UNDERSTANDING THE SELF-DEALING RULES

By Jeffrey Davine

INTRODUCTION

- Self-Dealing Rules Set Forth in IRC §§ 4941 and 4946
- Added as Part of 1969 Tax Reform Act
- Designed to Discourage Private Persons From Engaging in Certain Financial Transactions With Private Foundations

APPLICATION OF RULES

- Private Foundations
- Charitable Remainder Trusts
- Charitable Lead Trusts

FOUR STEP ANALYSIS

- Is Transaction Between a PF and a DP?
- Is Transaction Identified in the IRC or Regulations as a Self-Dealing Transaction?
- Any Exceptions Applicable?
- Amount of Potential Excise Taxes?

DISQUALIFIED PERSONS

- Substantial Contributors
- Foundation Managers
- 20% Owners of Substantial Contributors
- Certain Family Members of a DP
- Certain Entities Owned by a DP (35% Threshold)
- Government Officials

SELF-DEALING TRANSACTIONS

- Sales and Leases of Property
- Loans and Extensions of Credit
- Furnishing of Goods, Services, or Facilities
- Payment of Compensation to a DP
- Transfer to/Use by DP of Income or Assets of a PF

INDIRECT SELF-DEALING

- Not Defined in Code or Regulations
- Applied Broadly
- Generally Occurs as Transaction Between a DP and Entity Controlled by a PF

INDIRECT SELF-DEALING

PF (80%)

A (40%)

B (40%)

X

Y

SANCTIONS

- Two-Tiers of Taxes
- Imposed on DP and on Foundation Managers
- Tax Imposed on “Amount Involved”
- Self-Dealing Transaction Must be “Corrected”

Thank you

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