



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

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Date: November 7, 2005

Contact Person:

Identification Number:

Telephone Number:

UIL No.  
4941.00-00

Employer Identification Number:

Legend:

A =  
B =

Dear \_\_\_\_\_ :

This is in response to a letter from your authorized representative requesting a ruling on your behalf that the participation by one of the directors of A, in a director initiated grant program and a matching gifts program, does not constitute self-dealing under section 4941 of the Internal Revenue Code.

A is exempt from federal income tax under section 501(c)(3) of the Code and is classified as a private nonoperating foundation under section 509(a). It historically has been a grant-making organization with the purpose of enriching communities through its work with other charitable organizations. It is governed by a self-perpetuating Board of Directors, one of whom has recently been appointed to the position of Chief Administrative Officer ("CAO") in the office of the Mayor of the City of B ("Mayor"). His powers in that position are not defined in any written document. He serves at the discretion of the Mayor. The CAO serves as an advisor to the Mayor and attends many meetings as the Mayor's representative. The CAO also creates and manages ad hoc committees dealing with issues of interest to the Mayor.

Generally, A annually pays a fee to its directors. This director has agreed to serve as CAO without receiving a fee or reimbursement of his expenses, other than the reimbursement allowed by section 4941(d)(2)(G) of the Code and section 53.4941(d)-3(e) of the Foundation and Similar Excise Tax Regulations.

You have stated that A maintains a Director Initiated Grant Program and a Matching Gifts Program. The former allows directors to initiate grants that are not processed through the normal staff review process. They may be made to a variety of tax-exempt charitable organizations but cannot be made to church or other religious organization for unrestricted or

doctrinal purposes. The annual amount of director initiated grants each director may initiate is \$30,000 with a minimum grant of \$1000. The recipient of a director initiated grant must be a publicly supported organization or governmental agency and the grant must qualify as a qualifying distribution under section 4942 of the Code. The grant may not be used for any payment for which the director receives a specific benefit and may not be used to fulfill personal obligations or pledges of the director.

Directors may also participate in a Matching Gifts Program but only personal contributions by directors or staff members are eligible to be matched. The above rules concerning qualifying distributions also apply.

You have requested the following ruling:

Participation by a director who is a government official in your Director Initiated Grant Program and Matching Gifts Program does not constitute a payment to a government official within the meaning of section 4941(d)(1)(F) of the Code.

Section 501(a) of the Code provides an exemption from federal income tax for organizations described in section 501(c)(3) which are organized and operated exclusively for charitable, educational, etc., purposes provided no part of the organization's net earnings inure to the benefit of any private shareholder or individual.

Section 509(a) 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 of the Code imposes an excise tax on acts of self-dealing between a private foundation and disqualified persons.

Section 4941(d)(1)(F) of the Code and section 53.4941(d)-2(g) of the regulations prohibit the payment of money or property by a private foundation to a government official.

Sections 4946(c)(5) and (6) of the Code define the term "governmental official" to include an individual who holds an elective or appointive public office in an executive, legislative or judicial branch of the government of a state or political subdivision, receiving gross compensation of at least \$20,000 annually or the personal or executive assistant or secretary to that individual.

The Mayor is a government official within the meaning of section 4946(c)(5) of the Code. The CAO serves at the discretion of the Mayor, serves as an advisor to the Mayor, attends many meetings as the Mayor's representative, and creates and manages ad hoc committees dealing with issues of interest to the Mayor. Therefore, under section 4946(c)(6), the CAO is also a government official within the meaning of section 4946(c)(5).

The Director Initiated Grant Program and Matching Gifts Program do not result in any payment to your director because any payments under the programs are made to the charities

receiving the grants. The director's ability to direct grants under these programs does not include any amount provided as compensation nor constitute the discharge of a personal obligation of the director. Since the director does not receive, directly or indirectly, any payments of money or other property under these programs, his participation in these programs does not result in the payment of money or other property by a private foundation to a government official within the meaning of section 4941(d)(1)(F) of the Code or section 53.4941(d)-2(g) of the regulations.

Accordingly, based on all the facts and circumstances described above, we rule:

Participation by a director who is a government official in your Director Initiated Grant Program and Matching Gifts Program does not constitute a payment to a government official within the meaning of section 4941(d)(1)(F) of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent.

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.

This ruling will be made available for public inspection under section 6110 of the Code 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.

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.

Please keep a copy of this ruling in your permanent records.

Sincerely,

Lawrence M. Brauer  
Acting Manager  
Exempt Organizations  
Technical Group 1

Enclosure  
Notice 437