

§ 53.4941(e)-1

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the property is subject to any lease to disqualified persons; and

(iii) At the time with respect to which paragraph (f)(2)(i) of this section is applied, the transaction would not have constituted a prohibited transaction within the meaning of section 503(b) or the corresponding provisions of prior law if those provisions had been applied at the time of the transaction.

[T.D. 7270, 38 FR 9493, Apr. 17, 1973, as amended by T.D. 7678, 45 FR 12416, Feb. 26, 1980]

§ 53.4941(e)-1 Definitions.

(a) *Taxable period*—(1) *In general.* For purposes of any act of self-dealing, the term “taxable period” means the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4941(a)(1),

(ii) The date on which correction of the act of self-dealing is completed, or

(iii) The date on which the tax imposed by section 4941(a)(1) is assessed.

(2) *Date of occurrence.* An act of self-dealing occurs on the date on which all the terms and conditions of the transaction and the liabilities of the parties have been fixed. Thus, for example, if a private foundation gives a disqualified person a binding option on June 15, 1971, to purchase property owned by the foundation at any time before June 15, 1972, the act of self-dealing has occurred on June 15, 1971. Similarly, in the case of a conditional sales contract, the act of self-dealing shall be considered as occurring on the date the property is transferred subject only to the condition that the buyer make payment for receipt of such property.

(3) *Special rule.* Where a notice of deficiency referred to in subparagraph (1)(i) of this paragraph is not mailed because a waiver of the restrictions on assessment and collection of a deficiency has been accepted, or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the taxable period.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. On July 16, 1970, F, a manager of private foundation X acting on behalf of the foundation, knowing his act to be one of self-dealing, willfully and without reasonable cause engaged in an act of self-dealing by selling certain real estate to A, a disqualified person. On March 25, 1973, the Internal Revenue Service mailed a notice of deficiency to A with respect to the tax imposed on the sale under section 4941(a)(1). The taxable period with respect to the act of self-dealing for both A and F is July 16, 1970, through March 25, 1973.

Example 2. Assume the facts as stated in example (1), except that the act of self-dealing is corrected by A on March 17, 1971. The taxable period with respect to the act of self-dealing for both A and F is July 16, 1970, through March 17, 1971.

Example 3. Assume the facts as stated in example (1), except that on August 20, 1972, A files a waiver of the restrictions on assessment and collection of the tax imposed on the sale under section 4941(a)(1) which is accepted. The taxable period with respect to the act of self-dealing for both A and F is July 16, 1970, through August 20, 1972.

(b) *Amount involved*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, for purposes of any act of self-dealing, the term “amount involved” means the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received.

(2) *Exceptions.* (i) In the case of the payment of compensation for personal services to persons other than Government officials, the amount involved shall be only the excess compensation paid by the private foundation.

(ii) Where the use of money or other property is involved, the amount involved shall be the greater of the amount paid for such use or the fair market value of such use for the period for which the money or other property is used. Thus, for example, in the case of a lease of a building by a private foundation to a disqualified person, the amount involved is the greater of the amount of rent received by the private foundation from the disqualified person or the fair rental value of the building for the period such building is used by the disqualified person.

(iii) In cases in which a transaction would not have been an act of self-dealing had the private foundation received fair market value, the amount involved

is the excess of the fair market value of the property transferred by the private foundation over the amount which the private foundation receives, but only if the parties have made a good faith effort to determine fair market value. For purposes of this subdivision a good faith effort to determine fair market value shall ordinarily have been made where:

(a) The person making the valuation is not a disqualified person with respect to the foundation and is both competent to make the valuation and not in a position, whether by stock ownership or otherwise, to derive an economic benefit from the value utilized, and

(b) The method utilized in making the valuation is a generally accepted method for valuing comparable property, stock, or securities for purposes of arm's-length business transactions where valuation is a significant factor.

See section 4941(d)(2)(F) and §§ 53.4941(d)-1(b)(3), 53.4941(d)-3 (d)(1) and 53.4941(d)-4(b). Thus, for example, if a corporation which is a disqualified person with respect to a private foundation recapitalizes in a transaction which would be described in section 4941(d)(2)(F) but for the fact that the private foundation receives new stock worth only \$95,000 in exchange for the stock which it previously held in the corporation and which has a fair market value of \$100,000 at the time of the recapitalization, the amount involved would be \$5,000 (\$100,000—\$95,000) if there had been a good faith attempt to value the stock. Similarly, if an estate enters into a transaction with a disqualified person with respect to a foundation and such transaction would be described in § 53.4941(d)-1(b)(3) but for the fact that the estate receives less than fair market value for the property exchanged, the amount involved is the excess of the fair market value of the property the estate transfers to the disqualified person over the money and the fair market value of the property received by the estate.

(3) *Time for determining fair market value.* The fair market value of the property or the use thereof, as the case may be, shall be determined as of the date on which the act of self-dealing occurred in the case of the initial taxes

imposed by section 4941(a) and shall be the highest fair market value during the taxable period in the case of the additional taxes imposed by section 4941(b).

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. A, a disqualified person with respect to private foundation M, uses an airplane owned by M on June 15 and June 16, 1970, for a 2-day trip to New York City on personal business and pays M \$500 for the use of such airplane. The fair rental value for the use of the airplane for those 2 days is \$3,000. For purposes of section 4941(a), the amount involved with respect to the act of self-dealing is \$3,000.

Example 2. On April 10, 1970, B, a manager of private foundation P, borrows \$100,000 from P at 6 percent interest per annum. Both principal and interest are to be paid 1 year from the date of the loan. The fair market value of the use of the money on April 10, 1970, is 10 percent per annum. Six months later, B and P terminate the loan, and B repays the \$100,000 principal plus \$3,000 (\$100,000×6 percent for one-half year) interest. For purposes of section 4941(a), the amount involved with respect to the act of self-dealing is \$5,000 (\$100,000×10 percent for one-half year) for each year or partial year in the taxable period.

Example 3. C, a substantial contributor to private foundation S, leases office space in a building owned by S for \$3,600 for 1 year beginning on January 1, 1971. The fair rental value of the building for a 1-year lease on January 1, 1971, is \$5,600. On December 31, 1971, the lease is terminated. For purposes of section 4941(a), the amount involved with respect to the act of self-dealing is \$5,600 for each year or partial year in the taxable period.

Example 4. D, a disqualified person with respect to private foundation T, purchases 100 shares of stock from T for \$5,000 on June 15, 1982. The fair market value of the 100 shares of stock on that date is \$4,800. D sells the 100 shares of stock on December 20, 1983, for \$6,000. On December 27, 1983, a notice of deficiency with respect to the taxes imposed under subsections (a) and (b) of section 4941 is mailed to D and the taxable period ends. D fails to correct during the taxable period. Between June 15, 1982, and the end of the taxable period, the stock was quoted on the New York Stock Exchange at a high of \$67 per share. The amount involved with respect to the tax imposed under subsection (a) is \$5,000, and the amount involved with respect to the tax imposed under subsection (b) for failure to correct is \$6,700 (100 shares at \$67 per share), the highest fair market value during the taxable period.

Example 5. Corporation M, a disqualified person with respect to private foundation V, redeems all of its Class B common stock, some of which is held by V. The redemption of V's stock would be described in section 4941(d)(2)(F) but for the fact that V receives only \$95,000 in exchange for stock which has a fair market value of \$100,000 at the time of the transaction. The \$95,000 value of V's stock, which is not publicly traded, was determined by investment bankers in accordance with accepted methods of valuation that would be utilized if the M stock held by V were to be offered for sale to the public. Therefore, the amount involved with respect to the transaction will ordinarily be limited to \$5,000 (\$100,000—\$95,000).

(c) *Correction*—(1) *In general.* Correction shall be accomplished by undoing the transaction which constituted the act of self-dealing to the extent possible, but in no case shall the resulting financial position of the private foundation be worse than that which it would be if the disqualified person were dealing under the highest fiduciary standards. For example, where a disqualified person sells property to a private foundation for cash, correction may be accomplished by recasting the transaction in the form of a gift by returning the cash to the foundation. Subparagraphs (2) through (6) of this paragraph illustrate the minimum standards of correction in the case of certain specific acts of self-dealing. Principles similar to the principles contained in such subparagraphs shall be applied with respect to other acts of self-dealing. Any correction pursuant to this paragraph and section 4941 shall not be an act of self-dealing.

(2) *Sales by foundation.* (i) In the case of a sale of property by a private foundation to a disqualified person for cash, undoing the transaction includes, but is not limited to, requiring rescission of the sale where possible. However, in order to avoid placing the foundation in a position worse than that in which it would be if rescission were not required, the amount returned to the disqualified person pursuant to the rescission shall not exceed the lesser of the cash received by the private foundation or the fair market value of the property received by the disqualified person. For purposes of the preceding sentence, fair market value shall be the lesser of the fair market value at the time of the act of self-dealing or the

fair market value at the time of rescission. In addition to rescission, the disqualified person is required to pay over to the private foundation any net profits he realized after the original sale with respect to the property he received from the sale. Thus, for example, the disqualified person must pay over to the foundation any income derived by him from the property he received from the original sale to the extent such income during the correction period exceeds the income derived by the foundation during the correction period from the cash which the disqualified person originally paid to the foundation.

(ii) If, prior to the end of the correction period, the disqualified person resells the property in an arm's-length transaction to a bona fide purchaser who is not the foundation or another disqualified person, no rescission is required. In such case, the disqualified person must pay over to the foundation the excess (if any) of the greater of the fair market value of such property on the date on which correction of the act of self-dealing occurs or the amount realized by the disqualified person from such arm's length resale over the amount which would have been returned to the disqualified person pursuant to subdivision (i) of this subparagraph if rescission had been required. In addition, the disqualified person is required to pay over to the foundation any net profits he realized, as described in subdivision (i) of this subparagraph.

(iii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example 1. On July 1, 1970, private foundation M sold a painting to A, a disqualified person, for \$5,000, in a transaction not within any of the exceptions to self-dealing. The fair market value of the painting on such date was \$6,000. On March 25, 1971, the painting is still owned by A and has a fair market value of \$7,200. A did not derive any income as a result of purchasing the painting. In order to correct the act of self-dealing under this subparagraph on March 25, 1971, the sale must be rescinded by the return of the painting to M. However, pursuant to such rescission, M must not pay A more than \$5,000, the original consideration received by M.

Example 2. Assume the facts as stated in Example (1), except that A sold the painting on December 15, 1970, in an arm's-length transaction to C, a bona fide purchaser who

is not a disqualified person, for \$6,100. In addition, assume that the fair market value of the painting on March 25, 1971, is \$7,600. In order to correct the act of self-dealing under this subparagraph on March 25, 1971, A must pay M \$2,600 (\$7,600, the fair market value at the time of correction, less \$5,000, the amount which would have been returned to A if rescission had been required). Since the painting was sold to C in an arm's-length transaction prior to correction, no rescission is required.

(3) *Sales to foundation.* (i) In the case of a sale of property to a private foundation by a disqualified person for cash, undoing the transaction includes, but is not limited to, requiring rescission of the sale where possible. However, in order to avoid placing the foundation in a position worse than that in which it would be if rescission were not required, the amount received from the disqualified person pursuant to the rescission shall be the greatest of the cash paid to the disqualified person, the fair market value of the property at the time of the original sale, or the fair market value of the property at the time of rescission. In addition to rescission, the disqualified person is required to pay over to the private foundation any net profits he realized after the original sale with respect to the consideration he received from the sale. Thus, for example, the disqualified person must pay over to the foundation any income derived by him from the cash he received from the original sale to the extent such income during the correction period exceeds the income derived by the foundation during the correction period from the property which the disqualified person originally transferred to the foundation.

(ii) If, prior to the end of the correction period, the foundation resells the property in an arm's-length transaction to a bona fide purchaser who is not a disqualified person, no rescission is required. In such case, the disqualified person must pay over to the foundation the excess (if any) of the amount which would have been received from the disqualified person pursuant to subdivision (i) of this subparagraph, if rescission had been required over the amount realized by the foundation upon resale of the property. In addition, the disqualified person is required to pay over to the foundation

any net profits he realized, as described in subdivision (i) of this subparagraph.

(iii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example 1. On February 10, 1972, D, a disqualified person with respect to private foundation P, sells 100 shares of X stock to P for \$2,500 in a transaction which does not fall within any of the exceptions to self-dealing. The fair market value of the 100 shares of X stock on February 10, 1972, is \$3,200. On June 1, 1973, the 100 shares of X stock have a fair market value of \$2,900. From February 10, 1972, through June 1, 1973, P has received dividends of \$90 from the stock, and D has received interest of \$300 from the \$2,500 which D received as consideration for the stock. In order to correct the act of self-dealing under this subparagraph on June 1, 1973, the sale must be rescinded by the return of the stock to D. However, pursuant to such rescission, D must pay P \$3,200, the fair market value of the stock on the date of sale. In addition, D must pay P \$210, the amount of income derived by D during the correction period from the \$2,500 received from P (\$300) minus the income derived by P during the correction period from the stock sold to P (\$90).

Example 2. Assume the facts as stated in Example (1), except that on September 1, 1972, P sells the 100 shares of X stock to E, a bona fide purchaser who is not a disqualified person, in an arm's-length transaction for \$2,750. Assume further that P has not received any dividends from the stock prior to the sale to E, but that P receives interest of \$260 from the \$2,750 received as consideration for the stock for the period from September 1, 1972, to June 1, 1973. In order to correct the act of self-dealing under this subparagraph on June 1, 1973, D must pay P \$450 (\$3,200, the amount which would have been received from D if rescission had been required, less \$2,750, the amount realized by P from the sale to E). In addition, D must pay P \$40, the amount of income derived by D during the correction period from the \$2,500 received from P (\$300) minus the income derived by P during the correction period from the stock sold to P (\$260 from the \$2,750 received as consideration for the stock). Since the stock was sold to E in an arm's-length transaction prior to correction, no rescission is required.

(4) *Use of property by a disqualified person.* (i) In the case of the use by a disqualified person of property owned by a private foundation, undoing the transaction includes, but is not limited to, terminating the use of such property. In addition to termination, the disqualified person must pay the foundation:

(a) The excess (if any) of the fair market value of the use of the property over the amount paid by the disqualified person for such use until such termination, and

(b) The excess (if any) of the amount which would have been paid by the disqualified person for the use of the property on or after the date of such termination, for the period such disqualified person would have used the property (without regard to any further extensions or renewals of such period) if such termination had not occurred, over the fair market value of such use for such period.

In applying (a) of this subdivision the fair market value of the use of property shall be the higher of the rate (that is, fair rental value per period in the case of use of property other than money or fair interest rate in the case of use of money) at the time of the act of self-dealing (within the meaning of paragraph (e)(1) of this section) or such rate at the time of correction of such act of self-dealing. In applying (b) of this subdivision the fair market value of the use of property shall be the rate at the time of correction.

(ii) The provisions of this subparagraph may be illustrated by the following examples:

Example 1. On January 1, 1972, private foundation S rented the third story of its office building to A, a disqualified person, for 1 year at an annual rent of \$10,000, in a transaction not within any of the exceptions to self-dealing. Both S and A are on the calendar year basis. The fair rental value of such office space for a 1-year period on January 1, 1972, is \$12,000. On June 30, 1972, the fair rental value of such office space for a 1-year period is \$13,000. In order to correct the act of self-dealing under this subparagraph on June 30, 1972, A must terminate his use of the property. In addition, A must pay S \$1,500, the excess of \$6,500 (the fair rental value for 6 months as of June 30, 1972) over \$5,000 (the amount paid to S from Jan. 1, 1972, to June 30, 1972).

Example 2. On January 1, 1972, private foundation R rented the fourth story of its office building to B, a disqualified person, for 1 year at an annual rent of \$10,000, in a transaction not included in any of the exceptions to self-dealing. Both R and B are on the calendar year basis. On January 1, 1973, B continues to rent the office space as a periodic tenant paying his rent monthly at an annual rate of \$10,000. The fair rental value of such office space for a 1-year period on January 1,

1972, is \$12,000, and as of January 1, 1973, is \$1,250 per month. As of December 31, 1973, the fair rental value of such office space is \$14,000 for a 1-year period and \$1,200 on a monthly basis. In order to correct his acts of self-dealing (within the meaning of paragraph (e)(1) of this section) under this subparagraph on December 31, 1973, B must terminate his use of the property. In addition, B must pay R \$9,000, \$4,000 for his use of the property for 1972 (the excess of \$14,000, the fair rental value for 1 year as of Dec. 31, 1973, over \$10,000, the amount B paid R for his use of the property for 1972) and \$5,000 for his use of the property for 1973 (the excess of \$15,000, the fair rental value for 12 months as of Jan. 1, 1973, over \$10,000, the amount B paid R for his use of the property for 1973).

Example 3. B, a substantial contributor to private foundation T, leases office space in a building owned by T for \$5,000 for 1 year beginning on November 10, 1972, in a transaction not included in any of the exceptions to self-dealing. The fair rental value of the building for a 1-year period on November 10, 1972, is \$4,000. On May 10, 1973, the fair rental value of the building for the remaining period of the lease is \$2,200. In order to correct the acts of self-dealing under this subparagraph on May 10, 1973, B and T must terminate the lease. In addition, B must pay T \$300 (the excess of \$2,500, the amount which would have been paid by B for the remaining period of the lease if it had not been terminated, over \$2,200, the fair rental value at the time of correction for the remaining period of the lease).

(5) *Use of property by a private foundation.* (i) In the case of the use by a private foundation of property owned by a disqualified person, undoing the transaction includes, but is not limited to, terminating the use of such property. In addition to termination, the disqualified person must pay the foundation:

(a) The excess (if any) of the amount paid to the disqualified person for such use until such termination over the fair market value of the use of the property, and

(b) The excess (if any) of the fair market value of the use of the property, for the period the foundation would have used the property (without regard to any further extensions or renewals of such period) if such termination had not occurred, over the amount which would have been paid to the disqualified person on or after the date of such termination for such use for such period.

In applying (a) of this subdivision the fair market value of the use of property shall be the lesser of the rate (that is, fair rental value per period in the case of use of property other than money or fair interest rate in the case of use of money) at the time of the act of self-dealing (within the meaning of paragraph (e)(1) of this section) or such rate at the time of correction of such act of self-dealing. In applying (b) of this subdivision the fair market value of the use of property shall be the rate at the time of correction.

(ii) The provisions of this subparagraph may be illustrated by the following examples:

Example 1. On July 1, 1972, private foundation X leases office space in a building owned by C, a disqualified person, for 1 year at an annual rent of \$6,000. Both X and C are on the calendar year basis. The fair rental value of such office space for a 1-year period as of July 1, 1972, is \$4,200. As of January 1, 1973, the fair rental value of such office space for a 1-year period is \$5,400, and as of June 30, 1973, the fair rental value of such office space for a 1-year period is \$4,800. In order to correct his acts of self-dealing (within the meaning of paragraph (e)(1) of this section) under this subparagraph on June 30, 1973, C must terminate X's use of the property. In addition, C must pay X \$1,500, \$900 (the excess of \$3,000, the amount paid to C from July 1, 1972, through December 31, 1972, over \$2,100, the fair rental value for 6 months as of July 1, 1972) plus \$600 (the excess of \$3,000, the amount paid to C from January 1, 1973, through June 30, 1973, over \$2,400, the fair rental value for 6 months as of June 30, 1973).

Example 2. On April 1, 1973, D, a disqualified person with respect to private foundation Y, loans \$100,000 to Y at 6 percent interest per annum. Both principal and interest are to be paid on April 1, 1978. The fair market value of the use of the money on April 1, 1973, is 9 percent per annum. On April 1, 1974, D and Y terminate the loan. On such date, the fair market value of the use of \$100,000 is 10 percent per annum. In order to correct the act of self-dealing on April 1, 1974, in addition to the termination of the loan from D to Y, D must pay Y \$16,000, the excess of \$40,000 ($\$100,000 \times 10$ percent, the fair market value of the use determined at the time of correction, from April 1, 1974, to April 1, 1978) over \$24,000 (the amount of interest Y would have paid to D from April 1, 1974, to April 1, 1978, if the loan from D to Y had not been terminated).

(6) *Payment of compensation to a disqualified person.* In the case of the payment of compensation by a private

foundation to a disqualified person for the performance of personal services which are reasonable and necessary to carry out the exempt purpose of such foundation, undoing the transaction requires that the disqualified person pay to the foundation any amount which is excessive. However, termination of the employment or independent contractor relationship is not required.

(7) *Special rule for correction of valuation errors.* (i) In the case of a transaction described in paragraph (b)(2)(iii) of this section, a "correction" of the act of self-dealing shall ordinarily be deemed to occur if the foundation is paid an amount of money equal to the amount involved (as defined in paragraph (b)(2)(iii) of this section) plus such additional amounts as are necessary to compensate it for the loss of the use of the money or other property during the period commencing on the date of the act of self-dealing and ending on the date the transaction is corrected pursuant to this subparagraph.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example. Assume the same facts as in example (5) of paragraph (b)(4) of this section. Such transaction shall be considered as corrected by a payment of \$5,000 by M to V, together with an additional payment to V of an amount equal to the interest which V could have obtained on \$5,000 for the period commencing on the date of the redemption and ending on the date the act is corrected.

(d) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963 (e), see section 4961 (a), and the regulations thereunder.

(e) *Act of self-dealing—(1) Number of acts; use of money or property—(i) In general.* If a transaction between a private foundation and a disqualified person is determined to be self-dealing (as defined in section 4941(d)), for purposes of section 4941 there is generally one act of self-dealing. For the date on which such act is treated as occurring, see paragraph (a)(2) of this section. If, however, such transaction relates to the leasing of property, the lending of money or other extension of credit, other use of money or property, or payment of compensation, the transaction will generally be treated (for purposes

of section 4941 but not section 507 or section 6684) as giving rise to an act of self-dealing on the day the transaction occurs plus an act of self-dealing on the first day of each taxable year or portion of a taxable year which is within the taxable period and which begins after the taxable year in which the transaction occurs.

(ii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example 1. On August 31, 1970, X, a private foundation, sells a building to A, a disqualified person with respect to X. A is on the calendar year basis. Under these circumstances, the transaction between A and X is one act of self-dealing which is treated for purposes of section 4941 as occurring on August 31, 1970.

Example 2. Assume the facts as stated in example (1), except that, instead of selling the building to A, X leases the building to A for a term of 4 years beginning July 31, 1970, at an annual rental of \$12,000. The fair rental value of the building is also \$12,000 per annum as of July 31, 1970, and throughout the next 4 years. This transaction is corrected on September 30, 1973, in accordance with paragraph (c)(4) of this section. Under these circumstances, the transaction between A and X constitutes four separate acts of self-dealing, which are treated for purposes of section 4941 as occurring on July 31, 1970, January 1, 1971, January 1, 1972, and January 1, 1973. Consequently, there are four taxable periods. The first taxable period is from July 31, 1970, to September 30, 1973; the second is from January 1, 1971, to September 30, 1973; the third is from January 1, 1972, to September 30, 1973; and the fourth is from January 1, 1973, to September 30, 1973. For purposes of the initial taxes in section 4941(a), the amount involved is \$5,000 for the first taxable period, \$12,000 for the second, \$12,000 for the third, and \$9,000 for the fourth. The initial taxes to be paid by A are thus \$1,000 ($\$5,000 \times 5\% \times 4$ taxable years or partial taxable years in the taxable period) for the first act; \$1,800 ($\$12,000 \times 5\% \times 3$) for the second act; \$1,200 ($\$12,000 \times 5\% \times 2$) for the third act; and \$450 ($\$9,000 \times 5\% \times 1$) for the fourth act.

Example 3. Assume the facts as stated in example (1) of § 53.4941(d)-4(c)(4)(ii). If the debentures are held by Y after December 31, 1979, the extension of credit will not be excepted from the definition of an act of self-dealing, because an act of self-dealing will be treated (for purposes of section 4941) as occurring on January 1, 1980.

(2) *Number of acts; joint participation by disqualified persons—(i) In general.* If joint participation in a transaction by two or more disqualified persons con-

stitutes self-dealing (such as a joint sale of property to a private foundation or joint use of its money or property), such transaction shall generally be treated as a separate act of self-dealing with respect to each disqualified person for purposes of section 4941. For purposes of section 507 and, in the case of a foundation manager, section 6684, however, such transaction shall be treated as only one act of self-dealing. For purposes of this subparagraph, an individual and one or more members of his family (within the meaning of section 4946(d)) shall be treated as one person, regardless of whether a member of the family is a disqualified person not only by reason of section 4946(a)(1)(D) but also by reason of another subparagraph of section 4946(a)(1). However, the liability imposed on a disqualified person and one or more members of his family for joint participation in an act of self-dealing shall be joint and several in accordance with section 4941(c)(1) and § 53.4941(c)-1(a).

(ii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example 1. Private foundation X permits A, a substantial contributor to X, and her spouse, H, to use an automobile owned by X and normally used in its foundation activities to travel from State Z to State Y for a vacation on December 1, 1971. The automobile is then returned to X until December 21, 1971, when X again permits them to use the automobile to return to their home in State Z. Under these circumstances, there is one act of self-dealing on December 1, 1971, and a second act of self-dealing on December 21, 1971.

Example 2. Assume the facts as stated in example (1), except that B joined A and H on their vacation and traveled with them both to and from State Y. B is a disqualified person with respect to X, but he is not related by blood or marriage to A or H. Assume also that X is not paid for the use of its automobile, but that the fair rental value during the taxable period is \$300 (or \$100 per person) for a one-way trip between State Y and State Z. Under these circumstances, there are four acts of self-dealing, two with respect to A and H and two with respect to B. The amount involved with respect to A and H is \$200 for each act, and the amount involved with respect to B is \$100 for each act.

(f) *Fair market value.* For purposes of §§ 53.4941(a)-1 through 53.4941 (f)-1, fair

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market value shall be determined pursuant to the provisions of § 53.4942(a)-2 (c)(4).

[T.D. 7270, 38 FR 9493, Apr. 17, 1973, as amended by T.D. 8084, 51 FR 16301, May 2, 1986]

§ 53.4941(f)-1 Effective dates.

(a) *In general.* Except as provided in paragraph (b) of this section, §§ 53.4941(a)-1 through 53.4941(e)-1 shall apply to all acts of self-dealing engaged in after December 31, 1969.

(b) *Transitional rules—(1) Commitments made prior to January 1, 1970, between private foundations and government officials.* Section 4941 shall not apply to a payment for one or more purposes described in section 170(c) (1) or (2)(B) made on or after January 1, 1970, by a private foundation to a government official, if such payment is made pursuant to a commitment entered into prior to such date, but only if such commitment was made in accordance with the foundation's usual practices and is reasonable in amount in light of the purposes of the payment. For purposes of this subparagraph, a commitment will be considered entered into prior to January 1, 1970, if prior to such date, the amount and nature of the payments to be made and the name of the payee were entered on the records of the payor, or were otherwise adequately evidenced, or the notice of the payment to be received was communicated to the payee in writing.

(2) *Special transitional rule.* In the case of an act of self-dealing engaged in prior to July 5, 1971, section 4941(a) (1) shall not apply if:

(i) The participation (as defined in § 53.4941(a)-1(a)(3)) by the disqualified person in such act is not willful and is due to reasonable cause (as defined in § 53.4941(a)-1(b) (4) and (5)),

(ii) The transaction would not be a prohibited transaction if section 503(b) applied, and

(iii) The act is corrected (within the meaning of § 53.4941(e)-1(c)) within a period ending [insert 90 days after date on which final regulations under section 4941 are filed by the Federal Register], extended (prior to the expiration of the original period) by any period which the Commissioner determines is reasonable and necessary (within the meaning of § 53.4941(e)-1(d)) to bring

about correction of the act of self-dealing.

Subpart C—Taxes on Failure To Distribute Income

SOURCE: T.D. 7249, 38 FR 768, Jan. 4, 1973, unless otherwise noted.

§ 53.4942(a)-1 Taxes for failure to distribute income.

(a) *Imposition of tax—(1) Initial tax.* Except as provided in paragraph (b) of this section, section 4942(a) imposes an excise tax of 15 percent on the undistributed income (as defined in paragraph (a) of § 53.4942(a)-2) of a private foundation for any taxable year which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period as defined in paragraph (c)(1) of this section). For purposes of section 4942 and this section, the term *distributed* means distributed as qualifying distributions under section 4942(g). See paragraph (d)(2) of § 53.4942(a)-3 with respect to correction of deficient distributions for prior taxable years.

(2) *Additional tax.* In any case in which an initial excise tax is imposed by section 4942(a) on the undistributed income of a private foundation for any taxable year, section 4942(b) imposes an additional excise tax on any portion of such income remaining undistributed at the close of the correction period (as defined in paragraph (c)(1) of this section). The tax imposed by section 4942(b) is equal to 100 percent of the amount remaining undistributed at the close of the taxable period.

(3) *Payment of tax.* Payment of the excise taxes imposed by section 4942 (a) or (b) is in addition to, and not in lieu of, making the distribution of such undistributed income as required by section 4942. See section 507(a)(2) and the regulations thereunder.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. M, a private foundation which uses the calendar year as its taxable year, has at the end of 1981, \$50,000 of undistributed income (as defined in paragraph (a) of § 53.4942 (a)-2) for 1981. As of January 1, 1983,