

Managing Self-Dealing and Conflicts of Interest in an Increasingly Interconnected Environment

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Managing Private Foundation Risk

- **Avoid self-dealing** penalties by learning the absolute prohibitions on transactions between a PF and its insiders called disqualified persons.
- **Self-dealing that occurs** must be corrected by giving the property or cash back to the PF. [Treas. Reg. §53.49419(e)-1(c)]
- **Adopt** governance policies to avoid self-dealing.
- **Don't forget** PFs retain tax exemption by adhering to §501(c)(3) private inurement sanctions.

Managing Private Foundation Risk

Use tools available to qualify for exceptions to the strict self-dealing rules.

- Like, like, like rule and Guidestar. [Regs. §1.162-7(b)(3) and §53.4958-4(a)(4); IRS Tech Adv. Memo 9008001]
- Recognize distinction between co-ownership in partnership vs. jointly-owned property.
- Identify personal vs. non-personal services and incidental and tenuous.
- Apply fiduciary responsibility standards.

The Tax Code - §4941-4946

- No self-dealing allowed (§4941).
- Annual mandatory distributions (§4942).
- No excess business holdings (§4943).
- No jeopardizing investments (§4944).
- No taxable expenditures (§4945).
- Definition of disqualified person (DP) (§4946).

PF Disqualified Persons (§4946)

- Substantial contributor to PF (\$5k/2% rule).
- 20% owner of substantial contributor.
- PF's foundation managers.
- Family member in linear fashion (siblings not included).
- Entity in which any of above own >35% of voting power (corporation), profits interest (partnership), or beneficial interest (trust).
- Certain government officials.

Self-Dealing Transactions

Direct or indirect [IRC 4941(d)]:

- Sales, exchanges, or leases of property.
- Lending of money or other extensions of credit.
- Furnishing of goods, services, or facilities.
- Payment of compensation or expense reimbursement.
- Transfer to, or use by or for benefit of, a DP of any income or assets of a PF.
- Payments of money or transfers of property to a government official.

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