

Self-dealing; disqualified person; bonds guaranteed by private foundation. The purchase of a portion of a bond issue on behalf of an exempt hospital by a disqualified person with respect to a private foundation that guaranteed the bonds except for those sold to the disqualified person is not an act of self-dealing.

Advice has been requested whether, under the circumstances described below, a purchase of bonds by a disqualified person with respect to a private foundation will constitute an act of self-dealing within the meaning of section 4941(d)(1)(E) of the Internal Revenue Code of 1954.

A hospital, which is exempt under section 501(c)(3) and described in section 170(b)(1)(A)(iii) of the Code, propose to finance an expansion program by arranging for the local hospital authority to issue revenue bonds for the benefit of the hospital. Funds for the payment of both the principal and the interest on the bonds are to be provided by the hospital to the local hospital authority. The bonds are secured by the net operating revenues of the hospital.

In order to reduce the cost of the bonds to the hospital, a private foundation has agreed to guarantee the payment of both the principal and the interest on the bonds if the hospital is unable to make such payments. A disqualified person with respect to the foundation, who is also an officer of the hospital, plans to purchase a portion of the bond issue. However, the guarantee will not apply to any bonds purchased by the disqualified person and will not become applicable to those bonds even if they are subsequently sold to other than a disqualified person.

Section 4941(d)(1)(E) of the Code provides that the term 'self-dealing' includes the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 53.4941(d)-2(f)(2) of the Foundation Excise Tax Regulations provided that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing.

Because the guarantee does not apply to bonds purchased by a disqualified person, the arrangement does not result in any use of the foundation's assets for the economic benefit of the disqualified person. Moreover, any benefit derived by the disqualified person by virtue of that person's position as an officer of the hospital is incidental or tenuous within the meaning of section 53.4941(d)-2(f)(2) of the regulations.

Accordingly, a purchase of the bonds by a disqualified person, under the circumstances described, will not constitute an

act of self-dealing within the meaning of section 4941(d)(1)(E) of the Code.