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

Date:
JUN 7 2001

U/L: 501.00-00
509.00-00
4941.00-00
4946.00-00

Contact Person:

Identification Number:

Telephone Number:

T:EO:B4

Employer Identification Number:

Legend:

B:
C:
E:

Dear Taxpayer:

We have considered B's ruling request dated October 2, 2000, along with supplemental correspondence, concerning the application of section 4941 of the Internal Revenue Code to B's proposed payment of trustee fees.

FACTS

B is a charitable trust created under the laws of the State of C. B is exempt from Federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) and is a private foundation within the meaning of section 509(a). B supports and promotes the arts, together with other charitable, scientific and educational organizations, by making direct grants to public charities, private operating foundations and other qualifying 501(c)(3) organizations at the discretion of the B's Trustees.

Originally, three individuals served as trustees of B; however, one trustee recently passed away, and a new trustee will not be appointed to succeed him. The Trustees have each assumed all of the numerous duties that are imposed on a trustee in the state of C. These services include, but are not limited to, physical custody and management of the assets, accurate record keeping, responsibility for personnel matters and investment decisions, and investigating, making and monitoring grants to other charitable institutions. B has no president or similar officer rendering substantial services to B. The Trustees have assumed the

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responsibility of performing services normally performed by a president, vice president, and similar officers. Additionally, the trustees have indicated that they will be providing certain professional services normally contracted for by trusts.

B intends to compensate and reimburse reasonable expenses of its two Trustees for the performance of personal services in accordance with B's Trust agreement. The Trust agreement provides:

> "A Trustee shall be entitled to compensation and reimbursement of reasonable expenses (including reasonable advances for expenses anticipated in the immediate future) for the performance of "personal services" as defined in Treasury Regulation Section 53.4941(d)-3(c), and such compensation and reimbursement of reasonable expenses shall not be excessive. The Trustees shall consider the fees charged by E, or its successors, in determining the amount of compensation payable to the Trustees."

B has represented that E is not a Trustee or otherwise a disqualified person as defined in section 4946 of the Code. B has provided a schedule of fees of E's trust services. The fees are based on a fixed percentage of the fair market value (as of the end of each month) of the assets under management, with a sliding scale dependent upon the amount of assets under management. While managing a trust and its investments, E may employ third parties to sub-advise commingled funds or to separately sub-advise an account. In accordance with E's policy, this additional expense passes through to the trust. E charges additional fees that may be necessary in situations involving the sale of assets other than marketable securities. E's policy is to charge a transaction fee for the sale of assets other than marketable securities. Finally, E collects these fees whether serving as sole trustee or co-trustee. B has provided an affidavit by the Senior Vice President of E stating that the fees charged by E are comparable to and representative of the fees charged by similar institutions for similar services.

B intends to pay each of its two Trustees, as co-Trustees, a fee less than the fee charged by E. B's Trustees will be paid using a similar sliding fee structure as E; however, the fee paid to the trustees will include third parties sub-advisor fees and be capped. B will compensate one of its Trustees (whichever of the two Trustees is actively involved in the sale) a transaction fee for sales of assets other than marketable securities. B represents that all fees to be charged by the Trustees to B for their services as trustees are reasonable for the services rendered, in accordance with industry practice, and consistent with local laws governing fiduciaries.

RULING REQUESTED

B requests a ruling that:

> The payment of Trustee's fees as provided for in the B's Trust agreement and under E's fee arrangement does not constitute "self-dealing" under section 4941 of the Code.

LAW

Section 501(c)(3) of the Code provides, in part, an exemption from federal income tax for a corporation organized and operated exclusively for charitable, scientific or educational purposes

provided no part of the corporation's net earnings inure to the benefit of any private shareholder or individual.

Section 509(a) of the Code provides that, unless specifically excepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a private foundation and a disqualified person (as defined in section 4946(a)).

Section 4941(d)(1)(D) of the Code provides that the term "self-dealing" includes 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) of the Code 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 4941(d)(2)(E) of the Code provides that the payment of compensation by a private foundation to a disqualified person for personal services which are reasonable and necessary to carry out the exempt purpose of the foundation shall not be an act of self-dealing if the compensation is not excessive.

Section 53.4941(d)-1(a) of the Foundation and Similar Excise Taxes Regulations provides that for purposes of section 4941, the term "self-dealing" means any direct or indirect transaction described in section 53.4941(d)-2 of the regulations. For purposes of this section it is immaterial whether the transaction results in a benefit or detriment to the private foundation.

Section 53.4941(d)-3(c)(1) of the regulations provides that the payment of compensation (and the payment or reimbursement of expenses, including reasonable advances for expenses anticipated in the immediate future) by a private foundation to a disqualified person for the performance of personal services which are reasonable and necessary to carry out the exempt purposes of the private foundation shall not be an act of self-dealing if such compensation (or payment or reimbursement) is not excessive. For purposes of this subparagraph the term "personal services" includes the services of a broker serving as agent for the private foundation, but not the services of a dealer who buys from the private foundation as principal and resells to third parties.

Section 4946(a)(1) of the Code describes a disqualified person as including a foundation manager as that term is described in section 4946(b).

Section 4946(b) of the Code defines a foundation manager as: an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

Section 1.162-7(b)(3) of the Income Tax Regulations provides that "It is, in general, just to assume that reasonable and true compensation is only such amount as would ordinarily be paid for like services by like enterprises under like circumstances."

ANALYSIS

B's Trustees are "disqualified persons" under section 4946 of the Code. Thus, B's proposal to compensate the Trustees for personal services will constitute self-dealing under section 4941(d)(1)(E), unless the compensation is reasonable and necessary to carry out the exempt purpose of B and is not excessive.

B's Trust agreement includes a provision for the compensation and reimbursement of reasonable expenses. The Trust agreement mandates that the Trustees consider the fees charged by E in determining the amount of compensation payable to the Trustees. B has given consideration to the fees charged by E and has adopted a fee structure for its Trustees which is less than E. B has provided information that indicates that the fees charged by E are comparable to and representative of fees normally charged by similar institutions for similar services.

B's Trustees have each assumed all of the duties imposed on a trustee by C law. The Trustees perform all of the services that E typically performs when serving as a trustee. Additionally, B's Trustees have assumed the responsibility of performing services that are typically performed by a president, vice president, or similar officers. Furthermore, the Trustees have indicated that they will be providing certain professional services normally contracted for by trusts.

B has represented that the fees paid to its Trustees are reasonable based upon the nature of the duties assumed by the Trustees, and the fees are less than the fees charged by institutions for similar services. Based upon this representation, the compensation arrangements meet the requirements of section 4941(d)(2)(E) of the Code and section 53.4941(d)-3(c)(1) of the regulations.

RULING

Based upon the representations B submitted, B's fee compensation arrangement for its Trustees as provided for in the B's trust agreement will not constitute "self-dealing" under section 4941 of the Code.

Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the transaction described above under any other provision of the Internal Revenue Code. With respect to "reimbursement of reasonable expenses (including reasonable advances for expenses anticipated in the immediate future)," as provided for in B's trust agreement, B should be mindful that section 53.4941(d)-3(c)(1) of the regulations generally caps reasonable advances to not ordinarily exceed $500.00.

Because this ruling could help resolve future questions about your federal income tax status, you should keep it in your permanent records.

This ruling 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.

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.

Sincerely,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4

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