

Rev. Rul. 73-363, 1973-2 C.B. 383

Private foundation; self-dealing; rental of charter aircraft. The rental of a charter aircraft by a disqualified person, the charter aircraft company, to a private foundation constitutes an act of self-dealing under section 4941(d)(1)(C) of the Code.

Advice has been requested whether the rental of charter aircraft by a disqualified person, a charter aircraft company, to a private foundation constitutes an act of self-dealing under section 4941(d)(1)(C) of the Internal Revenue Code of 1954.

The aircraft is chartered without a pilot and is used by the private foundation in furtherance of its exempt purposes. The rental rates are substantially the same as those charged by other charter aircraft companies.

Section 4941(d)(1)(C) of the Code provides that the term 'self-dealing' means any direct or indirect furnishing of goods, services, or facilities between a private foundation and a disqualified person.

Section 53.4941(d)-2(d) of the Foundation Excise Tax Regulations includes the furnishing of automobiles as an example of the furnishing of goods, services or facilities that shall constitute an act of self-dealing.

However, section 4941(d)(2)(E) of the Code provides that the payment of compensation by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation is not excessive.

Section 53.4941(d)-(3)(c)(2) of the regulations provides three examples of the performance of personal services, including legal, investment counseling, and general banking services.

The rental of charter aircraft is a furnishing of property for use by the foundation and does not constitute the performance of personal services within the meaning of section 53.4941(d)-3(c) of the regulations. Such rental is analogous to the rental of automobiles and is therefore a furnishing of goods, services, or facilities as described in section 53.4941(d)-2(d) of the regulations. The fact that the rate charged is comparable to rates charged by other aircraft companies is not a relevant factor.

Accordingly, the rental of charter aircraft by the disqualified person to the private foundation under the circumstances described above constitutes an act of self-dealing under section 4941(d)(1)(C) of the Code.