

Also, if the indemnification or insurance is to pay chapter 42 tax, it will be an act of self-dealing unless the amounts are treated as compensation.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Terri Harris, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 53 is proposed to be amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 53.4941(d)-2 is amended as follows:

1. Paragraphs (f)(1) and (3) are revised.
 2. Paragraph (f)(4) is redesignated as paragraph (f)(5).
 3. New paragraph (f)(4) is added.
- The additions and revisions read as follows:

§ 53.4941(d)-2 Specific acts of self-dealing.

* * * * *

(f) *Transfer or use of the income or assets of a private foundation—(1) In general.* The transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation shall constitute an act of self-dealing. For purposes of the preceding sentence, the payment by a private foundation of any tax imposed on a foundation manager by chapter 42 shall be treated as a transfer of the income or assets of a private foundation for the benefit of a disqualified person unless such payment is treated as part of the compensation to such manager. Similarly, the payment by a private foundation of the premiums for an insurance policy providing liability insurance to a foundation manager for chapter 42 taxes shall be an act of self-dealing under this paragraph unless such premiums are treated as part of the compensation paid to such manager.

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(3) *Indemnification of foundation managers against liability for defense in civil proceedings.* Except as provided in § 53.4941(d)-3(c), section 4941(d)(1) shall not apply to the indemnification by a private foundation of a foundation manager, with respect to the manager's defense in any civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation, against all expenses (other than taxes, penalties, or expenses of correction) including attorneys' fees, if—

- (i) Such expenses are reasonably incurred by the manager in connection with such proceeding; and
 - (ii) The manager has not acted willfully and without reasonable cause with respect to the act or failure to act which led to such proceeding or to liability for tax under chapter 42.
- Similarly, except as provided in § 53.4941(d)-3(c), section 4941(d)(1) shall not apply to premiums for insurance to reimburse a foundation for an indemnification payment allowed pursuant to this paragraph (f)(3)(ii). Neither shall such indemnification or payment of insurance be treated as part of the compensation paid to such manager. Thus, a private foundation

shall not be engaged in an act of self-dealing if the foundation purchases a single insurance policy to provide its managers both the noncompensatory and the compensatory coverage discussed in this paragraph (f), provided that the total insurance premium is allocated to include, in each manager's compensation, that manager's portion of the premium attributable to the compensatory coverage, which is the coverage for the amount of penalty, tax, expense of correction, judgment or expense, that is owed by the manager.

(4) *Indemnification.* For purposes of this paragraph (f), the term *indemnification* shall include not only reimbursement by the foundation for losses and expenses that the foundation manager has already incurred but also direct payment by the foundation of such expenses as the expenses arise.

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Margaret Milner Richardson,

Commissioner of Internal Revenue.

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26 CFR Part 301

[GL-0038-93]

RIN 1545-AS61

Seals of Office

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains a proposed regulatory amendment relating to the authority contained within section 7514 of the Internal Revenue Code to prescribe or modify seals of office for the district directors, service center directors, and compliance center directors (directors) and other officers or employees of the Treasury Department to whom any of the functions of the Secretary of the Treasury are or may be delegated. The proposed regulations provide an additional or alternative uniform seal to various Internal Revenue offices throughout the country. This amendment is intended to eliminate the need to publish facsimiles of seals in the **Federal Register** as new internal revenue offices are established or relocated or as replacement of existing seals becomes necessary.

DATES: Written comments and requests for a public hearing must be received by March 6, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (GL-0038-93), room 5228, Internal Revenue Service, P.O.B.