

§ 53.4941(c)-1 Special rules.

(a) *Joint and several liability.* (1) In any case where more than one person is liable for the tax imposed by any paragraph of section 4941 (a) or (b), all such persons shall be jointly and severally liable for the taxes imposed under such paragraph with respect to such act of self-dealing.

(2) The provisions of this paragraph may be illustrated by the following example:

Example. A and B, who are managers of private foundation X, lend one of the foundation's paintings to G, a disqualified person, for display in G's office, in a transaction which gives rise to liability for tax under section 4941(a)(2) (relating to tax on foundation managers). An initial tax is imposed on both A and B with respect to the act of lending the foundation's painting to G. A and B are jointly and severally liable for the tax.

(b) *Limits on liability for management.*

(1) The maximum aggregate amount of tax collectible under section 4941(a)(2) from all foundation managers with respect to any one act of self-dealing shall be \$10,000, and the maximum aggregate amount of tax collectible under section 4941(b)(2) from all foundation managers with respect to any one act of self-dealing shall be \$10,000.

(2) The provisions of this paragraph may be illustrated by the following example:

Example. A, a disqualified person with respect to private foundation Y, sells certain real estate having a fair market value of \$500,000 to Y for \$500,000 in cash. B, C, and D, all the managers of foundation Y, authorized the purchase on Y's behalf knowing that such purchase was an act of self-dealing. The actions of B, C, and D in approving the purchase were willful and not due to reasonable cause. Initial taxes are imposed upon the foundation managers under subsections (a)(2) and (c)(2) of section 4941. The tax to be paid by the foundation managers is \$10,000 (the lesser of \$10,000 or 2½ percent of the amount involved). The managers are jointly and severally liable for this \$10,000, and this sum may be collected by the Internal Revenue Service from any one of them.

§ 53.4941(d)-1 Definition of self-dealing.

(a) *In general.* For purposes of section 4941, the term *self-dealing* means any direct or indirect transaction described in § 53.4941(d)-2. For purposes of this

section, it is immaterial whether the transaction results in a benefit or a detriment to the private foundation. The term "self-dealing" does not, however, include a transaction between a private foundation and a disqualified person where the disqualified person status arises only as a result of such transaction. For example, the bargain sale of property to a private foundation is not a direct act of self-dealing if the seller becomes a disqualified person only by reason of his becoming a substantial contributor as a result of the bargain element of the sale. For the effect of sections 4942, 4943, 4944, and 4945 upon an act of self-dealing which also results in the imposition of tax under one or more of such sections, see the regulations under those sections.

(b) *Indirect self-dealing*—(1) *Certain business transactions.* The term "indirect self-dealing" shall not include any transaction described in § 53.4941(d)-2 between a disqualified person and an organization controlled by a private foundation (within the meaning of paragraph (6)(5) of this section) if:

(i) The transaction results from a business relationship which was established before such transaction constituted an act of self-dealing (without regard to this paragraph),

(ii) The transaction was at least as favorable to the organization controlled by the foundation as an arm's-length transaction with an unrelated person, and

(iii) Either:

(a) The organization controlled by the foundation could have engaged in the transaction with someone other than a disqualified person only at a severe economic hardship to such organization, or

(b) Because of the unique nature of the product or services provided by the organization controlled by the foundation, the disqualified person could not have engaged in the transaction with anyone else, or could have done so only by incurring severe economic hardship. See example (2) of subparagraph (8) of this paragraph.

(2) *Grants to intermediaries.* The term "indirect self-dealing" shall not include a transaction engaged in with a government official by an intermediary organization which is a recipient of a