



511 Tax Me if You Can: Maintaining Your Tax-Exempt Status

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David L. Fish is a manager in Exempt Organizations Technical Guidance and Quality Assurance for the Internal Revenue Service in Washington, DC.

Previously, he was with the IRS Office of Chief Counsel in Disclosure and Privacy Law. He also clerked for the Honorable Joel Gerber on the United States Tax Court.

Mr. Fish received his B.A. from the University of Cincinnati, J.D. from Ohio State University, and LL.M. in Taxation from the University of Florida.

James J. Holmberg III

James J. Holmberg, III, AIA is the general counsel and architect for Father Joe's Villages in San Diego, California. His responsibilities include providing legal counsel to the organization and its sister organizations of St. Vincent de Paul Village, Inc., Martha's Village & Kitchen, Inc., Toussaint Youth Villages, Inc., San Diego Health & Faith Alliance, Inc., Marillac Homes, Inc., and the National AIDS Foundation. In addition to the legal services, Mr. Holmberg provides design and management services for the construction and maintenance of the organizations' facilities.

Prior to joining Father Joe's Villages, Mr. Holmberg was in private architectural and legal practice. He also served as business manager for the Diocese of San Diego and as an architect for the U.S. Army Corps of Engineers.

He was a founding board member of Fresh Start Surgical Gifts, Inc. He has provided pro bono legal work through the regional task force on the homeless and homeless subcommittee of the San Diego Bar Association. He also volunteers with the United States Coast Guard Auxiliary teaching safe boating and sailing fundamental classes to the public.

Mr. Holmberg received his Bachelor of Architecture from the University of Notre Dame and is a graduate of the Creighton University School of Law.

Jerald A. Jacobs

Jerald A. Jacobs is a partner at Pillsbury Winthrop Shaw Pittman LLP in Washington, DC. He is head of the firm's nonprofit organization team, which provides counseling and advocacy to some 150 national trade associations, professional societies, charities, and social welfare organizations.

Mr. Jacobs is the author or editor of nearly a dozen texts on nonprofit organization law, including the standard *Association Law Handbook*, which will be published later this year in its Fourth Edition by the American Society of Association Executives (ASAE). Mr. Jacobs is general counsel to ASAE. In 2002 he was awarded the Nonprofit Lawyers Award as Outstanding Attorney by the ABA's section of business law.

He holds undergraduate and law degrees from Georgetown University and has taught nonprofit organization law both there and at The Georgetown University.

Intermediate Sanctions

An Excise Tax on Excess Benefits

INTRODUCTION

I. History of legislation and purpose.

Congress, in an action to stop “insiders” of nonprofit organizations from using the donated assets of the organizations for their private inurement or benefit, passed the intermediate sanctions law in 1996, 26 USC §4958.

This law created two levels of excise tax on excess benefit transactions between an applicable tax-exempt organization and a disqualified person, persons or organization.

The purpose of the legislation is to prevent disqualified individuals or organizations from profiting unreasonably from the donated assets of public charities. This legislation reshaped and refocused the law regarding private inurement and private benefit by creating stiff penalties on those “insider” that use the charity for their own enrichment.¹

26 USC § 4958 (26 CFR 53.4958), even though it became law in 1996, looks back September 14, 1995 to regulate all benefit transactions from there forward.

The IRS did not issue its first rules until 2002, IRS Notice 96-46 – 2 C.B. 212.

II. Parties to the Excess Benefits Transaction

a. Applicable tax-exempt organization.

i. 26 CFR 53.4958-2 defines the applicable tax-exempt organization as:

1. An organization that is described in 26 USC §501(c)(3) or (4) and is exempt from tax under §501(a). This generally describes public charities that are able to provide donors tax deductions for their donations;
 - a. The §501(c)(3) organization has to have provided notice described in §508, the application for recognition as a tax exempt organization, or;
 - b. Described in §501(c)(3) and not required to file for the recognition in a. above.
 - c. §501(c)(4) organizations is applicable only if it:
 - i. applied for and received recognition from the IRS as a 501(c)(4) organization;
 - ii. has filed an application for recognition for §501(c)(4) or

- iii. has held itself out as being described in §501(c)(4) and exempt from tax under §501(a).
- d. Exceptions.
 - i. Private Foundations are exempt from §4958.
 - ii. Governmental agencies are exempt from §4958.
 - iii. If an organization was denied recognition as a tax exempt organization in its final determination letter from the IRS and is determined not to be tax exempt under §501(a), if the reasons are not based upon participation in inurement or one or more excess benefit transactions.

If the organization was qualifiable as either a 501 (c)(3) or (4) during a five-(5) year lookback period then it may be an applicable tax-exempt organization.

b. Disqualified Person

i. 26 CFR 53.4958-3 describes what a disqualified person is:

1. Generally it is any person who was in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization at any time during the five-year period ending on the date of the transaction.
2. Statutory categories of disqualified persons include
 - a. family members, spouses, children, grandchildren, great grandchildren, parents, brothers, sisters and inlaws;
 - b. 35 percent owners of entities that are parties to the transaction, either by stock ownership or partnership;
 - c. trusts or estates in which the person owns 35 percent or more interest.
 - d. Persons having substantial influence powers, responsibilities or interests over the affairs of the applicable tax exempt organization by:
 - i. Being a voting member of the of the governing body of the organization;
 - ii. CEO, president or COO.
 - iii. Treasurer and chief financial officers
 - iv. Persons with a material financial interest in a provider-sponsored organization.
3. Persons deemed not to have substantial influence
 - a. Tax-exempt organizations described in §501 (c)(3) and exempt under §501(a).
 - b. Certain §501(c)(4) organizations.
 - c. Employees that receive economic benefits less than a specified amount in a taxable year, which is

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2. Contingencies or conditions may be incorporated in the original agreement to make such fixed payment dependent upon future events as long as the formula for the compensation is fixed in the initial agreement.
3. The fixed payment exception does not include any reimbursement or similar arrangement where discretion is exercised by any person with respect to the amount of expenses incurred or reimbursed.
4. Pension, profit-sharing, or stock option bonus plans under §401(a), or a employee pension plan that is subject to and satisfies coverage and nondiscrimination rules under the Internal Revenue Code (e.g. §127 and §137) are considered fixed payments.
5. Initial contract, the initial contract is a binding written contract between the applicable tax-exempt organization and a person who was not a disqualified person within the meanings of section §4958(f)(1) and §53.4958-3 immediately prior to entering into the contract.
6. Substantial performance. The disqualified person has a duty to substantially perform his or her obligations of the initial contract during any taxable year that the fixed payment is made.
7. Treatment as a new contract.
 - a. If the written binding contract provides the applicable tax-exempt organization the right to terminate or cancel the contract at no penalty to the organization and without the consent of the other party then the contract will treated as a new contract as of the earliest date that the any such termination or cancellation, if made, would be effective.
 - b. If a material change is made to the contract, then the contract will treated as a new contract as of the date of the material change.
 - c. Effect of the fixed payment exception. Since the contract is considered a new contract at the time of the either the termination effective date or the material change and it is after the person becomes a disqualified person, the new contract must be tested under §53.4958-4(a)(3)(ii) as to whether it is an initial contract for the purposes of determining excess economic benefit.
- viii. Other economic benefits that are statutorily disregarded for the purposes of excess benefits transactions.
 1. Nontaxable fringe benefits except any liability insurance premium, payment, or reimbursement that must taken into account under §53.4958-4(b)(1)(ii)(B)(2).
 2. Expense reimbursement payments pursuant accountable plans.
 3. Certain economic benefits provided to volunteers to the organization if the benefit is provided to the general public in exchange for a membership fee or contribution of \$75.00 or less per year.
4. Certain economic benefits to a member of, or donor to, the organization, if the economic benefit provided to the member or donor is solely based upon the membership fee paid or tax deductible (under §170) donation, regardless whether the donor is eligible to claim the deduction if
 - a. Any non-disqualified person paying a membership fee or making a charitable donation above a certain amount is given the option to receive the same economic benefit; and
 - b. The disqualified person and a significant number of non-disqualified persons make a payment of donation of at least the specified amount.
5. Economic benefits provided to a charitable beneficiary, where the disqualified person is a member of the charitable class that the applicable tax-exempt organization intends to benefit as part of the accomplishment of its exempt purposes; and
6. Certain economic benefits to a governmental unit if the transfer is for exclusively public purposes.
- ix. Exceptions for certain payments granted by the Department of Labor under ERISA.
- b. Valuation standards of the economic benefit.
 - i. Fair market value of the ownership transfer and right to use is the willing buyer and seller with both parties having reasonable knowledge of relevant facts test.
 - ii. Reasonable compensation is:
 1. The value of services that would ordinarily be paid for like services by like enterprises, whether taxable or tax-exempt.
 2. Determination of the value of compensation include the following items:
 - a. All forms of cash and noncash compensation including salary, fees, bonuses, severance payments, and deferred and noncash compensation described in §53.4958-1(e)(2);
 - b. Unless excludable from income as de minimis fringe benefit pursuant §132(a)(4) the payment of liability insurance premiums for, or the payment of reimbursement by the organization of:
 - i. Any penalty, tax, or expense of correction owed under §4958;
 - ii. Any expense not reasonable incurred by the person in connection with a civil judicial or civil administrative proceeding arising out of the person's performance of services on behalf of the applicable tax-exempt organization.
 - iii. Any expense resulting from an act or failure to act with respect to which the person has acted willfully and without reasonable cause; and

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- iv. All other compensatory benefits, whether or not included in gross income for income tax purposes including welfare benefits (medical, dental, life insurance, severance pay and disability benefits, below market loans.
- c. Inclusion of items in determination of reasonable compensation does not govern income tax treatment.
- d. Timing of reasonableness determination, the facts and circumstances to be taken into consideration are those existing on the date the parties entered into the contract pursuant to which the payment is made.
 - i. In the event of substantial nonperformance, reasonableness is determined based upon all the facts and circumstances as of the date of payment.
 - ii. If the payment is determined to be a fixed payment, reasonableness is determined at the time the contract was entered into.
 - iii. "If the payment is determined not to be a fixed payment, then the date of reasonableness is the date the payment was made.
 - iv. Treatment as new contract, if the contract has a termination clause that allows the applicable tax-exempt organization to terminate or cancel the contract without consent of the other party and without substantial penalty or a material change was made to the contract, then the date is that of either the effective date of the right to terminate the contract or the date of the material change to the contract.
- e. Establishment of intent to treat the economic benefit as consideration for services provided the organization. The economic benefit is not treated as consideration for services performed unless the organization providing the benefit clearly indicates its intent to treat the benefit as compensation when the benefit is paid.
 - i. The organization must provide written substantiation that is contemporaneous with the transfer of the economic benefit at issue.
 - ii. If an organization fails to provide the written substantiation, then the services provided by the disqualified person will not be treated as consideration for the determination of the reasonableness of the transaction.
 - iii. Economic benefits obtained by fraud or theft will not be treated as consideration for the performance of services.
- iv. Nontaxable benefits. If a benefit is excluded from the disqualified person's gross income for income tax purposes the applicable tax-exempt organization is not required to provide written substantiation of the consideration for services. All compensatory benefits, except those disregarded for purposes of §4958(a)(4), taxable and not taxable, provided by the organization for the performances of services are taken into account in determining the reasonableness of the person's compensation.
- v. Contemporaneous substantiation. The applicable tax-exempt organization provides the contemporaneous substantiation by :
 1. Reporting the economic benefit as compensation on an original federal tax informational return with respect to the payment (W-2 or 1099).
 2. The recipient disqualified person reports the benefit as income on the person's original tax return (form 1040).
 3. The recipient disqualified person reports the benefit prior to:
 - a. Commencement of an Internal Revenue Service examination of the applicable tax-exempt organization or the disqualified person for the taxable year in which the transaction took place; or
 - b. The first written documentation by the Internal Revenue Service of potential excess benefits transaction involving either the organization or disqualified person.
 4. Failure to report due to reasonable cause. If the applicable tax-exempt organization can show reasonable cause then the organization economic benefit will be treated as clearly intending to treat the economic benefit as compensation for services.
 - a. Reasonable cause is described in 26 CFR §301.6724-1 as
 - b. The organization must establish significant mitigating factors (§301.6724-1(b)) or failure to report is due to circumstances beyond the organization's control (§301.6724-

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- 1(c) and that the organization acted responsibly before and after the failure occurred (§301.6724-1(d)).
5. Other written contemporaneous evidence, which is contemporaneous documentation which may be used to demonstrate that the person or persons having authority to approve the transfer as compensation for services in accordance with establish procedures, such as:
 - a. An approved written employment contract. Executed on or before the date of the transfer.
 - b. Documentation that an authorized body approved the transfer as compensation for services on or before the date of transfer:
 - c. Written evidence that was in existence prior to the due date for the applicable Federal tax return of a reasonable belief that the benefit was a nontaxable benefit as described above.
 - c. Rebuttable presumption that a transaction is not an excess benefit transaction. (§53.4958-6)
 - i. Payments under a compensation arrangement are presumed to be reasonable and a transfer of property, or the right to use property, is presumed to be at fair market value if the following conditions are met:
 1. The compensation arrangement or terms of the property transfer are approved in advance of the transaction by the authorized body of the applicable tax-exempt organization composed entirely of individuals who do not have a conflict of interest with respect to the potential excess benefit transaction.
 2. The authorized body obtained and relied upon appropriate data a to comparability prior to making its determination.
 3. The authorized body adequately documented the basis for its determination concurrently with making its determination.
 - ii. Rebutting the presumption. If the three conditions of §53.4958-6(a) are satisfied, the Internal Revenue Service may rebut this presumption of reasonableness only if it develops sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body.
 1. For fixed payments, the rebuttal evidence is limited to the facts and circumstances existing on the date the parties entered into the contract pursuant the payment is made.
 2. For non-fixed payments and other payments, the rebuttal evidence may include facts and circumstances up and including the date of payment.
 - iii. Requirements for the applicable tax-exempt organization to invoke the rebuttable presumption:
 1. Approval by an authorized body.
 - a. An authorized body is defined as:
 - i. The governing body of the organization – board of directors, trustees
 - ii. A committee of the governing body, as comprised of individuals and to the extent of authority to act on behalf of the organization permitted by state law.
 - iii. To the extent permitted by state law, other parties authorized to act on behalf of the organization by following procedures specified by the governing body in approving compensation arrangements or property transfers.
 - b. Individuals not included on authorized body. If an individual only is present to answer questions and recuses himself or herself from the meeting and is not present during debate and voting on the compensation arrangement
 - c. Absence of conflict of interest. A member of the authorized body does not have a conflict of interest, with respect to the compensation arrangement, if:
 - i. Is not a disqualified person participating in or economically benefiting from the compensation arrangement or property transfer, and is not a family member of any such disqualified person.
 - ii. Is not in an employment arrangement and subject to the direction or under the control of any disqualified person participating in or economically benefiting from the compensation arrangement or property transfer;
 - iii. Does not receive compensation or other payments subject to the approval of any disqualified person participating in the transaction
 - iv. Has no material financial interest affected by the compensation arrangement or property transfer;
 - v. Does not approve any compensation arrangement or property transfer to a disqualified person who then approves a compensation arrangement or property transfer for the benefit of the member.
 2. Appropriate data as to comparability.
 - a. An authorized body has appropriate data as to comparability, if given the knowledge and expertise of its members, it has information sufficient to determine

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- whether the compensation arrangement in its entirety is reasonable or the property transfer is at fair market value under the standards set forth in §53.4958-4(b).
- i. For compensation comparability, relevant data includes but not limited to, compensations paid by similarly situated organizations; current compensation surveys compiled by independent firms, and actual written offers provided by competing similar institutions.
 - ii. For property transfer relevant data includes, but not limited to current independent appraisals of the value of all property to be transferred, and offers received as part of an open and competitive bidding process.
- b. Special rules for small organizations in determining reasonable of compensation
- i. For organizations with annual gross receipts (including contributions) of less than \$1 million, the authorized body will be considered to have appropriate data of comparability if it has data prepared by three comparable organizations in the same or similar communities for similar services.
 - ii. Application. For the purpose of determining whether the organization fits within the special rules for small organization, the organization may calculate its annual gross receipts based on its average of the three prior years. If the organization is controlled by another organization, the gross receipts are aggregated to determine applicability of the special rule.
3. Documentation.
- a. For a determination to be documented adequately, the written or electronic records of the authorized body must note:
 - i. The terms of the transaction that was approved and the date it was approved;
 - ii. The members of the authorized body who were present during the debate on the transaction that was approved and those who voted on it;
 - iii. The comparability data that the authorized body relied upon.
 - iv. Any action taken with respect to consideration of the transaction by anyone who is otherwise a member of the authorized body but who had a conflict of interest with respect to the transaction.
- b. If the authorized body determines that the reasonable compensation for a specific arrangement or fair market value in a specific property is higher or lower than the range of comparability data obtained, the authorized body must record the basis for its determination.
- i. For a decision to be documented concurrently, records must be prepared before the next meeting of the authorized body or 60 days after the final action or actions of the authorized body. The records must be reviewed by the authorized body as reasonable, accurate, and completed within a reasonable time thereafter.
- d. Non-fixed payments do not enjoy the presumption of reasonableness until amounts are determined.
- i. Exact payment or a fixed formula for calculating the payment is specified.
 - ii. The three requirements of §53.4958-6(c) have been satisfied.
 - iii. Special rule for certain non-fixed payments subject to a cap. If an employment contract is approved that includes a non-fixed payment subject to a specified cap, the authorized body may establish a rebuttable presumption with respect to the non-fixed payment at the time the employment contract is entered into if:
 1. Prior to approving the contract, the authorized body obtains the appropriate comparability data indicating the reasonableness of the compensation package.
 2. The maximum amount payable does not exceed the amount the authorized body determined to be reasonable (§53.4958-6(d)(2)(i)).
 3. The other requirements of §53.4958-6(c) have been satisfied.
- e. There is no inference from the absence of the presumption that the transaction between the applicable tax-exempt organization and disqualified person is an excess benefit transaction.
- f. Period of reliance on the rebuttable presumption. Except for the provisions of §53.4958-6(d) for non-fixed payments, the rebuttable presumption applies to all payments made or transactions completed in accordance with a contract, provided that the provisions of §53.4958-6(a) have been satisfied.
- IV. Intermediate sanctions.
- a. Tier 1 - Excise tax of 25% of the excess benefit and return of the excess benefit.
 - b. Tier -2 -
 - c. Correction. (§53.4958-7)
 - i. Excess benefit transactions is corrected by undoing the excess benefit to the extent possible and take any additional measures possible to place the applicable tax-exempt organization in a financial position not worse than that in which it would have been if the disqualified person were dealing under the highest fiduciary standards.
 - ii. Acceptable forms of correction.
 1. Cash or cash equivalent equal to the correction amount, excluding a promissory note to the organization.

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2. Anti-abuse rule. If the commissioner determines that the disqualified person engaged in several transactions with the organization to circumvent the requirements of the corrections section resulting in the disqualified person effectively transferring property other than cash or cash equivalence, then correction requirements are not satisfied.
3. Special rule relating to nonqualified deferred compensation. "If an excess benefit transaction results, in whole or part, from vesting, then the disqualified person may correct the portion of the excess benefit resulting from the undistributed deferred compensation by relinquishing the person's rights to receive the excess portion of the undistributed deferred compensation, including any earnings thereon.
4. Return of specific property, with the permission of the organization, the disqualified person may correct the portion of the excess benefit transaction by returning the specific property. The value of the property is the lesser of:
 - a. The fair market value of the property on the date the property was returned to the organization.
 - b. The fair market value of the property on the date the excess benefit transaction took place.
 - c. If the fair market value is insufficient to correct the excess benefit, then the disqualified person must provide additional cash to equal the difference.
 - d. The disqualified person may not participate in the decision process of the organization of whether to accept a return of the specific property.
5. Correction amount. The value of the cash or equivalent must equal that of the determined excess benefit of the excess benefit transaction plus interest from the date of the excess benefit transaction at a rate not less than the applicable federal rate (AFR)
 - a. The period of time from the date of the transaction determines which federal interest rate to use, long or short term. §1274(d)(1)(A).
 - b. Correction where the contract between the organization and the disqualified person is partially performed. The contract does not have to be terminated, but it must be modified to avoid future excess benefits.
6. Correction in the case where the applicable tax-exempt no longer exists or is no longer tax-exempt.
 - a. For 501 (c)(3) organizations the disqualified person must the correction payment to another organization that is described in the dissolution clause of the articles of incorporation organization that was involved in the excess benefit provided that
 - i. The organization receiving the correction amount is described in §170(b)(1)(A) and has been in existence and so described for a period of at least 60 calendar months ending on the correction date;
 - ii. The disqualified person is also not a disqualified person with respect to the organization that is receiving the correction amount.
 - iii. The disqualified person is not allowed to make or recommend any grants or distributions by the organization.
 - b. For 501 (c)(4) organizations, the disqualified person must make the correction amount to the successor organization. If there is no successor organization, then to another 501(c)(3) or (4) organization that is described in §170(b)(1)(A).

V. Special Rules

- a. Substantive requirements for exemptions still apply. §4958 does not effect the requirements that the organization be organized and operated for exempt purpose only and no part of its earnings inure to the benefit of any private shareholder or individual. Transactions that may not be subject to §4958 may still jeopardize the organizations tax-exempt status under certain circumstances such as initial contract.
- b. Church tax inquiries and examinations will use the procedures of §7611 in determining whether an excess benefit has occurred. If there is a reasonable belief that an excess benefit transaction has taken place is sufficient to meet the reasonable belief to initiate an inquiry under §7611 involving a church.

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Protection:

1. Establishment of procedures to determine the reasonableness of compensation,

i. person.

(1) In general. For purposes of this subchapter [26 USCS §§ 4940 et seq.], the term "disqualified person" means, with respect to a private foundation, a person who is--

(A) a substantial contributor to the foundation,

(B) a foundation manager (within the meaning of subsection

(b)(1)),

(C) an owner of more than 20 percent of--

(i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated

enterprise,

which is a substantial contributor to the foundation,

(D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),

(E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) a trust or estate in which persons described in subparagraph

(A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,

(H) only for purposes of section 4943 [26 USCS § 4943], a private foundation--

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question, and

(I) only for purposes of section 4941 [26 USCS § 4941], a government official (as defined in subsection (c)).

(2) Substantial contributors. For purposes of paragraph (1), the term "substantial contributor" means a person who is described in section 507(d)(2) [26 USCS § 507(d)(2)].

(3) Stockholdings. For purposes of paragraphs (1)(C)(i) and (1)(E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c) [26 USCS § 267(c)], except that, for purposes of this paragraph, section 267(c)(4) [26 USCS § 267(c)(4)] shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(4) Partnerships; trusts. For purposes of paragraphs (1)(C)(ii) and (iii), (1)(F), and (1)(G), the ownership of profits or beneficial interests

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shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) [26 USCS § 267(c)] (other than paragraph (3) thereof), except that section 267(c)(4) [26 USCS § 267(c)(4)] shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(b) Foundation manager. For purposes of this subchapter [26 USCS §§ 4940 et seq.], the term "foundation manager" means, with respect to any private foundation--

(1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

(c) Government official. For purposes of subsection (a)(1)(I) and section 4941 [26 USCS § 4941], the term "government official" means, with respect to an act of self-dealing described in section 4941 [26 USCS § 4941], an individual who, at the time of such act, holds any of the following offices or positions (other than as a "special Government employee", as defined in section 202(a) of title 18, United States Code):

(1) an elective public office in the executive or legislative branch of the Government of the United States,

(2) an office in the executive or judicial branch of the Government of

the United States, appointment to which was made by the President,

(3) a position in the executive, legislative, or judicial branch of the Government of the United States--

(A) which is listed in schedule C of rule VI of the Civil Service Rules, or

(B) the compensation for which is equal to or greater than the lowest rate of basic pay for the Senior Executive Service under section 5382 of title 5, United States Code,

(4) a position under the House of Representatives or the Senate of the United States held by an individual receiving gross compensation at an annual rate of \$ 15,000 or more,

(5) an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, held by an individual receiving gross compensation at an annual rate of \$ 20,000 or more,

(6) a position as personal or executive assistant or secretary to any of the foregoing, or

(7) a member of the Internal Revenue Service Oversight Board.

(d) Members of family. For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

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- b. Excess Benefit
- c. Economic Benefit
- d. What is excess
- e. Rebuttable presumption of reasonable
- f. How is the benefit determined

Independent board

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