

Questions often arise in situations where a corporate foundation shares office space or employees with the sponsoring business corporation. Where a corporation or its principal shareholder is a substantial contributor to the foundation whether the contributions are added to an endowment or “passed through” the foundation to grantees, the corporation will be considered a “disqualified person” with respect to the foundation. The term “disqualified person” refers to a person or entity that is disqualified from engaging in financial transactions with a private foundation under the self-dealing rules. In general, payments or reimbursements for office space or employees constitute acts of self-dealing; however, there are exceptions to these rules. Here is some practical advice for corporate foundations regarding payments or reimbursements to the corporation.

- **Can a corporate foundation pay the corporation for any services performed by corporate employees on behalf of the private foundation?**

Under federal law, private foundations may pay compensation to disqualified persons for certain “personal services,” provided that (1) the amount is reasonable, and (2) the services are reasonable and necessary to carry out the exempt purposes of the private foundation. The self-dealing rules do not clearly define “personal services” but the IRS Regulations provide examples of activities that constitute personal services, such as legal services, investment management services and general banking services.

- **Has the IRS provided any further guidance on the types of services that constitute “personal services” permissible under the self-dealing rules?**

One 1996 IRS private letter ruling has held that the following services are personal services that do not amount to acts of self-dealing: (1) asset management (e.g., review of and advice regarding asset allocation, including the selection and monitoring of investment managers); (2) coordination of tax matters (e.g., recordkeeping, preparation of returns, and tax planning); (3) other financial services (e.g., cash management, accounting, accounts payable, financial analysis and investment appraisals); and (4) administrative assistance in charitable programs. A more recent private letter ruling provides additional examples of personal services that the IRS ruled do not amount to acts of self-dealing: (1) identification and analysis of potential real estate acquisitions; (2) review and negotiation of financing agreements; (3) supervision of property operations and inspections; (4) advertising; and (5) human resource services (including hiring, firing and administration of employee benefits). Of course, a private letter ruling does not establish binding precedent and may only be relied upon by the taxpayer who requested it. Private letter rulings do, however, provide insight into IRS thinking on the subjects addressed in the ruling.

- **Can a corporate foundation pay the corporation for the use of its office space?**

A corporation may provide the use of a building or office space to a foundation only if the corporation does not charge the foundation. When the corporation is a tenant and leases its offices from a third party landlord, it presents an opportunity for the foundation to pay its own way. The foundation could enter into a direct lease with the landlord for its allocable share of the space. However, the foundation cannot simply reimburse the corporation for its allocable share of the space without violating the self-dealing rules.

- **Can a corporate foundation reimburse the corporation for janitorial, general maintenance and custodial services?**

The U.S. Tax Court characterized the legislative intent of the self-dealing rules and regulations as limited to those personal services that are “essentially professional and managerial in nature,” ruling that janitorial, general maintenance and custodial services are not personal services within the exception to the self-dealing rules. Thus, the foundation may not reimburse the corporation for these types of services.

- **Can a corporate foundation reimburse a corporation whose employees provide secretarial or clerical services to the foundation?**

The principal thrust of the Regulations, Tax Court interpretation and private letter rulings leads most practitioners to conclude that secretarial or clerical services would not fall within the exception as being “professional and managerial in nature.” However, we are aware of a contrary private letter ruling from 1979 holding secretarial and clerical services to be personal services which may be reimbursed by the corporate foundation. Again, a private letter ruling does not establish binding precedent and may only be relied upon by the taxpayer who requested it. Reimbursing for these services would carry some element of risk that the corporation would be subject to charges of self dealing. The attached sample administrative services agreement does not provide for the reimbursement of those services.

- **Can a corporate foundation reimburse a corporation for certain administrative expenses such as office supplies, postage, telephone, copying and printing, and overhead costs such as depreciation of furniture, fixtures, equipment and computers?**

If a corporation provides such items to a private foundation, then it must do so without charge to the foundation. Therefore, a foundation may not pay or reimburse a corporation for such expenses. However, the foundation certainly has the option of paying expenses directly to the provider. For example, many corporate foundations purchase supplies directly, maintain separate phone and fax lines, and own or lease copiers, etc.

- **Is there a preferred method of protecting against an inadvertent violation of the self-dealing rules?**

The IRS rules and regulations set forth the position of the IRS on transactions between a private foundation and a disqualified person, but the rules are confusing! We recommend that the foundation and corporation enter into an administrative services agreement that

outlines in writing what services (only those permitted under IRS authority) are reimbursed at cost, whether office facilities will be provided by the corporation (without charge) and describes the ancillary benefits (i.e. phone, copying, postage, etc.) that are either provided without charge or will be contracted and paid directly by the foundation. A sample administrative services agreement is attached.