Private foundation considerations

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January 20, 2021

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Agenda

- Self-dealing and conflicts of interest
  - The law
  - Practice points
- Taxable expenditures and expenditure responsibility
  - The law
  - Practice points

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Self-dealing

Acts of self-dealing

- Acts of self-dealing between a private foundation and a disqualified person (DQP) include:
  - Sale, exchange, or leasing of property
  - Lending money or other extensions of credit
  - Providing goods, services or facilities
  - Paying compensation or reimbursing expenses of a DQP
  - Transferring private foundation (PF) income or assets to, or for the use or benefit of, a DQP
  - Certain agreements to make payments to government officials

Self-dealing – IRC § 4941

- Internal Revenue Code (IRC) 4941 imposes excise taxes with respect to any direct or indirect act of self-dealing between a private foundation and a disqualified person.
- Who does this apply to?
  - The self-dealer and, in certain cases, the foundation managers.
- What else can go wrong?
  - More than one excise (Chapter 42) tax can be assessed on the same act.

Indirect self-dealing

- The various enumerated acts of self-dealing may be engaged in directly between a disqualified party and a private foundation or **indirectly through a third party**
- Inserting an organization in the middle does not prevent self-dealing
- Exceptions
  - Estate administration exception
  - Certain transactions in the ordinary course of business involving limited amounts

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