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

Significant Index Nos.:4941.04-00
4945.04000

Date: JUL 9 1999
OP:E:EO:T:3

Contact Person:

ID Number:

Telephone Number:

Employer Identification Number:

Legend:

B =
C =
X =

Dear Sir or Madam:

This in reference to your request for a private letter ruling dated May 14, 1998, as modified by letters dated December 9, 1998, and May 26, 1999, concerning the federal tax consequences of the proposed transactions described below:

The information provided indicates that you (the "Foundation") were incorporated as a non-stock corporation on December 6, 1996 and have been recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. The Foundation has been determined to be a private foundation within the meaning of section 509(a) of the Code. The Directors of the Foundation are B and C, husband and wife.

The Directors, their children, and a partnership owned by the Directors and their children own 100 percent of the interests in X Farms, LLC, a limited liability company (the "Company"), the assets of which are real and personal property used to operate a farm. These assets include several residences (one of which is used by the Directors), an orchard, and various farm buildings.

B and C have subdivided the real property owned by the Company into nine (9) parcels. B and C propose to cause the Company to distribute to them two of the parcels that are not part of the operating assets of the farm. B and C propose to contribute these two parcels outright to the Foundation, retaining no interest of any kind in the transferred parcels. The Foundation proposes to construct on these two parcels of land one or more buildings to be used as the site of an educational institute to be known as the X Institute (the "Institute"). The Institute will not be separately incorporated or organized as an entity separate from the Foundation.

The Institute will hold public discussion groups, panels, lectures, conferences, and other similar

programs. Such programs may include radio, television or live internet coverage. These programs will bring together experts in the field of environmentally sensitive agricultural and farming, and disseminate to all parts of the agricultural community the results of the most recent and complete data on these subjects, in an effort to reduce the deleterious effect of on the environment of the continual abandonment of farm land to other uses, and the continued use of environmentally hostile techniques in agriculture. This exchange of ideas will be designed to promote the use of environmentally sensitive techniques throughout the agricultural community.

The subjects to be discussed at the programs held by the Institute will include (but not be limited to) nontoxic farming methods, small farm operations, value added food processing, niche crop development, including medicinal and culinary herbs, and related topics. It is anticipated that the programs sponsored by the Institute will be attended by persons in all areas of agribusiness, as well as educators, herbalists, food scientists, conservationists, public policy professionals, and other interested individuals. Some programs will be open to the general public and advertised appropriately. Other programs may be open only to invited participants, who will be selected based on a geographical, or community of interest basis, or both.

In some instances, a fee may be charged by the Foundation for attendance at the Institute programs. Fees may be charged to participants employed by or representing for-profit entities to attend seminars at the Institute, and either lower or no fees shall be charged to participants representing or employed by not-for-profit entities. It is expected the revenue produced will be less than the cost of the seminars and that the Foundation will subsidize the balance.

The programs will be planned by the Directors of the Foundation in consultation with leading academic, scientific and business professionals in the fields of agriculture, environmental sciences and complementary health care officials. The Company will not utilize the Institute or its programs as recruitment or advertising vehicles. Presentations may be made by officers or employees of the Company at seminars presented by the Institute, disseminating the results of the experimentation conducted at the Company, but there shall be no compensation for these presentations nor special preference shown to the Company in advertising the programs. The Institute will not provide services or goods to, or otherwise give preferential treatment to X or its officers or employees in any manner.

Section 501(c)(3) of the Code provides, in part, for an exemption from federal income tax for corporations organized and operated exclusively for charitable, scientific or educational purposes, provided no part of the corporations net earnings inures to the benefit of any private shareholder or individual.

Section 501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 4941 of the Code imposes a tax on each act of self-dealing, directly or indirectly,

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between a disqualified person and a private foundation.

Section 4941(d)(1)(E) of the Code provides that the term "self-dealing" means any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or the assets of a private foundation.

Section 4946(a)(1)(A)-(G) of the Code and section 53.4946-1(a)(1)(i)-(vii) of the Foundation and Similar Excise Taxes Regulations define the term "disqualified person," with respect to a private foundation, as a person who is (1) a substantial contributor to the foundation, as defined in section 507(d)(2); (2) a foundation manager; (3) an owner of more than 20% of the total combined voting power of a corporation, profits interest of a partnership, or beneficial interest of a trust or unincorporated enterprise which is a substantial contributor to the foundation; (4) a member of the family of any of the above; or (5) a corporation, partnership, trust or estate of which persons described above own more than 35% of the voting power, profits interest or beneficial interest.

Section 4946(b) of the Code and section 53.4946-1(f)(1) of the regulations define the term "foundation manager" as an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors or trustees of the foundation), and with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

Section 53.4941(d)-2(f)(2) of the regulations states that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Thus, the public recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous.

In Example (4) of section 53.4941(d)-2(f)(4) of the regulations, a disqualified person with respect to a private foundation contributed certain real estate to the private foundation for the purpose of building a neighborhood recreation center in a particular underprivileged area. As a condition of the gift, the private foundation agreed to name the recreation center after the disqualified person. Since the benefit to the disqualified person was only incidental and tenuous, the naming of the recreation center, by itself, was not an act of self-dealing.

Rev. Rul. 73-407, 1973-2 C.B. 383, holds that the public recognition afforded by a private foundation to a disqualified person through the use of the disqualified person's name by the private foundation for 100 years is an incidental and tenuous benefit which does not constitute an act of self dealing under section 4941(d)(1)(E) of the Code.

Rev. Rul. 77-367, 1977-2 C.B. 193 holds that a nonprofit organization formed to create an operate a replica of an early American village is engaging in educational activities similar to those of a museum and qualifies for exemption under section 501(c)(3) or the Code even though a corporation that donated land and a substantial percentage of the organization's support benefits by having the village named after it and by having its name associated with the village through both the corporations' and the organization's advertising. The ruling recognized that any benefit going to the corporation was merely incidental to the benefits flowing to the general public from access to the village and its historic structures.

Section 4945(a)(1) of the Code imposes an excise tax on each taxable expenditure of a private foundation.

Section 4945(d)(5) of the Code and section 53.4945-6(a) of the Regulations state that the term "taxable expenditure" means any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 170(c)(2)(B) of the Code refers to "religious, charitable, scientific, literary, or educational purposes. . ."

Section 1.501(c)(3)-1(d)(3) of the regulations provides that, in general, the term "educational", as used in section 501(c)(3), relates to:

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(3)(ii) of the regulations provides examples of organizations which, if they otherwise meet the requirements of section 501(c)(3), are educational. Example (2) is as follows:

> An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Rev. Rul. 70-186, 1970-1 C.B. 128 held that an organization formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake to enhance its recreational features, qualifies for recognition of exemption as an organization described in section 501(c)(3) of the Code.

Rev. Rul. 76-204, 1976-1 C.B. held that an organization formed for the purpose of preserving the natural environment by acquiring by gift or purchase, ecologically significant undeveloped land, and either maintaining the land itself with limited public access or transferring the land to a government conservation agency by outright gift or being reimbursed by the agency for its cost, qualifies for recognition of exemption as an organization described in section 501(c)(3) of the Code because it is operated exclusively for charitable purposes.

Under section 4946 of the Code and the regulations thereunder, B, C, and X are disqualified persons with respect to the Foundation. Generally, any use of the Foundations assets for the benefit of these individuals would result in an act of self-dealing under section 4941. However, the naming of the Institute and its proximity to X will result in no more than an incidental or tenuous benefit to X. Under the applicable regulations, such tenuous or incidental benefit will not, in and of itself, result in an act of self dealing. The Foundation will provide no other benefits or preferences to any disqualified person.

Under Example (4) of section 53.4941(d)-2(f)(4) of the regulations, holding seminars, lectures, and panel discussions about methods by which the environment can be preserved and enhanced through correct environmentally sensitive agricultural techniques are educational activities. In addition, the relevant precedent also suggests that activities in furtherance of environmental preservation for the benefit of the public serve generally recognized charitable purposes. Expenditures in furtherance of educational and charitable purposes are expenditures for section 170(c)(2)(B) purposes and, thus, are not taxable expenditures within the meaning of section 4945 of the Code.

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Accordingly, we rule as follows:

1. The creation of an educational institute bearing a name similar to that of the Company and disseminating to the agricultural public the results of experimentation and operation of the Company will not constitute an act of self-dealing under section 4941 of the Code.

2. Expenditures by the Foundation to conduct the educational programs of the Institute, including the construction of the facilities where the programs will be conducted are not taxable expenditures under section 4945(a) of the Code.

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

Sincerely,

(signed) Robert C Harper, Jr.

Robert C. Harper, Jr.
Chief, Exempt Organizations
Technical Branch 3