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Date:

May 05, 2025

Legend

Foundation	=
State	=
Region	=
Foreign Country	=
Year 1	=
Year 2	=
Year 3	=
A	=
B	=
C	=
D	=

Dear :

This letter responds to a letter from your authorized representative, dated October 29, 2024, requesting rulings under sections 501, 4941, 4942, and 4945¹ with respect to certain grants planned to be made by Foundation, as more fully set forth below.

FACTS

Foundation is a not-for-profit corporation incorporated in State in Year 1. Foundation was recognized by the Internal Revenue Service as an organization described in section 501(c)(3) and classified as a private foundation under section 509(a). Foundation is a non-member entity that is governed by a board of directors. Foundation's purposes include improving the health and welfare of economically disadvantaged elders and promoting education and access to the arts. Foundation engages with charitable organizations and religious communities in Region, primarily

¹ Sections 501, 4941, 4942 and 4945 of the Internal Revenue Code of 1986, as amended, to which all subsequent "section" references are made unless otherwise indicated.

Foreign Country, that are involved in activities that have similar purposes and help populations similar to those targeted by Foundation. Foundation is a calendar year taxpayer.

Foundation requested a prior private letter ruling in Year 2 ("Year 2 PLR"). The facts for the Year 2 PLR were that Foundation established a grant program as its primary manner of carrying out its charitable purposes. The grant program involved making grants to A, B, and C, which are located in Foreign Country. As provided for in the Year 2 PLR, the Foreign Organizations would use the grants to make their own grants to organizations ("Secondary Grantees") in Foreign Country to fund projects in furtherance of Foundation's charitable purposes, including projects that promote the protection, welfare, care, health and recreation of vulnerable, economically disadvantaged elderly people; projects that promote education, access to artistic activities and cultural expressions for economically disadvantaged children and teenagers belonging to lower income families; and projects that assist and support disadvantaged individuals in the areas of education, medical care, and economic provision for daily subsistence. The Year 2 PLR ruled that the grants represented amounts paid for a charitable purpose, the grants were qualifying distributions within the meaning of section 4942, the grants were not taxable expenditures within the meaning of section 4945, and the grants did not create acts of self-dealing under section 4941.

In Year 3, B merged into A in accordance with the law of Foreign Country, and the surviving organization was renamed D. As a result, Foundation's primary manner of carrying out its charitable purposes will be making grants to C and D (each individually a "Foreign Organization", and collectively, the "Foreign Organizations").

As in the prior ruling, each Foreign Organization will require potential Secondary Grantees to undergo a comprehensive pre-grant inquiry, under which a potential Secondary Grantee must demonstrate that its mission is consistent with the mission of the Foreign Organization. An approved Secondary Grantee may then submit a grant request for a specific project. If the grant request is approved, the Foreign Organization will enter into a grant agreement with the Secondary Grantee under which the grant funds may only be used for the approved project and the Foreign Organization will closely monitor the use of the funds. Each Secondary Grantee will submit periodic reports to the Foreign Organization making the grant, must maintain records of receipts and expenditures, and must make its books available to the Foreign Organization for examination.

Foundation represents that the Foreign Organizations are registered charitable not for profit organizations in good standing in Foreign Country and are exempt from tax under the laws of Foreign Country. Foundation further represents that the Foreign Organizations are operated exclusively for charitable purposes and are expressly not permitted to engage in non-charitable purposes other than as an insubstantial part of their activities; that no part of the net earnings of the Foreign Organizations inures to the benefit of any private shareholder or individual; that no substantial part of the activities

of the Foreign Organizations involves the carrying on of propaganda, or otherwise attempting, to influence legislation; and that neither of the Foreign Organizations participates in, or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of section 501(c)(3). Each of the Foreign Organizations is governed by a board of directors. Though some of the members of the board of directors of Foundation also serve on the boards of directors of the Foreign Organizations, such individuals represent a minority of the members of the boards of each Foreign Organization. Foundation represents that a project to be funded by each Foreign Organization must be approved by a simple majority (more than one-half) of its full Board of Directors occurring at a regular board meeting. Foundation also represents that none of the directors of the Foreign Organizations owns any voting stock in Foreign Organizations nor do they own a beneficial interest in the Foreign Organization. Foundation further represents that the Foundation's disqualified persons² are not in positions to influence the decisions made by the Foreign Organizations' boards and that the members of the Foreign Organizations' boards are not employed by and do not work for any of Foundation's disqualified persons. Foundation further represents that Foundation's disqualified persons do not have the power to control the Foreign Organization's spending or use of funds by way of any agreement in place.

Neither of the Foreign Organizations has applied for or received a determination letter from the Internal Revenue Service that it is an organization described in section 501(c)(3) or in section 4942(j)(3). Foundation has not made a good faith determination (as described in Treas. Reg. § 53.4942(a)-3(a)(6)(i)) that any of the Foreign Organizations is an organization described in section 509(a)(1), (a)(2), or (a)(3) or in section 4942(j)(3). However, Foundation represents that it has researched all of the officers and directors for each Foreign Organization, including on the Office of Foreign Asset Control Sanctions List Search, to ensure that none of them appears on that list. Foundation also represented that it has knowledge of the management, activities, and practices of the Foreign Organizations as a result of having a number of its directors also serving as directors of each of the Foreign Organizations. Finally, Foundation represents that it has reviewed the formation and governance documents for the Foreign Organizations and applicable law of Foreign Country and those documents demonstrate that the Foreign Organizations are properly organized as charitable organizations in a manner comparable to United States laws and principles.

Foundation represents that it will exercise expenditure responsibility over all grants to Foreign Organizations in accordance with section 4945(h) and Treas. Reg. § 53.4945-5. For each grant, Foundation will enter into an expenditure responsibility agreement with the recipient Foreign Organization consistent with the requirements of section 4945(h) and Treas. Reg. § 53.4945-5. Each expenditure responsibility agreement will provide that the grant funds awarded must be used exclusively for charitable purposes described in section 170(c)(2)(B) and that the Foreign Organization must maintain the

² As defined in section 4946.

grant funds in a separate fund dedicated to one or more purposes described in section 170(c)(2)(B). The expenditure responsibility agreement will also provide that the recipient Foreign Organization will not use any of the funds to make any grant that would constitute a taxable expenditure within the meaning of section 4945(d).

Foundation represents that it will not earmark the use by a Foreign Organization of any grant and that Foundation does not have any agreement, oral or written, whereby Foundation may cause the selection of Secondary Grantees. Each Foreign Organization will retain discretion and control over the use of funds received from Foundation consistent with the expenditure responsibility agreements.

RULINGS REQUESTED

Based on the stated facts and representations, Foundation has requested the following rulings:

1. The grants made by Foundation to Foreign Organizations represent amounts paid for a charitable purpose.
2. The grants made by Foundation to Foreign Organizations will be qualifying distributions within the meaning of section 4942.
3. The grants made by Foundation to Foreign Organizations will not be taxable expenditures within the meaning of section 4945.
4. The grants will not create any acts of self-dealing under section 4941.

LAW AND ANALYSIS

Ruling 1 – Whether the grants made by Foundation to Foreign Organizations will represent amounts paid for a charitable purpose as described in section 501(c)(3).

Section 501(a) provides that organizations described in section 501(c) and 501(d) are exempt from federal income tax.

Section 501(c)(3) describes organizations organized and operated exclusively for charitable and other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(i) includes “charitable” in the list of purposes for which an organization described in section 501(c)(3) may be organized and operated.

Treas. Reg. § 1.501(c)(3)-1(d)(2) provides that the term “charitable” is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall

within the broad outlines of “charity”, such terms include “relief of the poor and distressed or of the underprivileged” and “advancement of education.”

Rev. Rul. 72-124, 1972-1 C.B. 145, considers whether an organization formed for the purpose of establishing and operating a home for the elderly is organized and operated exclusively for charitable purposes. In concluding that the organization is exempt from federal income tax under section 501(c)(3), the Service recognized that the elderly, as a class, are highly susceptible to unique forms of distress due to their special needs in advanced age, and said that satisfaction of these special needs, which contributes to the prevention and elimination of the causes of these unique forms of distress, may, in the proper context, constitute charitable purposes or functions.

Rev. Rul. 64-175, 1964-1 C.B. 185, provides that organizations devoted to the promotion of the arts may qualify for exemption from federal income tax as educational or charitable organizations under section 501(c)(3).

The Foreign Organizations effectuate charitable purposes by providing resources to Secondary Grantees engaged in projects that promote the protection, welfare, care, health, and recreation of vulnerable, economically disadvantaged elderly people; that promote education, access to artistic activities, and cultural expressions for economically disadvantaged children and teenagers belonging to lower income families; and that assist and support disadvantaged individuals in the areas of education, medical care, and economic provision for daily subsistence. Accordingly, the grants made by Foundation to Foreign Organizations represent amounts paid for a charitable purpose.

Ruling 2 - Whether the grants made by Foundation to Foreign Organizations will be qualifying distributions within the meaning of section 4942.

Section 4942(a) imposes a tax on the undistributed income of a private foundation for any taxable year.

Section 4942(c) provides that the term “undistributed income” means, with respect to any private foundation for any taxable year as of any time, the amount by which (1) the distributable amount for such taxable year exceeds (2) the qualifying distributions made before such time out of such distributable amount.

Section 4942(g)(1)(A) provides that the term “qualifying distribution” means, in part, any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons.

Section 170(c)(2)(B) provides that the term “charitable contributions” means a contribution or gift for the following purposes: “religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition

..., or for the prevention of cruelty to children or animals.” These purposes are the same purposes listed in section 501(c)(3) (excluding testing for public safety).

Treas. Reg. § 53.4942(a)-3(a)(3) states that “an organization is ‘controlled’ by a foundation or one or more disqualified persons with respect to the foundation if any of such persons may, by aggregating their votes or positions of authority, require the donee organization to make an expenditure, or prevent the donee organization from making an expenditure, regardless of the method by which the control is exercised or exercisable.”

Treas. Reg. § 53.4942(a)-3(c)(4) provides that where a donee of a private foundation uses contributed funds to make a subsequent payment to a “secondary donee,” such subsequent payment will not be treated as a contribution by the private foundation to the secondary donee if the distributing foundation does not earmark the use of the contribution for any named secondary donee and does not retain power to cause the selection of the secondary donee by the organization to which such foundation has made the contribution.” Even where the private foundation “has reason to believe” that a secondary donee would benefit from a contribution, the foundation will not be deemed to have made a contribution to such secondary donee “so long as the original donee organization exercises control, in fact, over the selection process and actually makes the selection completely independently of such foundation.”

Foundation represents that the grants will not be earmarked for the use of any Secondary Grantees and Foundation will not retain any power to cause the selection of any Secondary Grantee by the Foreign Organizations. Foundation further represents that it does not directly or indirectly control any of the Foreign Organizations within the meaning of Treas. Reg. § 53.4942(a)-3(a)(3) because the members of Foundation’s board of directors (i.e., disqualified persons with respect to Foundation) only represent a minority of the members of the boards of directors of each Foreign Organization and do not have the power to require any of the Foreign Organizations to make an expenditure or prevent any of the Foreign Organizations from making an expenditure. Additionally, Foundation represents that each Foreign Organization will exercise control, in fact, over its Secondary Grantee selection process and make its selection decisions completely independently of Foundation. Accordingly, the grants made by Foundation to Foreign Organizations will be treated as grants from Foundation to the Foreign Organizations and not grants from Foundation to Secondary Grantees.

As established above in Ruling 1, the grants made by Foundation to the Foreign Organizations will represent amounts paid for a charitable purpose under section 501(c)(3). Thus, they will be made exclusively for section 170(c)(2)(B) purposes. Further, because Foundation does not, and will not, directly or indirectly control the Foreign Organizations or earmark the use of any of the grants, the grants made by Foundation to Foreign Organizations will be qualifying distributions, including any fees, taxes, or administrative costs that are determined to be reasonable and necessary administrative expenses.

Ruling 3 - Whether the grants made by Foundation to Foreign Organizations will be taxable expenditures under section 4945.

Section 4945(a) generally imposes a tax on taxable expenditures made by a private foundation.

Section 4945(d)(4) provides that a grant by a private foundation to an organization (other than a grant to a public charity described in section 509(a)(1) or (2), to a supporting organization described in section 509(a)(3) (other than one described in clause (i) or (ii) of section 4942(g)(4)(A)), or to an exempt operating foundation described in section 4940(d)(2)) will be a “taxable expenditure” unless the private foundation exercises expenditure responsibility over the grant pursuant to section 4945(h). In addition, section 4945(d)(5) provides that a “taxable expenditure” includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 4945(h) provides that expenditure responsibility referred to in section 4945(d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures (1) to see that the grant is spent solely for the purpose for which made, (2) to obtain full and complete reports from the grantee on how funds are spent, and (3) to make full and detailed reports with respect to such expenditures to the Secretary.

Treas. Reg. § 53.4945-5(b)(1) provides that a private foundation will be considered to be exercising “expenditure responsibility” under section 4945(h) as long as it exerts all reasonable efforts and establishes adequate procedures: (i) to see that the grant is spent solely for the purpose for which made, (ii) to obtain full and complete reports from the grantee on how the funds are spent, and (iii) to make full and detailed reports with respect to such expenditures to the Commissioner.

Treas. Reg. § 53.4945-5(b)(2)(i) provides that before making a grant to an organization with respect to which expenditure responsibility must be exercised, a private foundation should conduct a limited inquiry concerning the potential grantee. Such inquiry should be complete enough to give a reasonable individual assurance that the grantee will use the grant for the proper purposes. The inquiry should concern itself with matters such as: (a) the identity, prior history, and experience (if any) of the grantee organization and its managers; and (b) any knowledge which the private foundation has (based on prior experience or otherwise) of, or other information which is readily available concerning, the management, activities, and practices of the grantee organization. The scope of the inquiry might be expected to vary from case to case depending upon the size and purpose of the grant, the period over which it is to be paid, and the prior experience which the grantor has had with respect to the capacity of the grantee to use the grant for the proper purpose.

Treas. Reg. § 53.4945-5(b)(3) states that “in order to meet the expenditure responsibility requirements of section 4945(h), a private foundation must require that each grant to an organization, with respect to which expenditure responsibility must be exercised under this section, be made subject to a written commitment signed by an appropriate officer, director, or trustee of the grantee organization. Such commitment must include an agreement by the grantee:

- i. to repay any portion of the amount granted which is not used for the purposes of the grant,
- ii. to submit full and complete annual reports on the manner in which funds are spent and the progress made in accomplishing the purposes of the grant, except as provided in paragraph (c)(2) of [Treas. Reg. § 53.4945-5],
- iii. to maintain records of receipts and expenditures and to make its books and records available to the grantor at reasonable times, and
- iv. not to use any of the funds a) to carry on propaganda, or otherwise to attempt, to influence legislation (within the meaning of section 4945(d)(1), b) to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of section 4945(d)(2)), c) to make any grant which does not comply with the requirements of section 4945(d)(3) or (4), or d) to undertake any activity for any purpose other than are specified in section 170(c)(2)(B).”

Foundation represents that it has previously conducted an inquiry into the identity, prior history, and experience of the Foreign Organizations and their managers based on a review of all information that was readily available to Foundation concerning the management, activities, and practices of each Foreign Organization. Foundation further represents that Foundation will exercise expenditure responsibility with respect to grants to the Foreign Organizations in accordance with the requirements of section 4945(h) and Treas. Reg. § 53.4945-5(b)(3), including the entry of an expenditure responsibility agreement for each grant. Pursuant to the expenditure responsibility agreements, Foundation will require each Foreign Organization to maintain the grant funds in a separate fund dedicated to purposes described in section 170(c)(2)(B), in accordance with Treas. Reg. § 53.4945-6(c).

Therefore, the grants made by Foundation to the Foreign Organizations will not be taxable expenditures because Foundation has conducted a pre-grant inquiry, the grants will be made exclusively for section 170(c)(2)(B) purposes, and Foundation represents that it will exercise expenditure responsibility with respect to each of the grants.

Ruling 4 – Whether the grants made by Foundation to the Foreign Organizations will create any act of self-dealing under section 4941.

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

Section 4941(d)(1)(E) provides that the term “self-dealing” includes 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.”

Section 4946(a)(1)(B) defines the term “disqualified person” to include, with respect to a private foundation, a foundation manager. Section 4946(b) provides that a “foundation manager” includes an officer, director, or trustee of a foundation.

Section 4946(a)(1)(D) defines the term “disqualified person” to include a member of the family of a foundation manager. Section 4946(d) provides that for purposes of section 4946(a)(1), family members include only spouses, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

Treas. Reg. § 53.4941(d)-2(f)(2) states, in part, 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, and specifically notes that the public recognition a person may receive arising from the charitable activities of a private foundation with which they are associated are incidental and tenuous benefits not giving rise to self-dealing.

Treas. Reg. § 53.4941(d)-2(f)(9), Example (1) illustrates that there is only incidental and tenuous benefit to a disqualified person when a private foundation makes a grant to a city for the purpose of alleviating the slum conditions which existed in a particular neighborhood in the city when the disqualified person is a corporation that is a substantial contributor to the foundation and is located in the same area in which the grant is to be used. Although the general improvement of the area may constitute an incidental or tenuous benefit to the corporation, such benefit by itself will not constitute an act of self-dealing under section 4941.

In Rev. Rul. 77-331, 1977-2 C.B. 388, a private foundation gave a grant to a public charity to establish a student loan guarantee program. Under the terms of the program, the public charity agreed to guarantee loans only for children of the private foundation’s employees, some of whom were disqualified persons. The IRS held that “[e]ach time a loan made to a disqualified person is guaranteed with funds granted by the private foundation, the income or assets of the foundation are being used indirectly to satisfy the legal obligation of a disqualified person.” Such use of the foundation’s income or assets confers more than an incidental or tenuous benefit upon the disqualified person involved.

The members of the board of directors of Foundation are disqualified persons with respect to Foundation because they are foundation managers. Those family members of such foundation managers specified in section 4946(d) are also disqualified persons with respect to Foundation because of their familial relationships with the foundation managers. If Foundation assets are used or transferred through the grants to the

Foreign Organizations for the benefit of the directors of Foundation or their specified family members, such a transaction would be an act of self-dealing under section 4941(d)(1)(E). Foundation represents that the Foreign Organizations and the Secondary Grantees are not disqualified persons of the Foundation as they do not fall within any of the categories of persons set forth in section 4946(a).

An indirect act of self-dealing can occur where grants to intermediaries result in private foundation assets being transferred for the use or benefit of a disqualified person. In this instance, Foundation represents that none of the board members of Foundation or their specified family members, the only disqualified persons with respect to the grants by the Foundation to the Foreign Organizations, will receive any benefit from the proposed grants, other than possible public recognition arising from their association with the charitable work performed. Public recognition is only an incidental benefit that does not give rise to self-dealing. The fact that Foundation and Foreign Organizations share several common foundation managers does not alter the fact that these foundation managers are not receiving a benefit from the grants beyond a potential incidental or tenuous benefit. Accordingly, under the stated facts and representations, the making of the grants by Foundation to the Foreign Organizations will not result in any acts of self-dealing under section 4941.

RULINGS

Based solely on the facts and representations submitted in the request for rulings and supplemental submissions, we rule as follows:

1. The grants made by Foundation to the Foreign Organizations in each case will be amounts paid for a charitable purpose.
2. The grants made by Foundation to the Foreign Organizations will be qualifying distributions within the meaning of section 4942.
3. The grants made by Foundation to the Foreign Organizations will not be taxable expenditures within the meaning of section 4945.
4. The grants made by Foundation to the Foreign Organizations will not create any acts of self-dealing under section 4941.

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Foundation and accompanied by a penalty of perjury statement executed by individuals with authority to bind Foundation and upon the understanding that there will be no material changes in the facts. This office has not verified any of the material submitted in support of the request for rulings, and such material is subject to verification on examination. The Associate Office will revoke or modify a letter ruling and apply the revocation retroactively if: (1) there has been a misstatement or omission of controlling facts; (2) the facts at the time of the transaction are materially different from the controlling facts on which the ruling is based; or (3) in the case of a transaction involving a continuing action or series of actions, the

controlling facts change during the course of the transaction. See Rev. Proc. 2025-1, § 11.05.

This letter does not address the applicability of any section of the Code or Treasury Regulations to the facts submitted other than with respect to the sections specifically described. Except as specifically set forth herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This letter is directed only to Foundation. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Because it could help resolve questions concerning federal income tax status, this letter should be kept in Foundation's permanent records and must be attached to any income tax return to which it is relevant. Foundation may satisfy this requirement by attaching a statement to its return that provides the date and control number of this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Foundation's authorized representatives.

Sincerely,

Melinda G. Williams
Branch Chief
Exempt Organizations Branch 2
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

PLR-120963-24

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cc: