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Private Foundations Bulletin

Self-Dealing – Frequently Asked Questions

Acts of self-dealing come in many forms, and it is vital that foundation managers and board members are mindful of the different types of self-dealing prohibitions and the potential consequences to the foundation and the individuals involved in the act. While it would be impractical to predict every potential self-dealing act, as there are always new arrangements or transactions that require careful attention when it comes to these rules, we include in this bulletin some of the most frequently asked questions that we receive throughout the year on self-dealing.

Self-Dealing Refresher

Simply stated, a foundation is prohibited, subject to certain exceptions, from entering into any direct or indirect financial transaction (act of self-dealing) with certain related parties defined in the Internal Revenue Service (IRS) Regulations as "disqualified persons." For a detailed explanation of disqualified persons, and who they are in relation to the foundation, please reference our prior [Private Foundations Bulletin: Defining Disqualified Persons of Private Foundations](#).

To help navigate self-dealing, the IRS delineates acts of self-dealing into the following types of financial transactions:

- Sale, exchange, or leasing of property;
- Leases;
- Lending money or other extensions of credit;
- Providing goods, services, or facilities;
- Paying compensation to or reimbursing expenses of a disqualified person;
- Transferring foundation income or assets to, or for the use or benefit of, a disqualified person; and
- Certain agreements to make payments of money or property to government officials.

It is important to remember that prohibitions apply even if the transaction is considered by those involved to be "fair and reasonable" or even if it ultimately benefits the foundation.

Frequently Asked Questions

Below are some of the most common questions, along with our responses, that are asked by foundation board members and managers alike regarding acts of self-dealing:

Can a foundation pay a salary or fees to a disqualified person?

Yes, so long as the total compensation is for a set of limited "personal" services and the amount is reasonable. Reasonable compensation for personal services is the biggest exception to the rule against self-dealing. Whether this is potentially in the form of compensation or director fees, the payments could be acceptable so long as the work to be performed is necessary for the operation of the foundation and the amount of compensation is reasonable.

Can a disqualified person receive any personal benefit from foundation grants?

Yes, so long as the benefit is "incidental," "tenuous" or "mere recognition." In other words, the benefit bestowed on the board member must not include goods or services that have a tangible economic value.

Public recognition of the major donor to a foundation for acts of the foundation generally is incidental (or intangible). Examples include recognizing the donor in the program of a special fundraising event as a contributor or naming a building after the donor.

Can the foundation purchase directors' and officers' liability insurance without self-dealing?

Yes.

Can a foundation satisfy the personal charitable pledge of a family member?

No. Once any disqualified person makes a personal pledge, it becomes a legally binding and enforceable personal obligation. A private foundation is prohibited from using foundation assets to satisfy the personal obligation of a disqualified person.

Is it self-dealing to make a grant to a charity where a disqualified person sits on the board of the grantee?

The regulations are very clear on this point. It is not self-dealing when a foundation makes a grant to a public charity where a disqualified person (or spouse thereof) is on the board or staff of the grantee. However, if such a grant were earmarked to pay the salary of a disqualified person, self-dealing is probable. As a best practice, many foundations when faced with this scenario stipulate that the funds are "not to be used" for a particular person's salary, etc.

Are disqualified persons allowed to attend galas, benefits, or other ticketed events for which the foundation has received tickets?

Yes and no. While there are exceptions that would allow a disqualified person to attend these types of events on the foundation's behalf these exceptions are limited in scope and there are a number of pitfalls to watch out for when it comes to anything with "tickets" and guests especially.

Consequences of Self-Dealing

While some self-dealing acts may be allowed, subject to an exception, those that violate the rules are subject to steep penalties payable by not only the disqualified person(s) involved in the act but may also include any foundation manager who knowingly participates in the act. In addition, the reputational damage that an act of self-dealing may inflict on a foundation should also be taken into consideration.

Seek Outside Counsel

If there are any additional questions as to whether or not a potential relationship or future transaction could lead to self-dealing, we recommend that the foundation contact their legal counsel or tax preparers to ensure that all considerations have been made in the determination process.

Contact Us

We welcome the opportunity to answer any questions you may have related to this topic or any other accounting, audit, tax or advisory matters relative to private foundations. Please call 212.286.2600 or email any of the Private Foundation Services team members below:

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