

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

St. Louis Mercantile Library
Association
510 Locust
St. Louis, MO 63101

Person to Contact:

Telephone Number:

Refer Reply to:

OP:E:EO:R:4

Date:

23 SEP 1985

Employer Identification Number: 43-0694564

Dear Taxpayer:

This is in reply to your letter of May 30, 1985, in which you requested a ruling concerning status as an exempt operating foundation under section 4940(d) of the Code.

Your foundation is exempt under section 501(c)(3) of the Code and has been classified as a private operating foundation under section 4942(j)(3) of the Code. Your organization was a private operating foundation as of January 1, 1983.

Your Board of Directors consists of 19 people, including John W. Barriger IV. The mother of John W. Barriger IV is a substantial contributor to your foundation. The members of the Board of Directors are chosen annually by the over 2,000 members of your organization. Your Board of Directors includes executives of corporations, attorneys, a doctor, a judge, and officers of various cultural and charitable organizations.

Neither John W. Barriger IV nor his mother is an officer of your organization. You stated that no officer is a "disqualified individual" as defined in section 4940(d)(3)(B) of the Code.

You have requested the following rulings:

1. Your organization qualifies as an exempt operating foundation as defined in section 4940(d) of the Code.
2. A grant to your organization from a private foundation will not be a taxable expenditure within the meaning of section 4945(d) of the Code and a private foundation making a grant will not be required to exercise expenditure responsibility with respect to such a grant under sections 4945(d)(4) and 4945(h) of the Code.
3. Your organization will not be subject to the excise tax under section 4940(a) and 4940(d)(1) of the Code.

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Section 4940(a) of the Code provides for the imposition on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

Section 4940(d)(1) of the Code provides that no tax shall be imposed by this section on any private foundation which is an exempt operating foundation for the taxable year.

Section 4940(d)(2) of the Code, provides that the term "exempt operating foundation" means, with respect to any taxable year, any private foundation if --

- (A) such foundation is an operating foundation as defined in section 4942(j)(3),
- (B) such foundation has been publicly supported for at least 10 taxable years.
- (C) at all times during the taxable year, the governing body of such foundation consists of individuals at least 75 percent of whom are not disqualified individuals, and is broadly representative of the general public, and
- (D) at no time during the taxable year does such foundation have an officer who is a disqualified individual.

Section 4940(d)(3)(B) of the Code provides that the term "disqualified individual" means, with respect to any private foundation, an individual who is --

- (i) a substantial contributor to the foundation
- (ii) an owner of more than 20% of --
 - (I) the total combined voting power of a corporation,
 - (II) the profits interest of a partnership, or
 - (III) the beneficial interest of a trust or unincorporated enterprise, which is a substantial contributor to the foundation, or
- (iii) a member of the family of an individual described in clause (i) or (ii).

Section 4945(d)(4) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an organization unless

- (A) such organization is described in paragraph (1), (2), or (3) of section 509(a) or is an exempt operating foundation as defined in section 4940(d)(2), or

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- (B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h).

Section 302(c)(3) of Public Law 98-369 provides that a foundation which was an operating foundation as defined in section 4942(j)(3) as of January 1, 1983, shall be treated as meeting the requirements of section 4940(d)(2)(B).

Section 1.170A-9(e)(3)(v) of the Income Tax Regulations indicates in another context, that the governing body of a membership organization represents the general public if it is composed of individuals elected pursuant to the organization's governing instrument or by-laws by a broadly based membership.

Because John W. Barriger IV is a member of the family of a substantial contributor to your foundation, John W. Barriger IV is a disqualified individual within the meaning of section 4940(d)(3)(B) of the Code. However, because none of the other 18 members of your Board of Directors is a disqualified individual, no more than 25% of your governing body is composed of disqualified individuals. Additionally, the information provided indicates that the governing body of the organization is broadly representative of the general public. Because your organization is a private operating foundation within the meaning of section 4942(j)(3) of the Code, was described as a private operating foundation on January 1, 1983, the governing body of your organization is broadly representative of the general public, and none of your officers is a disqualified individual, your organization meets the requirements of section 4940(d)(2) to qualify as an exempt operating foundation.

Accordingly, we make the following rulings:

1. Your organization qualifies as an exempt operating foundation as defined in section 4940(d) of the Code.
2. A grant to your organization from a private foundation will not be a taxable expenditure within the meaning of section 4945(d) of the Code and a private foundation making a grant will not be required to exercise expenditure responsibility with respect to such a grant under sections 4945(d)(4) and 4945(h).
3. Your organization will not be subject to the excise tax under section 4940(a) of the Code.

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We are informing your key District Director of this action. Please keep a copy of this ruling with your organization's permanent records.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "J. A. Tedesco".

J. A. Tedesco
Director, Exempt Organizations
Technical Division