

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.