

19. AD methodology issues other than those outlined above;

#### *Procedural Issues*

20. Initiation of petitions;
21. Evidence;
22. Facts available;
23. *De Minimis* (address separately for AD and CVD);
24. Reviews, other than five-year reviews (if specific to AD or CVD, please specify);
25. Five-year reviews and revocation;
26. Repeal of Section 303;
27. Regional industries;
28. Critical circumstances;
29. Simplification;
30. Business proprietary information and administrative protective orders;
31. Ministerial errors;
32. Procedural issues other than those outlined above;
33. Other issues.

#### **List of Subjects in 19 CFR Parts 353, 355, and 356**

Business and industry, Foreign trade, Imports, Trade practices.

Dated: December 27, 1994.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 53

[EE-56-94]

RIN 1545-AT03

#### **Excise Tax On Self-Dealing By Private Foundations.**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed amendments to the regulations that define self-dealing by private foundations. The proposed amendments modify the application of the self-dealing rules to the provision by a private foundation of director's and officer's liability insurance to disqualified persons. These amendments provide that indemnification by a private foundation or provision of insurance for purposes of covering the liabilities of the person in their capacity as a manager of the private foundation is not self-dealing. Additionally, the amounts expended by the private foundation are not included

in the compensation of the disqualified person for purposes of determining reasonable compensation of the disqualified person.

**DATES:** Written comments and requests for a public hearing must be received by April 3, 1995.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:T:R (EE-56-94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE-56-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC.

**FOR FURTHER INFORMATION CONTACT:** Terri Harris or Paul Accettura at 202-622-6070 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 4941(a) imposes a tax on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(E) defines self-dealing as any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation. Section 53.4941(d)-2(f)(1) currently provides that provision of insurance for the payment of chapter 42 taxes by a private foundation for a foundation manager is self-dealing unless the premium amounts are included in the compensation of the foundation manager. Direct indemnification for the payment of chapter 42 taxes to the foundation manager from the private foundation is self-dealing whether or not the amounts are included in the manager's compensation.

Section 53.4941(d)-2(f)(3) currently provides that the indemnification of certain expenses by a private foundation for a foundation manager's defense in a judicial or administrative proceeding involving chapter 42 taxes is not self-dealing. Such expenses must have been reasonably incurred by the manager in connection with such proceeding. Also, the manager must be successful in such defense, or such proceeding must be terminated by settlement, and the manager must not have acted willfully and without reasonable cause with respect to the act or failure to act which led to the liability for tax under chapter 42.

Revenue Ruling 82-223, 1982-2 C.B. 301, discussed the application of the self-dealing rules to the provision of insurance by a private foundation for the indemnification of a foundation manager's defense in actions involving

state laws relating to the mismanagement of funds of charitable organizations. Rev. Rul. 82-223 implied that the private foundation's provision of insurance is includible in the foundation manager's taxable income. This position created a situation in which private foundation managers who were "employees" of the private foundation could exclude the insurance premiums from their income under the section 132(d) fringe benefit exclusion; however, this raised the possibility that unpaid "volunteer" managers would have to include the premiums in their income and, since they had no profit motive with which to support a working condition fringe benefit exclusion, could not exclude the income.

This situation has recently been corrected by the publication of amendments to regulations under section 132. Section 1.132-5(r) currently provides that bona fide volunteers for exempt organizations are deemed to have a profit motive for purposes of excluding a working condition fringe benefit.

Although these benefits are excluded from compensation under section 132(d), the problem of including the income excluded under section 132 in the compensation paid to the foundation manager still remains for purposes of determining whether a foundation manager's compensation is reasonable. These amendments to § 53.4941(d)-2(f) are intended to clarify the IRS's position that, generally, the payment of indemnification and insurance by a private foundation for a foundation manager in situations arising from the performance of services on behalf of the private foundation are not self-dealing and are not considered when determining reasonable compensation of the foundation manager.

##### **Explanation of Provisions**

The proposed regulations provide that it generally will not be self-dealing, or treated as the payment of compensation, if a private foundation indemnifies or provides insurance to a foundation manager in any civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation.

An indemnification or purchase of insurance would be an act of self-dealing if the expenses relating to such defense are not reasonably incurred by the manager in connection with such proceeding. Additionally, the manager must not have acted willfully and without reasonable cause with respect to the act or failure to act which led to such proceeding or to such liability.

Also, if the indemnification or insurance is to pay chapter 42 tax, it will be an act of self-dealing unless the amounts are treated as compensation.

### Special Analyses

It has been determined that these proposed rules are not major rules as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these proposed regulations is Terri Harris, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 53 is proposed to be amended as follows:

#### PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

**Paragraph 1.** The authority for part 53 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 2.** Section 53.4941(d)-2 is amended as follows:

1. Paragraphs (f)(1) and (3) are revised.
  2. Paragraph (f)(4) is redesignated as paragraph (f)(5).
  3. New paragraph (f)(4) is added.
- The additions and revisions read as follows:

#### § 53.4941(d)-2 Specific acts of self-dealing.

\* \* \* \* \*

(f) *Transfer or use of the income or assets of a private foundation—(1) In general.* The transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation shall constitute an act of self-dealing. For purposes of the preceding sentence, the payment by a private foundation of any tax imposed on a foundation manager by chapter 42 shall be treated as a transfer of the income or assets of a private foundation for the benefit of a disqualified person unless such payment is treated as part of the compensation to such manager. Similarly, the payment by a private foundation of the premiums for an insurance policy providing liability insurance to a foundation manager for chapter 42 taxes shall be an act of self-dealing under this paragraph unless such premiums are treated as part of the compensation paid to such manager.

\* \* \* \* \*

(3) *Indemnification of foundation managers against liability for defense in civil proceedings.* Except as provided in § 53.4941(d)-3(c), section 4941(d)(1) shall not apply to the indemnification by a private foundation of a foundation manager, with respect to the manager's defense in any civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation, against all expenses (other than taxes, penalties, or expenses of correction) including attorneys' fees, if—

- (i) Such expenses are reasonably incurred by the manager in connection with such proceeding; and
  - (ii) The manager has not acted willfully and without reasonable cause with respect to the act or failure to act which led to such proceeding or to liability for tax under chapter 42.
- Similarly, except as provided in § 53.4941(d)-3(c), section 4941(d)(1) shall not apply to premiums for insurance to reimburse a foundation for an indemnification payment allowed pursuant to this paragraph (f)(3)(ii). Neither shall such indemnification or payment of insurance be treated as part of the compensation paid to such manager. Thus, a private foundation

shall not be engaged in an act of self-dealing if the foundation purchases a single insurance policy to provide its managers both the noncompensatory and the compensatory coverage discussed in this paragraph (f), provided that the total insurance premium is allocated to include, in each manager's compensation, that manager's portion of the premium attributable to the compensatory coverage, which is the coverage for the amount of penalty, tax, expense of correction, judgment or expense, that is owed by the manager.

(4) *Indemnification.* For purposes of this paragraph (f), the term *indemnification* shall include not only reimbursement by the foundation for losses and expenses that the foundation manager has already incurred but also direct payment by the foundation of such expenses as the expenses arise.

\* \* \* \* \*

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

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### 26 CFR Part 301

[GL-0038-93]

RIN 1545-AS61

### Seals of Office

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This document contains a proposed regulatory amendment relating to the authority contained within section 7514 of the Internal Revenue Code to prescribe or modify seals of office for the district directors, service center directors, and compliance center directors (directors) and other officers or employees of the Treasury Department to whom any of the functions of the Secretary of the Treasury are or may be delegated. The proposed regulations provide an additional or alternative uniform seal to various Internal Revenue offices throughout the country. This amendment is intended to eliminate the need to publish facsimiles of seals in the **Federal Register** as new internal revenue offices are established or relocated or as replacement of existing seals becomes necessary.

**DATES:** Written comments and requests for a public hearing must be received by March 6, 1995.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:T:R (GL-0038-93), room 5228, Internal Revenue Service, P.O.B.