



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201031036**

Release Date: 8/6/10

Date: 5/12/10

4941.04-00

4946.01-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Investment Trust =

Founder =

Investment Advisor =

Dear

This is in reply to your ruling request regarding the proper treatment of certain transactions you wish to conduct under the Internal Revenue Code ("Code").

FACTS

You are recognized as an organization exempt from federal income taxation under section 501(c)(3) of the Code and are classified as a private foundation. You were formed and funded by Founder. Founder also controls your board of directors.

You intend to invest some of your assets in the Investment Trust. The Investment Trust is a registered investment company offering two investment portfolios, a growth fund and a total return fund. Shares of these portfolios are publicly traded and offered for sale on a continuous basis. Founder and other disqualified persons own percent of the shares of the growth fund and percent of the shares of the total return fund.

The Investment Trust is managed by a board of trustees, who are elected by the Investment Trust's shareholders and serve for terms of indefinite duration until death, resignation, retirement or removal from office. Founder is one of four trustees. None of the other trustees are disqualified persons with respect to you.

The Investment Trust's investment advisor, Investment Advisor, is owned and controlled by Founder. Investment Advisor is paid based on a percentage of the assets under management, approximately 1 percent, and that fee is passed on to the shareholders of the Investment Trust.

RULINGS REQUESTED

1. The Investment Trust and its funds are not disqualified persons with respect to you within the meaning of Section 4946(a)(1) of the Code.
2. The fees paid by you to the Investment Trust for expenses related to your investment in the Investment Trust and the compensation paid by the Investment Trust to Investment Advisor for its management of the funds will not constitute acts of direct or indirect self-dealing under section 4941 of the Code and section 53.4941(d)-2(e) of the Foundation and similar excise taxes regulations ("regulations"), so long as such fees are not excessive.

LAW

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable and other exempt purposes.

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

Section 4946(a)(1) of the Code provides in pertinent part that the term "disqualified person" means a person who is: (1) a substantial contributor to the foundation, (2) a foundation manager, (3) an owner of more than 20 percent of the total combined voting power of a corporation, the profits interest of a partnership, or the beneficial interest of a trust or unincorporated enterprise, which is a substantial contributor to the foundation, (4) a member of the family of any individual described above, or (5) a corporation, partnership, or trust of which persons described above own more than 35 percent of the total combined voting power, profits interest or beneficial interest.

Section 4941(d)(1) of the Code provides that the term "self-dealing" means, in part, any direct or indirect: (1) furnishing of goods, services, or facilities between a private foundation and a disqualified person, (2) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person, (3) lending of money or extension of credit between a private foundation and a disqualified person and (4) 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 except in the case of a government official, 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)(1) of the regulations provides that the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for the performance of personal services which are reasonable and necessary to carry out the

exempt purpose of the private foundation shall not be an act of self-dealing if such compensation (or payment or reimbursement) is not excessive.

Section 53.4941(d)-3(c)(2) of the regulations contains the following example as Example (2): C, a manager of private foundation X, owns an investment counseling business. Acting in his capacity as an investment counselor, C manages X's investment portfolio for which he receives an amount which is determined to be not excessive. The payment of such compensation to C shall not constitute an act of self-dealing.

ANALYSIS

Section 4946(a)(1) of the Code defines a disqualified person as a person who is a substantial contributor to a foundation, a foundation manager, an owner of more than 20 percent of a corporation, partnership, or trust that a substantial contributor to the foundation, a member of the family of any of these individuals, or a corporation, partnership, or trust where any of the previously described persons own more than a 35 percent interest. The Investment Trust has not contributed any funds to you and it is not one of your foundation managers or an owner of more than 20 percent of an entity which is a substantial contributor to you. In addition, Founder and all other disqualified persons with respect to you do not own more than a 35 percent interest in the Investment Trust. Therefore, the Investment Trust is not a disqualified person with respect to you under section 4946(a)(1) of the Code.

As part of your investment in the Investment Trust, you are required to pay a percentage of the investment management fees charged by Investment Advisor to the Investment Trust. These fees are compensation to Investment Advisor. Investment Advisor is owned and controlled by Founder, a disqualified person, therefore Investment Advisor is also a disqualified person under section 4946(a)(1) of the Code. Thus, under section 4941(d)(1)(D), the compensation you pay to the investment advisor through the Investment Trust could constitute indirect self-dealing under some circumstances. The payment of compensation is not self-dealing, however, if it is for the performance of personal services which are reasonable and necessary to carry out your exempt purpose within the meaning of section 53.4941(d)-3(c)(1) of the regulations and the amounts paid are not excessive. Personal services include investment management services, as illustrated by Example 2 of section 53.4941(d)-3(c)(2). The fees you pay are for investment management services similar to those identified in example 2 of the regulations. Therefore, under this exception they would not be considered self-dealing so long as they are not excessive.

RULINGS

1. The Investment Trust and its funds are not disqualified persons with respect to you within the meaning of Section 4946(a)(1) of the Code.
2. The fees paid by you to the Investment Trust for expenses related to your investment in the Investment Trust and the compensation paid by the Investment Trust to the investment advisor for its management of the funds will not constitute acts of direct or indirect self-dealing under section 4941 of the Code and section 53.4941(d)-2(e) of the regulations, so long as such fees are not excessive.

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.

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 by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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,

/s/

Ellen Berick
Acting Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437