

May 2019

Private Foundations Bulletin

Defining Disqualified Persons of Private Foundations

Recently, we received certain inquiries on the definition of “disqualified persons” at a foundation. In connection therewith, we hope this bulletin will serve as a reference defining a disqualified person and helping to ensure that self-dealing at the private foundation does not occur. Recognizing who are considered disqualified persons at the foundation and proceeding accordingly can avoid monetary penalties and ensure that the reputation of the foundation is protected.

This communication will cover the definition of disqualified persons while information on self-dealing transactions as they relate to a private foundation can be found on the [IRS website](#).

Disqualified

With respect to a private foundation, the following are referred to as “disqualified persons” with respect to certain transactions:

- an officer, director or trustee of a foundation;
- an employee of the foundation or other individual having powers or responsibilities similar to those of an officer, director or trustee;
- **a substantial contributor**¹ to the foundation;
- an owner of more than 20 percent of the total combined voting power of a corporation, the profits interest of a partnership, or the beneficial interest of a trust or unincorporated enterprise, which is a **substantial contributor** to the foundation;
- a member of the family of any individual described above which includes any spouse, ancestors, children (legally adopted child of an individual will be treated as a child by blood), grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren. [A sibling is not considered a disqualified person.];
- organizations in which any of the above own more than 35% interest in the form of a corporation, partnership, trust, estate, or unincorporated enterprise;
- controlled private foundations for purposes of the excess business holding provisions; and,
- a government official with respect to an act of self-dealing, who at the time of such an act, holds certain offices or positions in the government of the United States.

Potential Consequences

There are certain acts that are acceptable between the foundation and disqualified persons. However, it is important to understand who the disqualified persons of a foundation are because disallowed transactions will result in excise taxes on the amounts involved in any act of self-dealing. These excise taxes are payable by the disqualified person involved, as well as the foundation manager who knowingly participates in the act. That is why if there is any question as to whether or not a person/entity could lead to a self-dealing transaction with the disqualified person or entity, seek professional counsel.

¹ The term “**substantial contributor**” means any person who has contributed or bequeathed a total amount of more than \$5,000 to the private foundation, if such amount is more than 2 percent of total contributions and bequests received by the foundation from its creation up through close of the foundation’s tax year in which the contribution or bequest is received from that person. In the case of a trust, the term “substantial contributor” includes the creator of the trust. Special rules apply and should be considered; however, they are beyond the scope of this article.

Conclusion

Knowing who are disqualified persons is in the best interests of all associated with the private foundation. The reputation of the foundation and its governance is such an important component of public perception and is the catalyst of the foundation's mission.

Contact Us

We welcome the opportunity to speak with you about any questions you may have regarding this newsletter or any other subject related to accounting, audit, tax or advisory matters relative to private foundations.

Please contact us:

Thomas F. Blaney, CPA, CFE
Partner, Co-Director of Foundation Services
tblaney@pkfod.com

Christopher D. Petermann, CPA
Partner, Co-Director of Foundation Services
cpetermann@pkfod.com

www.pkfod.com

About PKF O'Connor Davies

PKF O'Connor Davies, LLP is a full-service certified public accounting and advisory firm with a long history of serving clients both domestically and internationally. With roots tracing to 1891, eleven offices in New York, New Jersey, Connecticut, Maryland and Rhode Island, and more than 700 professionals, the Firm provides a complete range of accounting, auditing, tax and management advisory services. PKF O'Connor Davies is ranked 29th on Accounting Today's 2019 "Top 100 Firms" list and is recognized as one of the "Top 10 Fastest-Growing Firms." PKF O'Connor Davies is also recognized as a "Leader in Audit and Accounting" and is ranked among the "Top Firms in the Mid-Atlantic," by Accounting Today. In 2019, PKF O'Connor Davies was named one of the 50 best accounting employers to work for in North America, by Vault.

PKF O'Connor Davies provides specialized services to not-for-profit organizations. Our dedicated industry practice serves over 3,000 not-for-profit organizations, including 250 private foundations (i.e., family, corporate, community and independent foundations) as well as grant making organizations. We are committed to the not-for-profit industry and continue to invest in our professionals by providing training, state-of-the-art technology and audit and tax guidance to meet the evolving needs of the not-for-profit community.

PKF O'Connor Davies is the lead North American representative in PKF International, a global network of legally independent accounting and advisory firms located in over 400 locations, in 150 countries around the world.

Our Firm provides the information in this e-newsletter for general guidance only, and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.