

Form 990-PF Update



Form 990-PF Filings

- Importance of filings is identified by requirements
 - All foundations regardless of income or assets
- Must be made available to the public
 - All pages – no redaction allowed
- Must be made available to the public

Purpose of Form 990-PF

- Reporting of basic financial information
 - Calculation of net investment income
 - Determination of disbursements to meet 5% payout requirements
- Compliance with federal requirements
 - Reasonable compensation
 - Required minimum distributions
 - Estimated tax payment requirements

Excise Taxes (Sections 4940-4945)

- Net investment income
- Self-dealing
- Failure to distribute income
- Excess business holdings
- Jeopardizing investments
- Taxable expenditures

Tax on Net Investment Income

- Tax imposed at 2% rate unless the organization qualifies for the lower 1% rate
- Net investment income equals
 - Gross investment income – interest, dividends, rents, royalties, and other investment income PLUS
 - Net capital gains from the sale of assets MINUS
 - Expenses of producing such investment income
- Does not include income subject to unrelated business income tax

Self-Dealing

- Tax imposed on transactions between a PF and its disqualified persons
 - Substantial contributors & creator of a trust
 - Foundation managers
 - Owners of more than 20% of a corporation, partnership or trust that is a substantial contributor to the foundation
 - Family members of the above
 - Entities where persons above own more than 35% of voting power, profits interest or beneficial interest

Acts of Self-Dealing

- Sale, exchange or lease of property
- Loan or extension of credit
- Furnishing of goods, services or facilities
- Payment of compensation
- Transfer to or use of a foundation's income or assets
- Payments to government officials

What is not self-dealing?

- No interest loans from a DP to a foundation
- Furnishing of goods, services or facilities by a DP to a foundation at no charge
- Furnishing of goods, services or facilities by a foundation to a DP if made on a basis no more favorable than the foundation provides to the public
- Payment of reasonable compensation to a DP – reasonable and necessary compensation

Failure to Distribute Income

- Undistributed income equals the amount that distributable amount exceeds qualifying distributions
- Causes foundations to expend exempt assets for exempt purposes
- Initial tax on undistributed income = 30%
- Additional tax = 100%

Excess Business Holdings

- Holdings of business interests of a foundation combined with the holdings of DPs cannot exceed 20%
- Applies to corporations, partnerships, LLCs and joint ventures

Exceptions to Excess Business Holdings

- Foundation and DPs can own up to 35% of a corporation as long as no effective control
- If foundation and all related foundations hold 2% or less of voting stock and value of stock, all holdings are permitted regardless of the holdings of the DPs
- Business enterprises do not include enterprises that carry out the foundation's exempt purpose or where 95% of the gross income is from passive income
- Initial tax = 10%
- Additional tax = 200%

Jeopardizing Investments

- Foundation and its managers must not invest in a manner that would jeopardize the foundation in carrying out its exempt purpose
- Ordinary business care and prudence must be exercised
- Measured by the initial investment decision and not investment performance.

Exception to Jeopardizing Investments

- Program Related Investments
 - Primary purpose must be to accomplish a charitable result
 - No significant purpose is to produce income or appreciation
 - No influencing of legislation or political campaign activities
 - Expenditure responsibility typically required
- Charitable objective of the investment must be documented
 - Requires due diligence and documentation

Examples of PRI

- Guarantees
- Loans
- Direct equity investments
- Fund investments

Mission Related Investments

- Primary purpose is to produce income or appreciation and not to accomplish a charitable result
- Do not count towards qualifying distributions
- Mission related investments should follow the organization's investment policy

Jeopardizing Investments

- Initial tax = 10%
- Additional tax – 25% on the foundation and 5% on any manager
- Correction requires disposition of investment and reinvestment of proceeds

Taxable Expenditures

- Prohibition on expenditures
 - Lobbying
 - Individual grants for study or study without advance IRS approval
 - Political activities
 - Grants to organizations other than public charities or government
 - Grants for noncharitable purposes

Taxable Expenditures

- Requires foundations to determine the tax status of all grantees
- Identification of the actual grantee
 - May include a subsequent (2nd) grantee
- Grant agreement should prohibit lobbying and political activities
- Correction of taxable expenditure requires recovering of expenditure or exercising expenditure responsibility

Grants to Supporting Organizations

- New codes with Form 990-PF instructions
 - Identification of foundation status of grantees
- Expenditure responsibility required for grants to certain 509(a)(3) supporting organizations (SO)
 - Non-functionally integrated type III
 - Any SO if DP of the PF control either the SO or any supported organization of the grantee supporting grantee
- Grants to 509(a)(3) SO requiring expenditure responsibility do not count as qualify distributions

Determination of Grantee Status

- Determination letters
- Select Check
- Business Master File
- Not all SO have a determination of type
- Rev. Proc. 2011-33 – PF may rely on IRS Select Check, Business Master File, or a third-party provider that pulls data from BMF – documentation must be maintained

Foundation Codes

- **PF** - Private non-operating foundation (section 509(a))
- **POF** - Private operating foundation (section 4942(j)(3)) other than an EOF
- **EOF** - Exempt operating foundation (section 4940(d))
- **PC** - Public charity described in section 509(a)(1) or (2)

Foundation Codes

- **GOV** - Domestic or foreign government (including Indian tribal governments) or instrumentality, or international organization designated by Executive Order under 22 U.S.C. 288
- **SO-DP** - Type I, Type II, or Type III functionally integrated supporting organization if a disqualified person of the private foundation controls the supporting organization or a supported organization (sections 509(a)(3) and 4942(g)(4))

Foundation Codes

- **SO I** - Type I supporting organization (sections 509(a)(3) and 509(a)(3)(B) (i)) other than an SO-DP
- **SO II** - Type II supporting organization (sections 509(a)(3) and 509(a)(3)(B) (ii)) other than an SO-DP
- **SO III FI** - Functionally integrated Type III supporting organization (sections 509(a)(3), 509(a)(3)(B)(iii), and 4943(f) (5)(B)) other than an SO-DP

Foundation Codes

- **SO III FI** - Functionally integrated Type III supporting organization (sections 509(a)(3), 509(a)(3)(B)(iii), and 4943(f) (5)(B)) other than an SO-DP
- **SO III NFI** - Non-functionally integrated Type III supporting organization (sections 509(a)(3), 509(a)(3)(B)(iii), and 4943(f) (5)(B))
- **TPS** - Testing for public safety organization (section 509(a)(4))
- **NC** - Organization not otherwise classified
- **I** - Individual person

International Grant Making

- Private foundations must exercise expenditure responsibility or make an equivalency determination
- Equivalency Determination
 - Good faith determination that a non-US organization is equivalent to a US charitable organization
 - Complex regulations and costly

Alternative Investments

- Examples
 - Partnership investments
 - Foreign investments
- Increased complexities
- Unrelated business income
- Foreign filings

Policy Implementation

- Investment policy
- Unrelated business income
- Program related investments
- Mission related investments
- Qualifying distributions
- Utilization of excess qualifying distribution carryover



Questions?

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