The Prohibitions on Private Inurement & Benefit by Tax-Exempt Organizations and Intermediate Sanctions

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SUMMARY

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The Prohibitions on Private Inurement & Benefit by Tax-Exempt Organizations and Intermediate Sanctions

The Internal Revenue Code (I.R.C.) contains certain restrictions designed to ensure tax-exempt organizations serve public, not private, interests and cannot be used for personal gain. *See, e.g.*, I.R.C. §§ 501(c)(3), (4). These restrictions derive from statutory text in the I.R.C. and have antecedents in common law rules on charity. *Id.* Among these restrictions are two prohibitions: (1) the prohibition on private inurement, and (2) the prohibition on private benefit. *Id.* These two prohibitions are distinct requirements derived from different statutory language, yet they overlap substantially in interpretation and enforcement by the Internal Revenue Service (IRS). *Id.* Violation of either prohibition is grounds for revocation of an organization's tax-exempt status. Treasury Regulations § 1.501(c)(3)-1(c)(2), (d)(1)(ii).

In addition to the prohibitions, the I.R.C. contains excise taxes on certain transactions that can result in personal gain. *See, e.g.*, I.R.C. §§ 4941, 4958, 4960. These excise taxes provide intermediate sanctions short of revocation of the tax exemption. This report discusses three types of excise taxes that differ in who is taxed, which transactions are taxed, how the tax is calculated, and the types of organizations subject to the tax. Application of the excise taxes to § 501(c)(3) organizations can depend on classification of the organization as (1) either a public charity or private foundation and (2) either a supporting organization or supported organization. *Id.* §§ 4941, 4958.

Focusing on the two most common types of tax-exempt organizations, §§ 501(c)(3) and 501(c)(4) organizations, this report explains the prohibitions on private inurement and benefit, how they differ, and how they overlap. This report also explains when and how excise taxes might apply in lieu of or in addition to revocation. It also describes related proposals that Congress has considered to modify the excise taxes, including to (1) expand the types of individuals upon whom the taxes are imposed, (2) expand the types of organizations subject to the taxes, (3) redefine the transactions subject to the taxes, (4) impose the taxes on organizations, and (5) restrict certain defenses against the taxes.

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Prohibition on "Private Inurement"

Section 501(c)(3) organizations—sometimes called "charitable organizations"—are organizations that receive tax exemption for being organized and operated exclusively for certain enumerated exempt purposes such as "religious, charitable, scientific, testing for public safety, literary, or educational purposes."[1] The requirements for such organizations to receive tax exemption are specified in § 501(c)(3).

Among the requirements, § 501(c)(3) provides that "no part of the net earnings of [the organization] inures to the benefit of any private shareholder or individual" for the organization to obtain or maintain tax-exempt status under it.[2] A private inurement prohibition on charities first appeared in the Payne-Aldrich Act and originally applied to an organization's "net income."[3] The prohibition was rephrased to apply to an organization's "net earnings" in 1918.[4]

The U.S. Department of the Treasury's (Treasury Department's) regulations interpreting the prohibition define "private shareholder or individual" as any "persons having a personal and private interest in the activities of the organization."[5] Private shareholders or individuals, sometimes called "insiders," have been found to include an organization's officers or directors.[6] The prohibition "is designed to prevent the siphoning of charitable receipts to insiders of the charity."[7] Determination of whether someone is an insider depends on an individual's level of control or influence within an organization, rather than a formal position.[8] For example, a "close professional working relationship" with an organization, without formal employment by or any other connection with the organization, can create a personal and private interest subject to the inurement prohibition.[9]

The statutory language prohibits all private inurement.[10] The Internal Revenue Service (IRS) has stated that "[p]ursuant to [Internal Revenue Code (I.R.C.) §] 501(c)(3), any amount of inurement is grounds for revocation [of tax-exempt status],"[11] and courts have generally applied the statutory prohibition strictly;[12] however, in certain specific situations, the IRS has found that no

[1] I.R.C. § 501(c)(3) (Title 26 of the *U.S. Code* is cited as the Internal Revenue Code (I.R.C.)). In this report, "section" and the section symbol (§) refer to sections in the I.R.C. unless otherwise specified.

[2] *Id.* § 501(c)(3).

[3] Ch. 6, § 38, 36 Stat. 11, 112–14 (1909).

[4] Revenue Act of 1918, ch. 18, § 231, 40 Stat. 1057, 1076 (1919). As explained later, courts and the IRS have not interpreted "net earnings" to have a strict, accounting meaning. *See infra* "Examples of Types of Private Inurement or Benefit." As a result, the difference between "net income" and "net earnings" may not be material.

[5] Treas. Reg. §§ 1.501(a)-1(c) (as amended in 2017), 1.501(c)(3)-1(c)(2) (as amended in 2017) (Title 26 of the *Code of Federal Regulations* is cited as Treasury Regulations (Treas. Reg.)).

[6] *See, e.g.*, Easter House v. United States, 12 Cl. Ct. 476 (1987), *aff'd*, 846 F.2d 78 (Fed. Cir. 1988); I.R.S. Priv. Ltr. Rul. 17-40-022 (Dec. 29, 2016) (finding private inurement to an executive director of an organization); I.R.S. Priv. Ltr. Rul. 15-41-012 (June 12, 2014) (finding private inurement to an organization's president).

[7] United Cancer Council v. Comm'r, 165 F.3d 1173, 1176 (7th Cir. 1999) (finding that a contract with the organization, although unfavorable to the organization, did not create an insider relationship to which the prohibition would apply).

[8] *Id.*; People of God Cmty. v. Comm'r, 75 T.C. 127, 133 (1980); Senior Citizens of Mo., Inc. v. Comm'r, 56 T.C.M. (CCH) 480 (1988).

[9] I.R.S. Gen. Couns. Mem. 39,670 (Oct. 14, 1987).

[10] I.R.C. § 501(c)(3) ("*no part* of the net earnings . . . inures to the benefit of any private shareholder or individual") (emphasis added).

[11] I.R.S. Priv. Ltr. Rul. 17-40-022 (Dec. 29, 2016).

[12] *See, e.g.*, *Easter House*, 12 Cl. Ct. at 488 ("It is also important to note that section 501(c)(3) specifically provides that (continued...)

private inurement occurred using reasoning similar to the less strict prohibition on private benefit described below.[13]

Prohibition on "Private Benefit"

Section 501(c)(3) organizations must also be "organized and operated exclusively" for an enumerated exempt purpose.[14] Interpreting the statutory text "organized and operated exclusively," the IRS regulations require that the organization must not be organized or operated for the benefit of private interests.[15] This prohibition on private benefit also has antecedents in common law rules on charitable trusts.[16]

The prohibition on "private benefit" is a distinct requirement but overlaps with the prohibition on private inurement discussed above.[17] If either the private inurement or private benefit prohibition is violated, the organization is not organized and operated exclusively for an exempt purpose and thus could lose tax-exempt status.[18]

The prohibition on private benefit is theoretically broader in terms of interests covered than the prohibition on private inurement. For example, the private benefit prohibition can apply to an organization's members or beneficiaries even if they are not insiders of the organization with significant control or influence within the organization and therefore not subject to the inurement prohibition.[19] In one case, the United States Tax Court found that an organization that provided burial benefits to its elderly, dues-paying members provided a private benefit to its members

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'no part' of the organization's net earnings may inure to a private shareholder or individual. This means that any inurement, regardless of amount, will prevent an organization from qualifying under section 501(c)(3).").

[13] *See, e.g.*, I.R.S. Tech. Adv. Mem. 98-35-001 (Aug. 28, 1998) (finding issuance of free passes to a fair conducted by an organization to the organization's shareholders is not private inurement "[a]lthough the issuance of tickets and/or passes to shareholders in some circumstances might constitute inurement of net earnings.").

[14] I.R.C. § 501(c)(3).

[15] Treas. Reg § 1.501(c)(3)-1(d)(1)(ii).

[16] Mark C. Westenberger, *A Path to "Inure" Peace: Consolidating the Perplexities of the Private Inurement and Private Benefit Doctrines*, 92 WASH. U. L. REV. 227, 248–52 (2014) (citing JAMES J. FISHMAN & STEPHEN SCHWARZ, NONPROFIT ORGANIZATIONS: CASES AND MATERIALS 459 (4th ed. 2010)).

[17] Am. Campaign Acad. v. Comm'r, 92 T.C. 1053, 1068–69 (1989) ("The absence of private inurement of earnings to the benefit of a private shareholder or individual does not, however, establish that the organization is operated exclusively for exempt purposes. Therefore, while the private inurement prohibition may arguably be subsumed within the private benefit analysis of the operational test, the reverse is not true."). *See also* IRS, PUB. NO. 6101, EXEMPT ORGANIZATIONS TECHNICAL GUIDE, TG 3-8: DISQUALIFYING AND NON-EXEMPT ACTIVITIES, INUREMENT AND PRIVATE BENEFIT – IRC SECTION 501(C)(3), at 5 (2025) ("[A]ll inurement is private benefit, but not all private benefit is inurement.").

At least one commentator has argued for a consolidation of the two prohibitions because they can be confused and conflated and are redundant. *See, e.g.*, Westenberger, *supra* note 16, at 251–52. *See also Am. Campaign Acad.*, 92 T.C. at 1068 ("Nonetheless, we have often observed that the prohibition against private inurement of net earnings appears redundant, since the inurement of earnings to an interested person or insider would constitute the conferral of a benefit inconsistent with operating exclusively for an exempt purpose. In other words, when an organization permits its net earnings to inure to the benefit of a private shareholder or individual, it transgresses the private inurement prohibition and operates for a nonexempt private purpose." (citation omitted)).

[18] Treas. Reg. § 1.501(c)(3)-1(c)(2), (d)(1)(ii).

[19] *Id.* § 1.501(c)(3)-1(d)(1)(ii). *See also* Christian Stewardship Assistance, Inc. v. Comm'r, 70 T.C. 1037 (1978); Korean-Am. Senior Mut. Ass'n v. Comm'r, 120 T.C.M. (CCH) 191 (2020). For a comparison of the prohibition on private benefit to the prohibition on private inurement, s*ee infra* **Table 1**.

because it did not provide burial benefits to nonmembers of the community and did not provide a subsidized dues program.[20]

While the statutory language in § 501(c)(3) prohibits all private inurement, the IRS has interpreted an incidental amount of private benefit to be permissible.[21] Whether a private benefit is incidental depends on the nature and amount of the private benefit in comparison to the exempt purpose served, that is, the "public benefit."[22]

Organizational and Operational Tests

As mentioned above, § 501(c)(3) organizations must be "organized and operated exclusively" for an enumerated exempt purpose. If the organization fails either the so-called "organizational" or "operational" test—for example, based on a finding of a private benefit—it will no longer be exempt from federal income tax.[23] Private benefit is one way in which an organization can fail the organizational and operational tests; other ways an organization can fail include engaging in prohibited political activity.[24] Thus, the prohibition on private benefit is an application of the more general "organizational" or "operational" tests. The organizational test relates to the purposes and activities of the organization described and authorized in its governing documents. The operational test relates to the actual activities conducted by the organization. Both tests must be satisfied.[25]

Organizational Test

To satisfy the organizational test, the articles of organization[26] (1) must limit the organization's purposes to exempt purposes; (2) may not expressly authorize the organization to engage in activities that do not further exempt purposes except to an insubstantial degree; and (3) must contain an express or implied provision dedicating the organization's assets to an exempt purpose upon dissolution.[27]

For example, "an organization that is empowered by its articles to engage in a manufacturing business, or to engage in the operation of a social club does not meet the organizational test."[28]

[20] Korean-Am. Senior Mut. Ass'n, 120 T.C.M. (CCH) 191.

[21] The IRS has interpreted "operated *exclusively*" as "*primarily*." Treas. Reg. § 1.501(c)(3)-1(c)(1) (emphasis added). *See infra* "Operational Test."

[22] *See, e.g.*, B.S.W. Grp. v. Comm'r, 70 T.C. 352, 356–57 (1978); I.R.S. Gen. Couns. Mem. 39,598 (Jan. 23, 1987); Rev. Rul. 74-146, 1974-1 C.B. 129 (finding incidental private benefit); I.R.S. Priv. Ltr. Rul. 16-14-038 (Apr. 1, 2016) (finding prohibited private benefit).

While the incidental doctrine is generally confined to private benefits, less strict applications of the prohibition on private inurement resemble this private versus public benefit comparison. *See, e.g.*, I.R.S. Tech. Adv. Mem. 98-35-001 (Apr. 27, 1998) ("[The organization] has shown that the issuance of free tickets and/or passes [to the organization's shareholders] is an important part of promoting and attracting people to the Fair so as to fulfill [the organization]'s exempt, educational goals. . . . Although there is no specific de minimis or 'insubstantial' exception to the prohibition against inurement of an organization's net earnings, the issuance of free passes in the manner described does not constitute a distribution of earnings.").

[23] Treas. Reg. § 1.501(c)(3)-1(a)(1).

[24] *Id.* § 1.501(c)(3)-1(c)(3).

[25] *Id.* § 1.501(c)(3)-1(a)(1).

[26] "Articles of organization" may be a trust instrument, a corporate charter, an article of association, or any other document which creates the organization. *Id.* § 1.501(c)(3)-1(b)(2).

[27] *Id.* § 1.501(c)(3)-1(b)(1), (b)(4).

[28] *Id.* § 1.501(c)(3)-1(b)(1)(iii) (emphasis omitted).

Operational Test

An organization is operated exclusively for exempt purposes if it engages "primarily" in activities that further its exempt purpose or purposes; only an insubstantial degree of activities that do not further any exempt purpose is allowed.[29] There is no bright-line rule for when an activity becomes substantial and violates the operational test; it depends upon the facts and circumstances of each case.[30] Whether an unrelated activity is permitted can depend on the size and extent of the non-exempt activities in comparison to and the size and extent of the activities that are in furtherance of exempt purposes.[31]

For example, an educational organization with a purpose of studying history and immigration focuses on the genealogy of one family, and its members consist only of individuals who are members of that one family. This organization would fail the operational test because it is operated for the benefit of private interests in violation of the restriction on private benefit.[32]

Table 1. Theoretical Differences Between the Prohibitions on Private Inurement and Private Benefit for § 501(c)(3) Organizations

	Beneficiary	Prohibition	Source of Prohibition
Private Inurement	Only an insider (person with control or influence within an organization)	Absolute prohibition	"[N]o part of the net earnings of [the organization] inures to the benefit of any private shareholder or individual."
Private Benefit	Any private interest, whether an insider or not	Incidental amount of private benefit allowed	Regulatory interpretation of "organized and operated exclusively [for an enumerated exempt purpose]."

Sources: I.R.C. § 501(c)(3); Treas. Reg. § 1.501(c)(3)-1 (as amended in 2017); IRS, PUB. NO. 6101, EXEMPT ORGANIZATIONS TECHNICAL GUIDE, TG 3-8: DISQUALIFYING AND NON-EXEMPT ACTIVITIES, INUREMENT AND PRIVATE BENEFIT – IRC SECTION 501(C)(3) (2025).

Examples of Types of Private Inurement or Benefit

While the statutory language prohibits only private inurement of "net earnings,"[33] courts and the IRS have applied the prohibition more broadly to the use or distribution of an organization's assets.[34] Neither the statutory language on the prohibition on private benefit nor the IRS

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[29] *Id.* § 1.501(c)(3)-1(c)(1).

[30] Living Faith, Inc. v. Comm'r, 950 F.2d 365, 371 (7th Cir. 1991).

[31] *See* Treas. Reg. § 1.501(c)(3)-1(e) (explaining permissibility of unrelated trade or business activities); Orange Cnty. Agr. Soc., Inc. v. Comm'r, 893 F.2d 529, 532 (2d Cir. 1990) (upholding revocation after considering organization's percentage of revenue from non-exempt revenue).

[32] Treas. Reg. § 1.501(c)(3)-1(d)(1)(iii) (ex. 1).

[33] I.R.C. § 501(c)(3); Treas. Reg. § 1.501(c)(3)-1(c)(2).

[34] *See., e.g.*, Anclote Psychiatric Ctr., Inc. v. Comm'r, 76 T.C.M. (CCH) 175 (1998), *aff'd sub nom.,* Anclote Psychiatric v. Comm'r, 190 F.3d 541 (11th Cir. 1999) (finding sale of a hospital to the hospital's board members for significantly less than fair market value was private inurement); I.R.S. Tech. Adv. Mem. 91-30-002 (Mar. 19, 1991) (revoking hospital's exemption for private inurement because hospital facility was sold to a for-profit entity controlled by hospital's directors for less than fair market value); Rev. Rul. 76-441, 1976-2 C.B. 147 (finding that assumption of the liabilities of a for-profit school by a nonprofit organization can be private inurement if the liabilities exceed the fair market value of the assets the nonprofit organization receives).

regulations contain limits as to the types of private benefits prohibited.[35] Thus, at least textually, more types of activities are prohibited under the prohibition on private benefit than under the prohibition on private inurement. However, because the prohibition on private inurement is applied more broadly than to just "net earnings," the types of activities prohibited by the prohibition on private inurement and the prohibition on private benefit can overlap.

Types of activities that may be prohibited private inurement and/or benefit include

- loans extended on advantageous terms,[36]
- partisan political activity,[37]
- paying excessive rent[38] or charging rent at less than fair market value,[39]
- personal use of an organization's assets,[40] and
- unreasonable compensation.[41]

Intermediate Sanctions

In addition to the prohibitions on private inurement and private benefit, the I.R.C. contains excise taxes on certain transactions that can result in personal gain. This report explains the operation of three such excise taxes—those imposed by §§ 4941, 4958, and 4960.[42] This report discusses how these three excise taxes differ in who is taxed, which transactions are taxed, how the tax is calculated, and the types of organizations subject to the tax. These excise taxes are intermediate sanctions short of revocation of tax exemption for violation of the prohibitions. The excise taxes are reported on IRS Form 4720.[43]

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[35] I.R.C. § 501(c)(3); Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

[36] *See, e.g.*, Unitary Mission Church of Long Island v. Comm'r, 74 T.C. 507, 1980 WL 4450 (1980), *aff'd*, 647 F.2d 163 (2d Cir. 1981); Orange County Agr. Soc., Inc. v. Comm'r, 893 F.2d 529 (2d Cir. 1990).

[37] *See, e.g.*, Am. Campaign Acad. v. Comm'r, 92 T.C. 1053 (1989) (ruling that an organization that operates for the benefit of private interests, such as members and entities of one political party, on a more than insubstantial basis may not qualify for § 501(c)(3) status); *see also* Democratic Leadership Council v. United States, 542 F. Supp. 2d 63 (D.D.C. 2008) (ruling that the retroactive revocation of group's § 501(c)(4) status was improper because case did not meet circumstances required for retroactive revocation; IRS had revoked the group's § 501(c)(4) status after determining the group had impermissibly benefited private interests, specifically Democratic elected officials); I.R.S. Priv. Ltr. Rul. 12-21-025 (Mar. 2, 2012).

In addition to the prohibitions on private inurement and benefit, political activity may also be prohibited by the restrictions on political activity placed on tax-exempt organizations. *See* CRS Report RL33377, *Tax-Exempt Organizations Under Internal Revenue Code Section 501(c): Political Activity Restrictions*, by Justin C. Chung (2025).

[38] *See, e.g.*, Tex. Trade Sch. v. Comm'r, 30 T.C. 642 (1958), *aff'd per curiam*, 272 F.2d 168 (5th Cir. 1959).

[39] *See, e.g.*, Harding Hosp., Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974); I.R.S. Priv. Ltr. Rul. 15-48-024 (Nov. 27, 2015); I.R.S. Gen. Couns. Mem. 39,598 (Jan. 23, 1987).

[40] *See, e.g.*, John Marshall Law Sch. v. United States, 228 Ct. Cl. 901 (1981) (per curiam); I.R.S. Priv. Ltr. Rul. 25-20-013 (Jan. 28, 2025); I.R.S. Priv. Ltr. Rul. 24-29-020 (July 19, 2024).

[41] Rev. Rul. 73-126, 1973-1 C.B. 220; Treas. Reg. § 1.162-7(b)(3) (2017). *See, e.g.*, Founding Church of Scientology v. United States, 412 F.2d 1197 (Ct. Cl. 1969).

[42] In this report, these excise taxes are referenced as "excise taxes" or "intermediate sanctions."

[43] DEP'T OF TREASURY, I.R.S., FORM 4720, RETURN OF CERTAIN EXCISE TAXES UNDER CHAPTERS 41 AND 42 OF THE INTERNAL REVENUE CODE (2025), https://www.irs.gov/pub/irs-pdf/f4720.pdf [https://perma.cc/KT76-WEQX].

Relevant Categories of § 501(c)(3) Organizations

Application of the excise taxes to § 501(c)(3) organizations can depend on classification of the organization as (1) either a public charity or private foundation and (2) either a supporting organization or supported organization.

Public Charity Versus Private Foundation

Section 501(c)(3) organizations are subclassified as either public charities or private foundations, distinguished primarily by the level of public involvement in their activities and funding. Public charities receive contributions from a variety of sources, whereas private foundations receive contributions from limited sources.[44] A § 501(c)(3) organization is presumed to be a private foundation unless it requests, and qualifies for, a determination as a public charity, which generally involves proving public support or activity.[45] Private foundations are generally subject to stricter regulation than public charities.

"Supporting" Organization Versus "Supported" Organization

"Supporting" organizations are subject to restrictions and requirements additional to those applicable to "supported" organizations. Supporting organizations are § 501(c)(3) organizations that qualify for public charity status by reason of close ties with another public charity, the supported organization.[46] The supporting organization must be organized and operated exclusively to further the purposes of a supported organization.[47] The supporting organization must have a defined relationship with its supported organization, such as a "parent-subsidiary" or "brother-sister" relationship.[48]

Section 4958 Excise Tax on Excess Benefit Transactions by Public Charities

Congress enacted the § 4958 excise tax on excess benefit transactions by public charities in 1996[49] to provide the IRS with an intermediate sanction short of loss of exemption for prohibited private inurement or benefit.[50] At a 1993 hearing by the House Ways and Means Committee's Oversight Subcommittee, the commissioner of internal revenue testified that the IRS needed intermediate sanctions to provide another mechanism to enforce the private inurement prohibition.[51] The § 4958 excise tax was modeled after existing excise taxes on private foundations.[52]

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[44] I.R.C. § 509; Treas. Reg. § 1.509(a)-3 (as amended in 2020).

[45] I.R.C. § 509; Treas. Reg. § 1.509(a)-3.

[46] I.R.C. § 509(a)(3).

[47] *Id.* § 509(a)(3)(A).

[48] *Id.* § 509(a)(3)(B).

[49] Taxpayer Bill of Rights 2, Pub. L. No. 104-168, tit. XIII, § 1311(a), 110 Stat. 1452, 1475 (1996).

[50] H.R. REP. NO. 104-105, at 55 (1955).

[51] *Federal Tax Laws Applicable to the Activities of Tax-Exempt Charitable Organizations: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 103d Cong. 14, 18–19 (1993) (statement of Margaret Milner Richard, Comm'r, IRS).

[52] For an explanation of "private foundations" and "public charities," *see supra* "Public Charity Versus Private Foundation."

(continued...)

As an intermediate sanction, the IRS has discretion to impose the § 4958 tax in lieu of or in addition to revocation of an organization's tax-exempt status.[53]

When a § 501(c)(3) public charity engages in an "excess benefit transaction" to "disqualified persons," the excise tax is imposed on the disqualified persons.[54] "Disqualified persons" include individuals with substantial influence over the organization, family members of such persons, or entities with a certain amount of control over the organization.[55] The tax applies to "excess benefit transactions," that is, any transaction in which an economic benefit is provided by the organization to a disqualified person where the value of the benefit provided exceeds the value received by the organization.[56] Unreasonable compensation is an example of an excess benefit transaction.[57] In addition, use of an organization's bank account for cash withdrawals and personal purchases are excess benefit transactions.[58]

An initial, "first-tier" tax on the disqualified person is equal to 25% of the "excess benefit" of such a transaction, that is, the excess of benefit to the disqualified person over the value received by the organization.[59] An additional tax of 200% of the excess benefit is imposed on the disqualified person if the excess benefit transaction is not corrected within the taxable period.[60]

Additionally, an organization's manager who knowingly participates in an excess benefit transaction is subject to a tax equal to 10% of the excess benefit.[61] The manager tax is capped at $20,000 for any one transaction.[62] The tax is not imposed if the participation is not "willful" and

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Private foundations are subject to the § 4941 excise tax on self-dealing and § 4945 excise tax on taxable expenditures. These excise taxes on private foundations pre-date the § 4958 tax on public charities. Tax Reform Act of 1969, Pub. L. No. 91-172, tit. I, § 101(b), 83 Stat. 487, 498. Because private foundations are subject to a different excise tax regime from public charities, the § 4958 tax on public charities excludes private foundations. I.R.C. § 4958(e).

For more information on the § 4941 excise tax on private foundations, *see infra* "Section 4941 Excise Tax on Self-Dealing by Private Foundations." For an explanation of the § 4945 excise tax on private foundations as applied to political expenditures, *see* CRS Report RL33377, *Tax-Exempt Organizations Under Internal Revenue Code Section 501(c): Political Activity Restrictions*, by Justin C. Chung (2025). The § 4945 excise tax is otherwise not covered in this report.

[53] T.D. 9390, 2008-1 C.B. 855; *see also* Treas. Reg. § 1.501(c)(3)-1(f)(2) (listing relevant factors the IRS considers in determining whether to revoke exempt status for excess benefit transactions).

[54] I.R.C. § 4958(a)(1).

[55] *Id.* § 4958(f)(1). "Substantial influence" is a fact-and-circumstances determination, and regulations list certain factors "tending to show" substantial influence as well as factors "tending to show no" substantial influence. Treas. Reg. § 53.4958-3(e) (as amended in 2002). For an example of a case applying the factors, *see* Fumo v. Comm'r, 121 T.C.M. (CCH) 1475 (2021).

[56] I.R.C. § 4958(c)(1)(A); *see also* Caracci v. Comm'r, 456 F.3d 444 (5th Cir. 2006) (approving the taxpayers' valuation of a transaction and finding no excess benefit).

[57] Treas. Reg. § 53.4958-4(a), (b)(ii) (as amended in 2002). Under the regulations, in certain circumstances compensation and transfers of property are given a rebuttable presumption of reasonableness, which the IRS must overcome to impose the tax. *Id.* § 53.4958-6. Generally, such transactions are presumed to be reasonable if approved in advance by a governing board with no conflicts of interest relying on appropriate data and with adequate documentation. *Id.* § 53.4958-6(a).

[58] Farr v. Comm'r, 115 T.C.M. (CCH) 1003 (2018), *aff'd*, 738 F. App'x 969 (10th Cir. 2018).

[59] I.R.C. § 4958(a)(1), (c)(1)(B).

[60] *Id.* § 4958(b).

[61] *Id.* § 4958(a)(2). Regulations define "knowing" as (1) having actual knowledge of sufficient facts to determine the transaction is an excess benefit transaction; (2) awareness that the transaction may violate federal tax law; and (3) negligently failing to make reasonable attempts to ascertain whether the transaction is an excess benefit transaction, or awareness in fact that it is such a transaction. Treas. Reg. § 53.4958-1(d)(4)(i) (as amended in 2002). Reliance on professional advice can preclude knowing participation. *Id.* § 53.4958-1(d)(4)(iii). Professional advice is limited to written advice from legal counsel, accountants, and independent valuation experts. *Id.*

[62] I.R.C. § 4958(d).

is "due to reasonable cause."[63] "Manager" is defined as "any officer, director, or trustee" of the organization or anyone with powers or responsibilities similar to such positions.[64] The definitions of "manager" and "disqualified persons" are not exclusive; thus, an individual could be subject to both the manager tax and the first-tier tax on disqualified persons.[65] The additional 200% tax for non-correction, though, applies only to disqualified persons.[66]

Table 2. Summary of § 4958 Excise Tax on Excess Benefit Transactions by Public Charities

	Tax on Disqualified Person	Tax on Manager
First-Tier Tax	25% of excess benefit	10% of excess benefit, not to exceed $20,000 for any one transaction, if manager knowingly participates in the transactions, unless such participation is not willful and is due to reasonable cause.
Additional Tax, if transaction is not corrected within the taxable period	200% of excess benefit	*(No additional tax)*

Source: I.R.C. § 4958.

Special Rules for Supporting Organizations

In addition to the general rules described above for the tax on excess benefit transactions, supporting organizations are subject to special rules.[67] Congress added these special rules in the Pension Protection Act of 2006.[68]

[63] *Id.* Regulations define "willful" as "voluntary, conscious, and intentional." Treas. Reg. § 53.4958-1(d)(5). "Due to reasonable cause" is defined as "if the manager has exercised responsibility on behalf of the organization with ordinary business care and prudence." *Id.* § 53.4958-1(d)(6).

While the statutory text in § 4958 only precludes the tax from being imposed on managers for non-willfulness and reasonable cause, the IRS may abate the first-tier tax on disqualified persons under another section of the tax code if the excess benefit was due to reasonable cause and not to willful neglect and if a correction is made within the correction period. I.R.C. § 4962.

[64] *Id.* § 4958(f)(2).

[65] *Id.* § 4958(f)(1), (2). The regulations list certain positions that qualify persons holding the powers and responsibilities of such positions as disqualified persons. These include voting member on the organization's governing body and the president, chief executive officer, chief operating officer, chief financial officer, and treasurer of the organization. Treas. Reg. § 53.4958-3(c) (as amended in 2002).

[66] I.R.C. § 4958(b). For a summary of the § 4958 excise tax, s*ee infra* **Table 2**.

[67] For an explanation of "supporting organizations," *see supra* "Supporting" Organization Versus "Supported" Organization.

Similar special rules apply to donor-advised funds. I.R.C. § 4958(c)(2). Donor-advised funds are funds or accounts established within a sponsoring organization, which oversees payment of grants to charities from the fund on recommendations from donors to the fund. For more information on donor-advised funds, *see* CRS Report R48789, *Tax Issues Relating to Charitable Contributions and Organizations*, by Jane G. Gravelle, Donald J. Marples, and Brendan McDermott (2026); CRS In Focus IF12126, *Donor-Advised Funds (DAFs): Proposed Legislation*, by Jane G. Gravelle (2022); CRS Report R42595, *An Analysis of Charitable Giving and Donor Advised Funds*, by Molly F. Sherlock and Jane G. Gravelle (2012). Donor-advised funds are otherwise not covered in this report.

[68] Pub. L. No. 109-280, tit. XII, § 1242, 120 Stat. 780, 1104.

Under these rules, certain transactions—including grants, loans, and compensation—made by the supporting organization to a "substantial contributor"[69] (even a contributor who is not a "disqualified person" under the definition in § 4958(f)(1)) are automatically excess benefit transactions, with the entire amount treated as the excess benefit regardless of reasonableness or amount of benefit to the organization.[70] Because substantial contributors to supporting organizations do not have to satisfy the general definition of disqualified persons, which can depend on influence within the organization, substantial contributors can be subject to the § 4958 excise tax even if they exercise little to no influence over the organization—for example, if they merely contributed money. The special rules also apply to transactions by the supporting organization to

- family members of a substantial contributor, [71] and
- an entity over which a substantial contributor or family member of a substantial contributor has a certain amount of control.[72]

Due to these special rules, the tax on excess benefits transactions is more strictly applied to contributors to supporting organizations.[73]

In addition to the special rules regarding substantial contributors, any loan from a supporting organization to a disqualified person (with some exceptions for loans to certain organizations such as supported organizations) is also treated as an excess benefit transaction, with the entire loan amount subject to the excise tax.[74]

Section 4941 Excise Tax on Self-Dealing by Private Foundations

Congress enacted § 4941 in 1969[75] to supplant a previous enforcement regime, which had imposed "arm's length standards" for certain transactions between an organization and its creators or substantial donors.[76] The arm's length standards were criticized as subjective, administratively difficult, and inconsistently enforced.[77]

Section 4941 imposes excise taxes on "disqualified persons" when certain "acts of self-dealing" occur between the person and a private foundation.[78]

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[69] Generally, a substantial contributor is any person who contributed more than $5,000 to the organization, if such amount is more than 2% of the total contributions received by the organization that tax year. I.R.C. § 4958(c)(3)(C).

[70] *Id.* § 4958(c)(3); *see also* I.R.S. Priv. Ltr. Rul. 16-27-005 (July 1, 2016) (stating student debt reduction payment to a substantial contributor would be an excess benefit transaction).

[71] I.R.C. § 4958(c)(3)(B)(ii).

[72] *Id.* § 4958(c)(3)(B)(iii).

[73] *Compare* I.R.C. § 4958(c)(3) (defining "substantial contributor" and "excess benefit" for supporting organizations) *with id.* § 4958(c)(1), (f)(1) (providing generally applicable definitions for "excess benefit" and "disqualified person").

[74] *Id.* § 4958(c)(3)(A)(ii); *see also* I.R.S. Tech. Adv. Mem. 15-03-019 (Jan. 16, 2015) (finding that a loan from the supporting organization to a company in which a former director owns more than 35% interest was automatically an excess benefit transaction equal to the loan amount).

[75] Tax Reform Act of 1969, Pub. L. No. 91-172, tit. I, § 101(k)(1), 83 Stat. 487, 492.

[76] STAFF OF THE JOINT COMM. ON INTERNAL REVENUE TAXATION, 91ST CONG., REPORT ON A GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1969 (Comm. Print 1970).

[77] *Id.*

[78] I.R.C. § 4941. For an explanation of "private foundations," *see supra* "Public Charity Versus Private Foundation."

The § 4941 excise tax on self-dealing is also applied to certain charitable trusts described in § 4947(a)(1) as well as certain split interest trusts described in § 4947(a)(2). These are otherwise outside the scope of this report.

Disqualified persons include[79]

- "substantial contributor[s] to the foundation";[80]
- "foundation manager[s]";[81]
- a person who owns more than 20% of an entity that is itself a substantial contributor;[82]
- a family member of an aforementioned person;[83]
- an entity with a certain amount of control over the foundation;[84] and
- certain government officials.[85]

Acts of self-dealing generally[86] include

- "sale or exchange, or leasing, of property";[87]
- loans;[88]
- "furnishing of goods, services, or facilities";[89]
- compensation or reimbursement;[90]
- transfer or use of income or assets;[91] and
- payments to a government official.[92]

Unlike the § 4958 excise tax on excess benefit transactions described above, the § 4941 excise tax is generally imposed on all such acts of self-dealing, even if there is an equivalent benefit to the organization.[93]

The tax is imposed on the "amount involved" in the act of self-dealing. This is defined as generally the greater of the

- "money and the fair market value of the other property given," or

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[79] *Id.* § 4946(a).

[80] *Id.* § 4946(a)(1)(A).

[81] *Id.* § 4946(a)(1)(B).

[82] *Id.* § 4946(a)(1)(C).

[83] *Id.* § 4946(a)(1)(D).

[84] *Id.* § 4946(a)(1)(E)–(G).

[85] *Id.* § 4946(a)(1)(I).

[86] Certain transactions are statutorily excepted from self-dealing even if the transaction would otherwise constitute an act of self-dealing. *Id.* § 4941(d)(2). For example, reasonable and necessary compensation (other than to a government official) for personal services is specifically excepted from self-dealing. *Id.* § 4941(d)(2)(E).

[87] *Id.* § 4941(d)(1)(A); Rev. Rul. 77-379, 1977-2 C.B. 387; Rev. Rul. 76-18, 1976-1 C.B. 355.

[88] I.R.C. § 4941(d)(1)(B).

[89] *Id.* § 4941(d)(1)(C); *see also* Rev. Rul. 73-363, 1973-2 C.B. 383 (finding that rental of an aircraft by a disqualified person to a private foundation is a furnishing of property).

[90] *Id.* § 4941(d)(1)(D).

[91] *Id.* § 4941(d)(1)(E); *see also* Rev. Rul. 74-600, 1974-2 C.B. 385 (finding that the placing of paintings owned by a private foundation in the residence of a substantial contributor is use of an asset).

[92] *Id.* § 4941(d)(1)(F).

[93] *Compare id.* § 4958(a)(1), (c)(1)(B) (tax applied to "excess benefit"), *with id.* § 4941(e)(2) (tax applied to "amount involved"). *See also* Treas. Reg. § 53.4941(d)-1(a) (as amended in 1973) ("[I]t is immaterial whether the [self-dealing] transaction results in a benefit or a detriment to the private foundation").

- "money and the fair market value of the other property received."[94]

The "amount involved" is calculated differently if the act of self-dealing is compensation. In the case of compensation other than to a government official, the tax is paid only if the compensation is "excessive," that is, if the compensation exceeds the fair value of the services. In such a case, the "amount involved" is only the excess compensation.[95]

An initial, "first-tier" tax equal to 10% of the amount involved in the self-dealing transaction is imposed on the disqualified person.[96] An additional tax of 200% of the amount involved is imposed on the disqualified person if the excess benefit transaction is not corrected within the taxable period.[97]

A foundation manager who knowingly[98] participates in a self-dealing transaction is subject to a first-tier tax equal to 5% of the amount involved.[99] The first-tier tax is not imposed on the manager if the participation is not "willful" and is "due to reasonable cause."[100] An additional tax of 50% of the amount involved is imposed on the foundation manager if the excess benefit transaction is not corrected within the taxable period and the manager refuses to agree to the correction.[101] The first-tier and additional taxes on managers are each capped at $20,000 for any one transaction.[102] A foundation manager may be liable both as a foundation manager and as a disqualified person.[103]

Table 3. Summary of § 4941 Excise Tax on Self-Dealing by Private Foundations

	Tax on Disqualified Person	Tax on Foundation Manager
First-Tier Tax	10% of amount involved	5% of amount involved, not to exceed $20,000 for any one transaction, if foundation manager knowingly participates in the transactions, unless such participation is not willful and is due to reasonable cause.
Additional Tax, if transaction is not corrected within the taxable period	200% of amount involved	50% of amount involved, not to exceed $20,000 for any one transaction, if foundation manager refuses to agree to the correction.

Source: I.R.C. § 4941.

[94] I.R.C. § 4941(e)(2).

[95] *Id.* § 4941(d)(2)(E), (e)(2).

[96] *Id.* § 4941(a)(1). The IRS cannot abate the first-tier tax on disqualified persons. *Id.* § 4962(b).

[97] *Id.* § 4941(b)(1).

[98] Regulations define "knowing" as (1) having actual knowledge of sufficient facts to determine the transaction is an act of self-dealing; (2) being aware that the transaction may violate federal tax law on self-dealing; and (3) negligently failing to make reasonable attempts to ascertain whether the transaction is an act of self-dealing, or awareness in fact that it is such an act. Treas. Reg. § 53.4941(a)-1(b)(3) (as amended in 1973). Reliance on advice of counsel can preclude knowing or "willful" participation and be considered "due to reasonable cause." *Id.* § 53.4941(a)-1(b)(6).

[99] I.R.C. § 4941(a)(2); Madden v. Comm'r, 74 T.C.M. (CCH) 440 (1997); Rev. Rul. 78-76, 1978-1 C.B. 377.

[100] I.R.C. § 4941(a)(2). Regulations define "willful" as "voluntary, conscious, and intentional." Treas. Reg. § 53.4941(a)-1(b)(4). "Due to reasonable cause" is defined as "if [the manager] has exercised his responsibility on behalf of the foundation with ordinary business care and prudence." *Id.* § 53.4941(a)-1(b)(5).

[101] I.R.C. § 4941(b)(2).

[102] *Id.* § 4941(c)(2).

[103] *Id.* §§ 4941(a), (b); 4946(a)(1)(B). For a summary of the § 4941 excise tax, s*ee infra* **Table 3**.

Section 4960 Excise Tax on Excess Compensation

The FY2018 reconciliation law, sometimes referred to as the Tax Cuts and Jobs Act (TCJA),[104] created § 4960, which imposes an excise tax on "remuneration" of "covered employees"[105] of certain tax-exempt organizations[106] that exceeds certain amounts.[107] The excise tax is paid by the organization.[108] Imposition of the § 4960 tax on excess compensation and the §§ 4958 and 4941 excise taxes described above are separate inquiries.[109] Liability for the § 4960 tax does not necessarily lead to liability for the others, though the same transaction can lead to liability for both.[110]

"Renumeration" generally means wages, with certain exceptions, including remuneration paid by a related organization, such as a supporting or supported organization.[111] The tax is equal to the product of the corporate income tax rate (currently 21%) and the sum of

- remuneration (excluding any "excess parachute payment") paid in any tax year to any covered employee that exceeds $1 million, plus
- any "excess parachute payment" to a covered employee.[112]

The structure of the § 4960 tax resembles limitations on deductibility of employee compensation by certain corporations.[113] The TCJA conference report on the § 4960 tax identified these limitations as "present law" but explained that "[t]hese deduction limits generally do not affect a tax-exempt organization."[114]

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[104] Pub. L. No. 115-97, tit. I, § 13602(a), 131 Stat. 2054, 2157 (2017).

[105] Defined in § 4960(c)(2) to mean any current or former employee of the organization (or its predecessor) employed during any tax year after December 31, 2016.

The FY2025 reconciliation law, sometimes referred to as the One Big Beautiful Bill Act, Pub. L. No. 119-21, § 70416, 139 Stat. 72, 223 (2025), expanded the definition of "covered employee," which was previously limited to "one of the 5 highest compensated employees of the organization for the taxable year" or one who was such for any preceding taxable year beginning after December 31, 2016.

[106] Including both § 501(c)(3) charities and private foundations. I.R.C. § 4960(c)(1)(A) (defining "applicable tax-exempt organization").

[107] *Id.* § 4960.

[108] *Id.* § 4960(b).

[109] Tax on Excess Tax-Exempt Organization Executive Compensation, 86 Fed. Reg. 6196 (Jan. 19, 2021) (codified at 26 C.F.R. §§ 1, 53).

[110] *Id.*; I.R.S. Notice 19-9, 2019-4 I.R.B. 403 (2019). For a comparison between the excise taxes, *see infra* **Table 4**.

[111] I.R.C. § 4960(c)(3)-(4).

[112] *Id.* § 4960(a)(1)-(2). Defined in § 4960(c)(5) to generally mean payments "contingent on [an] employee's separation" that are over a certain amount.

[113] I.R.C. §§ 162(m), 280G.

[114] H. REP. NO. 115-466 (2017) (Conf. Rep.).

Table 4. Comparison of §§ 4958, 4941, and 4960 Excise Taxes

	Who can be liable for the tax?	What is taxed?	What is the tax rate?
§ 4958	"Disqualified person"[a] and "organization manager"	"Excess benefit" of an "excess benefit transaction"	**25%:** First-tier tax on disqualified person **10%:** First-tier tax on organization manager **200%:** Additional tax on disqualified person
§ 4941	"Disqualified person" and "foundation manager"	"Amount involved" in an "act of self-dealing"	**10%:** First-tier tax on disqualified person **5%:** First-tier tax on foundation manager **200%:** Additional tax on disqualified person **50%:** Additional tax on foundation manager
§ 4960	The organization	"Remuneration" (other than any "excess parachute payment") in excess of $1,000,000 to any covered employee and any "excess parachute payment"	**21%**

Sources: I.R.C. §§ 4941, 4958, and 4960.

Note

a. Special rules apply for "substantial contributors" of supporting organizations.

Application to § 501(c)(4) Organizations

Section 501(c)(4) imposes prohibitions on private inurement and benefit similar to those imposed on § 501(c)(3) organizations. Section 501(c)(4) organizations—sometimes called "social welfare" organizations—are defined as

> [c]ivic leagues or organizations *not organized for profit but operated exclusively for* the promotion of social welfare, . . . *no part of the net earnings of such entity inures* to the benefit of any private shareholder or individual.[115]

The explicit statutory language prohibiting private inurement by § 501(c)(4) organizations was added in 1996.[116] Although in 1996 the IRS had stated an intent to issue guidance on the application of the private inurement prohibition to § 501(c)(4) organizations, it has not done this as of the date of writing this report.[117] While the IRS has acknowledged that the law on the private inurement prohibition on § 501(c)(4) organizations is "significantly less well developed" than for § 501(c)(3) organizations, it has stated, "It is clear that there is a comparable statutory bar to inurement. Therefore, the same facts that would justify revocation under section 501(c)(3) for inurement would also likely bar a claim of exemption under section 501(c)(4)."[118]

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[115] *See* I.R.C. § 501(c)(4) (emphasis added); *see also* Flat Top Lake Ass'n v. Comm'r, 868 F.2d 108 (4th Cir. 1989) (finding that "an organization that operates for the exclusive benefit of its members does not serve a 'community' as that term relates to the broader concept of social welfare."); I.R.S. Priv. Ltr. Rul. 13-13-031 (Sept. 8, 2011) ("By providing these facilities only for the use of its members the association is operating for the private benefit of its members, and not for the promotion of social welfare within the meaning of section 501(c)(4) of the Code.").

[116] Taxpayer Bill of Rights 2, Pub. L. No. 104-168, tit. XIII, § 1311(a), 110 Stat. 1452, 1475–77 (1996). Some transfers by certain cooperative organizations to their members were "grandfathered" from being subject to the prohibition. *Id.*

[117] I.R.S. Notice 96-47, 1996-2 C.B. 213.

[118] I.R.S. Gen. Couns. Mem. 04-31-023 (July 13, 2004).

Section 501(c)(4) organizations must be "operated exclusively for the promotion of social welfare."[119] Under the regulations, an organization operates exclusively for the promotion of social welfare if it is "*primarily engaged* in promoting in some way the common good and general welfare of the people of the community."[120] Such an organization is "*operated primarily* for the purpose of bringing about civic betterments and social improvements."[121] The IRS uses the same standards for determining what constitutes private benefit for § 501(c)(4) organizations as those for § 501(c)(3) organizations.[122]

While IRS regulations permit a § 501(c)(4) organization to engage in a limited amount of political campaign activity,[123] an organization that primarily benefits private, partisan interests could jeopardize its § 501(c)(4) status.[124]

Both the § 4958 excise tax on excess benefit transactions and the § 4960 excise tax on excess compensation apply to § 501(c)(4) organizations.[125] The § 4941 excise tax on self-dealing by private foundations does not apply to § 501(c)(4) organizations.[126]

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[119] I.R.C. § 501(c)(4).

[120] Treas. Reg. § 1.501(c)(4)-1(a)(2)(i) (as amended in 1990) (emphasis added).

[121] *Id.* (emphasis added).

[122] I.R.S. Priv. Ltr. Rul. 12-21-025 (Mar. 2, 2012) ("While you requested recognition as an organization described in section 501(c)(4) and not section 501(c)(3) . . . the standard for determining what constitutes private benefit . . . applies to both sections").

Because the prohibition on private benefit by § 501(c)(4) organizations derives from the statutory language "operated exclusively for the promotion of social welfare," the IRS is prohibited from further clarifying the prohibition by appropriations riders, first added to Congress's fiscal year 2016 appropriations law, which have prohibited the Treasury Department, generally, or the IRS in particular from "issu[ing], revis[ing], or finaliz[ing] any regulation, revenue ruling, or other guidance not limited to a particular taxpayer relating to the standard which is used to determine whether an organization is operated exclusively for the promotion of social welfare for purposes of section 501(c)(4)." *See, e.g.*, Department of the Treasury Appropriations Act, 2016, Pub. L. No. 114-113, div. E, tit. I., § 127, 129 Stat. 2423, 2433 (2015) (introducing the rider); Department of the Treasury Appropriations Act, 2024, Pub. L. No. 118-47, div. B, tit. I, § 123, 138 Stat. 460, 530.

[123] Treas. Reg. § 1.501(c)(4)-1(a)(2); Rev. Rul. 81-95, 1981-1 C.B. 332.

[124] *See* Democratic Leadership Council v. United States, 542 F. Supp. 2d 63 (D.D.C. 2008) (considering revocation of a group's § 501(c)(4) status after determining the group had impermissibly benefited private interests, specifically Democratic elected officials); I.R.S. Priv. Ltr. Rul. 12-21-025 (Mar. 2, 2012) (revoking § 501(c)(4) status of organization that trained female members of one political party).

[125] I.R.C. §§ 4958(e)(1); 4960(c)(1)(A).

[126] *Id.* §§ 509; 4941. For a summary of applicability of the prohibitions on private inurement & benefit and intermediate sanctions to § 501(c)(4) organizations, s*ee infra* **Table 5**.

Table 5. Summary of Applicability of Prohibitions on Private Inurement & Benefit and Intermediate Sanctions to §§ 501(c)(3) and 501(c)(4) Organizations

	Prohibition on Private Inurement	Prohibition on Private Benefit	§ 4958 Excise Tax	§ 4941 Excise Tax	§ 4960 Excise Tax
§ 501(c)(3) Public Charity	Yes	Yes	Yes, special rules for supporting organizations	No	Yes
§ 501(c)(3) Private Foundation	Yes	Yes	No	Yes	Yes
§ 501(c)(4)	Yes	Yes	Yes	No	Yes

Sources: I.R.C. § 501(c)(3), (4); *id.* §§ 4941, 4958, 4960.

Congressional Proposals on the Intermediate Sanctions

Congress has broad constitutional authority to select the "measure and objects" of taxation and may use its taxing power to regulate private conduct.[127] This authority includes the power to impose excise taxes, which are indirect taxes levied on specific activities.[128] Congress also has broad authority to exempt certain things from taxation and to set the conditions for the exemption.[129]

Allegations of abuse of tax-exempt status by specific organizations has drawn congressional interest in the intermediate sanctions.[130] Congress has proposed amendments that, if enacted, would change how the intermediate sanctions operate and to whom they apply. A current proposal would expand the definition of "disqualified person" for the § 4958 excise tax. Past proposals would have (1) expanded the types of individuals upon whom the § 4958 excise tax is imposed, (2) expanded the types of organizations subject to the § 4958 tax, (3) redefined the transactions subject to the § 4958 tax, (4) imposed the §§ 4958 and 4941 excise taxes on the organizations, and/or (5) restricted certain defenses against the §§ 4958 and 4941 taxes.

[127] Flint v. Stone Tracy Co., 220 U.S. 107, 167 (1911).

[128] U.S. CONST. art. I, § 8, cl. 1; *Stone Tracy Co.*, 220 U.S. at 155.

[129] Regan v. Taxation with Representation of Wash., 461 U.S. 540, 546–47 (1983).

[130] *See, e.g.*, STAFF OF COMM. ON WAYS AND MEANS, 117TH CONG., REPORT ON UNIVERSITIES' RESPONSES TO THE COMPENSATION OF ATHLETIC COACHES INQUIRY (2022), https://democrats-waysandmeans.house.gov/sites/evo-subsites/democrats-waysandmeans.house.gov/files/documents/V.3%20University%20Coaches%20Report-Pascrell.pdf [https://perma.cc/7WNT-HTUL] (investigating college coaching salaries); S. COMM. ON FIN., MAJORITY STAFF REPORT: THE NRA AND RUSSIA (Sept. 2019), https://www.finance.senate.gov/imo/media/doc/2019-09-27%20NRA%20&%20Russia%20-%20Majority%20Report.pdf [https://perma.cc/V6H4-DEKK] (considering allegations against the National Rifle Association); Press Release, S. Comm. on Fin., Grassley Releases Review of Tax Issues Raised by Media-based Ministries (Jan. 6, 2011), https://www.finance.senate.gov/ranking-members-news/grassley-releases-review-of-tax-issues-raised-by-media-based-ministries [https://perma.cc/8WUL-4RE2] (reviewing allegations against six media-based ministries); *Profiteering In a Non-Profit Industry: Abusive Practices in Credit Counseling: Hearing Before the Permanent Subcomm. on Investigations, S. Comm. on Governmental Affs.*, 108th Cong. (2004) (investigating allegations against credit counseling agencies).

CRS identified the following bills proposing amendments to §§ 4958 and 4941.[131]

Proposed Amendments to § 4958

S. 3325, 119th Congress—Expanding Access to Affordable Drugs and Medical Devices Act[132]—would expand "disqualified person" to include a person who provides certain types of funding to a "public interest drug or medical device health care organization."

S. 1, 115th Congress—An Original Bill to Provide for Reconciliation Pursuant to Title II of the Concurrent Resolution on the Budget for Fiscal Year 2018[133]—would have

- imposed on the organization a first-tier tax of 10% of the excess benefit, unless (1) the participation of the organization in the excess benefit transaction is not willful and is due to reasonable cause, or (2) the organization establishes "minimum standards of organization due diligence" or other reasonable procedures to ensure that no excess benefit is provided;[134]
- provided that reliance on professional advice shall not, by itself, preclude the manager from being treated as participating in the excess benefit transaction knowingly;[135]
- added athletic coaches at educational institutions and their family members as "disqualified persons";
- expanded and clarified situations where "investment advisors" can be considered "disqualified persons"; and
- expanded the applicability of § 4958 to labor unions under § 501(c)(5) and trade unions under § 501(c)(6).

H.R. 7083, 110th Congress—Charity Enhancement Act of 2008[136]—would have provided that reasonable compensation paid by supporting organizations to substantial contributors would not be treated as an excess benefit.

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[131] CRS searched for proposed amendments from the 109th Congress to the 119th Congress, as of the date of the writing of this report. CRS did not identify any un-enacted amendments to § 4960. The most recent congressional action on § 4960 is in the FY2025 reconciliation law, which expanded the definition of "covered employee." For more information, see *supra* note 105.

[132] S. 3325, 119th Cong. § 2 (as introduced, Dec. 3, 2025).

[133] S. 1, 115th Cong. § 13705 (as introduced, Nov. 28, 2017). The following proposed amendments were also included in Tax Reform Act of 2014, H.R. 1, 113th Cong. § 5201 (as introduced, Dec. 10, 2014).

[134] The "minimum standards of organization due diligence" was an attempt to eliminate the rebuttable presumption of reasonableness. STAFF OF J. COMM. ON TAX'N, 115TH CONG., DESCRIPTION OF THE CHAIRMAN'S MARK OF THE "TAX CUTS AND JOBS ACT," JCX-51-17, at 173 (2017). For more information on the rebuttable presumption of reasonableness, see *supra* note 57.

The Joint Committee on Taxation's explanation of the bill explains that "[t]ransactions with insiders create widespread opportunities for abuse, especially when the determination of whether a transaction passes muster depends upon a subjective determination of fair market value or reasonableness of compensation." STAFF OF J. COMM. ON TAX'N, 115TH CONG., SUMMARY OF JOINT COMMITTEE STAFF "OPTIONS TO IMPROVE TAX COMPLIANCE AND REFORM TAX EXPENDITURES," JCX-19-05R, at 28 (2017). Aside from this amendment, the rebuttable presumption has been suggested as an area of reform. Press Release, S. Comm. on Fin., Grassley Releases Staff Discussion Draft of Potential Non-profit Hospital Reforms, Solicits Public Comment (July 18, 2017), https://www.finance.senate.gov/ranking-members-news/grassley-releases-staff-discussion-draft-of-potential-non-profit-hospital-reforms-solicits-public-comment [https://perma.cc/Y9DW-2Z2T].

[135] For more information on reliance on professional advice as a defense, see *supra* note 61.

[136] H.R. 7083, 110th Cong. § 5 (as passed by House, Sept. 27, 2008).

Proposed Amendments to § 4941

H.R. 1, 113th Congress—Tax Reform Act of 2014[137]—would have

- imposed on private foundations a first-tier tax equal to 2.5% (10% in the case of compensation) of the amount involved in the act of self-dealing; and
- provided that reliance on professional advice shall not, by itself, preclude the manager from being treated as participating in the excess benefit transaction knowingly.[138]

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[137] H.R. 1, 113th Cong. § 5202 (as introduced, Dec. 10, 2014).

[138] For more information on reliance on professional advice as a defense, see *supra* note 98.