial proposal did not contemplate that the partition of the parcels of timberland would be on a strictly pro rata basis, although you proposed that the division would be of interests of equal value to that previously held by each of the parties.

By your letter dated December 18, 2002, you have amended the manner of the partition of the timberland to adopt the partition and division of the timberland held by the G side of the family on strictly a pro rata basis, parcel by parcel or tract by tract. You have represented that you will accomplish such a pro rata partition in the timberland by making exchanges with the K side of the family with respect to some of the smaller parcels. You propose that M trade its share in such smaller parcels with Z in return for interests of equal value in the larger parcels. Alternatively, or in addition, the GH trusts will trade their interests in the small parcels to Z in return for interests of equal value in the larger parcels. Your letter outlines the details of the swaps as to the various specific parcels of timberland. Following the trade with Z, you represent that M would own only interests in the larger parcels and would therefore receive a pro rata share of each parcel in the partition (or it would own interests in the smaller parcels, so that partition of those parcels would not involve any self-dealing issue).

You continue to represent that the value of the undivided interest held as tenants in common surrendered in the partition will equal the value of the partitioned or divided interest in timberland received. It is also represented that the partition of tracts or parcels of timberland will only be made individually as to each tract or parcel except where a tract or parcel is contiguous; that is, adjoining another tract or parcel.

A, B, C, D, E, M, N, O, P, Q, and R have requested the following ruling:

The proposed partition of M's undivided interest in certain timberlands will not constitute an act of self-dealing as described in section 4941 of the Code.

LAW AND ANALYSIS:

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d) of the Code defines self-dealing as any direct or indirect: (A) Sale or exchange, or leasing, of property between a private foundation and a disqualified person.

Section 4946 defines the term "disqualified person" for purposes of the application of section 4941 of the Code.

Section 4946(a)(1)(G) of the Code defines the term disqualified person to include a person who is a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest.

Rev. Rul. 56-437, 1956-2 C.B. 507, holds, in part, that the severance of a joint tenancy in stock of a corporation, under a partition act instituted under Colorado statutes compelling

partition, and the issuance of two separate stock certificates in the names of each of the joint tenants, is a nontaxable exchange. In each case there was no sale or exchange and the taxpayers neither realized a taxable gain nor sustained a deductible loss.

It has been stipulated in the ruling request that because all of H's children and grandchildren are the sole beneficiaries of N, N is a disqualified person as to M within the meaning of section 4946(a)(1)(G) of the Code. Similarly, it is also stipulated that because H's children and grandchildren (and their spouses) are beneficiaries of trusts O, P, Q, and R, these trusts are each disqualified persons under section 4946(a)(1)(G) of the Code.

M, along with N, O, P, Q, and R, will partition various tracts of timberlands in which they hold interests as tenants in common so that such property surrendered in partition is of equal value as the property received in the partition. The question for consideration is whether the partition will constitute a sale or exchange for purposes of section 4941 of the Code. Where the interests of M and the disqualified trusts in each parcel is divided on a pro rata basis in accordance with the fair market value of the common interest surrendered and the separate interest received, the division of properties is not a sale or exchange of property. See Rev. Rul. 56-437, *supra*. Therefore, the partition does not constitute an act of self-dealing within the meaning of section 4941 of the Code.

Accordingly, based on your representations that the partition will be divided so that each party will receive a divided interest in the timberlands equal in value to the current holdings of undivided interests as tenants in common based on valuation determined by an independent third party appraisal by a qualified appraiser, we conclude as follows:

The proposed partition of M's undivided interest in certain timberlands, as described above, will not constitute an act of self-dealing as described in section 4941 of the Code.

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,

Robert C. Harper, Jr.

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