



## **POLICY AND PROCEDURES FOR GIFTS OF CLOSELY-HELD STOCK**

### **I. AUTHORITY TO NEGOTIATE**

The President/CEO and the Vice President for Advancement shall have the overall authority to handle inquiries, negotiate with donors, assemble documentation, and execute agreements on behalf of the Community Foundation of Northeast Alabama (CFNEA). Assuming such activities follow approved procedures and assuming such agreements are approved by the Foundation's legal counsel, this authority to act will not require review or further approval by the Board of Trustees.

### **II. GENERAL GUIDELINES**

There are excellent tax incentives for contributing stock of a closely-held corporation to a fund in CFNEA. If some or all of the stock can be contributed to a component fund of CFNEA before the terms of a sale of the corporation are completed, considerable financial resources can be made available for charitable purposes at the lowest after-tax cost to the donor.

Sometimes donors will be interested in giving closely-held stock to CFNEA even if the business is not likely to be sold. Typically, the donor contributes shares of stock to a component fund in the Foundation and the stock is later sold for cash by the Foundation. In such instances, CFNEA will not guarantee or pre-arrange such sale or make any other agreement that might imply or cause a material restriction to be imposed upon the gift.

As a general rule, gifts of securities are sold as soon as possible, usually on the same day as the gift. A new or existing fund is then credited with the proceeds from the sale, after commissions and expenses, if any. In the case of gifts of stock of closely-held corporations that are not readily marketable at the time of the gift, it should reasonably appear that the stock will be sold or converted into income-producing property within a specific time frame, not to exceed three to five years. Treasury Regulations require that CFNEA assure that its funds produce a reasonable rate of return. This can be particularly important for property held in designated funds, because while this requirement is applied based on the aggregate performance of most funds, it is made on a fund-by-fund basis for designated funds. See Treas. Reg. Section 1.170A-9(e)(11)(v)(F) and 1.170A-9(e)(13)(x).

### **III. RESPONSIBILITIES OF THE DONOR**

- A. The donor will be responsible for obtaining a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the gift for federal income tax purposes, including the preparation of Form 8283 ("Noncash Charitable Contributions"). See Treas. Reg 1.170A-13(a).
- B. It is the donor's responsibility to prepare the appropriate instruments which are necessary to transfer the stock to the Foundation. All proposed transfer instruments must be reviewed by the Foundation's legal counsel prior to acceptance by CFNEA.
- C. Funds holding closely-held stock will be charged the same administrative fees as all other funds at the Foundation. There should be adequate assurance that the fund will have adequate cash to pay administrative fees, either from the investment itself or from further contributions from the

donor. All paid dividends will be used to offset all or a portion of the fee charged to the account on a quarterly basis. Dividends will be credited to the donor's fund only to the extent that they are in excess of fees.

- D. The Foundation's legal counsel shall review any shareholder, buy-sell, or other agreements that impose any restrictions or limitations upon the sale or transfer of the stock.

#### **IV. RESTRICTIONS**

- A. The Foundation does not accept gifts of general partnership interests due to potentially unlimited liability.
- B. In compliance with the Pension Protection Act (2006), CFNEA, notwithstanding any other provision in this Policy or the *Policies on Accepting and Managing Gifts*, shall not accept any gift of an interest in a business enterprise as an asset contributed to a Donor Advised Fund. The transaction would subject the Foundation to tax under section 4943 of the Internal Revenue Code, concerning "excess business holdings." Specifically, this excludes any gift of closely held stock that would result in the Donor Advised Fund holding:
  - a) a 20% or greater interest in a business or in an entity that activity and regularly produces income from the sale of goods or the performance of services, or
  - b) any interest in an entity in which any interest is owned by a donor or advisor to the Donor Advised Fund, by a family member of any such person, or by an entity in which any of the foregoing persons has an interest. See "disqualified person" in *Policies on Accepting and Managing Gifts*, Section II. L.

The rule does not apply to most gifts of real property, life insurance, non-inventory personal property, and a remainder interest in a personal residence or farm because these assets are not "business enterprises." In addition, the rule does not apply to a gift of an interest in a business enterprise being made to a Field of Interest Fund or a Designated Fund.

#### **IV. PROCEDURE FOR ACCEPTING CLOSELY-HELD STOCK**

- A. After the requirements of this Policy have been satisfied, the CEO will have the authority to accept or refuse a gift of closely-held stock.
- B. The CEO may refuse any offered gift of closely-held stock that is judged not to be in the best interests of the Foundation.
- C. Prior to or upon transfer of the stock to CFNEA, the donor and the Foundation will sign an agreement (approved by legal counsel) stating the terms of the gift, which shall specify that there are no restrictions on the Foundation's right to use or convey the property.
- D. In negotiating the sale of closely-held stocks, a fair market value (price per share) will be established at the time of sale. No warranty is given by the Foundation that the valuation will be acceptable to the IRS. In some cases, CFNEA may obtain an independent appraisal of the value of the stock prior to agreeing to a proposed sale of the stock.

- E. In addition, the donor will be advised that if the property listed on IRS Form 8283 is sold, liquidated, or otherwise disposed of within two years of receipt, CFNEA is required to file a separate report within 125 days with the IRS on IRS Form 8282 (“Donee Information Return”) and disclose facts about the disposition. See Treas. Reg. 1.6050L-1.

V. **WHAT CFNEA WILL NOT DO**

- A. To avoid any conflict of interest or inducement for a gift, the Foundation will not pay for legal assistance, appraisals or other professional services on behalf of the donor.
- B. The Foundation will not establish or corroborate the value of any property for the purpose of substantiating the donor's income tax charitable deduction.
- C. In many cases, upon the subsequent sale of closely-held stock, there will be a stock purchase agreement setting forth the proposed terms and conditions of sale. The Foundation can neither participate in the issuance of warranties and representations nor join in any indemnification agreements.

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