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Private Foundations Bulletin

Bipartisan Budget Act of 2018: Excess Business Holdings [Newman's Own Exception]

After weeks of intense Congressional negotiations, the Bipartisan Budget Act of 2018 (Act) was signed into law on February 9, 2018. While the main focus of the Act was on the avoidance of a government shutdown and other key provisions, the Act, in its final form, did include a provision that specifically affects private foundations for taxable years beginning after December 31, 2017.

The provision, which is commonly known as the "Newman's Own" exception, will exempt private foundations from the excise tax on excess business holdings that are 100% owned by the foundation, independently operated and have all profits go to the foundation.

Qualifying Factors

In order to qualify for this exemption, the following criteria must be met by the private foundation and the for-profit entity:

- The private foundation must own 100% of the voting stock of the for-profit entity at all times during the taxable year.
- The voting stock must have been acquired by means of gift or bequest.
- All net operating income of the for-profit entity must be distributed within 120 days after the close of the taxable year.
- At all times during the taxable year:
  - No substantial contributor (or family member) of the private foundation is a director, officer, trustee, manager, employee or contractor of the for-profit entity board.
  - At least a majority of the private foundation's board are not directors or officers (or family members) of the for-profit entity's board.
  - There is no loan outstanding to a substantial contributor (or family member) of the private foundation from the for-profit entity.

Ineligible

There are certain tax-exempt funds and organizations that are ineligible for the new exception including:

- Investments held in Donor Advised Funds (DAF) – 4943(e)
- Investments held in certain Type III Supporting Organizations – 4943(f)
- Charitable trusts as described in 4947(a)(1)
- Split interest trusts as described in section 4947(a)(2)

Origin of the Name for the Provision

The provision was introduced by U.S. Senators Richard Blumenthal (D-Conn) and Chris Murphy (D-Conn), who fought to include the provision because it had been excluded from the final version of the Tax Cuts and Jobs Act that was signed into law in December 2017. The exemption under the old law would have expired for Newman's Own Foundation, a private foundation domiciled in Connecticut (the Senators' home state). Had this provision not been passed, Newman's Own Foundation would have had to divest at least 80% of its voting shares or risk facing a significant excise tax.

Observation

Although this provision is new to the United States, similar laws have been enacted for years by other countries, providing a mechanism enabling for-profit ownership to be transferred to non-profit entities.

Contact Us

Should you have any questions regarding the implications of this provision in the Act or any of the items detailed in this bulletin, please contact the following experienced professionals in our Philanthropic and Private Foundation Services Practice:

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About PKF O'Connor Davies

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