AN ANNUAL CHECKLIST FOR PRIVATE FOUNDATIONS

INTRODUCTION

PART I. WHAT YOU MUST DO (ANNUALLY)

A. Classification and Valuation of Assets - Timing and Method
   1. Exempt Assets Distinguished from Non-Exempt Assets
   2. Valuation of Assets
      a. Readily Marketable Securities
      b. Cash
      c. Common Trust Funds
      d. Hedge Funds and Other Alternative Investments
      e. Other Assets, Including Real Estate

B. Mandatory Charitable Distributions - A Foundation Must Distribute at Least Five Percent of Its Assets Each Year for Charitable Purposes
   1. Pay Out at Least Five Percent of the Fair Market Value of Assets
   2. Qualifying Distributions
   3. Charitable Grants and Other Amounts Paid to Accomplish an Exempt Purpose
   4. Reliance on a Grant Recipient's Tax-Exempt Status
      a. How can a foundation determine whether a prospective grantee is a qualified public charity?
      b. How can a foundation determine whether a prospective grantee is a Type I, Type II, or Type III supporting organization?
c. How can a foundation determine whether a prospective grantee is a functionally integrated Type III supporting organization?

d. How can a foundation determine whether its disqualified persons control any supporting or supported organization?

e. What if a foundation cannot determine what type of supporting organization a prospective grantee is?

f. When can a foundation safely make a grant to a prospective grantee?

g. Unusual grants

h. Grants to government agencies.

i. Grant to a section 501(c)(3) organization with an advance ruling as to its public charity status.

5. Grants to Organizations Which Are Non-Functionally Integrated Type III Supporting Organizations or Which Are Not Public Charities - “Expenditure Responsibility” Requirements

a. Pre-Grant Inquiry

b. Written Agreement

c. Reports from Grantees

d. Grantor Foundation Reporting and Record Keeping Requirements

e. Violations of Expenditure Responsibility Requirements

6. Grants to Foreign Organizations

a. Grant to a Foreign Charity Not Recognized by the IRS

b. Grants to Foreign Governments and International Organizations

c. The “Out of Corpus” Requirement

7. Qualified Set-Asides

8. Program-Related Investments

9. Expenditures for Direct Charitable Activities

10. Other Qualifying Distributions
11. Grants to Individuals
   a. Grants for Travel, Study, or Other Similar Purposes
   b. Grants for Purposes Other than Travel, Study, or Other Similar Purposes
   c. Disaster Relief
   d. Earmarked Grants

12. Sample Application of Mandatory Payout Requirement

C. IRS Filing Requirements
   1. Form 990-PF
   2. Public Inspection Requirements
      a. Annual Return
      b. Form 990-T
      c. Exemption Application
      d. Request for Parts of Annual Information Returns, Forms 990-T, or Exemption Application
      e. Manner of Disclosure for In-Person Requests for Public Inspection.
      f. In-Person Requests for Copies of Documents
      g. Written Requests for Copies of Documents
      h. Making Annual Information Returns, Forms 990-T, and Exemption Application Widely Available for Public Inspection
      i. Foundations Subject to Harassment Campaigns
      j. Penalties
   3. Furnishing Copies of the Annual Return to State Officials

D. Foundation Excise Tax on Net Investment Income
   1. Net Investment Income
   2. Gross Investment Income
   3. Capital Gains and Losses
   4. Deductions
   5. Reduction of Excise Tax from Two Percent to One Percent if Certain Distribution Requirements Are Met
6. Effect of Excise Tax Reduction
7. Figuring and Paying Estimated Taxes on Net Investment Income
8. How to Make Estimated Tax Payments

E. Record Keeping
F. Investing a Foundation’s Assets to Preserve Its Long-Term Grantmaking Ability

PART II. WHAT YOU MUST NOT DO (EVER)

A. Self-Dealing
   1. Self-Dealing Restrictions
   2. What Is Self-Dealing?
      a. Sales or Exchanges of Property
      b. Leases
      c. Loan
      d. Providing Goods, Services, or Facilities
      e. Paying Compensation
      f. Use of Income or Assets
      g. Payment to a Government Official
   3. Penalty Taxes on Self-Dealing
   4. Who Is a Disqualified Person?
      a. All Substantial Contributors to the Foundation
      b. All “Foundation Managers” of the Foundation
      c. Owners of Businesses That Are Substantial Contributors to the Foundation
      d. Family Members
      e. Corporations Owned by Other Disqualified Persons
      f. Partnerships Owned by Other Disqualified Persons
      g. Other Entities Owned by Disqualified Persons
      h. Government Officials
   5. Foundation Investments and Self-Dealing Issues
      a. Payment of Compensation to Investment Managers Who Are Disqualified Persons
b. Compensation for Property Management

c. Performance of General Banking Services and Trust Functions

d. Hedge Funds and Venture Capital Investments

e. Joint Investments

f. Co-Ownership of Property

g. Pooling Assets for Investment

h. Mortgaged Property

6. Other Self-Dealing Issues

a. Travel Expenses and Other Out-of-Pocket Expenses

b. Foundation Office Space

c. Personal Charitable Pledge of a Disqualified Person

d. Attending Fundraisers

e. Overlapping Board Members, Officers, or Managers

7. Conclusion

B. Limitation on the Treatment of a Foundation’s Administrative Expenses as Qualifying Charitable Distributions

C. Excess Business Holdings

1. Attribution of Business Holdings

2. Exceptions to the Excess Business Holdings Rules

a. Functionally Related Business

b. Trade or Business That Obtains at Least Ninety-Five Percent of Its Gross Income from Passive Sources

c. Program-Related Investments

3. Permitted Holdings in an Incorporated Business Enterprise

a. Nonvoting Stock

b. Stock with Contingent Voting Rights

c. Convertible Nonvoting Stock

4. Thirty-Five Percent Rule

5. Interest in a Sole Proprietorship

6. Partnership Interests

8. Gifts or Bequests of Business Holdings to a Foundation
9. Transitional Rules
D. Jeopardizing Investments
E. Lobbying and Legislative Activities
   1. Grants to Public Charities
   2. Attempts to Affect the Opinion of the General Public (Grass Roots Lobbying)
   3. Exceptions to the Rule
      a. Nonpartisan Analysis, Study, and Research
      b. Technical Advice or Assistance
      c. Self-Defense - Decisions Affecting the Powers, Duties, Etc. of a Private Foundation
      d. Examinations and Discussions of Broad Social, Economic, and Similar Problems
      e. Private Lobbying Activity
F. Influencing Elections and Carrying on Voter Registration Drives
G. Indemnification and Directors and Officers (D&O) Liability Insurance
H. Conflicts of Interest