

Private Foundations Bulletin

Self-Dealing – IRS Temporarily Halts Certain 4941(d) Rulings

The Internal Revenue Service (IRS) issued on September 3, 2021 Revenue Procedure 2021-40 (2021-40), which stated that the IRS will place a temporary halt on issuing letter rulings or determination letters in relation to whether certain transactions are self-dealing within the meaning of Section 4941(d) of the Internal Revenue Code (the Code). In this bulletin, we will examine the provisions as outlined in 2021-40, along with how these provisions could impact private foundations.

Self-Dealing Transaction Identified

The specific transaction identified by the IRS in 2021-40 relates to when a private foundation owns or receives an interest in a limited liability company or other entity that owns a promissory note issued by a disqualified person. Transactions of this type could be perceived as being an act of indirect self-dealing. As indicated in 2021-40, the IRS is currently in the process of reviewing its prior ruling position in relation to this transaction. Therefore, the IRS has decided to halt rulings temporarily on these types of transactions until they have completed their review of the proper tax treatment.

No-Rule Areas

On a regular basis, the IRS issues letter rulings or determination letters when requested by taxpayers, which cover a wide variety of areas and tax transactions. However, the IRS does maintain a listing of what they refer to as “no-rule” areas and updates this listing on an annual basis. These no-rule areas are included in the IRS’s third Revenue Procedure of each year, with the current year version being Revenue Procedure 2021-3. The issuance of 2021-40 has effectively placed these types of transactions on the IRS’s no-rule listing.

Section 4941(d) Code Defined

Under Section 4941(d) of the Code, the IRS considers any of the following, whether direct or indirect, as constituting a self-dealing transaction:

- Sale or exchange, or leasing, of property between a private foundation and a disqualified person;
- Lending of money or other extension of credit between a private foundation and a disqualified person;
- Furnishing of goods, services, or facilities between a private foundation and a disqualified person;
- Payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person (unless an exception exists as described in Regulations Section 53.4941(d)-3);
- Transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation;
- Agreement by a private foundation to make any payment of money or other property to a government official.

For further detail regarding self-dealing transactions, please reference our prior [Private Foundations Bulletin: Self-Dealing – Frequently Asked Questions](#).

Effective Date

This Revenue Procedure applies to all requests related to these types of transactions either pending in or received by the IRS on or after September 3, 2021. For any requests pending as of this date, the IRS will close the request and any user fees paid by the taxpayer will be returned in full.

Implications

As the IRS has added this type of transaction to its no-rule list, private foundations who partake or intend to partake in this type of transaction can no longer request and rely on a letter ruling from the IRS to support their tax position. These private foundations should instead work with their advisors to ensure proper documentation is available to support the transaction.

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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