

A trust fund is maintained by a bank exclusively for the investment and reinvestment of moneys contributed thereto by the bank, in its capacity as trustee of community trusts and other charitable trusts which are exempt from Federal income tax under the provisions of section 501(a) of the Internal Revenue Code of 1954 as organizations described in section 501(c)(3) of the Code. Held, the fund qualifies as a 'common trust fund' within the meaning of section 584 of the Code, provided the fund is otherwise operated in conformity with the rules and regulations, prevailing from time to time, of the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

Advice has been requested whether a trust fund, established by a bank and consisting solely of property held by the bank as trustee of community trusts and other charitable trusts, all of which are exempt from Federal income tax under the provisions of section 501(a) of the Internal Revenue Code of 1954 as organizations described in section 501(c)(3) of the Code, is exempt from Federal income tax as a 'common trust fund' within the meaning of section 584 of the Code.

Section 584(a) of the Code provides, in part, that the term 'common trust fund' means a fund maintained by a bank (1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and (2) in conformity with the rules and regulations, prevailing from time to time, of the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

Section 1.584-1(b) of the Income Tax Regulations provides that (2) above applies whether or not the bank maintaining the fund is a national bank or a member of the Federal Reserve System.

Section 584(b) of the Code provides that a common trust fund shall not be subject to Federal income tax and shall not be considered a corporation.

Section 9.18(a) of title 12 of the Code of Federal Regulations, relating to fiduciary powers of national banks and collective investment funds, provides that, where not in contravention of local law, funds held by a national bank as a fiduciary may be invested collectively (1) in a common trust fund maintained by the bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as executor, administrator, guardian, or trustee under a will or deed; (2) in a fund consisting solely of assets of retirement, pension, profitsharing, stock bonus, or other trusts which are exempt from Federal income taxation under the Internal Revenue Code; (3) in a common trust fund, maintained by the bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as managing

agent under a managing agency agreement expressly providing that such moneys are received by the bank in trust.

Section 9.18(b)(2) of title 12 provides that property held by the bank in its capacity as trustee of retirement, pension, profitsharing, stock bonus, or other trusts which are exempt from Federal income taxation under the Internal Revenue Code may be invested in collective investment funds established under the provisions of subparagraph (1) or (2) of section 9.18(a) of title 12.

Since the trust fund is maintained by the bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as trustee and this is done in conformity with the rules and regulations, prevailing from time to time, of the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks, it qualifies as a 'common trust fund.' The fact that the trust fund may consist solely of property held by the bank in its capacity as trustee of community trusts and other charitable trusts which are exempt from Federal income tax does not alter the rule, since such trust funds may be invested in a collective investment fund under the provisions of either subparagraph (1) or (2) of section 9.18(a) of title 12.

Accordingly, the trust fund maintained by the bank qualifies as a 'common trust fund' within the meaning of section 584 of the Code, provided the fund is otherwise operated in conformity with the rules and regulations, prevailing from time to time, of the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.