

Private foundation self-dealing; auction sale to disqualified person. The sale of a private foundation's art objects to a disqualified person at a public auction conducted by an auction gallery to which the items were consigned for sale constitutes an act of self-dealing.

Advice has been requested whether the sale of a private foundation's art objects at public auction to a disqualified person constitutes an act of self-dealing under section 4941(d)(1)(A) of the Internal Revenue Code of 1954.

A private foundation consigned a collection of paintings and other art objects to an auction gallery for sale by public auction to the highest bidder. The gallery fixed the auction date, prepared special exhibitions, distributed a catalog, and placed advertising to announce the public auction of the collection. The gallery's promotion was calculated to attract the widest possible attention among potential buyers of art objects.

A disqualified person with respect to the foundation within the meaning of section 4946(a)(1) of the Code proposes to appear at the auction sale and purchase several of the foundation's paintings by outbidding all other participants.

Section 4941(d)(1)(A) of the Code provides that the term 'self-dealing' means any direct or indirect sale of property between a private foundation and a disqualified person.

None of the exceptions to self-dealing described in section 53.4941(d)-3 or 4 of the Foundation Excise Tax Regulations are applicable to the situation described herein.

In the conduct of an auction sale, it is generally recognized that an auctioneer selling the property of another is the agent of the seller and, under such circumstances, the seller and highest bidder for the property are principals to the transaction. See Restatement (Second) of Agency Sec. 140 (1957).

In this case, if the disqualified person were the highest bidder with respect to any items belonging to the private foundation's collection, the transaction would be a direct sale between the private foundation and the disqualified person.

Accordingly, the sale of a private foundation's art objects at public auction to a disqualified person with respect to it would constitute an act of self-dealing under section 4941(d)(1)(A) of the Code.