participants in a qualified cost sharing arrangement must use a consistent method of accounting to measure costs and benefits, and must translate foreign currencies on a consistent basis.

(j) *Administrative requirements*—(1) *In general.* The administrative requirements of this paragraph consist of the documentation requirements of paragraph (j)(2) of this section and the reporting requirements of paragraph (j)(3) of this section.

(2) *Documentation.* A controlled participant must maintain sufficient documentation to establish that the requirements of paragraphs (b)(4) and (c)(1) of this section have been met, as well as the additional documentation specified in this paragraph (j)(2), and must provide any such documentation to the Internal Revenue Service within 30 days of a request (unless an extension is granted by the district director). Documents necessary to establish the following must also be maintained—

(i) The total amount of costs incurred pursuant to the arrangement;

(ii) The costs borne by each controlled participant;

(iii) A description of the method used to determine each controlled participant's share of the intangible development costs, including the projections used to estimate benefits, and an explanation of why that method was selected;

(iv) The accounting method used to determine the costs and benefits of the intangible development (including the method used to translate foreign currencies), and, to the extent that the method materially differs from U.S. generally accepted accounting principles, an explanation of such material differences; and

(v) Prior research, if any, undertaken in the intangible development area, any tangible or intangible property made available for use in the arrangement, by each controlled participant, and any information used to establish the value of pre-existing and covered intangibles.

(3) *Reporting requirements.* A controlled participant must attach to its U.S. income tax return a statement indicating that it is a participant in a qualified cost sharing arrangement, and listing the other controlled participants in the arrangement. A controlled participant that is not required to file a U.S. income tax return must ensure that such a statement is attached to Schedule M of any Form 5471 or to any Form 5472 filed with respect to that participant.

(k) *Effective date.* This section is effective for taxable years beginning on or after January 1, 1996.

(l) *Transition rule.* A cost sharing arrangement will be considered a qualified cost sharing arrangement, within the meaning of this section, if, prior to January 1, 1996, the arrangement was a bona fide cost sharing arrangement under the provisions of § 1.482–7T (as contained in the 26 CFR part 1 edition revised as of April 1, 1995), but only if the arrangement is amended, if necessary, to conform with the provisions of this section by December 31, 1996.

§ 1.482–7T [Removed]

Par. 4. Section 1.482–7T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 6. Section 301.7701–3 is amended by adding paragraph (e) to read as follows:

§ 301.7701–3 Partnerships.

* * * * *

(e) *Qualified cost sharing arrangements.* A qualified cost sharing arrangement that is described in § 1.482–7 of this chapter and any arrangement that is treated by the Service as a qualified cost sharing arrangement under § 1.482–7 of this chapter is not classified as a partnership for purposes of the Internal Revenue Code. See § 1.482–7 of this chapter for the proper treatment of qualified cost sharing arrangements.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 602.101, paragraph (c) is amended by adding an entry to the table in numerical order to read as follows:

''1.482–7 .... 1545–1364''.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: November 30, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 95–30617 Filed 12–19–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 53

[TD 8639]

RIN 1545–AT03

Excise Tax On Self-Dealing By Private Foundations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that clarify the definition of self-dealing for private foundations. These regulations modify the application of the self-dealing rules to the provision by a private foundation of directors' and officers' liability insurance to disqualified persons. In general, these regulations provide that indemnification by a private foundation or provision of insurance for purposes of covering the liabilities of the person in his/her capacity as a manager of the private foundation is not self-dealing. Additionally, the amounts expended by the private foundation for insurance or indemnification generally are not included in the compensation of the disqualified person for purposes of determining whether the disqualified person's compensation is reasonable.

DATES: These regulations are effective December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Terri Harris or Paul Accettura of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS, at 202–622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1995 proposed regulations amending § 53.4941(d)–2(f) [EE–56–94, 1995–6 I.R.B. 39] under section 4941 of the Internal Revenue Code of 1986 were published in the Federal Register (60 FR 82). The proposed regulations provided that generally it would not be self-dealing, nor treated as the payment of compensation, if a private foundation were to indemnify or provide insurance to a foundation manager in any civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation. After IRS and Treasury consideration of the public comments received regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 4941(a) imposes a tax on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(E) defines self-dealing to include any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation. Prior to this Treasury decision, § 53.4941(d)–2(f)(1) provided that provision of insurance for the payment of chapter 42 taxes by a private foundation for a foundation manager was self- dealing unless the premium amounts were included in the compensation of the foundation manager. The payment of chapter 42 taxes by the private foundation on behalf of the foundation manager was self-dealing whether or not the amounts were included in the manager's compensation.

Section 53.4941(d)–2(f)(3) provided that the indemnification of certain expenses by a private foundation for a foundation manager's defense in a judicial or administrative proceeding involving chapter 42 taxes was not self-dealing. Such expenses must have been reasonably incurred by the manager in connection with such proceeding. Also, the manager must have been successful in such defense, or such proceeding must have been terminated by settlement, and the manager must not have acted willfully and without reasonable cause with respect to the act or failure to act which led to the liability for tax under chapter 42.

This Treasury decision expands the scope of the regulations to cover indemnification and insurance payments made by a private foundation to or on behalf of a foundation manager in connection with any civil proceeding arising from the manager's performance of services for the private foundation. The regulations also clarify the distinction between the treatment of indemnification and insurance payments under chapter 42 and the treatment of these same items for income tax purposes.

The proposed regulations resulted in some confusion as to whether certain indemnification and insurance payments would be considered compensatory or non-compensatory. The final regulations have been revised to provide greater clarity. They divide indemnification payments and insurance coverage into non-compensatory and compensatory categories, described comprehensively in § 53.4941(d)–2(f) (3) and (4). The second and third sentences of § 53.4941(d)–2(f)(1) of the proposed regulations have been removed because their substance was incorporated into § 53.4941(d)–2(f)(4). Generally, the non-compensatory category includes indemnification and insurance payments that cover expenses reasonably incurred in proceedings that do not result from a willful act or omission of the manager undertaken without reasonable cause. These payments are viewed as expenses for the foundation's administration and operation rather than compensation for the manager's services. The compensatory category includes indemnification or insurance payments that cover taxes (including taxes imposed by chapter 42), penalties or expenses of correction, expenses that were not reasonably incurred, or expenses for proceedings that result from a willful act or omission of the manager undertaken without reasonable cause. These payments are viewed as being exclusively for the benefit of the manager, not the foundation.

The regulations provide that non-compensatory indemnification and insurance payments are not affected by the prohibition against self-dealing. Conversely, compensatory indemnification and insurance payments are considered acts of self-dealing unless they are added to the benefiting manager's total compensation for purposes of determining whether that compensation is reasonable. If the total compensation is not reasonable, the foundation will have engaged in an act of self-dealing.

In some instances, a foundation may purchase an insurance policy that provides both non-compensatory and compensatory coverage. Some commentators have recommended that no allocation of insurance premiums be required when a single policy of this sort is purchased. These commentators argue that the allocation requirement places an undue burden on private foundations. After careful consideration, the IRS and the Treasury Department have decided to retain the allocation provision in the final regulations. The self-dealing rules were meant to discourage foundations from relieving managers of penalties, taxes and expenses of correction, as well as expenses ultimately resulting from the manager's willful violation of the law. A rule that did not require an allocation to determine whether the disqualified person's compensation is reasonable for purposes of chapter 42 could have the opposite effect. The insurance allocation rules are now set forth in § 53.4941(d)–2(f)(5).

Some commentators requested a clearer statement of what is meant by the statement that indemnification or insurance premiums are to be treated as compensation to the benefiting foundation manager. The IRS and the Treasury Department agree that further clarification is desirable. Accordingly, § 53.4941(d)–2(f)(7) has been added. It provides that treatment as compensation for the limited purpose of determining whether compensation is reasonable under chapter 42 is separate and distinct from treatment as income to the benefiting manager under the income tax provisions. Whether any amount of indemnification or insurance is included in the manager's gross income for individual income tax purposes is determined in accordance with section 132, without regard to the treatment of such amounts under chapter 42.

Finally, a provision has been added to the regulations specifying that a foundation may disregard de minimis benefits when calculating the total amount of compensation paid to an officer, director or foundation manager for purposes of determining whether that compensation is reasonable. In this context, a de minimis benefit is one excluded from gross income under section 132(a)(4). This provision makes explicit a Service position that has previously been reflected in the instructions to the Form 990–PF.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this Treasury decision is Terri Harris, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 53.4941(d)–2 is amended as follows:

1. Paragraph (f)(1) is amended by removing the second and third sentences and revising the fourth sentence.
2. Paragraph (f)(3) is revised.
3. Paragraph (f)(4) is redesignated as paragraph (f)(9).
4. New paragraphs (f)(4) through (f)(8) are added.

The additions and revisions read as follows:

§ 53.4941(d)–2 Specific acts of self-dealing.

* * * * *

(f) *Transfer or use of the income or assets of a private foundation*—(1) *In general.* * * * For purposes of the preceding sentence, the purchase or sale of stock or other securities by a private foundation shall be an act of self-dealing if such purchase or sale is made in an attempt to manipulate the price of the stock or other securities to the advantage of a disqualified person. * * *

* * * * *

(3) *Non-compensatory indemnification of foundation managers against liability for defense in civil proceedings.* (i) Except as provided in § 53.4941(d)–3(c), section 4941(d)(1) shall not apply to the indemnification by a private foundation of a foundation manager, with respect to the manager's defense in any civil judicial or civil administrative proceeding arising out of the manager's performance of services (or failure to perform services) on behalf of the foundation, against all expenses (other than taxes, including taxes imposed by chapter 42, penalties, or expenses of correction) including attorneys' fees, judgments and settlement expenditures if—

(A) Such expenses are reasonably incurred by the manager in connection with such proceeding; and

(B) The manager has not acted willfully and without reasonable cause with respect to the act or failure to act which led to such proceeding or to liability for tax under chapter 42.

(ii) Similarly, except as provided in § 53.4941(d)–3(c), section 4941(d)(1) shall not apply to premiums for insurance to make or to reimburse a foundation for an indemnification payment allowed pursuant to this paragraph (f)(3). Neither shall an indemnification or payment of insurance allowed pursuant to this paragraph (f)(3) be treated as part of the compensation paid to such manager for purposes of determining whether the compensation is reasonable under chapter 42.

(4) *Compensatory indemnification of foundation managers against liability for defense in civil proceedings.* (i) The indemnification by a private foundation of a foundation manager for compensatory expenses shall be an act of self-dealing under this paragraph unless when such payment is added to other compensation paid to such manager the total compensation is reasonable under chapter 42. A compensatory expense for purposes of this paragraph (f) is—

(A) Any penalty, tax (including a tax imposed by chapter 42), or expense of correction that is owed by the foundation manager;

(B) Any expense not reasonably incurred by the manager in connection with a civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation; or

(C) Any expense resulting from an act or failure to act with respect to which the manager has acted willfully and without reasonable cause.

(ii) Similarly, the payment by a private foundation of the premiums for an insurance policy providing liability insurance to a foundation manager for expenses described in this paragraph (f)(4) shall be an act of self-dealing under this paragraph (f) unless when such premiums are added to other compensation paid to such manager the total compensation is reasonable under chapter 42.

(5) *Insurance Allocation.* A private foundation shall not be engaged in an act of self-dealing if the foundation purchases a single insurance policy to provide its managers both the noncompensatory and the compensatory coverage discussed in this paragraph (f), provided that the total insurance premium is allocated and that each manager's portion of the premium attributable to the compensatory coverage is included in that manager's compensation for purposes of determining reasonable compensation under chapter 42.

(6) *Indemnification.* For purposes of this paragraph (f), the term *indemnification* shall include not only reimbursement by the foundation for expenses that the foundation manager has already incurred or anticipates incurring but also direct payment by the foundation of such expenses as the expenses arise.

(7) *Taxable Income.* The determination of whether any amount of indemnification or insurance premium discussed in this paragraph (f) is included in the manager's gross income for individual income tax purposes is made on the basis of the provisions of chapter 1 and without regard to the treatment of such amount for purposes of determining whether the manager's compensation is reasonable under chapter 42.

(8) *De minimis items.* Any property or service that is excluded from income under section 132(a)(4) may be disregarded for purposes of determining whether the recipient's compensation is reasonable under chapter 42.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,

Assistant Secretary of Treasury.

[FR Doc. 95–30838 Filed 12–19–95; 8:45 am]

BILLING CODE 4830–01–U

Fiscal Service

31 CFR Part 390

Collection By Administrative Offset

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends Title 31 by removing Part 390. The action is being taken because the Treasury Department's promulgation of administrative offset regulations at 31 CFR Part 5, Subpart D, made Part 390 unnecessary.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ed Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, Parkersburg, WV (304) 480–5187.

SUPPLEMENTARY INFORMATION:

Background

Part 390 applied to the collection of claims by administrative offset by the Bureau of the Public Debt. The rule was needed to implement the administrative offset provisions of section 10 of the Debt Collection Act of 1982, (31 U.S.C. 3716). Subsequent to the adoption of this rule, the Department of the Treasury promulgated Department-wide