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

200225037

Date: March 25, 2002

UIL: 4941.04-00

Contact Person:

ID Number:

Telephone Number:

T:EO:B3

Employer Identification Number:

A =
X =
Z =
a =

Dear

This letter is in response to X's letter dated November 14, 2000, requesting a ruling under section 4941 of the Internal Revenue Code.

The decedent, A, was survived by his wife and descendants. He left a will as modified by various codicils in which, in essence, the residue of his estate was left to X, a private foundation. X has received from the Internal Revenue Service a determination letter ruling that X is exempt from federal income tax as an organization described in section 501(c)(3) of the Code and is a private foundation described in section 509(a).

A created various trusts for friends and family members under his will. Each trust provides an income interest to a named beneficiary for the life of the beneficiary or beneficiaries, with the remainder interest passing to X which is also residuary beneficiary under A's Will.

Trusts created for some of A's grandchildren and for some of his other beneficiaries will be subject to generation skipping tax (GST) because such trusts are for the benefit of skip persons within the meaning of section 2613 of the Code. Because the transfers are direct skips under section 2612(c) of the Code, the tax is due as of the due date of the estate tax return for A's estate, Z.

The reading of A's will and the codicils thereto have raised a question of will interpretation as to whether the GST tax is payable from the residuary of the estate, thus having a direct bearing on the amount received by X, or whether the tax is apportioned against each of the direct skip trusts so that the GST tax is attributable to such trusts. A's original will contains a general tax apportionment clause directing the Executors to pay estate and inheritance taxes related to the estate. However, the general direction contains an exception directing the

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Executors not to pay any GST taxes. Thus, under such exception each of the individual trusts would bear its respective share of such taxes. However, a later executed codicil, prepared by the decedent himself, established five trusts subject to the GST tax. The language of such codicil is interpreted by some as not requiring such trusts to pay its respective share of the GST tax. Some of the beneficiaries of the five trusts are disqualified persons within the meaning of section 4946 of the Code.

Counsel to Z believed that the decedent intended to override the prohibition on Z paying the GST taxes. Accordingly, Counsel initiated a suit for advice and guidance before the county court where the will is being probated to obtain an order that Z is required to pay any GST tax with respect to the trusts at issue. The Attorney General of the state was a party to the suit.

On a, the court entered its final decree, following a trial on the merits, ordering that the residue of the estate (the residue of "Z") shall pay, without apportionment, the generation skipping transfer taxes attributable to the bequests created for the benefit of certain persons. Since the time for filing appeal has expired, the court's decree is now final.

X has requested the following ruling:

1. Based on the stated facts, Z's payment of the generation-skipping transfer taxes on the five trusts described above will not constitute an act of self-dealing.

LAW AND ANALYSIS:

Section 4941(a) of the Code imposes on each act of self-dealing by a disqualified person an "initial" tax equal to 5 percent of the amount involved with respect to the act of self-dealing for each year in the taxable period.

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.

Under the rationale of the decisions in Rockefeller v. United States, 572 F. Supp. 9 (E.D. Ark. 1982), aff'd, 718 F.2d 290 (8th Cir., 1983), cert. den. 466 U.S. 962 (1984) and Reis, 87 T.C. 1016 (1986), self-dealing under section 4941 may occur by virtue of the transfer of property held in an estate to which a private foundation has an interest or expectancy under the terms of the will or revocable trust. If a court were to determine that a private foundation, in fact, has no interest or expectancy with respect to any specific property, there is then no context in which a self-dealing transaction might arise with respect to such specific property.

The latter is the case with the tax apportionment issue raised in this ruling request. Since the county court determined that the residuary interest, X's interest, was liable as a matter of law for the payment of the GST tax, then it cannot be said that payment of the tax raises any kind of self-dealing issue since the residuary is viewed as holding assets subject to such obligation as of the date of A's death, when the terms of his will became final. All interested parties are viewed as merely carrying out their legal obligations under the law. It cannot be said

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that X has, by payment of the tax pursuant to court order, given up any property to which it had an interest or expectancy since from day one its interest has been subject to the GST tax obligation.

Accordingly, we rule as follows

1. Based on the stated facts, Z's payment of the generation skipping tax transfer taxes on the five trusts described above will not constitute an act of self-dealing under section 4941 of the Code.

We are sending a copy of this ruling letter to X's authorized representative listed on the power of attorney on file with this office.

This ruling is directed only to X and applies only to the facts represented herein. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

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