
CHAPTER ONE

Introduction to Private Foundations

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p. 1, note 1. Delete existing text and insert:

Pub. 55-B, *IRS Data Book, 2023* (Apr. 2024), informs that there are, as of the federal government's fiscal year 2023 (ending September 30, 2023), nearly 2 million tax-exempt organizations in the United States, more than 1.5 million of which are recognized charitable and similar organizations (including private foundations), plus 104,783 nonexempt charitable trusts and split-interest trusts (see §§ 3.6, 3.7). This number of charitable organizations does not include religious organizations that are not required to seek recognition of tax exemption.

p. 1, first paragraph, second line. Delete 90,000 and insert 145,000

p. 1, note 2. Delete existing text and insert:

According to Cause IQ (<https://www.causeiq.com/directory/private-foundations-list>).

§ 1.1 PRIVATE FOUNDATIONS: UNIQUE ORGANIZATIONS

p. 2, first paragraph, fourth line. Insert footnote 2.1 following semicolon:

^{2.1}Pub. L. No. 91-72, 83 Stat. 487.

§ 1.7 ORGANIZATIONAL RULES

§ 1.2 DEFINITION OF PRIVATE FOUNDATION

p. 5, note 11, first sentence. *Delete text following semicolon and insert:*
IRS Revenue Procedure (Rev. Proc.) 2024-5, 2024-1 I.R.B. 262 § 7.03, 7.04(2).

§ 1.4 PRIVATE FOUNDATION LAW PRIMER

(f) Excess Business Holdings Rules

p. 14, note 64. *Delete 7.2 and insert 7.2(c)*

(l) Unrelated Business Rules

p. 17, note 93. *Delete 7.1(b) and insert 7.2(b)*

§ 1.7 ORGANIZATIONAL RULES

p. 22, note 131. *Insert following existing text:*

See *Tax-Exempt Organizations* § 4.3(b). A sample dissolution provision acceptable to the IRS is provided in the Instructions for Form 1023 and in Pub. 557, *Tax-Exempt Status for Your Organization* (see Rev. Proc. 2024-22, 2024-22 I.R.B. 1332 § 2.08).

p. 22, third complete paragraph, last sentence. *Delete articles of organization and insert governing instrument*

p. 22, note 133. *Delete existing text and insert:*

For purposes of IRC § 508(e), *governing instrument* has the same meaning as *articles of organization* under Reg. § 1.501(c)(3)-1(b)(2) (see § 2.3).

p. 23, second complete paragraph, second sentence. *Delete and insert:*

Following the Tax Reform Act of 1969, most states enacted legislation imposing these requirements on private foundations automatically, and private foundations formed in these states generally are deemed to satisfy these requirements even if they do not in fact appear in a foundation's governing instrument. However, a private foundation is responsible for verifying that the required provisions are satisfied by applicable state law if its governing instrument does not include them.

p. 23, note 141. *Delete existing text and insert:*

Rev. Rul. 2024-10, 2024-22 I.R.B. 1240, *obsoleting* Rev. Rul. 75-38, 1975-1 C.B. 161, which identified states with statutory provisions in effect at the time of its publication that satisfied the requirements of IRC § 508(e). The IRS obsoleted the earlier ruling because several of the state statutory provisions referenced in the earlier ruling have been amended, repealed, or replaced since its publication and it does not address potential differences in the state statutory provisions in a small number of states that satisfy the IRC § 508(e) requirements for charitable trusts or corporations, but not both (Rev. Rul. 2024-10, 2024-22 I.R.B. 1240).

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In nonbinding, internal guidance, the IRS has identified whether and under what circumstances each state has enacted laws satisfying the IRC § 508(e) requirements, including the types of organizations covered by those laws and exceptions, with the caveat that subsequent changes to state law may affect the accuracy of this information (Program Manager Tech. Adv. Mem. 2024-03).

p. 24. *Insert following first complete paragraph:*

The IRS ruled that provisions in a private foundation's governing instrument that satisfy the specific organizational requirements for private foundations are not, however, sufficient in themselves to meet the general dissolution clause requirement generally applicable to all charitable organizations.^{147.1} The IRS reasoned that a private foundation is a charitable organization, yet an organization cannot be so classified where its governing instrument fails to include a dissolution clause, and the special governing instrument provisions apply only to private foundations. In so ruling, the IRS reviewed the legislative history of the private foundation rules, which makes it clear that these rules comprise requirements that are in addition to the general tax exemption requirements.^{147.2}

§ 1.8 PRIVATE FOUNDATION LAW SANCTIONS

p. 25, first heading. *Delete Sanctions (a Reprise) and insert Overview*

(b) Self-Dealing Sanctions as Pigouvian Taxes

p. 25, note 151. *Insert following existing text:*

See § 5.15(a)(i).

p. 25, note 152. *Insert following existing text:*

See § 5.15(a)(ii).

p. 25, note 153. *Insert following existing text:*

See § 5.15(a)(i), (ii).

p. 25, third paragraph, sixth line. *Insert footnote 153.1 following period after to tax:*

^{153.1} IRC § 4941(a), (b), (e)(2). See § 5.15(b).

p. 25, note 154. *Insert following existing text:*

See § 5.15(a)(iv).

p. 25, note 155. *Insert following existing text:*

See § 5.15(d).

^{147.1}See text accompanied by *supra* note 131.

^{147.2}Rev. Rul. 85-160, 1985-2 C.B. 162.

(c) Self-Dealing Sanctions: Taxes or Penalties?

p. 28, first complete paragraph. *Delete including footnote.*

p. 28, note 175. *Insert following existing text:*

The U.S. Supreme Court made the same observation in a case decided after Sanchez (Bob Jones University v. Simon, 416 U.S. 725, 791, n.12 (1974)).

p. 31. *Insert following first complete paragraph, before first heading:*

In a recent case involving the tax law sanction imposed on excess contributions to an individual retirement account (IRA),^{197.1} the U.S. Tax Court held that this sanction is a tax and not a penalty. The Court observed that the captions of the Internal Revenue Code section and the specific subsection at issue refer to the sanction as a “tax.” Additionally, within the provision itself “this exaction” is referred to “four times, in each case describing it as a ‘tax.’” The term “penalty” does not appear in the subsection at issue, nor in “any of the provision’s other six subsections.” Thus, the court concluded, the statute’s plain text establishes that it is a “tax” under the Code.^{197.2}

Although the court’s “textual analysis suffice[d] to resolve the issue,” the court noted “that numerous other factors, all pointing in the same direction,” confirm its conclusion: (1) the provision is located in Subtitle D of the Code, which is captioned “Miscellaneous Excise Taxes,” and which the court pointed out also includes the Chapter 42 excise taxes on private foundations; (2) “Congress generally has situated ‘penalties’ in Subtitle F of the Code, captioned ‘Procedure and Administration’”; (3) like other taxes, the sanction at issue “is ‘self-assessed’—i.e., required to be reported on a return filed by the taxpayer—whereas ‘penalties’ are determined by the Commissioner during an examination”;^{197.3} (4) Congress uninterruptedly has used “the term ‘tax’ to describe the exaction” through subsequent statutory revisions; and (5) deficiencies determined under the provision may generate “additions to the tax.”^{197.4} Likewise, all these factors apply to the Chapter 42 private foundation excise taxes.

^{197.1}IRC § 4973(a). This provision imposes a “tax in an amount equal to 6 percent of the amount of the excess contributions” that a taxpayer makes to an IRA in any given year (*id.*).

^{197.2}Couturier v. Commissioner, T.C. Memo. 2024-6, referencing the significance the U.S. Supreme Court assigned to Congress’s choice of label in holding that the Affordable Care Act’s “individual mandate” was not a “tax” (Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519, 564 (2012)).

^{197.3}Couturier v. Commissioner, T.C. Memo. 2024-6, citing *Latterman v. United States*, 872 F.2d 564, 566-69 (3d Cir. 1989).

^{197.4}Couturier v. Commissioner, T.C. Memo. 2024-6. Additions to tax are the subject of § 12.4(b).

(e) Potential of Overlapping Taxes

p. 32, note 204. *Delete § 7.2(b) and insert §§ 7.1, 7.2(c)(i)*

§ 1.9 STATISTICAL PROFILE

p. 33, second complete paragraph. *Delete existing text, including footnotes, and insert:*

There are approximately 145,000 private foundations in the United States,²¹⁸ thus accounting for a small percentage of the almost 2 million tax-exempt charitable organizations in the sector.^{218.1} These private foundations collectively employ 9,135 people, earn \$174 billion in revenue each year, and have assets of \$1.2 trillion.^{218.2} These assets amount to about 1 percent of the net worth in the United States overall.^{218.3} On the basis of data for 2018, it is estimated that all nonprofit organizations had a collective net worth of \$6.7 trillion; therefore, private foundations account for between one-sixth and one-seventh of assets held in the nonprofit sector.^{218.4}

²¹⁸According to Cause IQ, as of 2024, there are 145,625 private foundations in the United States (<https://www.causeiq.com/directory/private-foundations-list>). Cause IQ hosts an online directory of domestic private foundation providing key statistics for each private foundation.

^{218.1}Pub. 55-B, *IRS Data Book, 2023* (Apr. 2024), at 30.

^{218.2}<https://www.causeiq.com/directory/private-foundations-list>

^{218.3}Steuerle and Soskis, "Taxes and Foundations: A 50th Anniversary Overview," published by the Tax Policy Center, Urban Institute, and Brookings Institution (Feb. 8, 2020) at 3 (Steuerle & Soskis Paper).

^{218.4}*Id.* at 5.

