

Foundations Must Remain Alert to Potential Self-Dealing—Part II

Introduction

This article is the second in a series addressing self-dealing transactions, which continue to be a “major issue” in IRS examinations of private foundations.¹ Part I in this series examined the definition of “disqualified person.”² This installment examines the definition of “self-dealing.” Future articles in the series will discuss how self-dealing excise taxes are calculated and how these transactions are reported and corrected.

Acts of Self-Dealing

The term “self-dealing” describes a wide variety of transactions, whether carried out directly or indirectly. It is immaterial whether the transaction results in a benefit or detriment to the foundation.³ Although the definition of self-dealing is broad, there are numerous exceptions that permit private foundations to transact with disqualified persons. It is important for foundation managers to know the rules and exceptions so they can avoid punitive excise taxes without unduly constraining foundation operations.

Sale or Exchange of Property. As a general rule, the sale or exchange of property between a private foundation and a disqualified person is an act of self-dealing. While it might be easy to recognize the risk inherent in a private foundation purchasing property from—or selling property to—an insider, it is important to understand that even routine transactions may run afoul of the rules. For example, the sale of incidental supplies such as office supplies and furniture or computers by a disqualified person to a private foundation is an act of self-dealing regardless of whether the amount paid was at or below fair market value.⁴ Similarly, the sale of stock or other securities by a disqualified person to a private foundation in a “bargain sale” is an act of self-dealing, regardless of the amount paid.⁵

Caution: A gratuitous transfer of property from a disqualified person to a private foundation is treated as a prohibited sale

or exchange if the foundation assumes a mortgage or similar lien (such as a deed of trust or vendor’s lien) that was placed on the property prior to the transfer, or if the foundation takes the property subject to a mortgage or similar lien that the disqualified person placed on the property during the 10-year period ending on the date of the transfer.⁶

Practice Point: There is an exception for liens other than mortgages, deeds of trust, and vendor’s liens: other types of liens will not give rise to sale or exchange treatment if they are insignificant in relation to the fair market value of the property transferred.⁷

Exception for Securities Transactions. A transaction between a disqualified person and a private foundation does not constitute an act of self-dealing if (1) the transaction is a purchase or sale of securities by a private foundation through a stockbro-

ker following normal trading procedures on a stock exchange or recognized over-the-counter market; (2) neither the buyer nor the seller (nor the agent of either) knows the identity of the other party involved; and (3) the sale is made in the ordinary course of business, and does not involve a block of securities larger than the average daily trading volume of that stock over the previous four weeks.⁸

Exception for Corporation Transactions. A transaction between a private foundation and a corporation is not an act of self-dealing if the transaction is engaged in pursuant to a liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization as long as all securities of the same class as those held by the private foundation are subject to the same terms, and the terms provide for the foundation receiving no less than fair market value. In order for all securities to be considered “on the same terms,” the corporation must make a bona fide offer on a uniform basis to the foundation and all other holders of the same class of securities. If the foundation is the only holder of its class of securities, the consideration received by holders of other classes will be compared to the consideration received by the foundation to determine whether the foundation received as least as favorable treatment in relation to its interest as the holders of any other class received in relation to theirs.¹¹

Leases. The leasing of property between a disqualified person and a private foundation is an act of self-dealing. However, there are certain exceptions.

Exception for Leases Without Charge. It is not an act of self-dealing if a disqualified person leases property to a private foundation at no charge. This exception permits family foundations to operate out of the home or office of a founder.

Practice Point: A lease is considered to be without charge even if the foundation

In Congress’s view, the arm’s-length standard was not effective in preserving the integrity of private foundations.

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pays for janitorial services, utilities, or other maintenance costs. However, the payments must be made directly to the vendor or supplier; the foundation cannot pay or reimburse the disqualified person.¹²

Exception for Leases of Office Space.

There is an exception for leases of office space by a disqualified person to a private foundation.¹³ However, because one of the requirements for this exception to apply is that the lease be pursuant to a binding lease that was in effect on October 9, 1969, or pursuant to a renewal of such a lease, this exception is not available for leases entered into today.

Loans. The lending of money or extension of credit between a private foundation and a disqualified person is an act of self-dealing.¹⁴ This rule is implicated where a third-party purchases property and assumes a mortgage held by the private foundation and subsequently transfers the property to a disqualified person who assumes liability under the mortgage or takes the property subject to the mortgage.¹⁵ Similarly, self-dealing arises when a disqualified person borrows money from a third party and later transfers the promissory note evidencing the loan to the private foundation.¹⁶

Exception for Loans Without Interest.

There is an exception for transactions in which a disqualified person lends money or otherwise extends credit to a private foundation without interest or other charge.¹⁷

Exception for Loans Arising During the Administration of an Estate or Revocable Trust. As discussed below, certain transactions that ordinarily would be indirect self-dealing transactions are permitted if they occur during the administration of an estate or revocable trust. One common scenario arises when, under his will, a decedent leaves his residual estate (which includes real property) to a private foundation, and his children or other family members wish to purchase the property from the estate. Assuming the requirements for the estate-administration exception (discussed below) are met, if the family members do not have sufficient cash to buy the property, they can purchase the property

from the estate in exchange for a promissory note, after which the estate can transfer the promissory note to the private foundation.¹⁸

Exception for Evidences of Future Gifts. It is not an act of self-dealing for a disqualified person to make a promise, pledge, or similar commitment to a private foundation and to have that commitment evidenced by a written agreement, promissory note, or other instrument. For this exception to apply, the promise must be completely gratuitous and must be motivated by charitable intent.¹⁹

Exception for General Banking Functions. A bank or trust company could be a disqualified person with respect to a private foundation, whether because it is a trustee or substantial contributor, or—in the case of a privately held organization—because it is more than 35% owned by a disqualified person. Where a bank or trust company is a disqualified person, the performance of trust functions and general banking services is not an act of self-dealing if:

- The banking services are reasonable and necessary to carry out the exempt purpose of the foundation; and
- The compensation paid by the foundation is not excessive.²⁰

The term “general banking services” includes checking accounts (as long as the bank does not charge interest on overdrafts), savings accounts (as long as the foundation may withdraw its funds on no more than 30 days’ notice without subjecting itself to a loss of interest on its money during the time the money was on deposit), and safekeeping activities.²¹

Furnishing Goods, Services, or Facilities. Ordinarily, an act of self-dealing arises from the furnishing of goods, services, or facilities between a foundation and a disqualified person. Thus, self-dealing occurs when a foundation provides office space, secretarial help, meals, auditorium or other venue use, parking space, or other goods, services, or facilities to a disqualified person.²²

Exception for Items Provided in Recognition of Services. A foundation might have occasion to furnish meals, lodging, office space, or other goods, services, or

facilities to a foundation manager or another employee (including a person who would be an employee but for the fact that he does not receive compensation for his services). This arrangement is not an act of self-dealing if:

- It occurs in recognition of the disqualified person’s services in his capacity as foundation manager or service-provider;
- It is reasonable and necessary to the performance of his tasks in carrying out the foundation’s exempt purpose; and
- Taken together with any other compensation or reimbursement the foundation pays to the individual, it is not excessive.²³

Exception for Items Provided to Foundation Without Charge. No act of self-dealing arises if a disqualified person provides goods, services, or facilities to the private foundation without charge. An arrangement is considered to be “without charge” even if the private foundation pays for transportation, insurance, or maintenance costs that it incurs in obtaining or using the property, as long as it pays these expenses directly and does not pay or reimburse the disqualified person.²⁴

Exception for Transactions on Same Basis as General Public. It is not an act of self-dealing for a foundation to furnish goods, services, or facilities to a disqualified person if the items are made available to the general public on a basis at least as favorable as they are made available to the disqualified person. However, for this exception to apply, the goods, services, or facilities must be functionally related to the performance or exercise of the foundation’s tax-exempt purpose.²⁵ The term “general public” includes those persons who, because of the nature of the activities of the foundation, reasonably could be expected to utilize the goods, services or facilities.

Caution: In order for this exception to apply, there must be a substantial number of persons who actually are using the foundation’s goods, services, or facilities.²⁶

Payment of Compensation. The payment of compensation (or payment or reimbursement of expenses) by a private foundation

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dation to a disqualified person is an act of self-dealing.²⁷

Exception for Compensation for Personal Services. The payment of reasonable compensation to a disqualified person for personal services that are reasonable and necessary to carrying out the foundation's exempt purpose is not an act of self-dealing.²⁸ The IRC §4941 regulations provide examples of "personal services," which include legal services, investment counseling services, and banking services.

Caution: Not all services rendered by a disqualified person constitute "personal services." For example, in **Madden v. Comm'r**,²⁹ the Tax Court ruled that for IRC §4941 purposes, "personal services" are professional and managerial in nature and that maintenance, janitorial, and security services do not qualify. On the facts described in **PLR 201630009** (April 22, 2016), however, the IRS ruled that property management services do meet the definition of "personal services," suggesting that the self-dealing exception might apply to other services aside from the legal, investment counseling, and banking services specifically enumerated in the regulations.

Exception for Cash Advances. It is not an act of self-dealing for a foundation to make a cash advance to a foundation manager or employee for expenses on behalf of the foundation, provided that the amount of the advance is reasonable in relation to the duties and expense requirements of the recipient.

Practice Point: The regulations provide that a reasonable amount ordinarily will not exceed \$500, unless it is intended to cover extraordinary expenses to be incurred in fulfillment of a special assignment (such as long-distance travel).³⁰

Transfer or Use of the Income or Assets of the Foundation. An act of self-dealing arises when a foundation's income or assets are transferred to, or used by or for the benefit of, a disqualified person. For example, it would be an act of self-dealing for a private foundation to purchase or sell stock or other securities for the purpose of manipulating the price of the stock or securities to the advantage of a disqualified person.³¹ Similarly, it would be self-dealing

for a foundation to indemnify a lender or provide a guarantee with respect to a loan made to a disqualified person.³²

Caution: An act of self-dealing arises from a private foundation making a grant or payment that satisfies an enforceable pledge made by a disqualified person.³³ Where a disqualified person makes a pledge to a public charity that the private foundation also funds, care should be taken to ensure that the foundation's payment is not treated as satisfying the personal pledge and that the disqualified person's own funds are used to satisfy the pledge.

Exception for Incidental Benefits. Although a foundation's income and assets cannot be used to benefit a disqualified person, this prohibition does not apply if the benefit the disqualified person receives is incidental or tenuous.³⁴

Practice Point: this exception permits a private foundation to make a grant or other payment for which a disqualified person receives public recognition (including naming rights³⁵). Further, this exception permits a private foundation to award scholarships or fellowship grants to employees or children of employees of a substantial contributor.³⁶

Exception for Non-Compensatory Indemnification. A private foundation is permitted to indemnify its managers for expenses incurred in any civic judicial or civil administrative proceeding arising out of the manager's performance of services (or failure to perform services) on behalf of the foundation.³⁷ Indemnification may be accomplished by the foundation reimbursing the manager for expenses that he has already incurred or anticipates incurring, or by directly paying the expenses as the expenses arise.³⁸ The regulations distinguish between *non-compensatory* and *compensatory* indemnification.

Non-compensatory indemnification includes a foundation's payment or reimbursement of the managers' attorneys' fees, judgments, settlement expenses, and other expenses if (1) the expenses were reasonably incurred by the manager in connection with the civil proceeding, and (2) the manager did not act willfully or without reasonable cause in acting or failing to act.³⁹ It also includes the payment of premiums for insurance to make or reimburse a founda-

dation for these types of payments.⁴⁰ The rationale for permitting foundations to pay non-compensatory indemnification is because it helps foundations attract and retain talent, and permits foundation managers to carry out their duties reasonably and in good faith without worrying about potential out-of-pocket costs.

Indemnification payments (whether reimbursement or direct payment of expenses) that do not meet the definition of "non-compensatory indemnification" are compensatory indemnification. In particular, this category includes payment or reimbursement of any penalty or tax under Chapter 42 (the private foundation excise tax provisions) or any expense of correction that is owed by a foundation manager. It also includes any expense not reasonably incurred by the manager in connection with a civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation, and any expense resulting from an act or failure to act with respect to which the manager acted willfully or without reasonable cause.⁴¹ Compensatory indemnification also includes the payment of any premiums for an insurance policy providing liability insurance to a foundation manager for expenses that, if paid by the foundation, would be compensatory indemnification.⁴²

Caution: Unlike non-compensatory indemnification payments, which benefit a foundation by permitting it to attract good managers, compensatory indemnification payments benefit the managers themselves. Thus, the payment of compensatory indemnification is considered an act of self-dealing unless, when the indemnification payment is added to all other compensation paid to the relevant manager, the total compensation is reasonable under IRC §4941.⁴³ Any property or services that are excludable from income under IRC §132(a)(4) as a *de minimis* fringe benefit may be disregarded for purposes of determining whether the manager's total compensation is reasonable.⁴⁴

Practice Point: A foundation might purchase a single insurance policy that provides its managers both compensatory and non-compensatory coverage. In such a case, See *POTENTIAL SELF-DEALING, next page*

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the foundation will not be treated as engaging in an act of self-dealing if (1) the total insurance premium is allocated between the two types of coverage, and (2) each manager's portion of the premium attributable to the compensatory coverage is included in that manager's compensation for purposes of determining reasonable compensation under IRC §4942.⁴⁵

Payment to a Government Official.

In order to prevent a foundation from having improper influence over the attitudes or conduct of government officials, the rules provide that any payment of money or property to a government official is an act of self-dealing.⁴⁶

Exception for Awards. No act of self-dealing arises from a private foundation awarding a government official (1) a prize or award that is not includible in gross income under IRC §74(b) if the government official is selected from the general public,⁴⁷ or (2) a scholarship or fellowship grant that is excludible from gross income under IRC §117 that is to be used for study at an educational institution.⁴⁸

Exception for Qualified Plans. It is not an act of self-dealing for a private foundation to pay a government official an annu-

Exception for Traveling Expenses. No act of self-dealing arises from a foundation's paying, advancing, or reimbursing travel expense (including amounts for meals and lodging, regardless of whether the government official is "away from home" for purposes of IRC §162) for the official's travel within the United States for an exempt purpose, provided that the amount paid or reimbursed does not exceed the actual cost of transportation involved plus an amount for all other traveling expenses not in excess of 125% of the maximum amount payable under federal law for like travel by U.S. government employees.⁵²

Exception for Post-Government Service. It is not an act of self-dealing for a foundation to agree to employ or make a grant to a government official for a period after the termination of his government service as long as the agreement is entered into within 90 days prior to such termination.⁵³

Exception for Conference Participation. If a government official attends or participates in a conference sponsored by a foundation, the allocable portion of the costs of the conference and other non-monetary benefits (e.g., reputational, intellectual, professional, or psychological bene-

a transaction between a government official, and an intermediary organization that received a grant from a private foundation and that the private foundation does not control, as long as the foundation does not earmark the use of the grant for any named government official and there is no agreement (either oral or written) permitting the foundation to select the government official. The exception applies even if the private foundation has reason to believe that certain government officials will derive benefits from the grant, as long as the intermediary organization actually controls the selection process and makes the selection completely independently of the foundation.⁵⁵

Caution: This exception should not be read to suggest that merely interposing an intermediary will cure a transaction that otherwise would be an act of self-dealing. If it could be read that way, "an intermediary organization could be used to avoid [IRC §4941] and thereby undermine Congressional intent to prohibit self-dealing."⁵⁶

Transactions That Give Rise to Disqualified Person Status

The term "self-dealing" does not include a transaction between a private foundation and a disqualified person where the disqualified person status arises only as a result of that transaction. For example, if an individual makes a bargain sale to a private foundation, and the contribution component of that sale causes the individual to become a substantial contributor and disqualified person, the sale does not give rise to self-dealing.⁵⁷

Indirect Self-Dealing

In addition to prohibiting "direct" acts of self-dealing, in which a foundation transacts with a disqualified person, the regulations also prohibit "indirect" self-dealing.⁵⁸ As the IRS acknowledges in a recent ruling,⁵⁹ neither the Code nor the regulations actually contain a definition of "indirect self-dealing." It was not feasible to draft a comprehensive definition of "indirect self-dealing" because of the great variety of situations that could constitute indirect self-dealing.⁶⁰ Thus, outside narrow examples, the regulations under IRC §4941

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Beneficial interests in trusts are subject to the same attribution rules as profits interests in partnerships.

ity or other payment that (1) forms part of a stock-bonus, pension, or profit-sharing plan, by a trust qualified under IRC §401,⁴⁹ or (2) meets the requirements of IRC §404(a)(2) (dealing with employees' annuities).⁵⁰ Thus, an individual who formerly was employed by a private foundation can continue to receive these types of compensation even if she later becomes a government official.

Exception for De Minimis Amounts. It is not an act of self-dealing for a private foundation to provide a non-monetary contribution or gift, or services or facilities, to a government official if the aggregate value of such items does not exceed \$25 during any calendar year.⁵¹

fits resulting from the publication or distribution to participants of a record of the conference), as well as the payment or reimbursement of expenses received by the official as a result of his attendance or participation, is not an act of self-dealing as long as the conference is in furtherance of the foundation's exempt purpose.⁵⁴

Exception for Grants to Intermediaries. The regulations provide a narrow exception to the definition of "indirect self-dealing" (discussed below) for grants to intermediaries in the context of transactions involving government officials. This exception operates to soften the harshness of the prohibition on payments to government officials. Specifically, the exception refers to

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do not provide an affirmative definition of “indirect self-dealing,” making it difficult to know, based on the regulations, what facts give rise to indirect self-dealing.⁶¹

Examples of Indirect Self-Dealing.

The examples provided in the regulations illustrate the IRS’s position that “if a private foundation cannot directly engage in a transaction without committing an act of self-dealing, then it cannot indirectly engage in the transaction without committing an act of self-dealing.”⁶²

Example 1: The hypothetical Smith Family Foundation owns a controlling interest in Corporation A. Mr. and Mrs. Smith (who are also directors of Corporation A) and their business partners form NewCo for the purpose of building and managing a social lounge. The Smiths receive a total of 40% of NewCo’s stock, which makes NewCo a disqualified person with respect to the foundation. In order to finance the construction and operation of the social lounge, NewCo borrowed money from Corporation A. The making of a loan by Corporation A to NewCo is an indirect act of self-dealing between the foundation and NewCo.⁶³

Example 2: The hypothetical Johnson Foundation owns 20% of the voting stock of Corp1. David Johnson, a substantial contributor to the foundation, owns 16% of the voting stock of Corp1, and his son, William, owns 15% of the voting stock of Corp1. The terms of the voting stock are such that the foundation, David, and William could vote their stock in a block to elect the majority of the directors of Corp1. As a result, Corp1 is treated as “controlled” by the foundation for purposes of IRC §4941. David and William also own 50% of the stock of Corp2, making Corp2 a disqualified person with respect to the foundation. An act of indirect self-dealing will arise between the foundation and Corp2 if Corp1 makes a loan to Corp2.⁶⁴

However, the regulations do provide a list of safe harbors that are deemed not to constitute indirect self-dealing.

The regulations provide an exception to the definition of indirect self-dealing that can be used during the administration of an estate or revocable trust.

Exception for “Unbeatable” Preexisting Business Transactions. The regulations provide that “indirect self-dealing” does not arise from a transaction between a disqualified person and an organization controlled by a private foundation if:

- The transaction results from a business relationship that was established before the transaction constituted an act of self-dealing;
- The transaction was at least as favorable to the organization controlled by the foundation as an arm’s-length transaction with an unrelated person; and
- Either (1) the organization controlled by the foundation could have engaged in the transaction with someone other than a disqualified person only at a severe economic hardship to the organization, or (2) because of the unique nature of the product or services provided by the organization controlled by the foundation, the disqualified person could not have engaged in the transaction with anyone else, or could have done so only by incurring severe economic hardship.⁶⁵

Exception for Transactions During Estate or Trust Administration. The regulations provide an exception to the definition of indirect self-dealing that can be used during the administration of an estate or revocable trust. This exception is particularly useful in that it provides a way to avoid having a foundation receive excess business holdings or other undesirable assets, permitting family members or other disqualified people to receive those assets instead.

The exception provides that the term “indirect self-dealing” does not include a

transaction with respect to a private foundation’s interest or expectancy in property held by an estate if (1) the administrator or executor has the power to sell or reallocate the property or is required to sell the property under the terms of an option subject to which the estate acquired the property; (2) the transaction is approved by a court with jurisdiction over the estate; (3) the transaction occurs before the estate is considered terminated for federal income tax purposes; (4) the estate receives an amount that equals or exceeds the fair market value of the private foundation’s interest or expectancy in the property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate; and (5) the transaction results in the private foundation receiving an interest or expectancy at least as liquid as the one it gave up, results in the private foundation receiving an asset related to the active carrying out of its exempt purpose, or is required under the terms of any option that is binding on the estate.⁶⁶

Exception for Transactions With Non-Controlled Organizations. Where certain disqualified persons with respect to a foundation own more than 35% of the voting power, profits, or beneficial interests in an organization, the organization itself is a disqualified person with respect to the foundation.⁶⁷ However, if the disqualified persons own 35% or less of the organization then the organization is not a disqualified person. The question arises whether the foundation’s transaction with an owned-but-not-controlled organization is an act of indirect self-dealing. The regulations make clear that a transaction between a private foundation and an organization that is not controlled by the foundation and is not a disqualified person by reason of ownership is not an act of indirect self-dealing between the foundation and any disqualified-person owners.⁶⁸

Caution: For this exception to apply, the foundation cannot control the other organization. For this purpose, control exists in either of two situations:

1. An organization is controlled by a private foundation if the foundation and one of its managers (acting only in his capacity as manager) control the organization. See *POTENTIAL SELF-DEALING*, next page

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ity as foundation manager) may, only by aggregating their votes or positions of authority, require the organization to engage in a transaction that, if engaged in with the private foundation, would be self-dealing.⁶⁹

2. An organization is controlled by a private foundation, in the case of a transaction between the organization and a disqualified person ("DP1"), if DP1, together with one or more persons who are disqualified persons by virtue of their relationship to DP1, can require the organization to engage in the transaction.⁷⁰

Exception for Transactions With Limited Amounts. The term "indirect self-dealing" does not include any transaction between a disqualified person and an organization controlled by a private foundation—or between two disqualified persons where the foundation's assets might be affected by the transaction—if the following requirements are met:

1. The transaction arises in the normal and customary course of a retail business engaged in with the general public;
2. In the case of a transaction between a disqualified person and an organization controlled by a private foundation, the transaction is at least as favorable to the organization controlled by the foundation as an arm's-length transaction with an unrelated person; and
3. The total of the amounts involved in the transactions with respect to any one disqualified person in any one taxable year does not exceed \$5,000.⁷¹

Exception for Transactions That Would Not Be Direct Self-Dealing. The statutory exceptions to the definition of self-dealing apply to indirect self-dealing. Accordingly, indirect self-dealing does not arise from any transaction involving one or more disqualified persons to which a private foundation is not a party if the private foundation itself could engage in the transaction.⁷²

Conclusion

The penalties for engaging in self-dealing transactions (excise taxes and potential loss of private foundation status) are

severe, so foundation managers should use extreme caution when engaging in any transaction with a disqualified person—whether directly or indirectly—to ensure that an exception to the prohibition applies.

Editor's Note: Future articles in this series will discuss how self-dealing excise taxes are calculated and how these transactions are reported and corrected.

Endnotes

1. See Fred Stokeld, "Self-Dealing Remains a Big Issue in Private Foundation Exams," 158 *Tax Notes* 1450 (Mar. 5, 2018), *Tax Analysts Doc.* 2018-9037.

2. See "Foundations Must Remain Alert to Potential Self-Dealing—Part I," 17(4) *Fam. Found. Adv.* 3 (May/June 2018).

3. *Treas. Reg.* §53.4941(d)-1(a).

4. *Treas. Reg.* §53.4941(d)-2(a)(1).

5. *Id.*

6. *Treas. Reg.* §53.4941(d)-2(a)(2).

7. *Id.*

8. *Treas. Reg.* §53.4941(a)-1(a)(1).

9. *Id.*

10. See *Rev. Rul.* 76-18, 1976-1 CB 355.

11. *Treas. Reg.* §53.4941(d)-3(d)(1).

12. *Treas. Reg.* §53.4941(d)-2(b)(2).

13. *Treas. Reg.* §53.4941(d)-2(b)(3).

14. *Treas. Reg.* §53.4941(d)-2(c)(1).

15. *Id.*

16. *Id.*

17. *Treas. Reg.* §53.4941(d)-2(c)(2).

18. *Treas. Reg.* §53.4941(d)-2(c)(1).

19. *Treas. Reg.* §53.4941(d)-2(c)(3).

20. *Treas. Reg.* §53.4941(d)-2(c)(4).

21. *Id.*

22. *Treas. Reg.* §53.4941(d)-2(d)(1).

23. *Treas. Reg.* §53.4941(d)-2(d)(2).

24. *Treas. Reg.* §53.4941(d)-2(d)(3).

25. *Treas. Reg.* §53.4941(d)-3(b)(1).

26. *Id.*

27. *Treas. Reg.* §53.4941(d)-2(e).

28. *Treas. Reg.* §53.4941(d)-3(c).

29. *T.C. Memo* 1997-395.

30. *Treas. Reg.* §53.4941(d)-3(c).

31. *Treas. Reg.* §53.4941(d)-2(f)(1).

32. *Id.*

33. *Id.*

34. *Treas. Reg.* §53.4941(d)-2(f)(2).

35. See *Treas. Reg.* §53.4941(d)-2(f)(9), *Example* (4).

36. *Id.*; for a discussion of employer-related scholarship programs, see Katherine E. David, "How to Operate a Foundation's Employer-Related Scholarship Program," 17(3) *Fam. Found. Adv.* 1 (March/Apr. 2018).

37. *Treas. Reg.* §53.4941(d)-2(f)(3)-(4).

38. *Treas. Reg.* §53.4941(d)(2)(f)(6).

39. *Treas. Reg.* §53.4941(d)-2(f)(3).

40. *Treas. Reg.* §53.4941(d)-2(f)(3)(ii).

41. *Treas. Reg.* §53.4941(d)-2(f)(4)(i).

42. *Treas. Reg.* §53.4941(d)-2(f)(4)(ii).

43. *Treas. Reg.* §53.4941(d)-2(f)(4)(i).

44. *Treas. Reg.* §53.4941(d)-2(f)(8).

45. *Treas. Reg.* §53.4941(d)-2(f)(5).

46. Senate Finance Committee Rep. No. 91-552 (Nov. 1, 1969), at 32. Available at www.finance.senate.gov/library/committee-reports/ PageNum_rs=42&maxrows=15.

47. *Treas. Reg.* §53.4941(d)-3(e)(1).

48. *Treas. Reg.* §53.4941(d)-3(e)(2).

49. *Treas. Reg.* §53.4941(d)-3(e)(3).

50. *Treas. Reg.* §53.4941(d)-3(e)(4).

51. *Treas. Reg.* §53.4941(d)-3(e)(5).

52. *Treas. Reg.* §53.4941(d)-3(e)(7).

53. *Treas. Reg.* §53.4941(d)-3(e)(8).

54. *Treas. Reg.* §53.4941(d)-3(e)(9).

55. *Treas. Reg.* §53.4941(d)-1(b)(2).

56. PLR 9421039, (Feb. 28, 1994).

57. *Treas. Reg.* §53.4941(d)-1(a).

58. See IRC §4941(d)(1), *Treas. Reg.* §53.4941(d)-1(a) (defining "self-dealing" as any of a list of transactions, whether "direct or indirect").

59. PLR 201719004 (Feb. 1, 2017).

60. PLR 9421039 (Feb. 28, 1994).

61. For a detailed discussion of indirect self-dealing, see Katherine E. David, "Indirect Self-Dealing: Identifying What the Code Does Not Define," 16(5) *Fam. Found. Adv.* 3 (July/Aug. 2017).

62. PLR 201719004 (Feb. 1, 2017).

63. See *Treas. Reg.* §53.4941(d)-1(b)(8), *Example* (1).

64. See *Treas. Reg.* §53.4941(d)-1(b)(8), *Example* (6).

65. *Treas. Reg.* §53.4941(d)-1(b)(1).

66. *Treas. Reg.* §53.4941(d)-1(b)(3).

67. See IRC §4946(a)(1).

68. *Treas. Reg.* §53.4941(d)-1(b)(4).

69. *Treas. Reg.* §53.4941(d)-1(b)(5).

70. *Id.*

71. *Treas. Reg.* §53.4941(d)-1(b)(8).

72. *Treas. Reg.* §53.4941(d)-1(b)(7). ■



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