NO THIRD PARTY CONTACT

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

S.I.N.:
4941.04-00

Contact Person:

Telephone Number:

199913040

In Reference to:

Date: OP:E:EO:T:2

DEC 23 1998

Legend:

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Dear Applicant:

This is in reply to your May 22, 1998, request, and subsequent correspondence, for rulings that the activities described below will not constitute acts of self-dealing as defined in section 4941 of the Internal Revenue Code.

X represents that it is a private operating foundation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. X is organized to develop and operate a religious conference, retreat, and ministry center. X recently acquired a 7x acre parcel of real property ("the Property") on which to develop this center. Before entering the development phase, X must systematically resolve various access, usage, and zoning issues in the acquisition phase. After the acquisition and development phases are completed, X will open the center and commence ministry activity.

The President and Secretary of X, who are husband and wife, and both of whom also serve as directors of X, will temporarily serve in the position of development managers and pursue X's mission of developing a Christian retreat, conference, and ministry center in an expeditious, orderly, cost-effective manner. The development managers are "disqualified persons" as defined by section 4946(a)(1) of the Code, and are "foundation managers" as defined by section 4946(b).

X has determined that its President and Secretary are uniquely qualified to serve as development managers, as they have shaped the ministry's vision and are familiar with its mission, its property, and the local regulatory authorities with whom zoning, access, and property utilization issues would need to be presented (both formally and informally), actively pursued, and resolved prior to developing the property as a Christian retreat and conference center. The President, as a licensed Professional

Engineer who holds a civil engineering degree, is qualified to resolve developmental issues involving land development, sewerage, highway access, and other civil engineering problems.

The development managers' responsibilities would include management and oversight of maintenance, security, finances, successful completion of the feasibility study phase, and commencement of phase one development. They would use their best efforts to resolve the zoning, utilization, access, and other property issues involved in developing the property, and would secure all regulatory approvals needed to develop the property as a Christian retreat, conference, and ministry center. Once those approvals are secured, they will proceed to manage and supervise the phase one development of the property.

It is essential that the development managers live on the property in order to oversee security and maintenance, to supervise development of the physical property site, to receive deliveries to the property, and to take whatever other measures regarding the property are reasonable and necessary to pursue X's exempt purposes during the development period. The property contains ponds and a stream. The prior owners of the property frequently expelled trespassers from around the ponds. X is concerned with potential liability from trespassers suffering injury. Also, X wants to prevent vandalism to the buildings and grounds. The Secretary, as development manager, will live on the property to oversee its security and the development of the interiors of structures on the property. The President, as development manager, will supervise maintenance and development of the physical property site and assist in overseeing its security.

Once the property is fully developed and ready to be used as a retreat and conference center, the development managers' work will be completed, and they will move off of the property. At that point, X will hire a full-time retreat center director to oversee and manage the property.

The development managers would be provided the use of an existing house on the property, rent-free, as partial compensation for their services as property managers. X represents that the compensation arrangements are not excessive under the circumstances.

Section 4941(a) of the Code, in part, imposes a tax on each act of self-dealing between a private foundation and a disqualified person. The tax is imposed on the disqualified person and, in certain situations, a tax is also imposed on the foundation manager(s) participating in the act or acts.

Section 4941(d)(1) of the Code provides, in part, that the term self-dealing includes the direct or indirect sale, exchange, or leasing of property between a private foundation and a disqualified person; furnishing of goods, services, or facilities between a private foundation and a disqualified person; payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person; and transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 53.4941(d)-2(d)(1) of the Foundation and Similar Excise Taxes Regulations states that except as provided in subparagraph (2) or (3) of this paragraph (or Sec. 53.4941(d)-3(b)), 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. Thus, for example, if a foundation furnishes personal living quarters to a disqualified person (other than a foundation manager or employee) without charge, such furnishing shall be an act of self-dealing.

Section 53.4941(d)-2(d)(2) of the regulations states that the furnishing of goods, services, or facilities such as those described in subparagraph (1) of this paragraph to a foundation manager in recognition of his services as a foundation manager, or to another employee (including an individual who would be an employee but for the fact that he receives no compensation for his services) in recognition of his services in such capacity, is not an act of self-dealing if the value of such furnishing (whether or not includible as compensation in his gross income) is reasonable and necessary to the performance of his tasks in carrying out the exempt purposes of the foundation and, taken in conjunction with any other payment of compensation or payment or reimbursement of expenses to him by the foundation, is not excessive. For example, if a foundation furnishes meals and lodging which are reasonable and necessary (but not excessive) to a foundation manager by reason of his being a foundation manager, then, without regard to whether such meals and lodging are excludable from gross income under section 119 as furnished for the convenience of the employer, such furnishing is not an act of self-dealing.

Section 53.4941(d)-2(e) of the regulations states that the payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person shall constitute an act of self-dealing. See, however, Sec. 53.4941(d)-3(c) for

the exception for the payment of compensation by a foundation to a disqualified person for personal services which are reasonable and necessary to carry out the exempt purposes of the foundation.

Section 53.4941(d)-3(c) of the regulations states that under section 4941(d)(2)(E), except in the case of a Government official (as defined in section 4946(c)), 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 purpose 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. For the determination whether compensation is excessive, see Sec. 1.162-7 of this chapter (Income Tax Regulations). This paragraph applies without regard to whether the person who receives the compensation (or payment or reimbursement) is an individual. The portion of any payment which represents payment for property shall not be treated as payment of compensation (or payment or reimbursement of expenses) for the performance of personal services for purposes of this paragraph.

It is represented that the personal services which the President and Secretary will provide to X are those for which they are uniquely qualified, and are reasonable and necessary in carrying out X's exempt purpose, and that the rent free accommodations provided constitute commensurate compensation. Therefore, the exceptions provided in sections 53.4941(d)-2(d)(2) and 53.4941(d)-3(c) of the regulations would apply. The former allows the free furnishing of lodging, provided it is necessary for the accomplishment of X's exempt purposes and it, as well as all other compensation taken together, is not excessive. The latter allows the payment of compensation as long as it is not excessive.

Accordingly, based on the facts as stated above, and assuming that these amounts, taken in conjunction with any other payments, do not constitute excessive compensation, we rule that:

1. X's provision of housing facilities on its property, rent free, to its foundation managers for the purpose of securing the uniquely qualified services of the foundation managers to manage, protect, develop, and maintain the property,

during the property's development period, for X's charitable and religious purposes is not an act of self-dealing under section 4941(d)(1) of the Code.

2. The payment of reasonable compensation, including the furnishing of housing facilities to the foundation managers for their personal services in managing and overseeing the property during the development period is not an act of self-dealing under section 4941.

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

We are informing your key District Director of this ruling. Because this letter could help resolve any questions about your exempt status and foundation status, you should keep it in your permanent records.

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 your key District Director.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2