Bond Case Briefs

Municipal Finance Law Since 1971

IRS LTR: IRS Rules on Treatment of Matching Gifts to Charities.

The IRS ruled that matching gifts a foundation makes to public charities will not constitute self-dealing, will be qualifying distributions within the meaning of section 4942(g), and will not be taxable expenditures under section 4945(d).

Contact Person: * * *
Identification Number: * * *
Telephone Number: * * *

UIL Number: 4941.00-00, 4942.03-05, 4945.00-00
Release Date: 4/25/2014

Date: January 30, 2014Employer Identification Number: * * *

LEGEND:

Company = * * *
W = * * *
X = * * *
Y = * * *
Z = * * *
StateA = * * *

Dear * * *:We have considered your ruling request dated November 8, 2013, submitted by your authorized representative, requesting rulings under I.R.C. §§ 4941, 4942 and 4945.

FACTS

You are an organization exempt from taxation under § 501(c)(3) and classified as a private foundation under § 509(a). Company is your sole contributor and you and Company share the same officers and directors.As part of its charitable undertakings, Company had established a matching gifts program under which it matched employees' and Company board of director members' contributions in cash and securities to public charities. All full time employees of Company who were on the active payroll were eligible for the company match program. Employees who give monetary contributions to certain charitable organizations have their gifts matched. The limit of the match varies depending on the employees' positions. The amount that was matched must have been at least $W and non-executive employees have their gifts matched up to $X; executive employees have their gifts matched up to $Y; and directors have their gifts matched up to $Z.

Pursuant to written policies that you submitted as part of this ruling request, an employee's contribution must meet certain criteria to be eligible for a match payment. The contribution must go to "an organization that is recognized by the Internal Revenue Service as tax exempt, . . . [is]

designated a public charity under Section 501(c)(3) of the Internal Revenue Code," and is not a supporting organization under § 509(a)(3). Therefore, the donee organization could not be a private foundation. Further, a contribution where the employee receives anything in return is not eligible for the match. For example tuition payments, insurance premiums, and membership dues paid by employees to § 501(c)(3) organizations are not eligible. A contribution that an employee is legally required to pay is not eligible. A gift that is used for religious or political purposes is not eligible. Finally, a non-cash gift is not eligible for the match. A Company employee who seeks to have his or her donation matched must submit information about the donation and the recipient charitable organization to Company. Company then uses a third party vendor to verify eligibility. Once verified, the charity receives payment.

Company's employees are informed of these policies through e-mail and Company's human resources website. These policies also state that Company in its sole discretion may refuse to match an employee's gift and may modify or end the gift matching program at any time.

A few months before you submitted your ruling request, Company altered a significant component of its employee gift matching program. Prior to this change, Company paid the matches of employee donations to recipient organizations. However, in all but one state, Company has ceased making these payments. Instead, you have assumed the role of payor in Company's gift matching program ("foundation match program"), and you now pay the matches to recipient organizations. You stated that, under the foundation match program additional restrictions were imposed by you:

- The charitable organizations eligible for matching gifts are limited to public charities classified as exempt under § 509(a)(1) or (2). You do not pay organizations classified as private foundations. You do not match any gifts made by participants in the Company match pogrom prior to the termination of the Company match program.
- You do not match any legal obligation of a participant in the foundation match program, and the participant is required to certify that the participant has no legal obligation to make the contribution.
- You do not match contributions made to any organization which you control or which is controlled by one or more disqualified persons within the meaning of § 4946.
- Gifts are made to match the fair market cash value of contributions of securities.

The one state where Company did not change its gift matching policy for employees is StateA. Company maintained its policy there because of a prior agreement with a state agency. This state agency gave Company approval for a corporate acquisition on the condition that Company continue to make charitable contributions to organizations within StateA for a number of years following the transaction. As such, Company continues to be the payor of the gift match payments in StateA.

RULINGS REQUESTED

You requested the following rulings:

- 1. That matching gifts made by you under the foundation match program do not constitute self-dealing within the meaning of § 4941.

2. That the matching gifts made under the foundation match program will be "qualifying distributions" within the meaning of § 4942(g).

3. That the matching gifts made under the foundation match program will not be "taxable expenditures" within the meaning of § 4945(d).

LAW

I.R.C. § 170(c)(2)(B) provides the term “charitable contribution” means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.I.R.C. § 501(c)(3) exempts from federal income taxation corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.

I.R.C. § 507(d)(2)(A) defines a substantial contributor as any person who contributed or bequeathed an aggregated amount of more than $5,000 to a private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person.

I.R.C. § 4941 imposes an excise tax on private foundations and foundation managers for each act of self-dealing and between a private foundation and a disqualified person.

I.R.C. § 4941(d)(1) defines self-dealing to include the furnishing of goods, services, or facilities between a disqualified person and a private foundation, the payment of compensation by a private foundation to a disqualified person, or use of the private foundation’s assets, by or for the benefit of a disqualified person.

I.R.C. § 4942(a) imposes a tax on undistributed income of a private foundation for any taxable year, which has not been distributed by the first day of the second taxable year following such taxable year.

I.R.C. § 4942(g)(1) defines “qualifying distribution” as (A) any amount paid to accomplish one or more purposes described in § 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons, or (ii) a private foundation which is not an operating foundation, except as otherwise provided; (B) any amount paid to acquire an asset used directly in carrying out one or more purposes described in § 170(c)(2)(B).

I.R.C. § 4945(a) imposes a twenty percent tax on each taxable expenditure of a private foundation.

I.R.C. § 4945(d) defines taxable expenditure as any amount paid or incurred by a private foundation as a grant to an organization unless the expenditure meets certain criteria unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with § 4945(h) or an amount paid for any purpose other than one specified in § 170(c)(2)(B).

I.R.C. § 4946(a)(1) provides, in part, that the term ‘disqualified person’ means, with respect to a private foundation, a person who is —

- (A) a substantial contributor to the foundation,

(B) a foundation manager,

(C) an owner of more than 20 percent of —

- (i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise, which is a substantial contributor to the foundation,

- (D) a member of the family of any individual described in subparagraph (A), (B), or (C),

(E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest, and
Treas. Reg. § 53.4941(d)-2(f)(2) provides 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. For example, a grant by a private foundation to a § 509(a)(1), (2), or (3) organization will not be an act of self-dealing merely because one of the § 509(a)(1), (2), or (3) organization's officers, directors, or trustees is also a manager of or a substantial contributor to the foundation.Treas. Reg. § 53.4941(d)-2(f)(9) Example 2 gives the following situation. Private foundation X established a program to award scholarship grants to the children of employees of corporation M, a substantial contributor to X. After disclosure of the method of carrying out such program, X received a determination letter from the Internal Revenue Service stating that X is exempt under § 501(c)(3), that contributions to X are deductible under § 170, and that X's scholarship program qualifies under § 4945(g)(1). A scholarship grant to a person not a disqualified person with respect to X paid or incurred by X in accordance with such program shall not be an indirect act of self-dealing between X and M.

Treas. Reg. § 53.4942(a)-3(a)(2) defines the term "qualifying distribution," in relevant part, to mean any amount (including program related investments and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in § 170(c)(1) or (2)(B), other than any contribution to a private foundation which is not an operating foundation or to an organization controlled (directly or indirectly) by the contributing private foundation or one or more disqualified persons with respect to such foundation.

Treas. Reg. § 53.4945-5(a)(1) provides that the term "taxable expenditure" includes any amount paid or incurred by a private foundation as a grant to an organization (other than an organization described in § 509(a)(1), (2), or (3)), unless the private foundation exercises expenditure responsibility with respect to such grant.

Rev. Rul. 73-407, 1973-2 C.B. 383, holds that a contribution by a private foundation to a public charity made on the condition that the public charity change its name to that of the foundation's substantial contributor for at least 100 years does not constitute an act of self-dealing.

Rev. Rul. 77-160, 1977-1 C.B. 351, concerned the issue of whether payment by a private foundation of a disqualified person's membership church dues constituted an act of self-dealing within the

meaning of § 4941(d)(1)(E). The Revenue Ruling found that the payment was not an incidental or tenuous benefit within the meaning of § 53.4941(d)-2(f)(2). The foundation's payment resulted in a direct economic benefit to the disqualified person. The payment of the membership fee by the foundation was a substitute for an obligation of the disqualified person. As a result of the payment, the disqualified person was entitled to hold office, vote in congregational meetings to elect officers and conduct other business, and otherwise participate in the religious activities of the congregation. Accordingly, the payment of membership dues by the private foundation on behalf of the disqualified person was an act of self-dealing under § 4941(d)(1)(E).

Rev. Rul. 80-310, 1980-2 CB 319, held that the grants of a private foundation to an educational institution for engineering instruction were not an act of self-dealing, even though a corporation, a disqualified person, intended to hire graduates of the engineering program and encourage its employees to participate in the program. The Revenue Ruling stated that because the corporation would compete on an equal basis for program graduates and admission of its own employees to the program, it would receive only an incidental or tenuous benefit.

Rev. Rul. 85-162, 1985-2 C.B. 275, found no self-dealing where a private foundation, with a disqualified person of a bank, made loans to publicly supported organizations for construction projects in disadvantaged areas where the contractors doing the construction might have been ordinary customers of the bank. Any benefit to the bank from the fact that the loan proceeds were paid by the public charities to the contractors who are ordinary customers of the bank was incidental or tenuous.

ANALYSIS

Ruling 1Section 4941(a) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Under § 4946(a)(1)(A), a disqualified person for the purpose of § 4941 means, with respect to a private foundation, a person who is a substantial contributor to the foundation, a foundation manager, an owner of more than 20 percent of (i) the total combined voting power of a corporation which is a substantial contributor to the foundation; a member of the family of any individual described in above, a corporation in which persons described in above or own more than 35 percent of the total combined voting power. Section 507(d)(2)(A) defines a substantial contributor as any person who contributed or bequeathed an aggregated amount of more than $5,000 to a private foundation, if such amount is more than two percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. Here Company is your substantial contributor, and you and Company share the same officers and directors.

Section 4941(d)(1)(E) defines 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 the private foundation. You have agreed to take over payment ofCompany's employee gift matching program. Company has a policy whereby employees are informed that certain charitable gifts that they make will be matched, and you then tender the matching payment. If this agreement entails the exchange of money, merchandise or services between you and Company or the use of your assets to benefit company more than incidentally, then it violates the self-dealing prohibition. You have submitted a number of assurances in your ruling request including a representation that you will not match any gifts made by participants in the Company match program prior to the termination of the Company match program and that you are not taking on any obligation of Company or relieving Company of any financial burden. As such, the foundation match program does not involve any exchange of money, merchandise, or services between you and Company.

Nonetheless, Company derives some benefit from your payments from the good will created by this

foundation match program. However, this good will is merely incidental benefit for Company. Section 53.4941(d)-2(f)(2) states a private foundation's use of assets that results in incidental benefit to a disqualified person is not by itself an act of self-dealing. The benefits of increased loyalty and morale for a business have been found to be incidental and tenuous. Example 2 of § 53.4941(d)-2(f)(9) provides a situation where a private foundation's action, a scholarship program for children of employees of a disqualified person, likely results in increased employee loyalty and good will for the disqualified person. Nonetheless, the situation is not self-dealing. Similarly, the possibilities of an improved workforce or increased customer loyalty were found to be incidental benefits in Rev. Rul. 80-310 (providing that advantages gained by a local employer from the creation of a new education program were incidental and did not create self-dealing) and Rev. Rul. 85-162 (finding that a private foundation's funding of construction projects resulted in only incidental benefit to a bank, even though the projects might have employed the bank's customers).

Company is similar to the disqualified person in Rev. Rul. 73-407 who received only incidental benefit from a private foundation's directive for a public charity to adopt the disqualified person's name. The disqualified person derived good will from the charity's name change, but nonetheless the private foundation's payment was not an act of self-dealing. Further, unlike the disqualified person in Rev. Rul. 77-160 (finding more than incidental benefit when a private foundation paid a disqualified person's church membership dues and as a result the disqualified gained the right to be an active participant in the church), Company does not receive any tangible right or privilege from your payments. Thus, Company's receipt of good will does not render your foundation match program payments as acts of self-dealing. Since your gifts under the foundation match program benefit Company only incidentally between you and Company, they are not acts of self-dealing.

Ruling 2

Your payments under Company's foundation match program are qualifying distributions. Under § 4942(g)(1), the definition of "qualifying distribution" includes any amount paid to accomplish one or more purposes described in § 170(c)(2)(B). Under § 53.4942(a)-3(a)(2) the term "qualifying distribution" does not include a contribution to a private foundation. You have represented that you will make payments only to organizations that have been recognized by the IRS as public charities under §§ 509(a)(1) or (2). With these safeguards, you are ensuring that your payments under the foundation match program are qualifying distributions.

Ruling 3

Under § 53.4945-5(a)(1), a private foundation's taxable expenditures include amounts to an organization, other than an organization described in § 509(a)(1), (2), or (3), unless the private foundation exercises expenditure responsibility with respect to such grant. Since you have represented that you will give money in the foundation match program solely to organizations that are classified by the IRS as public charities under §§ 509(a)(1) or (2), then your payment will not constitute a taxable expenditure.

RULINGS

- 1. Matching gifts made by you under the foundation match program to qualified public charities do not constitute self-dealing within the meaning of § 4941.

2. The matching gifts made under the foundation match program will be "qualifying distributions" within the meaning of § 4942(g).

3. The matching gifts made under the foundation match program will not be "taxable expenditures"

within the meaning of § 4945(d).
This ruling will be made available for public inspection under I.R.C. § 6110 after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose.* A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.This ruling is directed only to the organization that requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept 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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

- Sincerely,
- Ronald Shoemaker
- Manager, Exempt Organizations
- Technical Group 2

Enclosure
Notice 437

JANUARY 30, 2014

Citations: LTR 201417022