



## **Top Ten Ways Family Foundations Get into Trouble**

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# Self-Dealing



## 1. What is self-dealing?

The use of foundation assets to enter into any financial transaction between the foundation and a disqualified person. Types of self-dealing transactions include the sale, exchange or lease of property, loans, extensions of credit, payments to government officials, satisfying pledges, furnishing goods or services, and more.

## 2. What are the penalties?

Penalty on self-dealer is now **10 percent** of amount involved.  
Penalty on foundation manager is now **5 percent**.

## 3. Who are Disqualified persons?

- Directors, Officers, Trustees
- Foundation managers (such as an executive director)
- Substantial contributors to the foundation (\$5,000 and 2 percent rule)
  - Also includes family members of the persons above such as ancestors, spouse, children (and their spouses), grandchildren (and their spouses).

## 4. What are some examples of self-dealing?

- Foundation loans \$\$, or furnishes goods or services to disqualified person
- Foundation pays rent to disqualified person, *even if below market rate*
- Foundation pays excessive compensation to disqualified person

## 5. Can we pay rent to a family member for use of their offices?

No. The payment of rent would be self-dealing, even if it is below market rate. Only exception is if rent is \$0 (any utilities and other costs must be paid to third party, not to family). Sharing office space is allowed where space is owned by an unrelated party, but danger for inadvertent self-dealing looms. All recordkeeping must be precise, payments must be to third parties only, leases must be separate, and the risk is that any reimbursements can be treated by IRS as self-dealing.

## 6. Can we approve a grant to a school where one of our trustees is a paid executive?

Yes, provided the trustee receives no tangible, economic benefit from the grant.



## Satisfying Personal Pledges

1. What is the rule for personal family pledges?

It is self-dealing for a foundation to pay a legally binding debt (a “Pledge”) of a disqualified person.

2. What is a legally binding pledge?

A legally binding pledge is a clear promise to pay that can be enforced in court. If the organization can demonstrate that it has reasonably relied on the promised funds, the courts are more likely to enforce the pledge.

3. A family trustee personally pledged to give to the local PBS, but now would like to use a foundation grant to satisfy the pledge instead of her personal funds. Can we do this?

No. A pledge is a private obligation to pay, and the foundation cannot fulfill a personal obligation of its trustees or other disqualified persons.

4. A family trustee pledged to a local charity that the foundation would make a grant, but did not check with the other trustees first. Can we use foundation assets to satisfy this pledge?

This would no longer be an act of self-dealing because it is not a personal pledge. It would be up to the foundation to decide whether to approve a grant that was pledged by a trustee without prior board approval. Such a decision may be based on the foundation’s grantmaking policy, the facts of the situation, and particularly whether that trustee has such authority. Crafting a policy that addresses this scenario before it arises is recommended.



## Attending Fundraisers

### 1. What should we know about ticketed events?

Typically, where goods or services are received in exchange for the price of the ticket, the foundation and its disqualified persons would be receiving a tangible, economic benefit by using the tickets. If paid for by the foundation, this would be an act of self-dealing.

### 2. Can I avoid self-dealing by personally paying for the value of the goods/services received, and having the foundation pay the charitable portion?

No. The splitting of the cost, also known as “bifurcating,” is also treated as self-dealing. The disqualified person attending must pay for the entire amount of the ticket to avoid self-dealing.

### 3. What if I must attend a ticketed event to monitor the grantee’s use of a recent grant from my foundation?

This is entirely permissible. The attendance at an event is permitted where the attendee has to carry out a legitimate foundation duty, such as evaluating or monitoring grantee activities.

### 4. Can I avoid self-dealing by giving the tickets to my daughter-in-law? My neighbor?

You will still be committing an act of self-dealing as your daughter-in-law is a disqualified person (your children’s spouses are disqualified). And, while giving the tickets to an unrelated person, such as a neighbor, will not be self-dealing, you would be using foundation assets for a non-charitable purpose. The IRS frowns on use of charitable assets for private benefit.

### 5. What should I do with tickets in my possession?

It is typically safe to give the tickets back to the organization or to another charity. This is a matter best addressed before it happens, in the foundation’s conflicts of interest policy. For example, the policy may be to give such tickets to local charities or potential funders that would gain needed information, experience or expertise by attending such an event.

### 6. Can the family foundation be listed in the program at the ticketed event?

Yes. Acknowledging the family foundation as a contributor to the event is considered public recognition, which the IRS has determined is permissible as it is not a tangible, economic benefit.



## Hiring Family Members as Staff



### 1. What do I need to know about family members and compensation?

Generally, you can hire family to work for the foundation and pay them a reasonable salary or fee for performing what the IRS describes as “personal” services that are necessary for the operation of the foundation.

### 2. What are personal services?

The IRS specifically includes legal, accounting, banking, and investment services as “personal services.” Real estate management, interior design, and IT are not included.

### 3. How do I determine what is reasonable compensation?

Look at what **similar foundations** pay **similar persons** for **similar services**. Try to pay no more than what others pay.

### A Word About Reasonable Compensation



**Reasonable compensation** is a major exception to the rule against self-dealing for private foundations. For example, it is perfectly legal for the creators of a family foundation to pay a family member to staff the foundation. Similarly, a private foundation may pay trustee or director fees to family members on the governing board. In all such cases, the payments are legal so long as the work to be performed is *necessary* for the operations of the foundation, the amount compensated is *reasonable* and the services are considered *personal*.

## Grantmakers Salary and Benefits Report

**Measure your salary ranges, check salary increase trends, and compare your benefits** relative to similar grantmaking organizations. As a resource to Council members, the Council publishes the annual **Grantmakers Salary and Benefits Report** complete with salary tables for community, private (family and independent) and public foundations and corporate grantmakers reporting base salaries as of February 1, 2007.



Here's an Excerpt!  
**Compensation Summary**  
 (Base salaries as of February 1, 2007)

Position Title	Salary					
	25 <sup>th</sup> %ile	Median	Mean	75% ile	Range	
Family	100,000	145,000	167,256	201,986	10,200	to 530,000
Independent	120,000	197,133	217,823	282,346	40,900	to 690,000
Family and Independent Combined	109,854	169,975	199,958	250,000	10,200	to 690,000
<b>Associate Director/Executive Vice President</b>	95,000	140,000	176,587	230,000	18,900	to 583,000
<b>Vice President (Administration)</b>	122,215	179,574	170,369	214,200	50,000	to 306,082
<b>Chief Financial Officer/Treasurer</b>	104,375	154,575	160,237	202,625	24,000	to 351,000

You can also find this information by checking the tax returns (990-PFs) of other foundations at [www.Guidestar.org](http://www.Guidestar.org) or [www.FdnCenter.org](http://www.FdnCenter.org).



## Board Compensation

### 1. What should I know about paying my board?

Simply put, reasonable fees for necessary board service are permissible. However, research shows that most foundations do not compensate their board members.

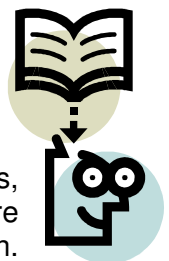
### 2. Can out-of-pocket expenses be reimbursed?

Yes, provided the expenses are reasonable and necessary for carrying out foundation work.

### 3. How do I determine what is reasonable?

Similar to the rules for compensation of family members as staff, you can look at what other foundations of similar size are paying. Check out our *Foundation Management Series* as a reference for what foundations are paying trustees.

Check it out!  
***Foundation Management Series***  
*Published by the Council on Foundations*  
Find out how much other family foundations  
are spending on administrative expenses,  
board compensation and more  
in this biennial publication.





## Paying Travel Expenses for Family



### 1. Can I take my family on foundation travel at the foundation's expense?

Generally, no. Paying for spouse/family travel using foundation assets is self-dealing unless the person has legitimate foundation duties or the travel expenses paid are treated as income to the foundation manager for the person in question.

### 2. Is attending dinner as a family at a conference a foundation expense?

It depends. If the family members all have official, meaningful foundation duties that further the charitable purpose of the foundation, the primary purpose of the dinner is to conduct official foundation business (rather than a social affair) and the costs of the dinner were reasonable, foundation assets can be used to reimburse costs of the dinner. Because of the penalties involved, however, foundations should carefully consider the extent to which foundation funds should be used to cover certain expenses, particularly meals, entertainment and travel. The family can save itself some headache by crafting a travel policy that addresses these issues before they occur.

#### A Word of Caution!

**The Council** urges caution when using foundation funds to cover expenses of family members, especially children or grandchildren, on the grounds that attendance helps them learn their future duties. In the only published guidance on this issue (PLR 9546020), the IRS ruled that reimbursement of training expenses for future trustees was not self-dealing. In the situation the IRS considered, the number of potential future trustees was small, the individuals in question had reached the minimum age required for election to the board, a significant proportion of those trained were likely to become trustees soon, the training program would be a formal, structured affair, and active participation in it would be a requirement for election to the board. Foundations should be hesitant to cover expenses for "trustees-in-training" without first considering similar factors.



**Beyond the legal considerations,** foundations would be wise to consider whether paying travel expenses for family members is consistent with the foundation's values and ethics. In promoting active fiscal oversight, the stewardship principles encourage boards to ensure that expenses are reasonable and in proportion to amounts spent on grants and technical assistance. Board members should also be aware that these decisions about paying travel expenses for their own family members may involve conflicts of interest. Finally, it may be prudent to consider the public perception of the foundation's actions. Often, the safest approach is to have family members pay their expenses personally unless their participation is clearly within legal and policy considerations.



## Grants to Individuals

### 1. Are there any special rules for grants to individuals?

Yes. The grant must be for a charitable purpose and cannot be made to any disqualified persons.

- Grantee selection procedures must be **preapproved** by the IRS *if the foundation is making the selection*.
- Grants must be made on an objective and nondiscriminatory basis.
- The number of potential grantees must be broad enough to be considered a “charitable class.”

### 2. Are we allowed to make grants to the college-bound seniors in our family?

No. Using foundation assets to make grants to people related to the family is a violation of self-dealing if the grants are to disqualified persons. And, while grants to extended family may not be self-dealing, requiring membership in a particular family may not be objective or broad enough to be considered charitable by the IRS.

### 3. Can we grant prizes or awards to recognize a remarkable achievement?

Prizes or awards that only recognize past achievement, have no strings attached, and are not earmarked for travel or study are charitable and do not require advance IRS approval. If used for travel or study, IRS travel/study rules apply.

### 4. Can we avoid these rules if we make the grant to a public charity or directly to the learning institution?

Generally, the travel/study rules (advance IRS approval) do not apply if the private foundation leaves the entire selection process up to the public charity or learning institution. However, *any agreement*, either oral or written, between the foundation and grantee, to select a particular recipient, is considered “earmarking” and the IRS is free to treat it as a taxable gift rather than a charitable contribution.



## Grants to Non-Charities

### 1. Can we make grants to organizations that are not charities?

Grants to non-charities are permissible, as long as the grant is for a **charitable purpose**, and the foundation follows special rules called “expenditure responsibility.” If you find the funds are being misused, you must end further grants to that grantee.

### **Expenditure Responsibility**

[Excerpted from *Expenditure Responsibility Step by Step*]

The five basic steps for completing expenditure responsibility are not that different from the standard grantmaking procedures used by many foundations. A quick summary of those five requirements is:

1. Pre-grant inquiry. The foundation must make a reasonable investigation of the grantee to make sure that the grantee is capable of performing the charitable activity that is to be funded.
2. Written agreement. The grantee must sign a written agreement with the foundation that specifically sets out what charitable activities are to be accomplished with the funds to be granted. In most circumstances, general purpose grants are not permitted. The agreement must also contain certain limitations (such as prohibiting the use of any of the funds for lobbying).
3. Separate account. Unless the grantee is another private foundation, the grantee must establish a separate account for the funds. Charitable dollars cannot be commingled with noncharitable dollars.
4. Regular reports. The grantee must provide regular status reports on the expenditure of the funds and the progress made in fulfilling the charitable purpose for which the funds are earmarked.
5. Report to IRS on the tax return. When filing the Form 990-PF tax return for any year in which a payment for an expenditure responsibility grant is made, the foundation must indicate that expenditure responsibility payments were made and must add a schedule to the form with a brief description of each grant indicating the grantee, the amount, the charitable purpose and the current status of the grant.



## Using a Fiscal Sponsor

### 1. What is a fiscal sponsor?

As a grantmaker, you may wish to support charitable projects or work of groups that do not have the 501(c)(3) charitable status. It is common for a 501(c)(3) public charity to serve as fiscal sponsor, an intermediary between donors and the non-charity when special rules are followed.

### 2. What are the rules for using fiscal sponsors?

Grants to fiscal sponsors are usually safe when the grant has not been earmarked and the fiscal sponsor has complete control over the way the funds are granted. Using fiscal sponsors can result in serious legal problems, if not done correctly.

Avoid earmarking. Foundation A makes a grant to Public Charity B (a safe grant) and directs that (or earmarks) the funds be re-granted to Group C (or to an individual). Treasury regulations consistently disallow using Public Charity B as a fiscal sponsor.

The rules are crystal clear that a grant from A to B earmarked for C is a grant to C; using the fiscal sponsor in the middle does not work. Earmarking is defined as an “oral or written agreement” whereby B can exercise no discretion over the funds and must redirect the funds to C.

How are they used? Foundations often like to use whole variety of grants in order to make them the involved administrative requirements of responsibility. Typical examples of where a use a fiscal sponsor are grants to: 1) a non-charity commerce; 2) a charity that does not yet have its IRS non-U.S. organization; 4) a small charity that might be vulnerable to “tipping;” 5) another private foundation; and 6) individuals for certain purposes.



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## International Grantmaking

### 1. Can we make grants outside the U.S.?

Family foundations can safely grant to non-501(c)(3) organizations outside the U.S. as long as they follow one of two special sets of procedures: expenditure responsibility or equivalency determination.

### 2. What are the rules for expenditure responsibility?

Go back to page 10 (Grants to non-Charities).

### 3. What are the rules for making an Equivalency Determination?

“Equivalency Determination” is a good faith judgment that the non-U.S. grantee is “the equivalent” of a U.S. public charity. The foundation may make such a determination based on either an affidavit of the grantee organization or an opinion of counsel (of the grantor or the grantee) that the grantee is a public charity. The affidavit or opinion must be based on sufficient facts and supported by adequate documentation.

### 4. What kind of documentation is sufficient?

The file should be thorough enough so that the IRS will be satisfied that the determination was reasonable. Whether the foundation uses legal counsel or seeks to obtain an affidavit from the grantee, it is likely to need the same information:

1. Organizational Documents. Articles of incorporation, charter, certificate of incorporation, or similar names. Bylaws (the organization’s internal governing rules) should also be obtained.
2. Purposes and Activities. A detailed description of the purposes activities of the grantee.
3. Distribution of Assets. A copy of relevant statutory law, or provisions in the governing instrument, stating how the assets of the grantee will be distributed if it ceases to exist.
4. Limitations. The grantee must also demonstrate that: 1) none of its assets or income will provide a private benefit to individuals; 2) its non-charitable activities or legislative lobbying are, and will be insubstantial; and 3) it will not participate in any political campaign or election on behalf of, or in opposition to, any candidate for public office.
5. Financial Data. Detailed financial data for several years for organizations that are not religious, educational, or medical institutions.

Most foundations active in the international arena have traditionally preferred the use of lawyer equivalency letters. Under Revenue Procedure 92-94, however, the IRS made it clear that multiple foundations may rely on the same affidavit. Because the affidavit format does not require incurring legal fees for each grantee, this change will hopefully permit more small and medium sized foundations to make grants outside the United States.



# Resources

## That's *Still* the Ticket

From *Council Columns*, June/July 2004

By Andrew C. Schulz

In the May/June 1998 issue of *Foundation News & Commentary*, Jane Nober wrote "That's the Ticket," about using foundation funds to pay for tickets to fundraising events. Six years later, questions about tickets and other tangible benefits paid for by the foundation are still among the most common inquiries received by the Council on Foundations' legal department. We thought it would be helpful to review the basic rules for private foundations and highlight some recent questions we've answered. Although these rules do not technically apply to community foundations, they are well-advised to follow them to protect their boards from excise tax penalties under Section 4958 of the Internal Revenue Code and ensure that donors or their advisors do not receive improper private benefits from grants from donor-advised funds. *As always, because this article presents complicated legal and policy issues, you should seek qualified legal counsel if you have questions.*

**A review of the rules:** Most tickets have some economic value, whether the ticket is for a dinner, performance or general admission to a museum or other facility. Under the private foundation self-dealing rules, foundation resources may not be used to benefit a disqualified person (which the law defines as foundation board members, executive staff, major donors and the family members of any of those persons and businesses they control). If any of those individuals use tickets purchased by or given to the foundation, it may constitute an act of self-dealing. An exception may be available if the person uses the ticket in his or her official capacity as a foundation representative *and* the use is reasonable and necessary to the performance of those duties (i.e., to monitor a charity's use of a foundation grant).

**May a trustee's spouse attend an event using a foundation ticket?** The Council recommends against this practice. There is no guidance from the IRS indicating that a spouse falls within the limited exception afforded disqualified persons who attend events in order to carry out their responsibilities to the foundation. In order to be permissible, spousal participation must be both *reasonable* and *necessary* to the performance of the *trustee's* foundation duties.

**Our trustees' children may be trustees one day; may they use tickets to attend events to learn about our grantees?** The Council is very cautious about justifying the attendance of children or grandchildren at charity events on the grounds that

attendance helps them learn their future duties. In the only published guidance on this issue (PLR 9546020, 1995), the IRS set a high bar for what constitutes an acceptable trustee training program: the individuals in question had reached the minimum age required for election to the board; a significant proportion of those trained were likely to become trustees in the near future; the training program would be a formal and structured affair; active participation was required for election to the board; and the number participating was small compared to the total number of children. Under those circumstances, the IRS agreed that the training was both reasonable and necessary, so using foundation funds to pay for it would not be an act of self-dealing. Providing tickets to children who may or may not serve as trustees someday would not meet this standard.

**May trustees attend events to show foundation support for the host charity?** While showing foundation support *may* be justification for a trustee to use foundation-purchased tickets to attend an event, whether or not it is reasonable and necessary depends on the facts. At a minimum, the foundation should document the basis on which it selects events or charities to which it lends this form of support. Is there a link between the foundation's support of a particular charity and increased support of that charity by others? Is the benefit to the charity sufficient to justify the expense to the foundation? How many trustees need to attend an event to show the foundation's support? Such use of foundation tickets may be permissible in some situations.

**What else should we think about as we review our policies on the use of tickets?** We recommend that boards consider not just whether current policies meet the minimum legal requirements, but also the ethical framework. Boards should discuss the fact that their decisions about their use—or a family member's use—of foundation tickets could involve a conflict of interest. While the amount of money involved may be small, use of foundation tickets does confer an economic benefit and this creates tension with the board member's duty of loyalty to the foundation. We recommend considering the public appearance of the foundation as well. Currently, many are questioning the extent to which foundation expenditures confer benefits on foundation insiders and whether such expenditures should be curtailed. Considering the issues from the point of view of the general public may help the board weigh them.



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## Hands On That's the Ticket

by Jane C. Nober

**Accepting and using tickets and other tangible benefits of more than minimal value raises questions for foundation managers. Here's what the general Tax Code rules say is acceptable.**

Phil N. Thropy, the president of the Thropy Family Foundation, was delighted when the board approved a grant of \$25,000 to his favorite charity, the local symphony. He was confused, though, when a package of four season tickets for the foundation appeared in his mailbox. Could he use the tickets to attend the symphony? Could he bring his wife and children? If he made his own contribution to the symphony and received another set of tickets, to whom could he give the foundation's tickets?

Reviewing her morning mail, Doe Nation, the manager of the new corporate foundation at XYZ Corporation, paused over the invitation to a fundraising dinner for a local charity. A table for ten at the benefit would cost the foundation \$10,000-\$1,000 for the dinner and \$9,000 for a charitable contribution. Nation wondered whether the foundation should make a practice of funding dinner events. Should the foundation send a check for the cause but refuse the table and dinners? If the foundation accepted the dinners, could corporate executives take the seats and bring some valued customers? Could the corporation's name be listed in the dinner program?

Grant Maker, the corporate contributions manager at QRS Industries, considered an appeal from the local art museum. A \$20,000 contribution would entitle the corporation to use the museum for an evening reception and provide free admission and a discount at the museum store for all corporate employees. Should the grant come from the corporate foundation or the corporate giving budget?


Anne Dowment, director of the community foundation, was concerned. She had received 16 requests in one week for \$500 gifts to be made from donor-advised funds to the local children's hospital. Now she knew why: in her morning mail was an invitation to a gala dinner dance for the hospital. Tickets cost \$500-\$100 for the meal and \$400 for the charitable contribution.

As these examples suggest, accepting tangible benefits opens a Pandora's Box for foundations and prompts many requests for information from the Council on Foundations. Following is how the general Tax Code rules address these situations for family and community foundations, corporate foundations and giving programs, and public charities.

### **Tickets are Tangible Economic Benefits**

Whether they are tickets to a dinner, a performance or simply for general admission to a facility, tickets have economic value, generally the fair market value of the goods and services provided. The importance of this tangible economic value is that individuals and corporations (we'll come to foundations in a moment) must generally reduce the amount of any charitable income tax deduction taken in connection with a gift that yields benefits with economic value by the amount of that value. If a corporate giving program pays \$500 for a table at a fundraising dinner, and the economic value of the dinners provided to attendees is \$100, the corporation may take a charitable income tax deduction of \$400 (\$500 less \$100). It's perfectly legitimate for a corporation or individual to

Council on Foundations, 2008 Summit



accept tickets in exchange for a charitable contribution, but it is important to report the transaction properly. Tax rules dating from 1993 that require charities to disclose the value of tangible economic benefits provided to contributors are designed to aid compliance.

For public charities such as community foundations, the tangible economic value of tickets means that it is important to monitor distributions from donor-advised funds. To the extent that a donor advisor might receive tickets as a result of a distribution from a fund at the community foundation, the community foundation could be viewed as providing benefits to private individuals. To the media and the public, a pattern of this sort of activity may make the community foundation appear to be helping people avoid taxes (donors take a deduction for the full amount given to the donor-advised fund and presumably would not reduce that deduction by the value of the later-acquired tickets). To the IRS, a pattern of this sort of activity might suggest that the community foundation is not operating exclusively for charitable purposes as required to retain its tax exemption. Again, there is no problem with individuals making direct gifts to charities and receiving tickets or other tangible benefits in return; the problem only arises when the community foundation's funds are used to gain these goods and services for a donor.

The tangible economic value that tickets have poses a large problem for private foundations. The private foundation rules in the Tax Code generally provide that it is an act of self-dealing for disqualified persons to receive tangible economic benefits that flow from foundation grants. Disqualified persons are foundation managers, substantial contributors to the foundation, and the families of both of these. In the corporate foundation context, the corporation that funds the foundation is clearly a disqualified person. There is no IRS guidance on whether all


corporate employees are disqualified persons or if only certain managers or executives fall into this category. The conservative approach would be to consider all employees disqualified persons. Thus, the private foundation rules generally bar disqualified persons from using tickets that are made available on account of foundation grants.

### **Reasonable and Necessary**

The self-dealing rule's bar on the provision of tangible benefits has an important exception: Treasury Regulations allow a foundation to provide benefits to a disqualified person so long as those benefits are reasonable and necessary to his or her performance of functions that carry out the exempt purposes of the foundation. An IRS technical advice memorandum (TAM 8449008) states that when it is necessary for a disqualified person to attend an event to monitor how the foundation's funds have been spent, he or she may accept tickets provided by the foundation and use them. (Note: A technical advice memo only applies to the parties involved in the particular case, but it does provide an indication of the IRS' thinking on this matter.) There is no IRS guidance on whether a foundation board or staff member could legitimately "monitor" a grantee's activities for an entire season of concerts or whether just one visit is appropriate.

Note that whether or not a private foundation staff or board member attends a function, the value of the tickets need not be deducted from the amount as listed under "Contributions, gifts, [and] grants paid" on the foundations Form 990-PF. If a foundation wishes to, it may list as an administrative expense the value of any tickets used by a staff or board member who attends in a monitoring or administrative capacity and put the balance of the grant under "Contributions," but this type of accounting is not generally required.

A final thought on this topic is that goodwill and publicity are not tangible economic benefits. A



foundation, including a corporate foundation, is free to have itself listed in a dinner program or a banner. If support for a particular event comes from both the corporate foundation and the corporation, the two may be listed together.

### **Dividing Ticket Value into "Charitable" and "Noncharitable" Components Doesn't Work**

For the purpose of the self-dealing rule, the IRS takes the position that it is not possible to separate the price of a ticket into its charitable and noncharitable components. In other words, a private foundation cannot avoid the self-dealing problem by having a disqualified person (who has no monitoring or administrative duties to justify his or her attendance at a function) pay for the cost of the dinner (\$100) or other tangible benefit and having the foundation pick up the charitable portion (\$400) of the ticket. The reasoning behind this IRS position appears to be that the disqualified person would not be in a position to pay the \$100 for the dinner unless the foundation paid the \$400; the foundation is freeing a disqualified person of a financial obligation that he or she (or, in the case of a corporation, it) would otherwise incur. In a March 1, 1990, private letter ruling involving a corporate foundation (PLR 9021066), the IRS states that such "bifurcation" would constitute self-dealing, as would "any funding approach whereby [the corporate foundation's] funds were used to permit [the corporations'] executives to attend." Again, the ruling applies only to the taxpayer that requested it but provides evidence of the IRS' general attitude.

For public charities such as community foundations, the idea that the charitable and noncharitable components of a ticket are inseparable suggests that the donor advisor cannot correct the private benefit problem posed when fund distributions pay for tickets by offering to pick up the "noncharitable" portion of the tab. Again, the donor advisor would not be in a position to pay for the dinner if the community

foundation's funds were not covering the donation, and the community foundation may be seen as discharging an individual's obligation and thus serving private interests.


### **Tickets May be Refused or Otherwise Disposed of to Prevent Problems**

Individuals and corporations seeking to maximize their charitable deductions and grantmakers wishing to avoid the issues potentially raised by tickets may refuse them. As far back as 1967, the IRS provided rules for how benefits might be refused (see Rev. Rul. 67-246, 1967-2 C.B. 104). Options include indicating on a contribution form that no tickets are to be sent and refusing to accept the tickets if they are sent.

Revenue Ruling 67-246 emphasizes that simply not using the tickets does not constitute a refusal or disposition of them that restores the full value of an individual or corporation's charitable contribution; as long as the taxpayer still has the tickets, he or she has the right to attend the event and that right has economic value. However, in a later ruling, the IRS held that a taxpayer who donated the tickets back to the charity for resale was entitled to a charitable deduction equal to his cost of the ticket (see Rev. Rul. 74-348, 1974-2 C.B. 80). Some corporations make a practice of donating tickets back to the charity that issues them. Another option may be to donate the tickets to another charitable group that can put them to good use.

### **From the General to the Specific**

For family foundations, tickets for fundraisers and other events should be used only by foundation staff and directors who have monitoring and administrative responsibilities for the relevant grants. Spouses of these disqualified persons are not covered by the exception to the self-dealing rules, and should not be using foundation-sponsored tickets. Some lawyers suggest that one way of making it



possible for spouses to attend fundraisers is to treat the full cost of their tickets (both charitable and noncharitable components) as compensation to the disqualified person who is attending in a monitoring or administrative capacity. If family members want to support and attend a fundraising event, the best course is for them to make their contribution out of their own pocket, not the foundation's.

For Phil N. Thropy, recipient of the symphony tickets on account of the Thropy Foundation's gift, the rules mean that he and perhaps other board members (or staff) may use one or more of the tickets sent by the symphony. Unless his wife and children play a role in the foundation, they should not be using the tickets. Mr. Thropy may return unused tickets to the symphony or perhaps give them to another charitable organization, but there is no requirement that he do so and no tax or other penalty for the foundation if he does not. On the foundation's tax return, the full \$25,000 may be shown as a contribution to the symphony, although the foundation is free to list the value of tickets used as an administrative expense. There's no clear answer to the question of whether it is appropriate for Mr. Thropy to use the entire season's worth of tickets or just one.

Corporate foundations, too, would be well advised to look for another source of funding for contributions that will yield tickets or other tangible benefits. If there is a corporate giving program, it is the ideal funder, since the self-dealing rules do not apply when the corporate foundation is not used. If the corporate foundation does provide funding that results in tickets, the key to good compliance is keeping in mind who disqualified persons are: the foundation's managers, board members, the corporation and, potentially, all of its employees. None of these people should be using tickets unless they are attending on behalf of the foundation in an administrative or monitoring capacity. As with family foundations, spouses are


not covered by the exception for monitoring and administration. In the corporate context, it may be tempting to invite corporate clients or other business associates to sit at a corporate foundation table, but this should be avoided.

For Doe Nation, the rules mean that the XYZ Corporation Foundation needs to make a policy choice on the issue of whether it will support fundraisers and other events that result in tangible economic benefits. If the decision is that it will not, Ms. Nation may pass on such requests to the direct corporate giving program. If the foundation opts to support these events, it must decide whether it will accept tables and to whom it will distribute tickets. Whether or not the foundation accepts tables, it may be listed in the dinner program as a sponsor. The foundation is free to list the value of tickets used as an administrative expense on its 990-PF, but need not do so.

### **What Becomes of a Ticket Kept?**

Both family and corporate foundation managers might well wonder to whom—other than foundation personnel with administrative and monitoring responsibilities—they may legally give tickets if accepted. There's no clear answer in the law, but returning them to the issuing charity or another charitable group is usually a safe option. Giving the tickets to truly unrelated persons, including other potential contributors to the charity who may benefit from an opportunity to learn about its work, is another possibility.

Corporate giving programs that acquire tickets have much more flexibility in distributing them. So long as the corporation reduces the amount of its charitable deduction by the value of any goods and services received, it may send executives or other employees, customers and other business contacts to an event. Note, too, that under certain circumstances, corporate contributions need not be reduced by the value of benefits received; the 1993 tax rules provide that if a corporation



makes a gift to a charity and receives in return benefits for its employees that are identical to membership privileges that an individual might receive for a gift of \$50 or less, the value of these benefits need not be taken into account.

Thus, Grant Maker, who's been offered a package of benefits for QRS Industries' employees in exchange for a large corporate gift would be well advised to make the contribution to the local art museum from the corporate giving program, not the corporate foundation. He will need to verify that the package of benefits available to QRS employees is identical to that offered to museum members who pay \$50 or less. If the donation comes from the corporate foundation, and the admission benefits are offered, it may be an act of self-dealing for QRS Industries employees to use them.

Public charities such as community foundations need to exercise caution when dealing with fundraising tickets. The wise community foundation alerts donor advisors from the outset that it will not make recommended distributions that will result in tangible benefits accruing to them. If donors are given forms on which to request distributions, it is helpful to have an acknowledgment or recital that the suggested grants do not represent the payment of a pledge or other financial obligation nor will the donor advisor receive any personal benefit from this charitable distribution.

Community foundation executive Anne Dowment faces the unenviable task of contacting her donor advisors and asking each one gently whether he or she is requesting a distribution in order to buy tickets for the Children's Hospital benefit dinner dance. If the answer is yes, she should tactfully inform him or her that such a gift should come from personal, not community foundation, funds. If a donor advisor mentions that he would like to make a contribution but is not planning to attend the dinner dance, however, the community foundation can make the

contribution and indicate that tickets should not be sent. Ms. Dowment may wish to think about revising the community foundation's materials for donor advisors to make the prohibition on personal benefits more prominent.

Tickets and other tangible benefits pose complicated legal and policy challenges for all types of grantmakers, and the guidelines set out here are no substitute for expert counsel from a lawyer familiar with the grantmakers' activities. But understanding the issues and knowing when to call on counsel is an important part of complying with the rules in this area.

## Resources From the Council on Foundations' Bookstore

To order, call 888/239-5221 or visit [www.cof.org](http://www.cof.org) and click on "Publications."

John A. Edie. *Family Foundations and the Law: What You Need to Know*, 3rd ed. (Washington, DC: Council on Foundations, 2002).

John A. Edie. *Grants to Individuals by Private Foundations*, (Washington, DC: Council on Foundations, 1995).

John A. Edie. *Expenditure Responsibility Step by Step*, 3<sup>rd</sup> ed. (Washington, DC: Council on Foundations, 2005).

Adler, Betsy Buchalter, et. al., *Rules of the Road: A Guide to the Law of Charities in the United States*, (Washington, DC: Council on Foundations, **available Summer 2007**).

## Resources From the Council on Foundations' Website: [www.cof.org](http://www.cof.org)

Click: "Learn."

Click: "Legal Information."

**Developing a Travel Policy.**

<http://www.cof.org/learn/content.cfm?ItemNumber=1173>

**Equivalency or Expenditure Responsibility: A Guide in Plain English.**

<http://www.cof.org/Members/content.cfm?ItemNumber=1559#legal>

**United States International Grantmaking**

[www.usig.org](http://www.usig.org)

**Fiscal Agency versus Fiscal Sponsorship**

<http://www.foundationnews.org/CME/article.cfm?ID=3069>

**Tread Carefully When Sharing Board Members with Grantseekers**

<http://www.cof.org/learn/content.cfm?ItemNumber=819>

**Compensation for Foundation Directors and Trustees:**

[http://www.cof.org/files/Documents/Governing\\_Boards/trusteecomp2003.pdf](http://www.cof.org/files/Documents/Governing_Boards/trusteecomp2003.pdf)