

**ROCHESTER AREA COMMUNITY FOUNDATION
POLICY AND PROCEDURE
FOR POTENTIAL GIFTS OF CLOSELY HELD STOCK**

I. AUTHORITY TO NEGOTIATE

The President will have the overall authority to handle inquiries, negotiate with donors, assemble documentation, and execute agreements on behalf of Rochester Area Community Foundation. 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 Governing Board.

II. GENERAL GUIDELINES

There are excellent tax incentives for contributing stock of a closely held corporation to a fund in RACF. If some or all of the stock can be contributed to a component fund of RACF 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 RACF 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, the Foundation 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 contribution.

As a general rule, gifts of securities are sold as soon as possible, usually on the same day as the gift. The fund which the donor established 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.

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 that are necessary to transfer the stock to the Foundation. The Foundation's legal counsel prior to acceptance must review all proposed transfer instruments by the Foundation.
- 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 affected fund will have adequate cash to pay administrative fees, either from the investment itself or from further contributions from the donor. Any paid dividends will be first used to offset the fee charged to the account. Any fee balance due will accrue to the fund pending availability of cash.

- 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. PROCEDURE FOR ACCEPTING CLOSELY HELD STOCK

- A. After the requirements of this Policy and Procedure have been satisfied, the President will have the authority to accept or refuse a gift of closely held stock.
- B. The President 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 the Foundation, 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, the Foundation 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, RACF 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 THE FOUNDATION WILL NOT DO

- A. Except in extraordinary circumstances, the Foundation will not pay for legal assistance, appraisals or other 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 cannot join in or participate in the issuance of warranties and representations and in indemnification agreements.