



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200433028

Date: MAY 18 2004

Contact Person

Uniform Issue List Numbers: 4944.00-00
4941.04-00

Contact Identification Number:

Telephone Number:

Legend:

A =
B =
C =
T =

T:EO:B02

Dear

This is in reply to T's rulings request concerning sections 4941 and 4944 of the Internal Revenue Code in regard to a specific stock comprising about ninety percent of T's assets.

T is a charitable trust created by A and a private foundation under section 509(a) of the Code. T was funded by gift from a non-charitable trust created by A, primarily with stock in a national bank, C. C stock is listed on the New York Stock Exchange in good standing. Upon commencement of its operation for charity, about ninety percent of T's assets consisted of stock in C. T's holdings in C constitute a miniscule part of the ownership of C (well below one percent). T's trustee, B, is an affiliated or subsidiary bank of C. T plans to sell the C stock in installments over a period of time and gradually diversify its investments. T represents that it will exercise ordinary business care and prudence in diversifying its holdings. B charges a fee to T for B's services as trustee — the same amount it charges to other customers for similar services.

T requests the following rulings:

T, with B as trustee, may continue to hold all C stock, received from the non-charitable trust, under T's plan of gradual sales and diversification, and pay standard and reasonable compensation to B as trustee for its services, without violating (i) the jeopardizing investment rules of section 4944 of the Code, and (ii) the self-dealing rules of section 4941.

Section 4941 of the Code provides, in pertinent part, that self-dealing includes the use of the assets of a private foundation for the benefit of a disqualified person. Under section 4941 of the Code, the payment of reasonable compensation by a private foundation to its trustee bank for reasonable and necessary services performed is not a prohibited or taxable or an act of self-dealing. Such compensation is not an improper use of the foundation's assets for a disqualified person.

Section 4944 of the Code imposes tax on a private foundation's investing any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes.

Section 53.4944-1(a)(2)(ii)(a) of the Foundations and Similar Excise Taxes Regulations provides that section 4944 shall not apply to an investment made by any person which is later gratuitously transferred to a private foundation. If such foundation furnishes any consideration to such person upon the transfer, the foundation will be treated as having made an investment (within the meaning of section 4944(a)(1)) in the amount of such consideration.

Under section 4944 of the Code, the existence of a jeopardizing investment is a matter based upon all the facts and circumstances. There is no specific listing of allowable or not allowable investments, nor is there a specific or numerical diversification requirement.

T's holding of the C stock is not a jeopardizing investment because, under section 53.4944-1(a)(2)(ii)(a) of the regulations, T received the stock by gift. Also, T's plan to sell the stock gradually, rather than all at once, in order to diversify is not a jeopardizing investment. We are not ruling upon particular investments in T's diversification plan because T has not provided us with any details. Instead, we accept T's factual representation that the plan will be executed with ordinary business care and prudence. Generally, diversification is a prudent strategy for management of investment assets.

The fact that T's stock is stock in the parent corporation of its corporate bank trustee B is the source of your inquiry as to possible conflict of interest and section 4941 violation. However, those investments were made before T began operation as a charitable trust. Any benefit to B and C arising from T's mere holding of C stock is too incidental and tenuous to result in an act of self-dealing. Moreover, under the circumstances, T does not appear to be in a position to manipulate the price of C stock through its gradual sales, so as to result in an act of self-dealing.

Also, T may pay B reasonable compensation for B's services as trustee without resulting in an act of self-dealing under section 4941 of the Code. We do not rule whether the compensation T pays to B is reasonable, which is an inherently factual issue.

Accordingly, we rule that T, with B as trustee, may continue to hold all its C stock, received from the non-charitable trust, under T's plan of gradual sales and diversification, and pay standard and reasonable compensation to B as trustee for its services, without violating (i) the jeopardizing investment rules of section 4944 of the Code, and (ii) the self-dealing rules of section 4941 of the Code.

Because this ruling letter could help to resolve any questions, please keep it in your permanent records. This ruling letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

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Joseph Chasin
Manager, Exempt Organizations
Technical Group 2