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

Date:
NOV 24 1999

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Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T:2

Employer Identification Number:

LEGEND

X =
z =

Dear Applicant:

This letter responds to X's request dated May 27, 1999 for a ruling whether its payment of compensation to board members will constitute self-dealing under section 4941 of the Internal Revenue Code.

X is a private foundation described in sections 501(c)(3) and 509(a) of the Code. X's governing board consists of several children and grandchildren of its founder. A bank is also a non-voting board member. X has no paid staff members and has not compensated its directors for their services except the bank, which charges its regular fees for custodial and investment services. The board members directly operate the foundation. Each board member receives and investigates grant applications and presents them for consideration at board meetings. Other duties include following up on grants and reviewing the use of grant funds; reviewing X's annual independent audit; and reviewing X's current financial data and investment portfolio. X's endowment has grown sevenfold in size, resulting in additional responsibility for the board.

The individual board members desire compensation for their services. They will increase their level of activities with the goals of (i) expanding and diversifying the list of potential grantees through the active solicitation and investigation of grant requests, and (ii) concentrating on fewer, but more substantial, grant initiatives specializing in areas such as medical research and the arts. The individual board members will devote substantial amounts of time to investigating potential grantee organizations and overseeing the use of X's grants to provide the maximum benefits possible. The board members will hold an annual meeting and additional meetings as needed. X proposes to pay each individual board member annual compensation of z dollars, inclusive of travel expenses for board meetings. X regards the amount as reasonable and not excessive based on the oversight and management responsibilities, and as comparable to amounts paid by similar charitable organizations for similar services.

X requests a ruling that its payment of annual compensation of z dollars, inclusive of travel expenses incurred in attending board meetings, to its individual board members will not constitute self-

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dealing under section 4941 of the Code because the payments made to disqualified persons are within the exceptions stated in section 4941(d)(2)(E).

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

Section 4941(d)(1) of the Code defines as an act of self-dealing a payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person.

Section 4941(d)(2)(E) of the Code provides that, except in the case of a government official (as defined in section 4946(c)), the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

Section 53.4941(d)-3(c) of the regulations, regarding section 4941(d)(2)(E) of the Code, refers to section 1.162-7 of the regulations for the determination whether compensation is excessive, and provides that the payment or reimbursement of expenses includes reasonable advances for expenses anticipated in the immediate future. Further, the making of a cash advance to a foundation manager or employee for expenses on behalf of the foundation is not an act of self-dealing, so long as the amount of the advance is reasonable in relation to the duties and expense requirements of the foundation manager. Except where reasonably allowable pursuant to section 53.4941(d)-3(c)(1)(iii), such advances shall not ordinarily exceed $500. For example, if a foundation makes an advance to a foundation manager to cover anticipated out-of-pocket current expenses for a reasonable period (such as a month) and the manager accounts to the foundation under a periodic reimbursement program for actual expenses incurred, the foundation will not be regarded as having engaged in an act of self-dealing--

(i) When it makes the advance,

(ii) When it replenishes the funds upon receipt of supporting vouchers from the foundation manager, or

(iii) If it temporarily adds to the advance to cover extraordinary expenses anticipated to be incurred in fulfillment of a special assignment (such as long distance travel).

The services for which X will compensate each of the individual board members will be personal services. These personal services are reasonable and necessary to carrying out the exempt purposes of private foundations generally. X represents that the proposed compensation is reasonable and comparable to that paid by similar foundations for similar services and is not excessive. Also, there is no indication that the individual board members are or will be government officials.

Accordingly, we rule that X's payment of annual compensation of z dollars, inclusive of travel expenses incurred in attending board meetings, to its individual board members will not constitute self-dealing under section 4941 of the Code because the payments made to disqualified persons are within the exceptions stated in section 4941(d)(2)(E). This ruling is based on X's factual representation that the proposed compensation is not excessive.

Except as we have ruled above, we express no opinion as to the tax consequences of the proposed transaction under the cited provisions of the Code or under any other provisions of the Code.

This ruling is directed only to X. Section 6110(k)(3) of the Code provides that it may not be used

or cited as precedent.

Because this letter could help resolve any future tax questions relating to X's activities, X should a copy of this ruling in its permanent records.

We are providing the Key District Director a copy of this ruling.

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2