

Charitable loophole for FirstBank under attack

By Joanne Kelley, *The Rocky Mountain News*
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Roger Reisher grew up poor on a farm in Nebraska but now has more money than he ever imagined after building FirstBank into the state's largest locally owned banking organization.

He decided to donate his stake in the Lakewood-based banking chain to charity. But he is using a little-known type of philanthropic loophole that has drawn intense scrutiny from Congress and the IRS, both of which want to crack down on charitable tax exemptions.

Lawmakers say Reisher and others who set aside some of their wealth in so-called supporting organizations get too much in the way of tax-planning benefits and give out less to charity than they should even if the practice is legal.

In setting up his charitable entity, -Reisher has been transferring his FirstBank shares into a family foundation, which then shifts cash dividends from the stock to another fund that pays for college scholarships.

The stock itself stays in the supporting organization, which gets its name because it is meant to support one or more charities.

Aside from giving him a hefty tax deduction, the arrangement helps Reisher achieve another aim: ensuring that the \$7 billion FirstBank never becomes a takeover target.

"It sounds like a financial gain. That's the last thing in the world I need," said Reisher, who is co-chairman of the banking holding company. "I have more dollars than I ever dreamed anyone in the world would have when I was a kid back in Nebraska."

'Bullheaded' on doing right thing

What irks lawmakers is that Reisher gets around

the more burdensome requirement of a traditional foundation, which must diversify its holdings and pay out a certain percentage of assets each year.

"The point of tax breaks for charitable contributions is to help those in need, not subsidize control of a company," said Iowa Republican Chuck Grassley, chairman of the Senate Finance Committee, which is drafting legislation that would overhaul the nonprofit sector.

Reisher, who started his chain of banks more than four decades

ago, said he could only attend college because of the GI Bill. Now, he and his wife, Margaret, want to help Colorado students who otherwise could not afford to pay all of their college tuition.

"If my motivation had been to maximize the wealth I accumulated, the easy thing would have been to have sold out years ago and go retire," Reisher said. "I'm a little bullheaded and a little intense when it comes to doing the right thing."

Reisher readily admits he never wants FirstBank to succumb to a merger, a trend that has swept the industry in recent years. He wants to keep control in the family and with employees, who hold shares through an employee stock ownership plan.

That motivation "represents a mechanism of control as opposed to a mechanism of philanthropy," said Rick Cohen, executive director of Washington's National Committee for Responsive Philanthropy. "That's a clarion call for the change of regulations." Some maintain the community benefits from having local ownership of the more than 100 banks in the FirstBank organization.

Big acquirers, who have been buying up independent banks in recent years, typically eliminate a lot of local jobs and even cut back on much of the involvement local banks have in the communities they serve.

"The first thing they say is we're not going to make any changes, which means that they're going to change everything," said Larry Martin, a consultant with Banking Strategies LLC in Denver.

The Reishers' scholarship program helped 163 students pay for college last year, with much of the money coming from dividends on the block of stock that sits in the supporting organization.

It held almost \$14.5 million in assets by the end of 2004, Reisher said.

The organization that is supported by Reisher's foundation is a special fund held by the Denver Foundation, a community foundation that administers hundreds of such donor-advised funds.

The fund distributed more than \$686,000 in scholarships last year to more than 163 students who attended Metropolitan State College of Denver, the University of Northern Colorado and the University of Colorado at Denver.

"We have a lot of other scholarship funds, but nothing is even close to them in size," said David Miller, president and CEO of the Denver Foundation.

Miller acknowledged there have been many abuses nationwide by those who use supporting organizations to shield assets from taxes while donating little to charity.

But he said: "My concern is that they don't let the pendulum swing too far back."

Miller explained Reisher's twofold approach this way: "Roger is passionate about First Bank not being sold. He does not want to give up control. At the same time, he has a lot more money than he needs and wants to give some of it to charity."

'Targeted reform' needed

For his part, Reisher says he has seen too many instances in which out-of-state companies buy up banks and destroy the corporate culture. He says he wants to protect bank employees from such a fate.

His attorneys have been lobbying hard on his behalf to persuade the Senate Finance Committee not to propose changes that would affect the family's foundation.

"The committee is using small isolated abuses to justify doing away with the entire category," said Jim Walker, one of Reisher's attorneys. "What they really need is targeted reform."

Forcing the Reishers to use a traditional foundation structure would force them to sell off the stock, which would defeat one of the purposes of setting up the entity at the outset, he said.

"It would be unworkable," Walker said.

He said the impetus for creating the current structure was not the tax deduction Reisher gets for setting aside the shares.

But critics in Washington argue that if the dividends are the bulk of what goes to charity, Reisher could keep the stock and just give the Denver Foundation fund the dividends it produces.

Reisher said he also makes cash donations to fully fund the scholarships paid out of the Denver

Foundation fund.

The family foundation's 2003 tax filing shows it pays some of its trustees \$7,000 a year for work it estimates takes about a half-hour a week. That comes to about \$270 an hour for those who take the pay.

In testimony this month, the Congressional Research Service's Jane Gravelle cited data from the National Center for Charitable Statistics showing there are more than 43,000 supporting organizations associated with public charities.

Supporting organizations have landed on this year's list of the IRS' "Dirty Dozen" tax scams and abuses.

Grassley, of the Senate Finance Committee, maintains they are used more often as an estate planning vehicle than for philanthropy. He will soon propose far-reaching reforms for the entire nonprofit sector and counts supporting organizations among the areas in need of big changes.

Grassley bill could end practice

While some groups give out a paltry portion of assets compared with the Reishers' organization, Grassley still sees the family's strategy as too self-serving.

At a minimum, the bill he plans to introduce would significantly curb the specific type of supporting organization the Reishers established. But Grassley aides say the impending legislation might outlaw the entities altogether.

An expected provision would force the groups to pay at least 5 percent of their assets each year to charity.

If the expected legislative package looks like it won't make it through Congress by the end of the year, the committee will likely attach the provisions curbing supporting organizations to any other bill that stands a chance of passage.

Attorneys and advisers continue to advocate their use among the wealthy.

"There's nothing wrong with using it as an estate planning vehicle," said Douglas Freeman, an attorney for Freeman, Freeman & Smiley in Irvine, Calif. "It is wrong if it's to sequester funds for family benefit if it doesn't provide for the public at large."

Freeman was at the Denver Botanic Gardens this month to speak at a Denver Foundation-sponsored program titled "Is there a supporting organization in your future?"

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