

## **Intermediate Sanctions - Excise Taxes**

**Provisions in legislation signed by the President on August 17, 2006, may affect the information on this page.**

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### **Imposition of Excise Tax on Disqualified Persons**

An excise tax equal to 25% of the excess benefit is imposed on each excess benefit transaction between an applicable tax-exempt organization and a disqualified person. The disqualified person who benefited from the transaction is liable for the tax. If the 25% tax is imposed and the excess benefit transaction is not corrected within the taxable period, an additional excise tax equal to 200% of the excess benefit is imposed.

If a disqualified person makes a payment of less than the full correction amount, the 200% tax is imposed only on the unpaid portion of the correction amount. If more than one disqualified person received an excess benefit from an excess benefit transaction, all such disqualified persons are jointly and severally liable for the taxes.

To avoid the imposition of the 200% tax, a disqualified person must correct the excess benefit transaction during the taxable period. The taxable period begins on the date the transaction occurs and ends on the earlier of the date the statutory notice of deficiency is issued or the section 4958 taxes are assessed. This 200% tax may be abated if the excess benefit transaction subsequently is corrected during a 90-day correction period.

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### **Imposition of Excise Tax on Organization Managers**

An excise tax equal to 10% of the excess benefit may be imposed on the participation of an organization manager in an excess benefit transaction between an applicable tax-exempt organization and a disqualified person. This tax, which may not exceed \$10,000 with respect to any single transaction, is only imposed if the 25% tax is imposed on the disqualified person, the organization manager knowingly participated in the transaction, and the manager's participation was willful and not due to reasonable cause. There is also joint and several liability for this tax. A person may be liable for both the tax paid by the disqualified person and this organization manager tax in appropriate circumstances.

An organization manager is not considered to have participated in an excess benefit transaction where the manager has opposed the transaction in a manner consistent with the fulfillment of the manager's responsibilities to the organization.

A person participates in a transaction knowingly if the person has actual knowledge of sufficient facts so that, based solely upon such facts, the transaction would be an excess benefit transaction. Knowing does not mean having reason to know. The organization manager will not be considered knowing, if after full disclosure of the factual situation to an appropriate professional, the organization manager relied on a professional's reasoned written opinion on matters within the professional's expertise or if the manager relied on the fact that the requirements for the rebuttable presumption have been satisfied.

Participation by an organization manager is willful if it is voluntary, conscious, and intentional. An organization manager's participation is due to reasonable cause if the manager has exercised responsibility on behalf of the organization with ordinary business care and prudence.