

105TH CONGRESS
1ST SESSION

H. R. 239

To amend the Internal Revenue Code of 1986 to impose penalties on self-dealing between certain tax-exempt organizations and disqualified persons, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. MENENDEZ introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to impose penalties on self-dealing between certain tax-exempt organizations and disqualified persons, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tax Exemption
5 Accountability Act”.

1 **SEC. 2. PENALTIES ON SELF-DEALING BY CHARITIES AND**
2 **CERTAIN OTHER TAX-EXEMPT ORGANIZA-**
3 **TIONS.**

4 (a) IN GENERAL.—Part I of subchapter B of chapter
5 68 of the Internal Revenue Code of 1986 (relating to gen-
6 eral provisions) is amended by adding at the end the fol-
7 lowing new section:

8 **“SEC. 6716. SELF-DEALING BY CHARITIES AND CERTAIN**
9 **OTHER TAX-EXEMPT ORGANIZATIONS.**

10 “(a) INITIAL PENALTIES.—In the case of an act of
11 self-dealing between a disqualified person and an applica-
12 ble tax-exempt organization—

13 “(1) ON THE ORGANIZATION.—There is hereby
14 imposed a penalty equal to the product of—

15 “(A) the amount involved in the act of self-
16 dealing, and

17 “(B) the highest rate of tax specified in
18 section 11.

19 The penalty imposed by this paragraph shall be paid
20 by the organization with respect to which such act
21 occurred.

22 “(2) ON THE MANAGEMENT.—There is hereby
23 imposed on the participation of any organization
24 manager of an organization in any act of self-dealing
25 which occurs with respect to such organization,
26 knowing that it is such an act, a penalty equal to

1 2½ percent of the amount involved with respect to
2 such act for each year (or part thereof) in the tax-
3 able period, unless such participation is not willful
4 and is due to reasonable cause. The penalty imposed
5 by this paragraph shall be paid by the organization
6 manager who participated in the act of self-dealing.

7 “(3) ON THE BENEFICIARY.—There is hereby
8 imposed on any self-dealing a penalty equal to 5 per-
9 cent of the amount involved with respect to such act
10 for each year (or part thereof) in the taxable period.
11 The penalty imposed by this paragraph shall be paid
12 by the beneficiary (other than an organization man-
13 ager acting only as such) of such act.

14 “(b) EXCEPTION.—If—

15 “(1) it is established to the satisfaction of the
16 Secretary that a person otherwise required to pay a
17 penalty under subsection (a) with respect to any act
18 of self-dealing did not know that the act was an act
19 of self-dealing,

20 “(2) the applicable tax-exempt organization
21 submits to the Secretary, for each of the 3 calendar
22 years following the calendar year in which the act
23 occurred, a statement by a qualified independent
24 auditor that such organization was described in
25 paragraph (3) or (4) of section 501(c) (as the case

1 may be) and exempt from tax under section 501(a)
2 for each such year, and

3 “(3) such act is corrected within the taxable pe-
4 riod,

5 then such penalty shall not be imposed on such person.

6 “(c) ADDITIONAL PENALTIES IF ACT NOT COR-
7 RECTED.—

8 “(1) ON THE MANAGEMENT.—In any case in
9 which an additional penalty is imposed by paragraph
10 (1), if an organization manager refused to agree to
11 part or all of the correction, there is hereby imposed
12 a penalty equal to 50 percent of the amount involved
13 with respect to such act. The penalty imposed by
14 this paragraph shall be paid by any organization
15 manager who refused to agree to part or all of the
16 correction.

17 “(2) ON THE BENEFICIARY.—In any case in
18 which an additional penalty is imposed by paragraph
19 (1), there is hereby imposed a penalty equal to 200
20 percent of the amount involved with respect to such
21 act. The penalty imposed by this paragraph shall be
22 paid by the beneficiary (other than an organization
23 manager acting only as such) of such act.

24 “(d) SELF-DEALING.—For purposes of this section—

1 “(1) IN GENERAL.—The term ‘self-dealing’
2 means any direct or indirect—

3 “(A) sale or exchange, or leasing, of prop-
4 erty between an applicable tax-exempt organiza-
5 tion and a disqualified person;

6 “(B) lending of money or other extension
7 of credit between an applicable tax-exempt or-
8 ganization and a disqualified person;

9 “(C) furnishing of goods, services, or facili-
10 ties between an applicable tax-exempt organiza-
11 tion and a disqualified person;

12 “(D) payment of compensation (or pay-
13 ment or reimbursement of expenses) by an ap-
14 plicable tax-exempt organization to a disquali-
15 fied person;

16 “(E) transfer to, or use by or for the bene-
17 fit of, a disqualified person of the income or as-
18 sets of an applicable tax-exempt organization;
19 and

20 “(F) agreement to make any payment of
21 money or other property to a government offi-
22 cial (as defined in section 4946(c)), other than
23 an agreement to employ such individual for any
24 period after the termination of his government

1 service if such individual is terminating his gov-
2 ernment service within a 90-day period.

3 “(2) SPECIAL RULES.—For purposes of para-
4 graph (1)—

5 “(A) the transfer of real or personal prop-
6 erty by a disqualified person to an applicable
7 tax-exempt organization shall be treated as a
8 sale or exchange if the property is subject to a
9 mortgage or similar lien which the organization
10 assumes or if it is subject to a mortgage or
11 similar lien which a disqualified person placed
12 on the property within the 10-year period end-
13 ing on the date of the transfer;

14 “(B) the lending of money by a disquali-
15 fied person to an applicable tax-exempt organi-
16 zation shall not be an act of self-dealing if the
17 loan is without interest or other charge (deter-
18 mined without regard to section 7872) and if
19 the proceeds of the loan are used exclusively for
20 the exempt purposes of the organization;

21 “(C) the furnishing of goods, services, or
22 facilities by a disqualified person to an applica-
23 ble tax-exempt organization shall not be an act
24 of self-dealing if the furnishing is without
25 charge and if the goods, services, or facilities so

1 furnished are used exclusively for the exempt
2 purposes of the organization;

3 “(D) the furnishing of goods, services, or
4 facilities by an applicable tax-exempt organiza-
5 tion to a disqualified person shall not be an act
6 of self-dealing if—

7 “(i) such furnishing is made on a
8 basis no more favorable than that on which
9 such goods, services, or facilities are made
10 available to the general public, and

11 “(ii) the value of the goods, services,
12 or facilities so furnished in any transaction
13 (or series of related transactions) does not
14 exceed \$100;

15 “(E) except in the case of the payment of
16 compensation to (or the payment or reimburse-
17 ment of expenses of) a government official (as
18 defined in section 4946(c)), the payment of
19 compensation (and the payment or reimburse-
20 ment of expenses) by an applicable tax-exempt
21 organization to a disqualified person for per-
22 sonal services which are reasonable and nec-
23 essary to carrying out the exempt purpose of

1 the organization shall not be an act of self-deal-
2 ing if the compensation (or payment or reim-
3 bursement)—

4 “(i) is not excessive, and

5 “(ii) is at an annual rate not in excess
6 of the rate in effect under section 5312 of
7 title 5, United States Code (relating to
8 Level I of the Executive Schedule);

9 “(F) any transaction between an applicable
10 tax-exempt organization and a corporation
11 which is a disqualified person, pursuant to any
12 liquidation, merger, redemption, recapitaliza-
13 tion, or other corporate adjustment, organiza-
14 tion, or reorganization, shall not be an act of
15 self-dealing if—

16 “(i) there is a market on an estab-
17 lished securities market or otherwise for
18 any stock in such corporation, and

19 “(ii) all of the securities of the same
20 class as that held by the organization are
21 subject to the same terms and such terms
22 provide for receipt by the organization of
23 no less than fair market value;

1 “(G) in the case of a government official
2 (as defined in section 4946(c)), paragraph (1)
3 shall in addition not apply to—

4 “(i) prizes and awards which are sub-
5 ject to the provisions of section 74(b)
6 (without regard to paragraph (3) thereof),
7 if the recipients of such prizes and awards
8 are selected from the general public,

9 “(ii) scholarships and fellowship
10 grants which would be subject to the provi-
11 sions of section 117(a) (as in effect on the
12 day before the date of the enactment of the
13 Tax Reform Act of 1986) and are to be
14 used for study at an educational organiza-
15 tion described in section 170(b)(1)(A)(ii),

16 “(iii) any annuity or other payment
17 (forming part of a stock-bonus, pension, or
18 profit-sharing plan) by a trust which is a
19 qualified trust under section 401,

20 “(iv) any annuity or other payment
21 under a plan which meets the requirements
22 of section 404(a)(2),

23 “(v) any contribution or gift (other
24 than a contribution or gift of money) to, or
25 services of facilities made available to, any

1 such individual, if the aggregate value of
2 such contributions, gifts, services, and fa-
3 cilities to, or made available to, such indi-
4 vidual during any calendar year does not
5 exceed \$25,

6 “(vi) any payment made under chap-
7 ter 41 of title 5, United States Code, or

8 “(vii) any payment or reimbursement
9 of traveling expenses for travel solely from
10 one point in the United States to another
11 point in the United States, but only if such
12 payment or reimbursement does not exceed
13 the actual cost of the transportation in-
14 volved plus an amount for all other travel-
15 ing expenses not in excess of 125 percent
16 of the maximum amount payable under
17 section 5702 of title 5, United States
18 Code, for like travel by employees of the
19 United States; and

20 “(H) the leasing by a disqualified person
21 to an applicable tax-exempt organization of of-
22 fice space for use by the organization in a
23 building with other tenants who are not dis-
24 qualified persons shall not be treated as an act
25 of self-dealing if—

1 “(i) such leasing of office space is
2 pursuant to a binding lease which was in
3 effect on October 9, 1969, or pursuant to
4 renewals of such a lease;

5 “(ii) the execution of such lease was
6 not a prohibited transaction (within the
7 meaning of section 503(b) or any cor-
8 responding provision of prior law) at the
9 time of such execution; and

10 “(iii) the terms of the lease (or any
11 renewal) reflect an arm’s-length trans-
12 action.

13 “(e) OTHER DEFINITIONS.—For purposes of this
14 section—

15 “(1) APPLICABLE TAX-EXEMPT ORGANIZA-
16 TION.—The term ‘applicable tax-exempt organiza-
17 tion’ means any organization which (without regard
18 to any act of self-dealing) would be described in
19 paragraph (3) or (4) of section 501(c) and exempt
20 from tax under section 501(a).

21 “(2) DISQUALIFIED PERSON.—

22 “(A) IN GENERAL.—The term ‘disqualified
23 person’ means, with respect to any trans-
24 action—

1 “(i) any person who was an organiza-
2 tion manager at any time during the 5-
3 year period ending on the date of such
4 transaction.

5 “(ii) any member of a family (as de-
6 fined in section 4946(d)) of any person de-
7 scribed in clause (i),

8 “(iii) any 5-percent controlled entity
9 of persons described in clauses (i) and (ii),
10 and

11 “(iv) any government official (as de-
12 fined in section 4946(c)).

13 “(B) SPECIAL RULE FOR PRIVATE FOUN-
14 DATIONS.—With respect to any transaction in-
15 volving a private foundation—

16 “(i) the term ‘disqualified person’ in-
17 cludes a substantial contributor (as defined
18 in section 4946(a)(2)) to such foundation
19 and any person described in section
20 4946(a)(1)(C) with respect to such a con-
21 tributor, and

22 “(ii) such substantial contributor shall
23 be treated as described in clause (i) of sub-
24 paragraph (A) for purposes of applying

1 this section with respect to such founda-
2 tion.

3 “(3) ORGANIZATION MANAGER.—The term ‘or-
4 ganization manager’ means, with respect to any ap-
5 plicable tax-exempt organization—

6 “(A) any officer, director, or trustee of
7 such organization (or any individual having
8 powers or responsibilities similar to those of of-
9 ficers, directors, or trustees of the organiza-
10 tion), and

11 “(B) with respect to any act (or failure to
12 act), the employees of the organization having
13 authority or responsibility with respect to such
14 act (or failure to act).

15 “(4) 5-PERCENT CONTROLLED ENTITY.—

16 “(A) 5-PERCENT CONTROLLED ENTITY.—
17 The term ‘5-percent controlled entity’ means—

18 “(i) a corporation in which persons
19 described in subparagraph (A) or (B) of
20 paragraph (2) own more than 5 percent of
21 the combined voting power,

22 “(ii) a partnership in which such per-
23 sons own more than 5 percent of the prof-
24 its interest, and

1 “(iii) a trust or estate in which such
2 persons own more than 5 percent of the
3 beneficial interest.

4 “(B) CONSTRUCTIVE OWNERSHIP
5 RULES.—Rules similar to the rules of para-
6 graphs (3) and (4) of section 4946(a) shall
7 apply for purposes of this paragraph.

8 “(5) TAXABLE PERIOD.—The term ‘taxable pe-
9 riod’ means, with respect to any act of self-dealing,
10 the period beginning with the date on which the act
11 of self-dealing occurs and ending on the earliest of—

12 “(A) the date of mailing a notice of defi-
13 ciency with respect to the penalty imposed by
14 subsection (a)(1) under section 6212,

15 “(B) the date on which the penalty im-
16 posed by subsection (a)(1) is assessed, or

17 “(C) the date on which correction of the
18 act of self-dealing is completed.

19 “(6) AMOUNT INVOLVED.—The term ‘amount
20 involved’ means, with respect to any act of self-deal-
21 ing, the greater of the amount of money and the fair
22 market value of the other property given or the
23 amount of money and the fair market value of the
24 other property received; except that, in the case of
25 services described in subsection (d)(2)(E), the

1 amount involved shall be only the excess compensa-
2 tion. For purposes of the preceding sentence, the
3 fair market value—

4 “(A) in the case of the taxes imposed by
5 subsection (a), shall be determined as of the
6 date on which the act of self-dealing occurs;
7 and

8 “(B) in the case of the taxes imposed by
9 subsection (c), shall be the highest fair market
10 value during the taxable period.

11 “(7) CORRECTION.—The terms ‘correction’ and
12 ‘correct’ mean, with respect to any act of self-deal-
13 ing, undoing the transaction to the extent possible,
14 but in any case placing the applicable tax-exempt or-
15 ganization in a financial position not worse than
16 that in which it would be if the disqualified person
17 were dealing under the highest fiduciary standards.

18 “(f) SPECIAL RULES.—

19 “(1) JOINT AND SEVERAL LIABILITY.—If more
20 than one person is liable under any paragraph of
21 subsection (a) or (c) with respect to any one act of
22 self-dealing, all such persons shall be jointly and sev-
23 erally liable under such paragraph with respect to
24 such act.

1 “(2) MINISTERS.—Clause (ii) of subsection
2 (d)(2)(E) shall not apply to compensation paid by a
3 church to a duly ordained, commissioned, or licensed
4 minister thereof for the performance of sacerdotal
5 duties.”

6 (b) REVOCATION OF EXEMPTION OF CERTAIN CHAR-
7 ITIES FOR ACTS OF SELF-DEALING.—Section 501 of such
8 Code is amended by redesignating subsection (o) as sub-
9 section (p) and by inserting after subsection (n) the follow-
10 ing new subsection:

11 “(o) REVOCATION OF EXEMPTION OF CERTAIN
12 CHARITIES FOR ACTS OF SELF-DEALING.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), an organization which would (without re-
15 gard to any act of self-dealing) be described in para-
16 graph (3) or (4) of subsection (c) shall not be ex-
17 empt from tax under subsection (a) if there is any
18 act of self-dealing between such organization and
19 any person who is a disqualified person (as defined
20 in section 6716(e)) with respect to such organiza-
21 tion.

22 “(2) EXCEPTION.—Paragraph (1) shall not
23 apply to an organization if—

1 “(A) there has been no prior act of self-
2 dealing by such organization (or any prede-
3 cessor), and

4 “(B) the Secretary determines that revoca-
5 tion of such exemption is inappropriate.

6 In making the determination under subparagraph
7 (B), the Secretary shall take into account the extent
8 and duration of the self-dealing, the amount in-
9 volved, and whether such self-dealing was corrected
10 in a timely manner.

11 “(3) SELF-DEALING.—For purposes of this sub-
12 section, the term ‘self-dealing’ has the meaning
13 given such term by section 6716(d).”

14 (c) APPLICATION OF PRIVATE INUREMENT RULE TO
15 ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—
16 Paragraph (4) of section 501(c) of such Code is amended
17 to read as follows:

18 “(4)(A) Civic leagues or organizations not orga-
19 nized for profit but operated exclusively for the pro-
20 motion of social welfare and no part of the net earn-
21 ings of which inures to the benefit of any private
22 shareholder or individual.

23 “(B) Local associations of employees—

1 “(i) the membership of which is limited to
2 the employees of a designated person or persons
3 in a particular municipality,

4 “(ii) which is operated exclusively for char-
5 itable, educational, or recreational purposes,
6 and

7 “(iii) no part of the net earnings of which
8 inures to the benefit of any private shareholder
9 or individual.”

10 (d) REPEAL OF EXCISE TAX ON SELF-DEALING BY
11 PRIVATE FOUNDATIONS.—Section 4941 of such Code is
12 hereby repealed.

13 (e) CLERICAL AMENDMENTS.—

14 (1) The table of sections of part I of subchapter
15 B of chapter 68 of such Code is amended by adding
16 at the end the following new item:

 “Sec. 6716. Self-dealing by charities and certain other tax-exempt
 organizations.”

17 (2) The table of sections of subchapter A of
18 chapter 42 of such Code is amended by striking the
19 item relating to section 4941.

20 (f) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall apply to transactions after the date
23 of the enactment of this Act.

24 (2) EXCEPTION FOR CERTAIN COMPENSATION
25 PAID PURSUANT TO BINDING CONTRACTS.—Clause

1 (ii) of section 6716(d)(2)(E) of the Internal Revenue
 2 Code of 1986 (as added by this section) shall not
 3 apply to compensation which is paid—

4 (A) before the date which is 2 years after
 5 the date of the enactment of this Act, and

6 (B) pursuant to a contract which is bind-
 7 ing on January 1, 1995, and at all times there-
 8 after before the date such compensation is paid.

9 **SEC. 3. INCREASE IN PENALTIES FOR FAILURE TO FILE**
 10 **TIMELY ANNUAL RETURNS REQUIRED BY**
 11 **SECTION 6033 AND TO PERMIT TIMELY IN-**
 12 **SPECTION OF SUCH RETURNS.**

13 (a) INCREASE IN PENALTY.—The material following
 14 clause (ii) of section 6652(c)(1)(A) of the Internal Reve-
 15 nue Code of 1986 (relating to returns by exempt organiza-
 16 tions and certain trusts) is amended to read as follows:
 17 “there shall be paid by the exempt organization an amount
 18 equal to 3 percent of its gross receipts (for the year for
 19 which such return is required to be filed) for each 30-day
 20 period (or portion thereof) that such failure continues.”

21 (b) INCREASE IN PENALTY FOR FAILURE TO PERMIT
 22 PUBLIC INSPECTION OF ANNUAL RETURNS.—Subpara-
 23 graph (C) of section 6652(c)(1) of such Code is amended
 24 by striking “\$10” and inserting “\$25”.

25 (c) EFFECTIVE DATES.—

1 (1) SUBSECTION (a).—The amendment made
2 by subsection (a) shall apply to returns the due date
3 for which (determined without regard to any exten-
4 sion of time filing) is after the date of the enactment
5 of this Act.

6 (2) SUBSECTION (b).—The amendment made
7 by subsection (b) shall apply to requests made more
8 than 180 days after the date of the enactment of
9 this Act.

10 **SEC. 4. NATIONAL CLEARINGHOUSE FOR ACCESS TO AN-**
11 **NUAL RETURNS OF EXEMPT ORGANIZATIONS,**
12 **ETC.**

13 (a) IN GENERAL.—The Secretary of the Treasury or
14 his delegate shall establish a clearinghouse from which in-
15 dividuals may inspect or receive copies of annual returns
16 filed under section 6033 of the Internal Revenue Code of
17 1986 by organizations to which subsection (d) or (e)(1)
18 of section 6104 of such Code applies. Inspection shall be
19 permitted without charge, and copies shall be provided
20 without charge other than a reasonable fee for any repro-
21 duction and mailing costs.

22 (b) PERIOD OF AVAILABILITY.—Copies of a return
23 shall be available under subsection (a) only during the 3-
24 year period beginning on the last day prescribed for filing

1 such return (determined with regard to any extension of
2 time for filing).

3 (c) NO INSPECTION REQUIRED AT REGIONAL OR
4 DISTRICT OFFICES AFTER CLEARINGHOUSE ESTAB-
5 LISHED.—After the date of the clearinghouse is estab-
6 lished under subsection (a), no organization shall be re-
7 quired to permit inspections under section 6104(e)(1) of
8 such Code at any regional or district office.

9 (d) AUTHORIZATION.—There are authorized to be ap-
10 propriated such sums as may be necessary to carry out
11 this section.

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