

Self-dealing; stock in repayment of loan to disqualified person. A private foundation's transfer of stock in repayment of an interest free loan, made by a disqualified person and used exclusively for exempt purposes, is tantamount to a sale or exchange of property between the private foundation and the disqualified person and is an act of self dealing under section 4941(d)(1)(A) of the Code.

'Advice has been requested whether, under the circumstances described below, an act of self-dealing as defined in section 4941(d)(1)(A) of the Internal Revenue Code of 1954 occurs when a private foundation transfers assets other than money to satisfy an indebtedness to a disqualified person.

'A disqualified person with respect to a private foundation made an interest-free loan to the foundation, the proceeds of which were used in the organization's scholarship program. Two years later, to repay the loan, the private foundation transferred to the disqualified person shares of common stock with a fair market value sufficient to cancel the debt.

'Section 4941(a)(1) of the Code imposes an initial tax on each act of self-dealing between a disqualified person and a private foundation. Sections 4941(d)(1)(A) and (B) provide that the term 'self-dealing' means any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person and any direct or indirect lending of money or other extension of credit between a private foundation and a disqualified person.

'Section 4941(d)(2)(B) of the Code provides that the lending of money by a disqualified person to a private foundation shall not be an act of self-dealing if the loan is without interest or other charge and if the proceeds of the loan are used exclusively for purposes specified in section 501(c)(3).

'The loan is not an act of self-dealing because it was interest-free and because the proceeds were used exclusively for purposes specified in section 501(c)(3) of the Code. Although the ostensible purpose is to repay the loan, the transfer of shares in satisfaction of the debt still presents the same potential for abuse that section 4941 was enacted to eliminate. This stock transfer, when viewed together with the making of the loan, is tantamount to a sale or exchange, of property between a private foundation and a disqualified person within the meaning of section 4941(d)(1)(A).

'Accordingly, the private foundation's transfer of assets other than money to satisfy the indebtedness to the disqualified person is an act of self-dealing as defined in section 4941(d)(1)(A) of the Code.