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

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TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

Date: FEB 8 2002

Uniform Issue List
501.03-02
501.03-30
4941.00-00
4941.03-00
4941.04-00
4945.00-00
4945.04-00

Contact Person:

Identification Number:

Telephone Number:

T:EO:B4

Employer Identification Number:

Legend:

B =
C =
D =
E =
F =
M =
N =
O =

x =

Dear Sir or Madam:

We have considered the ruling requests dated November 27, 2001, and January 8, 2002, submitted on behalf of M, a private foundation, its three independent directors, D, E, and F (the "Independent Directors"), and C, the fourth director. These parties request rulings under sections 501(c)(3), 4941, and 4945 of the Internal Revenue Code in connection with the proposed settlement (the "Settlement") of a lawsuit brought against the Estate of B (the "Estate") by C.

FACTS

M was formed in 1990 under the nonprofit corporation statute of the State of N. M is exempt from federal income tax as an organization described in section 501(c)(3) of the Code and is also classified as a private foundation under section 509(a). M carries out its exempt purposes by making grants to public charities.

The Independent Directors are all residents of N and were business colleagues and friends of B, the founder of M, who died in November, 2000.

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In 1990, B executed his last will and testament (the "Will"). After B died, the Will was admitted to probate in a court of the State of N (the "Probate Court"). Consistent with B's direction, the Probate Court appointed a certain bank as the personal representative and executor of the Estate (the "Personal Representative"). In the Will, B made specific bequests to numerous individuals, ranging in amount from $.5 x to $50x. C received a bequest of $40x, and no other property. B left the residue of his Estate, estimated to total over $150000x, to M.

Aside from being B's long-time friend and employee, C served for many years as an employee and as the Assistant Secretary and Assistant Treasurer of O, another nonoperating private foundation which was established by B's parents. B, his brother, his sister-in-law, and his nieces and nephews served as directors of O for many years.

In April, 2001, C timely filed a Claim and accompanying Complaint (the "Claim") against the Estate in the Probate Court, alleging among other things, that B had breached a promise to provide retirement benefits to her through his Will and that B had failed to compensate her for services which she rendered to him during his lifetime. In the Claim, C seeks compensatory damages of $3,500x from the Estate, plus punitive and treble damages, interest, attorneys' fees, and costs. A few days later, the Personal Representative denied C's Claim in total, and in June, 2001, the Estate filed an answer in the Probate Court, denying liability for the Claim.

After extended negotiations conducted with the assistance of a neutral mediator, C and the Estate have executed a Conditional Settlement Agreement (the "Settlement Agreement"). The Estate and M (through the Independent Directors) have carefully evaluated and considered the assertions by C and evidence submitted during discovery in support of her Claim and have determined that the amount that the Estate proposes to pay C in connection with the Settlement is fair, adequate, and reasonable. The grounds thereof are explained below.

A neutral mediator has stated in his report to the Probate Court that, in his opinion, the Settlement is a fair and reasonable compromise of a genuinely disputed action. The mediator devotes nearly one-third of his legal practice to the mediation and compromise of lawsuits, serving as mediator in over 1,000 cases. He has never acted as counsel for the Estate, C, M, or any of the Independent Directors.

For over thirty years, C provided personal and business services to both B and O. In 1967, B hired C to serve as financial assistant and bookkeeper to manage his business investments and affairs. Over the years, C's duties steadily increased. She served as program and office manager, Assistant Secretary, and Assistant Treasurer for O. In these capacities, she managed the organization's day-to-day operations, consulted with its board and other officers, and provided oversight with respect to investment funds. After over thirty years of service, C retired from O in 1999.

Aside from the above business functions, C performed a variety of personal services for B. She managed his household and personal finances. This included the hiring and supervision of household employees- including housekeepers, cooks, and gardeners- and the payment of B's bills. Further, when B became ill (which was frequent during his final years), C would employ and assist B's home nursing staff. She continued to serve B's business and

personal needs even after her retirement from O. During several periods when B was severely ill over the years, C resided at his home to be available 24 hours a day, seven days a week. This included B's final illness, from May through November, 2000.

In addition, C has served as a director and as the Secretary of M since 1991. In these capacities, she has conducted most of the day-to-day work of M, including evaluating grant proposals, communicating with applicants and grantees, balancing the checkbook, and maintaining corporate records. She did not receive any compensation from M for these services. Although C continues to serve as an M director and as its Secretary, she has not participated in any of M's discussions of the lawsuit or of the Settlement, and she has not participated in M's decision to consent to the Settlement.

Over the years that C worked for B and O, her annual salary gradually increased to the point where, shortly before she retired from O at the end of 1999, her annual salary was approximately $87x. At that time, C received certain health benefits, which were paid for partially by O and partially by B. B also paid the entire cost of C's long-term care insurance premiums. After C retired from O, B assumed responsibility for providing all of her health insurance benefits and continued to pay for her long-term care insurance.

During her employment, C received small gifts from B from time to time, along with his other employees. The total value of such gifts did not exceed $10x. Twice in the 1980's, C purchased used cars from B at prices that the parties determined to be fair and reasonable.

Because of her unique familiarity with B's business affairs, particularly his investments in oil and mineral interests, the Personal Representative hired C to assist in the administration of the Estate after B's death. For these services, the Estate is paying her the annual equivalent of $78x, which was roughly her annual salary from B at the time of his death.

Over the course of her long employment, B and C developed a close personal relationship. C accompanied B to numerous civic, social, and charitable functions over the years. The two also traveled together and spent two to eight weeks annually at the summer home of B's family. During these vacations, C continued to perform her professional responsibilities as financial assistant and bookkeeper, and she also managed the daily activities of the family household. C asserts that in 1973 B proposed marriage to her and directed his attorney to prepare a prenuptial agreement. Although they did not marry, the personal relationship between C and B remained close and C continued to perform a broad variety of personal services for B. In her Claim, C has alleged that, because of this relationship, she accepted and relied upon B's representations that he would provide for her retirement in his Will.

C expected that her total retirement package would include a stipend equal to her annual salary, less Social Security payments, as well as continued health benefits. According to the Claim and supporting materials, B made numerous personal assurances to C that he would provide for her retirement through his Will. Over the years, C retained a financial planner, who met with her and with B to discuss her retirement, among other issues. B met with the financial planner and C on two separate occasions and assured him that C need not concern herself with

a separate retirement plan because B had personally established a fund that, upon his death, would supply sufficient funds to provide C income for the rest of her life. Accordingly, C did not plan or establish any individual retirement plan for herself, relying upon B's representations through the years.

In recognition of C's longstanding service and dedication to O, its board of directors approved a partial retirement benefit for her in 1988 that represented a relatively small portion of her total salary. Upon her retirement, O agreed to pay C a monthly stipend of $.72x (or approximately $8.6 annually). That stipend has been paid since her retirement from O at the end of 1999. According to her Claim, C did not question this arrangement or seek a greater retirement benefit because she understood that B personally would substantially supplement the monthly payment from O with a retirement fund that he had implemented, or planned to implement, on her behalf.

Since C filed her Claim with the Probate Court, the parties have engaged in discovery and extensive arm's length negotiations regarding the lawsuit. Both the Personal Representative and M's Independent Directors have carefully evaluated the merits of C's allegations and the evidence she has supplied in support thereof. "Ultimately, to avoid the expense, delay, and uncertainty of protracted litigation, the possibility of distracting publicity about M and B's personal life, and the potential for a significant adverse judgment, the Estate and M have determined that it is in M's best interests for the Estate to compromise and settle the lawsuit. Accordingly, on September 14, 2001, under the direction and guidance of a neutral mediator, the parties reached the Settlement, which has been memorialized in the Settlement Agreement." This Agreement includes the following key provisions:

(i) The Estate will pay to C a total net amount of $325x, net of her attorneys' fees (which the Estate will pay, subject to a cap of $160x) and net of taxes (which the Estate will calculate and pay in addition to the $325x).

(ii) As of the effective date of the Settlement Agreement, C will provide a full and complete release in favor of B, the Estate, the Personal Representative, M, and the Independent Directors, and C's Claim will be dismissed with prejudice.

(ii) The Settlement is conditioned on the approval of the Probate Court (which was obtained on November 27, 2001) and a favorable ruling from the IRS that the Settlement will not affect M's exempt status under Code section 501(c)(3), result in self-dealing under section 4941, or constitute a taxable expenditure under section 4945.

Independent of the Settlement Agreement, the Personal Representative has decided to continue to employ C through March 31, 2002, as a full-time employee of the Estate at her present rate of compensation. After March 31, 2002, C will continue on a part-time basis, at a reduced rate of pay, until September 30, 2002. The Personal Representative has determined that C's continued services are necessary for the administration and winding up of B's various financial and business interests. In particular, C has extensive experience with B's oil and mineral holdings, which span several states. She is also familiar with B's other real estate

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interests and loans made by B that are secured by real estate interests in the western United States. The Personal Representative presently is attempting to collect on these debts or attach new properties as security, and C's assistance has been and will remain vital in these endeavors. In addition, B's business office remains open, and C has continued to manage certain interests, such as properties B had leased to various tenants, on the Estate's behalf.

In a meeting on September 17, 2001, the Independent Directors of M unanimously agreed that the Settlement is fair and reasonable and that the Settlement is in the best interests of M. C did not attend or participate in the meeting. The Independent Directors have been guided in the evaluation of the Settlement by M's legal counsel, who has served as attorney for both M and the Estate and has recommended that the Estate and M agree to the Settlement. Further, M and the Estate have taken into account the guidance of the neutral mediator, who also recommended that all of the parties agree to the Settlement.

RULINGS REQUESTED

M and the Independent Directors request the following rulings:

(1) The Settlement and its implementation will not adversely affect M's exemption from federal income tax under section 501(c)(3) of the Code;

(2) The Settlement and its implementation will not constitute self-dealing by M under section 4941 of the Code;

(3) The Settlement and its implementation will not constitute self-dealing by M that would result in personal liability to the Independent Directors under section 4941 of the Code;

(4) The Settlement and its implementation will not constitute taxable expenditures by M under section 4945 of the Code; and

(5) The Settlement and its implementation will not constitute taxable expenditures by M that would result in personal liability to the Independent Directors under section 4945 of the Code.

LAW

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated "exclusively" for charitable, educational, scientific, or other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which does not engage in proscribed legislative or political activities.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations states 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 the purposes specified in Code 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(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) defines the words "private shareholder or individual" in Code section 501 as referring to persons having a personal and private interest in the activities of the organization.

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 under Code section 501(c)(3) unless it serves a public rather 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.

Rev Rul. 69-383, 1969-2 C.B. 113, holds that the section 501(c)(3) tax exempt status of a hospital will not be jeopardized where, after arm's length negotiations, it enters into an agreement with a hospital-based radiologist to compensate him on the basis of a fixed percentage of the department's income. The rationale for the ruling is as follows: the parties had negotiated the agreement on an arm's length basis; the radiologist had no control over the hospital itself; the amount of compensation was reasonable in terms of the responsibilities and activities assumed; and, further, the amount was not excessive when compared to the amounts received by other radiologists in comparable circumstances.

Sections 4941(a)(1) and 4941(b)(1) of the Code impose excise taxes upon any act of self-dealing between a private foundation and any of its disqualified persons. The taxes are to be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing.

Sections 4941(a)(2) and 4941(b)(2) of the Code impose excise taxes on a foundation manager who participates in an act of self-dealing between the private foundation and a disqualified person where the foundation manager knows that such act is an act of self-dealing under section 4941.

Section 4946(a)(1) of the Code states that the term "disqualified person" includes a foundation manager within the meaning of subsection (b)(1). Section 4946(b)(1) provides that the term "foundation manager" means, with respect to a private foundation, an officer, director, or trustee of the foundation (or an individual having similar powers or responsibilities).

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

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Section 53.4941(d)-1(a) of the Foundation and Similar Excise Taxes Regulations provides that, for purposes of Code section 4941, the term "self-dealing" includes any direct or indirect transaction described in section 53.4941(d)-1 of the regulations.

Section 53.4941(d)-1(b)(3) of the regulations provides that the term "indirect self-dealing" shall not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if –

(i) The administrator or executor of an estate or trustee of a revocable trust either—

(a) Possesses a power of sale with respect to the property,

(b) Has the power to reallocate the property to another beneficiary, or

(c) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);

(ii) Such transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the private foundation);

(iii) Such transaction occurs before the estate is considered terminated for federal income tax purposes pursuant to paragraph (a) of section 1.641(b)-3 of this Chapter (or in the case of a revocable trust, before it is considered subject to Code section 4947);

(iv) The estate (or trust) receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and

(v) With respect to transactions occurring after April 16, 1973, the transaction either

(a) Results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,

(b) Results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or

(c) Is required under the terms of any option which is binding on the estate (or trust).

Sections 4945(a)(1) and 4945(b)(1) of the Code impose excise taxes to be paid by a private foundation that makes a taxable expenditure, as defined in section 4945(d).

Sections 4945(a)(2) and 4945(b)(2) of the Code impose excise taxes to be paid by a foundation manager who agrees to the foundation's making of an expenditure, "knowing" that it is a taxable expenditure, unless such agreement is not willful and is due to reasonable cause.

Section 4945(d)(5) of the Code defines the term "taxable expenditure" to mean any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B). The latter section states purposes that substantially coincide with those stated in section 501(c)(3).

Section 53.4945-6(b)(1) of the regulations provides that expenditures to acquire investments and reasonable expenses thereof entered into for the purpose of obtaining income or funds to be used in furtherance of purposes described in section 170(c)(2)(B) ordinarily will not be treated as taxable expenditures under Code section 4945(d)(5).

ANALYSIS

The Settlement helps ensure M's continued operation in furtherance of exempt purposes under section 501(c)(3) of the Code, as represented by M, with respect to the investments described in section 53.4945-6(b)(1) of the regulations above. As with the compensation arrangement at issue in Rev. Rul. 69-383, the Settlement has been reached after arm's length negotiations involving C and the Personal Representative of the Estate. Although C is a director and officer of M, she has recused herself from all discussions relating to the lawsuit and the Settlement by M and has not participated in M's approval of the Settlement. The Personal Representative, M (through the Independent Directors), the neutral mediator, and the Probate Court have all concluded that the Settlement is fair and reasonable in light of the potential for an adverse judgment, the likelihood of extended and expensive litigation, and possible harm to the charitable mission, reputation, and purposes of M. Also, the amount of the Settlement represents a very insignificant sum in comparison to the amount that the Estate will still be able to distribute to M. Therefore, it is clear that the Settlement will not result in the inurement of M's net earnings to the benefit of C.

We also note that the Settlement will allow the Estate to convey the residue of B's assets to M more quickly and will, in turn, enable M to make significant grants in furtherance of its charitable purposes and to perform other exempt activities. The foregoing demonstrates that the Settlement expedites the carrying out of M's exempt purposes and, as such, should not jeopardize M's tax exempt status under section 501(c)(3) of the Code.

The "Estate Administration Exception" to the self-dealing rules is described in section 53.4941(d)-1(b)(3) of the regulations and includes five specific requirements. Inasmuch as the Settlement satisfies all five requirements, based on M's representations, neither M nor any of the Independent Directors will engage in an act of self-dealing under section 4941 of the Code by entering into the Settlement and consenting to its implementation by the Estate.

As a director and officer of M, C is a foundation manager of M and is, therefore, a disqualified person. Section 4941 of the Code imposes taxes upon any act of self-dealing between a private foundation and any of its disqualified persons. Section 4941(d)(1) defines the term "self-dealing" to include any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person; or 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. Neither the Code nor regulations specifically define the term "indirect self-dealing". However, the case law and other authorities establish that an estate's assets that will pass to a private foundation may be treated as assets of the foundation for purposes of section 4941. Therefore, any sale, exchange, or other transfer of such assets to a disqualified person may constitute indirect self-dealing. See Estate of Reis, 87 T.C. 1016; and Rockefeller, 572 F. Supp. 9. Because M holds a residuary interest in the assets of the Estate, we must review the Settlement herein of C's lawsuit against the Estate to ensure that it does not contravene the self-dealing provisions of the Code.

Pursuant to the Estate Administration Exception of section 53.4941(d)-1(b)(3) of the regulations, a transaction with respect to a private foundation's interest or expectancy in property held by an estate does not constitute indirect self-dealing if five specific conditions are met. In the Rockefeller and Reis cases cited above, the Estate Administration Exception did not apply because one or more of the requisite conditions had not been met. In contrast, based on M's representations, the Settlement herein satisfies each of the five conditions, as explained below. Accordingly, its implementation will not result in indirect self-dealing under section 4941 of the Code.

1. The Executor of the Estate Has the Power to Reallocate the Property of the Estate to Another Beneficiary:

The executor or Personal Representative herein of the Estate possesses the power under Item I, Paragraph D, of B's Will to "Compromise, settle and pay or receive payment for any claim for or against (the) estate without obtaining court approval." Moreover, the relevant N statute grants the personal representative of an unsupervised estate the authority to "satisfy and settle claims." By virtue of the Personal Representative's authority to settle all claims against the Estate, it has the power to reallocate the property of the Estate to another beneficiary, thereby satisfying the second of the three alternative tests of section 53.4941(d)-1(b)(3)(i) of the regulations.

2. The Settlement Has Been Approved by the Probate Court With Jurisdiction Over the Estate:

On November 13, 2001, the Personal Representative and C jointly filed a petition with the Probate Court, seeking approval of the terms of the Settlement. Notice of this petition was provided to the Attorney General of N. The Attorney General did not object to the petition. On November 27, 2001, the Probate Court held a hearing regarding the petition, which was attended by the Personal Representative and C. In an order dated November 27, 2001, the Probate Court approved the terms of the Settlement. Accordingly, the requirement of section 53.4941(d)-1(b)(3)(ii) of the regulations has been met.

3. The Settlement Will Occur Before the Estate is Considered Terminated for Federal Income Tax Purposes:

The Personal Representative has not yet distributed the Estate's assets, and no tax clearances have been received. Accordingly, the Estate has not yet been terminated for federal estate tax purposes, and the requirement of section 53.4941(d)-1(b)(3)(iii) of the regulations is satisfied.

4. The Estate is Receiving an Amount Which Equals or Exceeds the Fair Market Value of M's Interest or Expectancy in Such Property at the Time of the Transaction:

In her lawsuit, C has sought over $3,500x in damages, fees, and costs from the Estate. The Estate and M (through the Independent Directors) have evaluated her claims carefully and thoroughly. Aside from analyzing the merits of the action, evidence furnished by C, and independent investigation and interviews by the Estate and its attorneys, the Estate and M have considered the exorbitant costs, substantial delay, and overall uncertainty of protracted litigation of the lawsuit; the risk of adverse publicity for M (and for B personally) from such litigation; and the potential for a significant adverse judgment that would diminish markedly the assets that M would ultimately receive from the Estate. After careful consideration of all these factors and arm's length negotiations with C, the Estate has approved the Settlement. Similarly, M's Independent Directors have unanimously concluded that the Settlement is in M's best interests and that the amount to be received by C under the Settlement is equal to the fair market value of her claims against the Estate's assets.

The attorney serving as counsel for both M and the Estate has assisted in the negotiation of the Settlement and, based upon the information above, has recommended that M and the Estate agree to the Settlement. Further, the parties have taken their dispute to mediation, and the neutral mediator has recommended that the parties agree to the Settlement. The recommendations of the mediator and counsel, as buttressed by the approval of the Probate Court, reflect their views that the Settlement is in the best interests of the Estate and M. This leads to the conclusion that the fair market value of M's interest in the Estate following the Settlement is at least as great as that it would receive absent this resolution of C's lawsuit, as required by section 53.4941(d)-1(b)(3)(iv) of the regulations.

5. The Settlement Will Result in the Foundation Receiving an Interest at Least as Liquid as the One It Gave Up and Will Result in M Receiving an Asset Related to the Active Carrying Out of its Exempt Purposes:

Upon entering into the Settlement, M will receive an interest which is more liquid than what it is giving up. Until the Settlement, the possibility that C would prevail on her Claim has created a risk that M's interests in the residue of the Estate could be reduced significantly. Accordingly, the precise value of M's interest in the Estate has been uncertain. If the Settlement is approved by the Service, then M will finally be free to receive the entire residue of the Estate, approximately $150,000x, without the risk of substantial loss in litigation. This interest will be more liquid than M's present interest because the assets will be unencumbered by C's Claim and free of the potential for reduction by the costs of litigation or through an adverse judgment.

Inasmuch as the assets that B bequeathed to M have, to date, been held by the Estate, M has not been able to use those assets to further its exempt purposes. Service approval of the Settlement will enable it to be finalized and M will receive funds which it can use to carry out its exempt purposes. Consequently, the Settlement satisfies the first of the three alternative tests of section 53.4941(d)-1(b)(3)(v) of the regulations.

Based on the foregoing analysis, the Settlement satisfies the requirements of the Estate Administration Exception set forth in section 53.4941(d)-1(b)(3) of the regulations and, therefore, does not constitute an act of self-dealing under section 4941 of the Code.

Section 4941 of the Code imposes taxes upon a foundation manager of a private foundation who knowingly participates in an act of self-dealing between the foundation and a disqualified person. As directors of M, the Independent Directors are foundation managers, as that term is defined by section 4946. For the reasons stated above, based on M's representations, the Settlement satisfies the requirements of the Estate Administration Exception of section 53.4941(d)-1(b)(3) of the regulations, and thus does not constitute an act of self-dealing. Accordingly, the Independent Directors have not participated in any act of self-dealing by M and are not subject to taxation under section 4941.

Section 4945 of the Code imposes a tax upon any taxable expenditure, which is defined under section 4945(d) to mean any amount paid or incurred by a private foundation for any of several identified purposes. M has not yet received any assets from the Estate and the Settlement amount will be paid by the Estate, and not by M. In light of the fact that the Settlement has been reached while the Estate's assets are held by the Personal Representative, M is not liable for any taxable expenditure under section 4945.

Section 4945(d)(5) of the Code defines the term "taxable expenditure" to mean an amount paid or incurred by a private foundation for other than the exempt purposes set forth in section 170(c)(2)(B). Section 53.4945-6(b)(1) of the regulations provide that expenditures and related expenses to acquire investments entered into for the purpose of obtaining income or funds to be used in furtherance of purposes described in section 170(c)(2)(B) ordinarily will not be treated as taxable expenditures under section 4945(d)(5). The exact disposition of the residue of the Estate is presently in dispute because of C's Claim. In order to resolve that dispute, the Personal Representative has agreed to the Settlement. As a result of the Settlement, the Estate will avoid incurring substantial additional attorneys' fees and court costs. But more importantly, the Settlement will allow the residue of the Estate to pass to M and will enable M to obtain income and funds which will be used to make grants for charitable purposes, as described in section 170(c)(2)(B). Accordingly, the participation by the Estate and M in the Settlement should be deemed a cost of acquiring income and assets to be used in furtherance of M's exempt purposes and, therefore, not a taxable expenditure.

Section 4945 of the Code imposes excise taxes to be paid by a foundation manager who knowingly agrees to the foundation's making of a taxable expenditure. Based on M's representations that the Settlement costs, including Estate legal fees, are fair and reasonable, and for the reasons set forth above, the Settlement is not a taxable expenditure by M.

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Consequently, the Independent Directors have not agreed to any taxable expenditure by M and are not subject to taxation under section 4945.

RULINGS

Based on M's representations, and the applicable law, we are able to rule as follows:

1. The Settlement and its implementation will not adversely affect M's exemption from federal income tax under section 501(c)(3) of the Code.

2. The Settlement and its implementation will not constitute self-dealing under section 4941 of the Code.

3. The Settlement and its implementation will not constitute self-dealing by M that would result in personal liability to the Independent Directors under section 4941 of the Code.

4. The Settlement and its implementation will not constitute taxable expenditures by M under section 4945 of the Code.

5. The Settlement and its implementation will not constitute taxable expenditures by M that would result in personal liability to the Independent Directors under section 4945 of the Code.

Any changes that may have a bearing upon M's exempt status should be reported to the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service Office. The mailing address is: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The telephone number there is 877-829-5500 (a toll free number).

This ruling is limited to the applicability of the provisions of sections 501(c)(3), 4941, and 4945 of the Code and does not purport to rule on any facts that were not represented in this ruling. Further, we have not determined whether the methodology you are using to determine fair market value or fair and reasonable costs is proper.

Pursuant to a Power of Attorney on file in this office, we are sending a copy of this letter to your authorized representative.

We are also sending a copy of this ruling to the Ohio TE/GE Customer Service Office. Because this letter could help resolve any questions about M's exempt status, it should be kept with M's permanent records.

If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

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This ruling is directed only to M and C, D, E, and F, the parties that requested the ruling. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Thank you for your cooperation.

Sincerely,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4