

## § 53.4958-0

political expenditures by reason of section 4955(d)(2)(E), only if the expenditures violate the prohibition on political activity provided in section 501(c)(3).

(d) *Abatement, refund, or no assessment of initial tax.* No initial (first-tier) tax will be imposed under section 4955(a), or the initial tax will be abated or refunded, if the organization or an organization manager establishes to the satisfaction of the IRS that—

(1) The political expenditure was not willful and flagrant; and

(2) The political expenditure was corrected.

(e) *Correction—(1) Recovery of expenditure.* For purposes of section 4955(f)(3) and this section, correction of a political expenditure is accomplished by recovering part or all of the expenditure to the extent recovery is possible, and, where full recovery cannot be accomplished, by any additional corrective action which the Commissioner may prescribe. The organization making the political expenditure is not under any obligation to attempt to recover the expenditure by legal action if the action would in all probability not result in the satisfaction of execution on a judgment.

(2) *Establishing safeguards.* Correction of a political expenditure must also involve the establishment of sufficient safeguards to prevent future political expenditures by the organization. The determination of whether safeguards are sufficient to prevent future political expenditures by the organization is made by the District Director.

(f) *Effective date.* This section is effective December 5, 1995.

[T.D. 8628, 60 FR 62210, Dec. 5, 1995]

## § 53.4958-0 Table of contents.

This section lists the major captions contained in §§ 53.4958-1 through 53.4958-8.

### § 53.4958-1 Taxes on excess benefit transactions

- (a) In general.
- (b) Excess benefit defined.
- (c) Taxes paid by disqualified person.
- (1) Initial tax.
- (2) Additional tax on disqualified person.
  - (i) In general.
  - (ii) Taxable period.
  - (iii) Abatement if correction during the correction period.

## 26 CFR Ch. I (4-1-14 Edition)

- (d) Tax paid by organization managers.
  - (1) In general.
  - (2) Organization manager defined.
  - (i) In general.
  - (ii) Special rule for certain committee members.
- (3) Participation.
- (4) Knowing.
- (i) In general.
- (ii) Amplification of general rule.
- (iii) Reliance on professional advice.
- (iv) Satisfaction of rebuttable presumption of reasonableness.
- (5) Willful.
- (6) Due to reasonable cause.
- (7) Limits on liability for management.
- (8) Joint and several liability.
- (9) Burden of proof.
- (e) Date of occurrence.
  - (1) In general.
  - (2) Special rules.
- (3) Statute of limitations rules.
- (f) Effective date for imposition of taxes.
  - (1) In general.
  - (2) Existing binding contracts.

### § 53.4958-2 Definition of applicable tax-exempt organization

- (a) Organizations described in section 501(c)(3) or (4) and exempt from tax under section 501(a).
  - (1) In general.
  - (2) Exceptions from definition of applicable tax-exempt organization.
    - (i) Private foundation.
    - (ii) Governmental unit or affiliate.
  - (3) Organizations described in section 501(c)(3).
  - (4) Organizations described in section 501(c)(4).
  - (5) Effect of non-recognition or revocation of exempt status.
- (b) Special rules.
  - (1) Transition rule for lookback period.
  - (2) Certain foreign organizations.

### § 53.4958-3 Definition of disqualified person

- (a) In general.
  - (1) Scope of definition.
  - (2) Transition rule for lookback period.
- (b) Statutory categories of disqualified persons.
  - (1) Family members.
  - (2) Thirty-five percent controlled entities.
    - (i) In general.
    - (ii) Combined voting power.
    - (iii) Constructive ownership rules.
      - (A) Stockholdings.
      - (B) Profits or beneficial interest.
      - (c) Persons having substantial influence.
        - (1) Voting members of the governing body.
        - (2) Presidents, chief executive officers, or chief operating officers.
        - (3) Treasurers and chief financial officers.
        - (4) Persons with a material financial interest in a provider-sponsored organization.

**Internal Revenue Service, Treasury****§ 53.4958-0**

- (d) Persons deemed not to have substantial influence.
- (1) Tax-exempt organizations described in section 501(c)(3).
- (2) Certain section 501(c)(4) organizations.
- (3) Employees receiving economic benefits of less than a specified amount in a taxable year.
- (e) Facts and circumstances govern in all other cases.
  - (1) In general.
  - (2) Facts and circumstances tending to show substantial influence.
  - (3) Facts and circumstances tending to show no substantial influence.
- (f) Affiliated organizations.
- (g) Examples.

**§ 53.4958-4 Excess benefit transaction**

- (a) Definition of excess benefit transaction.
  - (1) In general.
  - (2) Economic benefit provided indirectly.
  - (i) In general.
  - (ii) Through a controlled entity.
    - (A) In general.
    - (B) Definition of control.
      - (1) In general.
      - (2) Constructive ownership.
      - (iii) Through an intermediary.
      - (iv) Examples.
    - (3) Exception for fixed payments made pursuant to an initial contract.
      - (i) In general.
      - (ii) Fixed payment.
      - (A) In general.
      - (B) Special rules.
      - (iii) Initial contract.
      - (iv) Substantial performance required.
      - (v) Treatment as a new contract.
      - (vi) Evaluation of non-fixed payments.
      - (vii) Examples.
    - (4) Certain economic benefits disregarded for purposes of section 4958.
      - (i) Nontaxable fringe benefits.
      - (ii) Expense reimbursement payments pursuant to accountable plans.
      - (iii) Certain economic benefits provided to a volunteer for the organization.
      - (iv) Certain economic benefits provided to a member of, or donor to, the organization.
      - (v) Economic benefits provided to a charitable beneficiary.
      - (vi) Certain economic benefits provided to a governmental unit.
    - (5) Exception for certain payments made pursuant to an exemption granted by the Department of Labor under ERISA.
      - (b) Valuation standards.
        - (1) In general.
        - (i) Fair market value of property.
        - (ii) Reasonable compensation.
      - (A) In general.
      - (B) Items included in determining the value of compensation for purposes of determining reasonableness under section 4958.

- (C) Inclusion in compensation for reasonableness determination does not govern income tax treatment.
- (2) Timing of reasonableness determination.
  - (i) In general.
  - (ii) Treatment as a new contract.
  - (iii) Examples.
- (c) Establishing intent to treat economic benefit as consideration for the performance of services.
  - (1) In general.
  - (2) Nontaxable benefits.
  - (3) Contemporaneous substantiation.
  - (i) Reporting of benefit.
    - (A) In general.
    - (B) Failure to report due to reasonable cause.
    - (ii) Other written contemporaneous evidence.
  - (4) Examples.

**§ 53.4958-5 Transaction in which the amount of the economic benefit is determined in whole or in part by the revenues of one or more activities of the organization. [Reserved]**

- § 53.4958-6 Rebuttable presumption that a transaction is not an excess benefit transaction.**
  - (a) In general.
  - (b) Rebutting the presumption.
  - (c) Requirements for invoking rebuttable presumption.
    - (1) Approval by an authorized body.
    - (i) In general.
    - (ii) Individuals not included on authorized body.
    - (iii) Absence of conflict of interest.
    - (2) Appropriate data as to comparability.
    - (i) In general.
    - (ii) Special rule for compensation paid by small organizations.
    - (iii) Application of special rule for small organizations.
    - (iv) Examples.
    - (3) Documentation.
    - (d) No presumption with respect to non-fixed payments until amounts are determined.
      - (1) In general.
      - (2) Special rule for certain non-fixed payments subject to a cap.
      - (e) No inference from absence of presumption.
      - (f) Period of reliance on rebuttable presumption.

**§ 53.4958-7 Correction.**

- (a) In general.
- (b) Form of correction.
  - (1) Cash or cash equivalents.
  - (2) Anti-abuse rule.
  - (3) Special rule relating to nonqualified deferred compensation.
  - (4) Return of specific property.
    - (i) In general.
    - (ii) Payment not equal to correction amount.
    - (iii) Disqualified person may not participate in decision.

**§ 53.4958-1**

- (c) Correction amount.
- (d) Correction where contract has been partially performed.
- (e) Correction in the case of an applicable tax-exempt organization that has ceased to exist, or is no longer tax-exempt.
  - (1) In general.
  - (2) Section 501(c)(3) organizations.
  - (3) Section 501(c)(4) organizations.
- (f) Examples.

**§ 53.4958-8 Special rules.**

- (a) Substantive requirements for exemption still apply.
- (b) Interaction between section 4958 and section 7611 rules for church tax inquiries and examinations.
- (c) Other substantiation requirements.

[T.D. 8978, 67 FR 3083, Jan. 23, 2002]

**§ 53.4958-1 Taxes on excess benefit transactions.**

(a) *In general.* Section 4958 imposes excise taxes on each excess benefit transaction (as defined in section 4958(c) and § 53.4958-4) between an applicable tax-exempt organization (as defined in section 4958(e) and § 53.4958-2) and a disqualified person (as defined in section 4958(f)(1) and § 53.4958-3). A disqualified person who receives an excess benefit from an excess benefit transaction is liable for payment of a section 4958(a)(1) excise tax equal to 25 percent of the excess benefit. If an initial tax is imposed by section 4958(a)(1) on an excess benefit transaction and the transaction is not corrected (as defined in section 4958(f)(6) and § 53.4958-7) within the taxable period (as defined in section 4958(f)(5) and paragraph (c)(2)(ii) of this section), then any disqualified person who received an excess benefit from the excess benefit transaction on which the initial tax was imposed is liable for an additional tax of 200 percent of the excess benefit. An organization manager (as defined in section 4958(f)(2) and paragraph (d) of this section) who participates in an excess benefit transaction, knowing that it was such a transaction, is liable for payment of a section 4958(a)(2) excise tax equal to 10 percent of the excess benefit, unless the participation was not willful and was due to reasonable cause. If an organization manager also receives an excess benefit from an excess benefit transaction, the manager may be liable for both taxes imposed by section 4958(a).

**26 CFR Ch. I (4-1-14 Edition)**

(b) *Excess benefit defined.* An excess benefit is the amount by which the value of the economic benefit provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person exceeds the value of the consideration (including the performance of services) received for providing such benefit.

(c) *Taxes paid by disqualified person—*

(1) *Initial tax.* Section 4958(a)(1) imposes a tax equal to 25 percent of the excess benefit on each excess benefit transaction. The section 4958(a)(1) tax shall be paid by any disqualified person who received an excess benefit from that excess benefit transaction. With respect to any excess benefit transaction, if more than one disqualified person is liable for the tax imposed by section 4958(a)(1), all such persons are jointly and severally liable for that tax.

(2) *Additional tax on disqualified person—*(i) *In general.* Section 4958(b) imposes a tax equal to 200 percent of the excess benefit in any case in which section 4958(a)(1) imposes a 25-percent tax on an excess benefit transaction and the transaction is not corrected (as defined in section 4958(f)(6) and § 53.4958-7) within the taxable period (as defined in section 4958(f)(5) and paragraph (c)(2)(ii) of this section). If a disqualified person makes a payment of less than the full correction amount under the rules of § 53.4958-7, the 200-percent tax is imposed only on the unpaid portion of the correction amount (as described in § 53.4958-7(c)). The tax imposed by section 4958(b) is payable by any disqualified person who received an excess benefit from the excess benefit transaction on which the initial tax was imposed by section 4958(a)(1). With respect to any excess benefit transaction, if more than one disqualified person is liable for the tax imposed by section 4958(b), all such persons are jointly and severally liable for that tax.

(ii) *Taxable period.* *Taxable period* means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earlier of—

(A) The date of mailing a notice of deficiency under section 6212 with respect to the section 4958(a)(1) tax; or