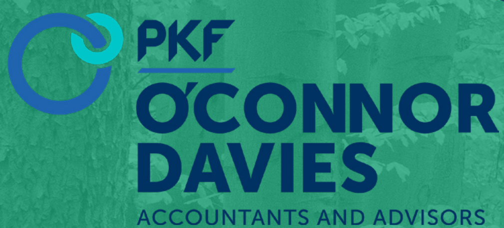

Private Foundation

Governance & Tax Guide

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Preface

Private foundations come in all shapes and sizes. Understanding available resources and limitations is important in developing a "right-sized" approach to operating your foundation. What works for one foundation may not work for another. In this white paper, we will examine some key operational and tax concepts which foundations should consider utilizing when developing their own right-sized approach.

The Private Foundation Services team at PKF O'Connor Davies has spent the last two decades providing accounting, assurance, tax and advisory services to the private foundation sector. This valuable experience has allowed us to guide clients through issues and solutions, both small and large. In the process, we have become trusted advisors to over 550 private foundations.

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Operational Considerations

Creating a Foundation Under State Law

One of the first steps in creating a foundation is to determine whether the foundation should be created as a corporation or trust. The foundation, in conjunction with its advisors, should consider the reporting, tax and compliance implications of selecting one structure versus the other.

Prior to creating a foundation in a particular state, the foundation must ensure that its organizing documents (articles of incorporation, by-laws, trust agreement, etc.) include specific provisions required by the Internal Revenue Service (IRS). Generally, these provisions require the foundation to act, or refrain from acting, in a manner where the foundation could be liable for penalty excise taxes, which are imposed by §4941, §4942, §4943, §4944 and §4945 of the Internal Revenue Code (IRC).

Foundations that are incorporated in a particular state should consider the laws, reporting requirements and compliance standards applicable to that state as requirements vary greatly between states. Similar to corporations, the activities of the foundation will be carried out in accordance with the terms as defined and adopted in its articles of incorporation and by-laws. The foundation will also have to engage a registered agent in the selected state who will represent the foundation on an annual basis.

Alternatively, foundations can be formed as a trust upon the execution of a trust agreement. Foundations that are established as a trust are governed by the trust agreement, which will govern/dictate how the foundation (trust) will carry out its activities.

Once adopted, articles of incorporation, by-laws and trust agreements can only be amended by means of an action of either the Board of Directors or Board of Trustees and must be reported to the IRS accompanied with the foundation's latest federal filing.

The foundation should also apply for an employer identification number (EIN), which is necessary when applying for an IRS exemption. This EIN is a unique number that identifies the organization to the IRS and can be obtained by completing Form SS-4, *Application for Employer Identification Number.*

Defining the Foundation's Mission

A defined mission stating the purpose of the foundation, the areas of interest or issues the foundation wishes to address and the foundation's positions on those interests and issues. The foundation's mission can be central in establishing a structure upon which the foundation can operate. Examples of areas of interest or issues could include, but is not limited to: religious, scientific, literary, civic or educational purposes. The mission could further define whether the foundation wants to focus on a particular region or a demographic. Having a well-defined mission can also create common purpose and ensure continuity among Board members and other interested parties in the foundation.

Type of Organization

The organization can be recognized as a private operating foundation, exempt operating foundation or (in most cases) a grant-making (private non-operating) foundation depending on the mission and intended goals of the organization.

- A private operating foundation is a foundation that devotes most of its resources to the active conduct of its exempt activities.
- An exempt operating foundation is a private operating foundation that is not subject to the excise tax on its net investment income. An organization applying for initial recognition of its tax-exempt status may also concurrently apply for private operating foundation status.
- A grant-making or private nonoperating foundation is defined as a private foundation that is neither a private operating foundation nor an exempt operating foundation.

The organization and its advisors should give careful consideration to which type of foundation will best fit the given criteria of the organization.

Applying for Exemption

Once a foundation has been created under state law, defined what their mission will be and determined what type of foundation is the most appropriate, the foundation should apply for recognition by the IRS of exempt status under §501(c)(3) of the IRC. A foundation can accomplish this by electronically filing Form 1023, *Application for Recognition of Exemption Under §501(c)(3) of the Internal Revenue Code,* by means of www.pay.gov and pay the appropriate user fee. As the questions and information contained in this application can be complex, the foundation should consult with both their legal counsel and certified public accountants to ensure the form is completed accurately and contains all the necessary information to increase the chances of IRS approval.

Among other important items, the form will require the foundation to choose when their tax year will end (e.g., December 31st for a calendar year-end or June 30th for a fiscal year-end, etc.) and what basis of accounting the foundation will be recorded under (e.g., cash, modified cash, accrual, etc.). Upon approval of exemption by the IRS, the foundation will receive an IRS determination letter indicating that the foundation is approved for exempt status and is further classified by type of foundation.

Day-to-Day Operations – Staff or No Staff

Determining who will operate the foundation on a day-to-day basis is an important consideration. The foundation can be operated by paid staff or the foundation can be operated by paid/unpaid volunteer board members. There can also exist a combination of both. Some foundations opt to outsource operations to a third-party service provider. Foundations should weigh the cost and benefits when determining which approach works best.

Governance and Financial Controls

A comprehensive and well-thought-out policies and procedures manual that defines roles and responsibilities can be an important tool that creates a checks and balances system and allows for the segregation of duties that is right-sized for your foundation. Various policies adopted by the foundation (e.g., conflict of interest policy), some of which may be required by state law, will also help protect the foundation by keeping the foundation accountable and in compliance. The foundation should also continue to monitor changes in state laws (e.g., board composition requirements) and work with legal counsel to update organizational documents to reflect these changes.

Legal Counsel with Exempt Organization Experience

Hiring legal counsel that is both competent and knowledgeable of the foundation industry could be one of the most important decisions the foundation makes. Foundations, in and of themselves, are uniquely intricate with federal and state specific rules and laws, compliance reporting requirements and operational considerations. Legal counsel can help craft and guide the completion of the foundation's organizing documents and exemption application at the start of the foundation's life cycle. Knowledgeable legal counsel can both protect the foundation and ensure all pertinent terms and conditions are included when guiding a foundation in creating and/or reviewing documents, such as employment agreements and grant and lease agreements. Having the right legal counsel can help the foundation stay in compliance and help guide the foundation in interpreting changing laws and industry trends.

Insurance

Like any organization, a foundation will require a variety of insurance to protect the foundation, its Board and its employees, if applicable. The requirements will depend on the specific activities and complexities of each foundation. Finding a knowledgeable insurance agent who is familiar with the risks and intricacies of foundations can go a long way to ensuring that the foundation is adequately covered and protected. The foundation should perform an assessment to determine what policies, at a minimum, should be in place at the foundation, such as a directors and officers (D&O) insurance policy.

Technology and Cybersecurity

As the world is becoming more complex and technologically advancing by the day, it is essential that the foundation have the necessary capabilities in place to protect itself against unscrupulous parties. It is important that the foundation perform an information technology (IT) assessment to determine whether controls are in place. The foundation should also develop and regularly test a disaster recovery plan to ensure that the foundation can continue to operate and carry on their philanthropic activities with limited interruption to operations in case of disaster. Adopting concrete IT policies can help prevent financial loss as well as help the foundation mitigate reputational risk. All these considerations are especially important and critical for foundations with a large staff base and physical offices with IT infrastructure.

Investment Portfolio

The size and complexity of investment portfolios can vary from foundation to foundation, depending on endowment sizes, funding resources and operational spending requirements (e.g., operating expenses, grants, taxes, etc.). Each foundation, in concurrence with their investment advisors, legal counsel and certified public accountants should develop a well-defined investment policy. It should include the investment objectives of the portfolio, which reflect the foundation's risk profile and should address the legal and tax implications of transactions undertaken. Engaging an investment advisor who understands the fundamentals of foundations can help the foundation with their investment portfolio such as cash forecasting needs, which is important to foundation operations.

Grants

Once a foundation has identified an area to fund and perhaps selected a particular grantee, due diligence of this grantee should be performed. Depending on the size and resources of the foundation, the due diligence can be handled by the foundation, a philanthropic advisor or another third-party service provider. The foundation must determine whether they wish to maintain the due diligence grant files or have a philanthropic advisor/third-party service provider maintain the files. A philanthropic advisor can also help with identifying potential grantees and managing the correspondence process. Whichever recordkeeping option the foundation chooses, these grant files must be maintained to comply with IRS guidelines.

Physical Office vs. Virtual Office

Foundations come in all shapes and sizes and this is no different when it comes to how they operate. A foundation can choose to have a physical office where employees come to work or can be run completely remotely by its employees. A foundation can also choose to have zero to a few employees and outsource the operational aspects of the foundation to a certified public accounting company to perform CFO/COO services. In the end, there is no right or wrong way and it comes down to what works best for the foundation to accomplish its philanthropic mission.

Tax Considerations

Required Annual Filings

All foundations, whether they have taxable income or not each tax year, are required to file a Form 990-PF, *Return of Private Foundation,* on an annual basis. The return is due by the 15th day of the 5th month following the close of the foundation's fiscal year and should be filed with the IRS. However, a six-month extension can be requested by filing Form 8868, *Application for Automatic Extension of Time to File an Exempt Organization Return.* Failure to file the form timely could result in substantial penalties. In addition, depending on the state(s) the foundation is registered in, the foundation may be required to complete annual state filing(s) and the failure to do so could also result in substantial penalties.

Key Tax Terms:

- Tax Compliance
- Self-Dealing
- Net Investment Income
- Minimum Investment Return
- Excess Business Holdings
- Jeopardizing Investments
- Taxable Expenditures
- Expenditure Responsibility
- Unrelated Business Income
- Foreign Filings

Tax on Net Investment Income (the 1.39% Excise Tax)

IRC §4940 imposes an excise tax on the net investment income generated by most foundations in a given tax year. The current excise tax rate is a flat 1.39% of net investment income. The tax is required to be reported on the annual Form 990-PF and estimated payments are required if certain conditions exist.

The IRS defines net investment income as the amount by which the sum of gross investment income (interest, dividends, rents, payments with respect to securities loans and royalties) and the capital gain net income (capital gains and losses from the sale or other disposition of property held for investment purposes or for the production of income) exceeds allowable deductions (all ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation or maintenance of property held for the production of income, subject to certain modifications). For larger foundations (those defined by the IRS as having $1 million or more in net investment income for any of the three tax years immediately preceding the tax year involved), estimated quarterly tax payments are required.

Disqualified Persons

One important area a foundation should pay particular attention to as a not-for-profit entity concerns transactions with "disqualified persons." A disqualified person is defined by the IRS as "any person who was in a position to exercise substantial influence over the affairs of the applicable tax-exempt organization at any time during the lookback period. It is not necessary that the person actually exercise substantial influence, only that the person be in a position to do so."

The IRS considers the following persons as disqualified persons with respect to the private foundation:

- All substantial contributors to the foundation, including members of their family.
- All foundation managers of the foundation, including members of their family.
- An owner (or their family member/s) with more than 20 percent of the:
  - total combined voting power of a corporation
  - profits interest of a partnership, or
  - beneficial interest of a trust or unincorporated enterprise, which is, during the ownership, a substantial contributor to the foundation.
- A corporation of which more than 35 percent of the total combined voting power is owned by persons, or family members of persons, described above.
- A partnership of which more than 35 percent of the profits interest is owned by persons, or family members of persons, described above.
- A trust, estate, or unincorporated enterprise of which more than 35 percent of the beneficial interest is owned by persons, or family members of persons, described above.
- For purposes of the tax on excess business holdings only, another.
- For purposes of the tax on self-dealing only, a government official.
- A private foundation that either:
  - is effectively controlled, directly or indirectly, by the same person or persons who control(s) the private foundation in question, or
  - receives substantially all of its contributions, directly or indirectly, from the same persons described above or members of their families, who made, directly or indirectly, substantially all the contributions to the private foundation in question.

Acts of Self-Dealing

An act of self-dealing results from transactions between a foundation and a disqualified person and can include indirect self-dealing. In general, the following are considered acts of self-dealing:

- sale, exchange, or leasing of property,
- leases,
- lending money or other extensions of credit,
- providing goods, services, or facilities,
- paying compensation or reimbursing expenses to a disqualified person,
- transferring foundation income or assets to, or for the use or benefit of, a disqualified person and
- certain agreements to make payments of money or property to government officials.

Specific exceptions to self-dealing do exist.

§4941 of the IRC imposes an excise tax on certain transactions between a private foundation and disqualified persons. Initially, there is an excise tax of 10% of the amount involved, which is imposed on the disqualified person for each year or part of a year in the taxable period and an excise tax of 5% of the amount involved, which is imposed on the foundation manager who knowingly participates in an act of self-dealing, unless participation is not willful and is due to reasonable cause, for each year or part of a year in the taxable period.

An additional excise tax of 200% of the amount involved is imposed on the disqualified person, who participated in the act of seal-dealing, if the act of self-dealing is not corrected within the taxable period. However, if the act of self-dealing is corrected during the correction period, this additional tax will not be assessed, or if assessed it will be abated. In addition, an excise tax of 50% of the amount involved will be imposed on any foundation manager who refuses to agree to part or all of the correction of the self-dealing act.

There is a limit on the amount of excise tax that can be imposed. The maximum initial tax that can be imposed on a foundation manager is $20,000 and the maximum additional tax is $20,000 for any one act. However, there is no maximum on the liability of the self-dealer. If more than one person is liable for the initial and additional taxes imposed for any act of self-dealing, then all parties will be jointly and severally liable for these taxes.

Minimum Investment Return (the 5% Payout)

A foundation's minimum investment return (MIR) is defined as 5% of the excess of the combined fair market value of all assets of the foundation, other than those used or held for exempt purposes, over the amount of indebtedness incurred to purchase these assets.

The foundation's MIR is then adjusted to arrive at the distributable amount. Each year, the MIR will be;

- reduced by any tax on investment income and income tax and
- increased by any amounts received as repayments of amounts taken into account as qualifying distributions for any tax year and
- increased by amounts received from the sale or other disposition of property to the extent that the acquisition of the property was considered a qualifying distribution for any tax year, or
- increased by any amount set aside for a specific project to the extent the amount was not necessary for the purposes for which it was set aside.

Qualifying distributions can include:

- any amount paid to accomplish religious, charitable, scientific, literary, or other public purposes,
- any amount paid to buy an asset used (or held for use) directly to carry out a charitable or other public purpose and
- any qualifying amount set-aside (an amount set-aside for a specific project may be treated as a qualifying distribution in the year set-aside, but not in the year actually paid).

For a qualifying amount to be considered set-aside, the amount must be paid for the specific project within 60 months from the date when it was first set-aside and the foundation must demonstrate that the project can be better accomplished utilizing a set-aside than by immediate payment (suitability test).

Once the distribution amount is determined, this amount must be distributed as qualifying distributions. The foundation is required to distribute these qualifying distributions by the end of the subsequent tax year in which the distributable amount is applicable. Any excess qualifying distributions can be carried forward for a period of five years immediately following the tax year in which the excess was created. Failure to pay out qualifying distributions in a timely manner could result in a 30% excise tax under §4942 of the IRC on the undistributed income amount. Undistributed income amount is defined as the amount by which the distributive amount for any tax year exceeds the qualifying distributions for any tax year. An additional 100% tax is assessed if the foundation fails to make appropriate qualifying distributions within 90 days of receiving notification from the IRS of the foundation's failure to make timely qualifying distributions.

Another topic related to qualifying distributions which foundations should be aware of and consider is a conduit election. This election may be available to foundations that qualify as conduit foundations in a given taxable year. Conduit foundations are private nonoperating foundations that meet the distribution requirements as specified in IRC §170(b)(1)(F)(ii) in a taxable year, whereby the foundation makes qualifying distributions in an amount equal to 100% of contributions received in a taxable year by no later than the

15th day of the third month following the close of the taxable year in question. As the rules and benefits of conduit elections are complex and constantly changing, a foundation should consult with their tax advisors when considering these elections.

Excess Business Holdings

An excess business holding occurs when a foundation and all its disqualified persons combined own more than 20% of the voting stock in a business enterprise that is a corporation, 20% of the profits interest in a business enterprise that is a partnership or joint venture, or a 20% beneficial interest in a business enterprise that is another unincorporated enterprise.

If a foundation has excess business holdings, under §4943 of the IRC, the foundation may be subject to an excise tax based on the amount of the excess holdings. An initial tax of 10% is imposed on the value of the excess holdings, with the value being determined as of the day during the tax year in which the excess holdings in the business were at their greatest value. If the foundation has not disposed of any remaining excess holdings by the end of the taxable period, the IRS imposes an additional 200% excise tax.

However, the excise tax can be abated if the foundation demonstrates that the excess holdings were due to reasonable cause and not due to willful neglect and that the excess holdings were disposed of within the correction period (ends 90 days from the mailing date of the notice of deficiency for the additional tax).

Jeopardizing Investments

Foundations should be especially careful to avoid investments that could be perceived as being financially jeopardizing to the foundation's ability to carry out its exempt purpose. Failure to do so could result in both the foundation and its individual foundation managers being held liable for taxes under §4944 of the IRC.

Jeopardizing investments are generally defined as investments that show a lack of reasonable care and prudence in providing for both the long- and short-term financial needs of the foundation for it to carry out its exempt function.

If it is ultimately determined that the foundation held a jeopardizing investment, §4944 of the IRC imposes an initial tax of 10% on the amount involved and will be assessed on both the foundation and any foundation manager who knowingly, willfully and without reasonable cause participated in making the jeopardizing investment. If the foundation does not remove the investment from jeopardy within the taxable period, an additional excise tax of 25% will be assessed on the amount involved.

However, if the foundation can demonstrate that the jeopardizing investment was made due to reasonable cause and not willful neglect and that the jeopardizing investment was corrected within the correction period (ends 90 days from the mailing date of the notice of deficiency for the additional tax), then the foundation will not be held liable.

It should be noted that in the case where an additional excise tax is imposed, any foundation manager who refuses to agree to all or part of the removal from jeopardy within the correction period will be assessed an additional excise tax of 10% on the amount involved. If more than one foundation manager is held liable for excise taxes on a jeopardizing investment, all parties will be jointly and severely liable. The amount of excise tax that can be imposed on foundation managers for any one jeopardizing investment is limited to a maximum initial tax of $10,000 and a maximum additional tax of $20,000.

Taxable Expenditures

A taxable expenditure occurs when a foundation has an expenditure to:

- Carry on propaganda or otherwise attempt to influence legislation,
- Influence the outcome of any specific public election or carry on any voter registration drive, unless certain requirements are satisfied,
- Make a grant to an individual for travel, study, or other similar purposes, unless certain requirements are satisfied,
- Make a grant to an organization [other than an organization described in §509(a)(1), (2), or (3) or an exempt operating foundation] unless the foundation exercises expenditure responsibility with respect to the grant, or
- Carry out any purpose other than a religious, charitable, scientific, literary, or educational purpose, the fostering of national or international amateur sports competition (with exceptions) or the prevention of cruelty to children or animals.

If the foundation had an expenditure as described above, a tax is imposed on both the foundation and any foundation manager who knowingly and willfully agrees to the expenditure pursuant to §4945 of the IRC.

Moreover, an initial tax of 20% on the expenditure amount is imposed on the foundation if it is determined that a taxable expenditure did occur. Foundation managers will not be held liable if they can demonstrate that the expenditure was due to reasonable cause (exercised responsibility on behalf of the foundation with ordinary business care and prudence) and not willful neglect and the expenditure was corrected within the correction period (ends 90 days from the mailing date of the notice of deficiency for the additional tax) or the foundation manager acted on a reasoned legal opinion in writing from counsel. However, if the foundation manager knowingly, willfully and without reasonable cause agrees to the taxable expenditure, then an initial tax of 5% on the expenditure amount is imposed, up to a maximum of $10,000 for any expenditure.

An additional excise tax of 100% of the expenditure amount will be imposed on the foundation if the expenditure is not corrected within the taxable period unless the expenditure is corrected within the correction period. An additional excise tax of 50% of the expenditure amount will be imposed on foundation managers who refuse to agree to any part of the correction, up to a maximum of $20,000.

Expenditure Responsibility and Equivalency Determination

IRC §4945(d)(4) states that a taxable expenditure includes grants to organizations unless the grant is made to a public charity or the foundation exercises expenditure responsibility in accordance with §4945(h) of the IRC.

While researching potential funding opportunities, a foundation might come across an organization that is not a public charity but the organization furthers the foundation's philanthropic mission. In order for the foundation to fund this organization by means of a grant, the foundation must exercise expenditure responsibility with respect to the grant. The foundation is responsible for exerting all reasonable efforts and establishing adequate procedures to:

- see that the grant is spent solely for the purpose for which made,
- obtain full and complete reports from the grantee on how the funds are spent and
- make full and detailed reports regarding the grants to the IRS.

The foundation's failure to exercise expenditure responsibility could result in the grant being considered a taxable expenditure subject to excise taxes imposed by IRC §4945(a).

The IRS also provides the option for a foundation to make an equivalency determination whereby the foundation can make a good faith determination that the grantee is an organization equivalent to a U.S. public charity. A foundation can document this determination by obtaining an affidavit from the grantee organization and an opinion from either legal counsel or a qualified tax practitioner that the grantee is equivalent to a U.S. public charity.

Private Operating Foundation

As defined by the IRS, a private operating foundation "is any private foundation that spends at least 85 percent of its adjusted net income or its minimum investment return, whichever is less, directly for the active conduct of its exempt activities (the income test)." In addition, the private operating foundation must meet one of the following tests: the Assets Test, the Endowment Test or the Support Test.

Note: Certain private foundations that provide long-term care facilities are treated as operating foundations only for the purposes of the excise tax on failure to distribute income.

Like private nonoperating foundations, private operating foundations are still subject to the excise tax on net investment income. However, there exists some unique tax compliance considerations. For instance, private operating foundations are required to meet the **Income Test** and one of the following: the **Assets Test** or the **Endowment Test** or the **Support Test** to maintain their status.

- **Income Test** − Test requires the private operating foundation to spend at least 85% of their adjusted net income or minimum investment return (whichever is less) directly for the active conduct of its exempt activities.
- **Assets Test** – Test met if 65% or more of the private operating foundation's assets:
  (a) Are devoted directly to the active conduct of its exempt activity, a functionally related business, or a combination of the two,
  (b) Consist of stock of a corporation that is controlled by the foundation (80% of the total voting power of all classes of stock entitled to vote and at least 80% of the total shares of all other classes of stock) and at least 85% of the assets which are so devoted,
  (c) Any combination of (a) and (b).
- **Endowment Test** – Test met if the private operating foundation makes qualifying distributions directly for the active conduct of its exempt activities that equals at least two-thirds of its minimum investment return.
- **Support Test** – Test met if:
  (a) at least 85% of the private operating foundation's support is received from the public and 5% or more from unrelated exempt organizations,
  (b) not more than 25% of the private operating foundation's support is received from any one exempt organization and
  (c) not more than 50% of the private operating foundation's support is received from gross investment income.

The tests for qualifying as a private operating foundation are based upon the year in question and the three immediately preceding years and may be met either on an aggregate basis or on a three-out-of-four-year basis.

Private operating foundations are also not subject to excise tax on failure to distribute income. In those years in which the foundation does not qualify as an operating foundation, the foundation will revert to nonoperating status.

Another consideration to remember is that contributions to private operating foundations are deductible by donors for up to 50% of the donor's adjusted gross income (30% of a donor's adjusted gross income for all other private foundations). The 50% limit for contributions to a private operating foundation was temporarily raised to

60% of adjusted gross income for cash contributions through taxable years beginning before January 1, 2026, as part of the Tax Cuts and Jobs Act of 2017 (TCJA) and was increased to 100% of adjusted gross income for cash contributions in 2020 and 2021 under the Coronavirus Aid, Relief and Economic Security (CARES) Act.

Exempt Operating Foundation

To be considered an exempt operating foundation and, therefore, exempt from paying tax on investment income, strict criteria must be met and maintained. The criteria include:

- the private foundation must have been supported publicly for at least 10 years,
- the governing body must consist of individuals, less than 25% of whom are disqualified individuals,
- the governing body must be broadly representative of the public and
- the governing body must contain no officer who is considered a disqualified individual during the year.

Unrelated Business Income Tax

Despite being considered tax exempt, a foundation could be liable for income tax on unrelated business income at both the federal and state level. Unrelated business income (UBI) is defined as income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the foundation's tax exemption. If a foundation generates $1,000 or more of gross income from an unrelated business, then they must file a federal Form 990-T, *Exempt Organization Business Income Tax Return* and pay the applicable tax, if required.

Foundations that expect this tax to be $500 or more in a given tax year must make estimated payments. It should be noted that the filing of a Form 990-T is supplemental to the annual required filing for Form 990-PF. Each state has its own rules, income thresholds and reporting requirements, which must be analyzed to determine whether a state filing is required.

Foreign Filings

A factor that foundations must consider when contemplating entering a new investment position is the country in which the investment is domiciled. Monies transferred to investment positions located outside the United States could result in an additional foreign filing requirement for the foundation, which is dependent on meeting certain criteria. The most common foreign filings include, but are not limited to:

- Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation,*
- Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships,*
- Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations,*
- Form 8886, *Reportable Transaction Disclosure Statement,*
- Form 8621, *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.*

Failure to file a complete and accurate foreign filing by the due date, along with extensions of the foundation's tax return, could result in monetary penalties beginning at $10,000.

Conclusion

While not inclusive of every circumstance a foundation could encounter because each foundation is different and has unique situations, the terms and concepts discussed in this paper should provide a baseline understanding of a foundation's operational and tax considerations as well as the implications of both creating and administrating a foundation.

Private Foundation Services

In 1891, PKF O'Connor Davies made a commitment to the non-profit sector. Today, we work with well over 550 private foundations and nearly 4,000 non-profit organizations.

We offer comprehensive accounting, assurance, tax and advisory services, as well as in-depth internal controls support. In addition, we have significant experience in complex investment portfolios and diversified grant-making activities.

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Contact Us

We welcome the opportunity to answer any questions you may have related to this overview or other accounting, audit, tax or advisory matters relative to private foundations. Please call 212.286.2600 or email any of the Private Foundation Services team members below:

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