Patterson Belknap Webb & Tyler LLP

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Violations of Chapter 42

How to Identify, Correct, and Report While Minimizing Audit Risks

Tomer Inbar
Michelle Michalowski

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Form 4720

Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*

- Used to report various tax violations involving exempt organizations and to pay any excise tax due as a result
- Today's focus– violations by private foundations of the excise tax rules under Sections 4941 through 4945 of Chapter 42 of the Internal Revenue Code (IRC) are all reported in Schedules A through E
- Requires detailed disclosure on correction and calculation of tax liability
- Has its own separate annual due date, that may be separately extended
- Questions on the annual Form 990-PF trigger filing

Our Focus Today

Chapter 42 Private Foundation Excise Taxes

- IRC § 4941 – Self-dealing
- IRC § 4942 – Mandatory Distributions
- IRC § 4943 – Excess Business Holdings
- IRC § 4944 – Jeopardizing Investments
- IRC § 4945 – Taxable Expenditures

Possible Violation– What Next?

Violations of each of these Sections must be corrected, reported, and any excise tax due paid. Each violation has a different means of correction and a different calculation for a first, and sometimes second, tier excise tax.

Mitigation or abatement may be available depending on the timing and circumstances of the violation and reporting.

1. Has there been a violation?
2. How should it be corrected?
3. What tax is due?

Note: the "correction period" begins at the date of the violation and ends 90 days after the statutory notice of deficiency.

Reporting

- Form 990-PF
  - Part VII-B: Questions on Chapter 42 violations requiring Form 4720
  - Part XIII: Calculation for minimum distributions under Section 4942
- Form 4720
  - Each individual excise tax is reported on Schedules
  - Correction is required before reporting
  - Correction can be coordinated with other forms such as Form 8940
  - Some taxes may be abated for reasonable cause

Section 4941: Self-Dealing

Excise tax imposed on specified types of "self-dealing" between a private foundation and a disqualified person (as defined by IRC § 4946).

1a During the year, did the foundation (either directly or indirectly):

(1) Engage in the sale or exchange, or leasing of property with a disqualified person? ☐ Yes ☐ No

(2) Borrow money from, lend money to, or otherwise extend credit to (or accept it from) a disqualified person? ☐ Yes ☐ No

(3) Furnish goods, services, or facilities to (or accept them from) a disqualified person? ☐ Yes ☐ No

(4) Pay compensation to, or pay or reimburse the expenses of, a disqualified person? ☐ Yes ☐ No

(5) Transfer any income or assets to a disqualified person (or make any of either available for the benefit or use of a disqualified person)? ☐ Yes ☐ No

(6) Agree to pay money or property to a government official? (**Exception.** Check "No" if the foundation agreed to make a grant to or to employ the official for a period after termination of government service, if terminating within 90 days.) ☐ Yes ☐ No

b If any answer is "Yes" to 1a(1)–(6), did **any** of the acts fail to qualify under the exceptions described in Regulations section 53.4941(d)-3 or in a current notice regarding disaster assistance? See instructions **1b**

Organizations relying on a current notice regarding disaster assistance, check here ▶ ☐

c Did the foundation engage in a prior year in any of the acts described in 1a, other than excepted acts, that were not corrected before the first day of the tax year beginning in 2018? **1c**

Form 990-PF, Part VII-B

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