

Avoiding Common Private Foundation Mistakes

Agenda

- Why this Presentation?
- Basic Definitions/Foundation Excise Taxes
- Self-Dealing Mistakes
- Proper Procedures for Grants to Foreign Organizations
- 990-PF Common Errors
- Planning Tips
- Recordkeeping and Processes

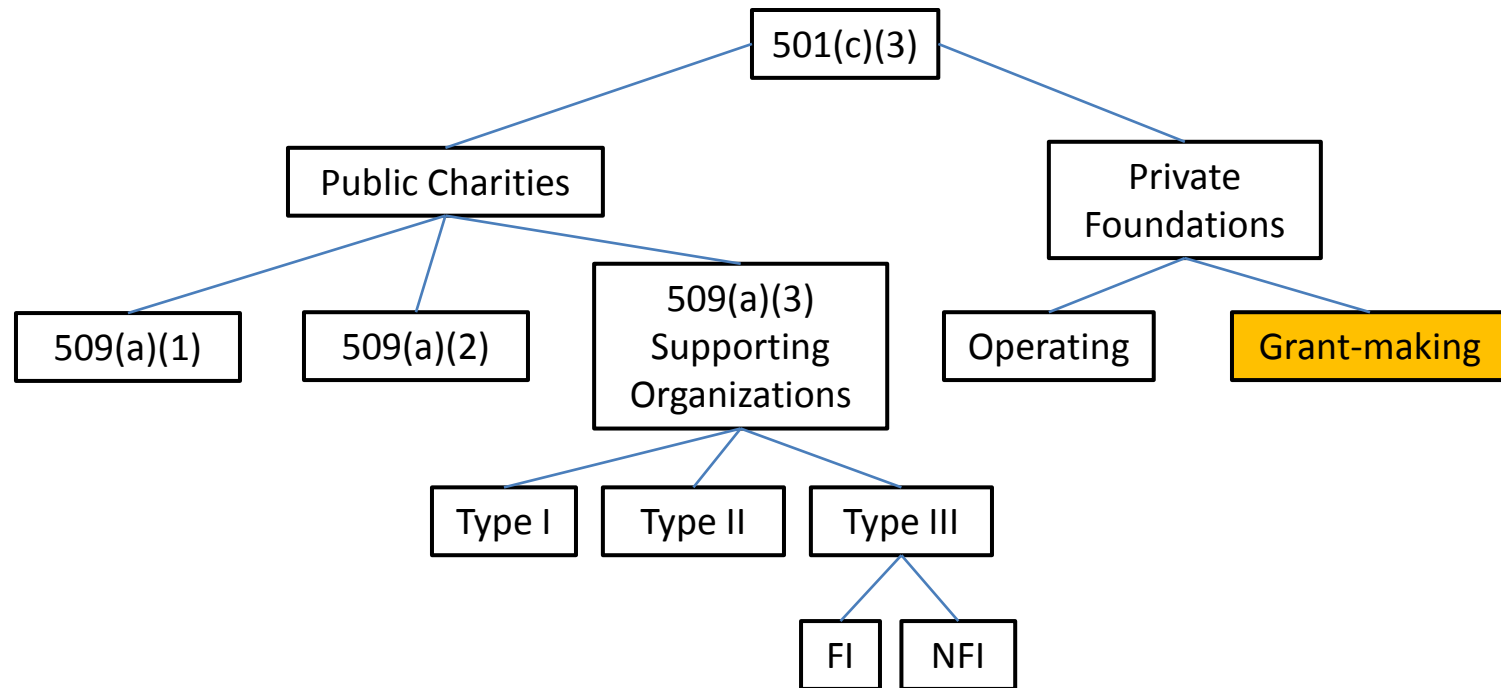
Why this Presentation?

- Tax rules applicable to private foundations are complicated and not always intuitive
- Most foundations run into problems with “self-dealing” rules, which prohibit almost all financial transactions between a foundation and its “disqualified persons”
- Foundations also encounter problems when making grants to other organizations, particularly grants to foreign organizations
- New rules issued 9/2015 regarding certain types of grants to foreign organizations

Why this Presentation?

- Foundation returns are complicated and often not prepared correctly
- The Form does not flow in any type of logical progression
- IRS estimates 60 hours to learn applicable laws to prepare the form—so, it's even hard to prepare for many practitioners
- Returns are open to public inspection—Foundation Center and Guidestar
- Reliance on CPA or other preparer to get it right

Where Private foundations Fit in the 501(c)(3) Universe



Basic Definitions

Foundation Excise Taxes

- **Self-dealing transactions (a variety of transactions with disqualified persons)**
 - Sales, exchanges, leases
 - Furnishing of goods, services, facilities
 - Payment of compensation or reimbursement of expenses
 - Exceptions
- **Mandatory Payout**
 - In general, a foundation must pay out 5% of its noncharitable assets
- **Excess Business Holding Rules**
 - Designed to prevent the control of a for-profit business by the private foundation; generally, more than 20% interest

Basic Definitions

Foundation Excise Taxes

- **Jeopardizing Investment Rules**
 - Penalties are imposed if foundation makes investments that jeopardize the ability of the foundation to carry out its exempt purpose
 - Foundation managers failed to carry out ordinary business care
 - No investments are automatic violations
 - Important exception: PRIs
- **Taxable Expenditure Rules**
 - Impermissible expenditures:
 - Lobbying
 - Influencing public elections
 - Grants to individuals without IRS approval
 - Grants to organizations that aren't public charities (expenditure responsibility required)
 - Expenditures for non-charitable purpose
 - Grants to Type III non-functionally integrated supporting organizations

Chart of Taxes

IRC Section	Sanction	Tax Imposed On		
		Private Foundation	Managers	Tax
4940	Investment income tax	X		1% - 2%
4941	Self-dealing		Self-dealer	10%-200%
			Foundation manager	5%-50%
4942	Undistributed income	X		30% -100%
4943	Excess business holdings	X		10% - 200%
4944	Jeopardizing investments	X		10%-25%
			X	10%
4945	Taxable expenditures	X		20% - 100%
			X	5% - 50%

Self-Dealing Mistakes

Disqualified Persons

Basic Rule: No transactions with “disqualified persons”

- Officers, directors, trustees
- Substantial contributors
- Person who owns more than 20% of a corporation, partnership, trust, or unincorporated enterprise that is itself a substantial contributor
- Family member of an individual described above
- Corporation, partnership, trust, or estate in which persons described above own more than 35%

Self-Dealing Mistakes

Penalty Excise Tax

- On Disqualified Person:
 - Initial tax of 10% of the “amount involved”
 - Second-tier tax of 200% if not corrected
 - Due even if self-dealer unaware
 - Due even if transaction is fair to foundation
- On Foundation Managers:
 - Initial tax of 5% of the amount involved (up to \$20,000 per act)
 - Second-tier tax of 50% if not corrected
 - Applies to managers who approved the transaction knowing it was self-dealing
- No abatement

Self-Dealing Mistakes

Compensating Family Members

Can our foundation compensate a family member for services?

- Basic rule: Yes, so long as compensation is reasonable and for personal services necessary to carry out the foundation's charitable functions
 - Personal Services: Foundation management, legal, accounting, investment
 - Property management? Non-professional services?
 - How do you determine reasonable compensation?

Self-Dealing Mistakes

Travel Expenses

Can our foundation pay travel expenses for disqualified persons?

- Most foundations don't compensate family members who sit on boards, but no prohibition if fees are reasonable
- Foundation assets generally cannot be used to finance the travel or other expenses of family members (e.g., spouses and children) who have no role in the foundation

Self-Dealing Mistakes

Tickets and Tables

Who can use tickets or tables our foundation receives for grants made in support of fundraising events, charity benefits, museums, performing arts organizations?

- Foundation officers, directors, and managers (even if employees of foundation's corporate founder) if reasonable and necessary to performance of oversight, evaluation and monitoring tasks for Foundation.
- Spouse of foundation employee?
- Disqualified persons (including, company officials) who have no role in foundation may not use tickets
- Bifurcation not permitted

Self-Dealing Mistakes

Sharing Office Space and Employees with DPs

Can our foundation share office space, equipment and/or employees with a disqualified person?

- Potential acts of self-dealing:
 - Sale, exchange, or lease of property
 - Furnishing of goods, services, or facilities
 - Payment, compensation, or reimbursement of a disqualified person
- Exceptions:
 - Permissible if resources provided to foundation for no charge
 - “fair” or “below market” terms are not a defense
 - Permissible if foundation and DP enter into separate lease agreements or equipment contracts with non-disqualified person
 - Permissible for foundation to reimburse DP for personal services that are reasonable and necessary to the foundation; employee time must be tracked and allocated

Self-Dealing Mistakes

Co-investing with Disqualified Persons

Can our Foundation and a disqualified person invest in the same investment partnership?

- IRS guidance on issue isn't clear, but foundation's purchase and redemption of shares in partnership could be viewed as a sale or exchange of property with a disqualified person (act of self-dealing)
- In a few rulings, IRS has held that purchase by foundation of a LP interest in a fund in which disqualified persons have an interest is not an act of self-dealing. But, IRS has clearly acknowledged the potential for self-dealing under such circumstances
 - PLR 200318069: Foundation's acquisition of LP interest in an entity controlled by DPs constitutes a "co-investment arrangement," not a sale or exchange between the private foundation and the disqualified persons
 - PLR 9726006: Foundation's investment in LP controlled by disqualified persons could be deemed an act of self-dealing, but was not in this instance because disqualified persons would receive no "more than an incidental or tenuous benefit" where foundation's investment would constitute only 1%-3% of the partnership's total capital
- IRS Priority Guidance Plan

Self-Dealing Mistakes

Pledges

Can our foundation pay a pledge made by our founder?

- Foundation should not satisfy a pledge made by a disqualified person
 - Satisfaction of a disqualified person's obligation is an act of self-dealing
- Does it matter if the pledge isn't legally enforceable under state law?
 - IRS has ruled that payment of DP's obligation by foundation is self-dealing whether or not legally enforceable
- IRS has ruled that payment of DP's pledge may also be a taxable expenditure (TAM8534001)

Self-Dealing Mistakes

Credit Cards

Can a disqualified person use a foundation credit card for personal expenses and reimburse the foundation within a month?

- Use by a disqualified person of a foundation credit card for personal expenses is considered a loan by the foundation to the DP
- Violation of the self-dealing prohibition even if the DP repays the foundation promptly

Proper Procedures for Grants to Foreign Organizations

For grants to foreign organizations not recognized by the IRS, Foundation can use:

- Expenditure responsibility
- Equivalency determination
 - Foundation can opt to conduct a foreign equivalency determination – only needs to exercise expenditure responsibility if it determines that the grantee is not the equivalent of a sec. 501(c)(3) public charity
 - Foundation must make “good faith determination” and “reasonable judgment” that foreign entity meets criteria to be a 501(c)(3) public charity, based either on affidavit from grantee or opinion of counsel

Proper Procedures for Grants to Foreign Organizations

- **Comparison of Alternatives:**

- Often easier for grantors to exercise expenditure responsibility than conduct equivalency determinations
- Equivalency determination may be may be preferable in certain cases:
 - Clear equivalent – e.g., grant to foreign university
 - Grants for endowments – perpetual reporting?
 - Grants for capital equipment – also potential reporting problem
 - Grants for general support
 - Grants where practical considerations make expenditure responsibility difficult – e.g., if likely to be difficult to get reports from grantee (of course, may be difficult to do equivalency determination too)
- New regulations issued 9/2015
 - Grantee affidavit alone no longer adequate basis for “good faith determination” of equivalency
 - Foundation generally must also rely on written advice from “qualified practitioner”
 - Includes CPAs, NGOsource, in-house counsel (maybe)

990-PF Common Errors

Reporting Issues

- **What does the 990-PF do?**
 - Revenues and disbursements, assets and liabilities classified into meaningful categories
 - Form has special parts that fish for compliance failures

990-PF Common Errors

Reporting Issues

- Complete ALL lines of the return—“yes”, “no”, “N/A”
- Use zeros or enter “none” or N/A if a part does not apply
- Failing to allocate legitimate administrative expenses to charitable activities/purpose
- Column d must be on a cash basis even if the foundation maintains its books on an accrual basis

990-PF Common Errors

Reporting Issues

- Failing to file 990 PF with the state Attorney General in which the foundation's principal office is located; and the state in which the foundation was incorporated or created
- Not using investment related expenses to off-set net investment income.
- Failing to include Schedule B—it is open to public inspection

990-PF Common Errors

Distributions

- Missing out on utilizing excess grant carryovers
- Example a Foundation over distributes \$50,000 in 2015. The foundation can use this excess to reduce its grant-making up to that amount through 2020. After 2020, the ability to use this excess is lost
- Missing out on the amount that must be distributed in the following year
- Failing to add grant recoveries to distributable amount, Part XI, line 4

990-PF Common Errors

Investment Related Issues

- Incorrect calculation on sale of stock donated to the foundation—failing to track the donor's basis
- Failing to list all securities held—this could be pages
- Government and municipal obligations can be shown in aggregate but not grouped together
- Capital gains and losses can be net together, but cannot be less than zero
- Attaching a list of all publicly trade stock, mutual funds, bonds—can be reported as a lump sum. All other sales must be listed separately.
- Valuation of property – appraise every 5 years

990-PF Common Errors – The Form

Accrual,
cash or
modified
cash

Sch B

Form 990-PF Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation

OMB No. 1545-0047 2014

Department of the Treasury Do not enter social security numbers on this form as it may be made public.
Internal Revenue Service Information about Form 990-PF and its separate instructions is at www.irs.gov/form990.

For calendar year 2014 or tax year beginning _____, and ending _____

Name of foundation: **HOPING FOR A MILD WINTER FOUNDATION, INC**

Employer identification number: **01-1234659**

Address: **123 PALM TREE DRIVE, SALEM, MA 01970**

Telephone number: **978-594-0000**

Accounting method: Cash Accrual

Part I Analysis of Revenue and Expenses

	(a) Revenue and expenses per books	(b) Net investment income	(c) Adjusted net income	(d) Disbursements for charitable purposes (cash basis only)
1 Contributions, gifts, grants, etc., received	746,000.		N/A	
2 Check <input type="checkbox"/> if the foundation is not required to attach Sch. B interest on savings and temporary cash investments	11,100.	11,100.		STATEMENT 1
4 Dividends and interest from securities	507,756.	507,756.		STATEMENT 2
5a Gross rents				
b Net rental income or (loss)				
6a Net gain or (loss) from sale of assets not on line 10	2,164,364.			
b Gross sales price for all assets on line 6a	8,298,798.			
7 Capital gain net income from Part IV, line 2		2,164,364.		
8 Net short-term capital gain				
9 Income modifications:				
10a Gross sales less returns and allowances				
b Less: Cost of goods sold				
c Gross profit or (loss)				
11 Other income				
12 Total. Add lines 1 through 11	3,429,220.	2,683,220.		
13 Compensation of officers, directors, trustees, etc.	0.	0.		0.
14 Other employee salaries and wages	295,780.	41,080.		254,700.
15 Pension plans, employee benefits	132,195.	0.		132,195.
16a Legal fees:				
b Accounting fees	25,280.	12,640.		12,640.
c Other professional fees	136,869.	123,513.		13,356.
17 Interest				
18 Taxes	82,613.	12,113.		0.
19 Depreciation and depletion	286.	0.		
20 Occupancy	38,034.	0.		38,034.
21 Travel, conferences, and meetings	81,083.	0.		81,083.
22 Printing and publications	113.	0.		113.
23 Other expenses	36,218.	0.		36,218.
24 Total operating and administrative expenses. Add lines 13 through 23	828,477.	189,346.		568,345.
25 Contributions, gifts, grants paid	1,459,500.			1,459,500.
26 Total expenses and disbursements. Add lines 24 and 25	2,287,977.	189,346.		2,027,845.
27 Subtract line 26 from line 12:				
a Excess of revenue over expenses and disbursements	1,141,243.			
b Net investment income (if negative, enter -0-)		2,493,874.		
c Adjusted net income (if negative, enter -0-)			N/A	

Always N/A for
grant-making
foundations

Must be cash
basis

Other reasonable
and necessary can
be allocated to col
b & d

Part VI Excise Tax Based on Investment Income (Section 4940(a), 4940(b), 4940(e), or 4948 - see instructions)	
1a Exempt operating foundations described in section 4940(d)(2), check here <input type="checkbox"/> and enter "N/A" on line 1. Date of ruling or determination letter: _____ (attach copy of letter if necessary-see instructions)	
b Domestic foundations that meet the section 4940(e) requirements in Part V, check here <input type="checkbox"/> and enter 1% of Part I, line 27b	1 49,877.
c All other domestic foundations enter 2% of line 27b. Exempt foreign organizations enter 4% of Part I, line 12, col. (b).	
2 Tax under section 511 (domestic section 4947(a)(1) trusts and taxable foundations only. Others enter -0-)	2 0.
3 Add lines 1 and 2	3 49,877.
4 Subtitle A (income) tax (domestic section 4947(a)(1) trusts and taxable foundations only. Others enter -0-)	4 0.
5 Tax based on investment income. Subtract line 4 from line 3. If zero or less, enter -0-	5 49,877.
6 Credits/Payments:	
a 2014 estimated tax payments and 2013 overpayment credited to 2014	6a 65,247.
b Exempt foreign organizations - tax withheld at source	6b
c Tax paid with application for extension of time to file (Form 8868)	6c 7,500.
d Backup withholding erroneously withheld	6d
7 Total credits and payments. Add lines 6a through 6d	7 72,747.
8 Enter any penalty for underpayment of estimated tax. Check here <input checked="" type="checkbox"/> if Form 2220 is attached	8
9 Tax due. If the total of lines 5 and 8 is more than line 7, enter amount owed	9
10 Overpayment. If line 7 is more than the total of lines 5 and 8, enter the amount overpaid	10 22,870.
11 Enter the amount of line 10 to be: Credited to 2015 estimated tax <input type="checkbox"/> Refunded <input type="checkbox"/>	11 0.

Tax on net investment income

Part VII-A Statements Regarding Activities		Yes	No
1a During the tax year, did the foundation attempt to influence any national, state, or local legislation or did it participate or intervene in any political campaign?	1a		X
b Did it spend more than \$100 during the year (either directly or indirectly) for political purposes (see instructions for the definition)? <i>If the answer is "Yes" to 1a or 1b, attach a detailed description of the activities and copies of any materials published or distributed by the foundation in connection with the activities.</i>	1b		X
c Did the foundation file Form 1120-POL for this year?	1c	X	
d Enter the amount (if any) of tax on political expenditures (section 4955) imposed during the year: (1) On the foundation. \$ 0. (2) On foundation managers. \$ 0.			
e Enter the reimbursement (if any) paid by the foundation during the year for political expenditure tax imposed on foundation managers. \$ 0.			
2 Has the foundation engaged in any activities that have not previously been reported to the IRS? <i>If "Yes," attach a detailed description of the activities.</i>	2		X
3 Has the foundation made any changes, not previously reported to the IRS, in its governing instrument, articles of incorporation, or bylaws, or other similar instruments? <i>If "Yes," attach a conformed copy of the changes.</i>	3	X	
4a Did the foundation have unrelated business gross income of \$1,000 or more during the year?	4a	X	
b If "Yes," has it filed a tax return on Form 990-T for this year?	4b		N/A
5 Was there a liquidation, termination, dissolution, or substantial contraction during the year? <i>If "Yes," attach the statement required by General Instruction T.</i>	5		X
6 Are the requirements of section 508(e) (relating to sections 4941 through 4945) satisfied either: • By language in the governing instrument, or • By state legislation that effectively amends the governing instrument so that no mandatory directions that conflict with the state law remain in the governing instrument?	6	X	
7 Did the foundation have at least \$5,000 in assets at any time during the year? <i>If "Yes," complete Part II, col. (c), and Part XV.</i>	7	X	
8a Enter the states to which the foundation reports or with which it is registered (see instructions) <u>MA</u>			
b If the answer is "Yes" to line 7, has the foundation furnished a copy of Form 990-PF to the Attorney General (or designate) of each state as required by General Instruction G? <i>If "No," attach explanation.</i>	8b	X	
9 Is the foundation claiming status as a private operating foundation within the meaning of section 4942(j)(3) or 4942(j)(5) for calendar year 2014 or the taxable year beginning in 2014 (see instructions for Part XIV)? <i>If "Yes," complete Part XIV.</i>	9		X
10 Did any persons become substantial contributors during the tax year? <i>If "Yes," attach a schedule listing their names and addresses.</i>	10		X

Potential taxable expenditure for political activities

By-law changes

File with state AG

Substantial contributor disclosure

Part VII-A Statements Regarding Activities (continued)

11	At any time during the year, did the foundation, directly or indirectly, own a controlled entity within the meaning of section 512(b)(13)? If "Yes," attach schedule (see instructions)			X
12	Did the foundation make a distribution to a donor advised fund over which the foundation or a disqualified person had advisory privileges? If "Yes," attach statement (see instructions)			X
13	Did the foundation comply with the public inspection requirements for its annual returns and exemption application?	X		
Website address ▶ WWW.NOMORESNOW.ORG				
14 The books are in care of ▶ JIMMY BUFFETT Telephone no. ▶ 978-594-0000				
Located at ▶ 123 PALM TREE DRIVE, SALEM, MA ZIP+4 ▶ 01970				
15	Section 4947(a)(1) nonexempt charitable trusts filing Form 990-PF in lieu of Form 1041 - Check here and enter the amount of tax-exempt interest received or accrued during the year			N/A
16	At any time during calendar year 2014, did the foundation have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country?		Yes	No X
See the instructions for exceptions and filing requirements for FinCEN Form 114, (formerly TD F 90-22.1). If "Yes," enter the name of the foreign country ▶				

Foundation ownership of a controlled entity

Transfers to a donor advised fund

Public inspection requirements

Make sure this is really "no": FBAR may be needed

Excise tax form

Part VII-B Statements Regarding Activities for Which Form 4720 May Be Required		Yes	No
File Form 4720 if any item is checked in the "Yes" column, unless an exception applies.			
1a During the year did the foundation (either directly or indirectly):			
(1) Engage in the sale or exchange, or leasing of property with a disqualified person?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(2) Borrow money from, lend money to, or otherwise extend credit to (or accept it from) a disqualified person?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(3) Furnish goods, services, or facilities to (or accept them from) a disqualified person?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(4) Pay compensation to, or pay or reimburse the expenses of, a disqualified person?	<input checked="" type="checkbox"/> Yes		
(5) Transfer any income or assets to a disqualified person (or make any of either available for the benefit or use of a disqualified person)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(6) Agree to pay money or property to a government official? (Exception. Check "No" if the foundation agreed to make a grant to or to employ the official for a period after termination of government service, if terminating within 90 days.)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
b If any answer is "Yes" to 1a(1)-(6), did any of the acts fail to qualify under the exceptions described in Regulations section 53.4941(d)-3 or in a current notice regarding disaster assistance (see instructions)?		1b	X
Organizations relying on a current notice regarding disaster assistance check here	<input type="checkbox"/>		
e Did the foundation engage in a prior year in any of the acts described in 1a, other than excepted acts, that were not corrected before the first day of the tax year beginning in 2014?		1e	X
2 Taxes on failure to distribute income (section 4942) (does not apply for years the foundation was a private operating foundation defined in section 4942(j)(3) or 4942(j)(5)):			
a At the end of tax year 2014, did the foundation have any undistributed income (lines 6d and 6e, Part XIII) for tax year(s) beginning before 2014?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If "Yes," list the years ▶			
b Are there any years listed in 2a for which the foundation is not applying the provisions of section 4942(a)(2) (relating to incorrect valuation of assets) to the year's undistributed income? (If applying section 4942(a)(2) to all years listed, answer "No" and attach statement - see instructions.)	N/A	2b	
e If the provisions of section 4942(a)(2) are being applied to any of the years listed in 2a, list the years here. ▶			
3a Did the foundation hold more than a 2% direct or indirect interest in any business enterprise at any time during the year?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
b If "Yes," did it have excess business holdings in 2014 as a result of (1) any purchase by the foundation or disqualified persons after May 26, 1969; (2) the lapse of the 5-year period (or longer period approved by the Commissioner under section 4943(c)(7)) to dispose of holdings acquired by gift or bequest; or (3) the lapse of the 10-, 15-, or 20-year first phase holding period? (Use Schedule C, Form 4720, to determine if the foundation had excess business holdings in 2014.)	N/A	3b	
4a Did the foundation invest during the year any amount in a manner that would jeopardize its charitable purposes?		4a	X
b Did the foundation make any investment in a prior year (but after December 31, 1969) that could jeopardize its charitable purpose that had not been removed from jeopardy before the first day of the tax year beginning in 2014?		4b	X

Self-dealing Often incorrectly marked no. See Line 1b for exception

Undistributed income prior years

Excess business holdings

Form 990-PF (2014)

Part VII-B Statements Regarding Activities for Which Form 4720 May Be Required *(continued)*

5a During the year did the foundation pay or incur any amount to:				
(1)	Carry on propaganda, or otherwise attempt to influence legislation (section 4945(e))?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
(2)	Influence the outcome of any specific public election (see section 4955); or to carry on, directly or indirectly, any voter registration drive?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
(3)	Provide a grant to an individual for travel, study, or other similar purposes?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
(4)	Provide a grant to an organization other than a charitable, etc., organization described in section 4945(d)(4)(A)? (see instructions)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
(5)	Provide for any purpose other than religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
b	If any answer is "Yes" to 5a(1)-(5), did any of the transactions fail to qualify under the exceptions described in Regulations section 53.4945 or in a current notice regarding disaster assistance (see instructions)?			5b
	Organizations relying on a current notice regarding disaster assistance check here	▶ <input type="checkbox"/>		
e	If the answer is "Yes" to question 5a(4), does the foundation claim exemption from the tax because it maintained expenditure responsibility for the grant? SEE STATEMENT 12	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
	<i>If "Yes," attach the statement required by Regulations section 53.4945-5(d).</i>			
6a	Did the foundation, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
b	Did the foundation, during the year, pay premiums, directly or indirectly, on a personal benefit contract?			6b
	<i>If "Yes" to 6b, file Form 8870.</i>			X
7a	At any time during the tax year, was the foundation a party to a prohibited tax shelter transaction?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
b	If "Yes," did the foundation receive any proceeds or have any net income attributable to the transaction?		N/A	7b

Often incorrectly marked "No"- here the foundation made grants to 501(c)(4)s

Part VIII Information About Officers, Directors, Trustees, Foundation Managers, Highly

Part XIII Undistributed Income (see instructions)

	(a) Corpus	(b) Years prior to 2013	(c) 2013	(d) 2014
1 Distributable amount for 2014 from Part XI, line 7				1,258,449.
2 Undistributed income, if any, as of the end of 2014:				
a Enter amount for 2013 only			0.	
b Total for prior years:		0.		
3 Excess distributions carryover, if any, to 2014:				
a From 2009	1,019,157.			
b From 2010	1,262,142.			
c From 2011	1,073,686.			
d From 2012	1,043,621.			
e From 2013	1,055,623.			
f Total of lines 3a through e	5,454,229.			
4 Qualifying distributions for 2014 from Part XII, line 4: ▶ \$	2,027,845.			
a Applied to 2013, but not more than line 2a			0.	
b Applied to undistributed income of prior years (Election required - see instructions)		0.		
c Treated as distribution out of corpus (Election required - see instructions)	0.			
d Applied to 2014 distributable amount				1,258,449.
e Remaining amount distributed out of corpus	769,396.			
5 Excess distributions carryover to 2014 (if an amount appears in column (c), it must be shown in column (b))				0.
6 Enter the net total of the column as indicated below:				
a Corpus. Add lines 3a, 4c, 4d, 4e, and 5. Subtract line 5.	6,223,625.			
b Prior years' undistributed income. Subtract line 4b from line 2b.		0.		
c Excess distributions carryover. Subtract line 5d from line 2c.				
d Subtract line 6c from line 6b. Taxable amount - see instructions			0.	
e Undistributed income for 2013. Subtract line 4a from line 2a. Taxable amount - see instr.			0.	
f Undistributed income for 2014. Subtract lines 4d and 5 from line 1. This amount must be distributed in 2015				0.
7 Amounts treated as distributions out of corpus to satisfy requirements imposed by section 170(b)(1)(F) or 4842(g)(3) (Election may be required - see instructions)			0.	
8 Excess distributions carryover from 2009 not applied on line 5 or line 7	1,019,157.			
9 Excess distributions carryover to 2015. Subtract lines 7 and 8 from line 6a	5,204,468.			
10 Analysis of line 9:				
a Excess from 2010	1,262,142.			
b Excess from 2011	1,073,686.			
c Excess from 2012	1,043,621.			
d Excess from 2013	1,055,623.			
e Excess from 2014	769,396.			



- Distributable Amount v. Qualifying Distributions (what's the difference)

Distributable amount (DA) for a grant-making foundation = mandatory payout requirement. The DA for operating, conduit, and common fund foundations is different. Line 1 (d)

Qualifying distributions = page 1, line 28, BUT also program related investments, set asides, assets used in carrying out charitable purposes. Line 4



Planning Tips

1% v 2%

Take advantage of the 1% tax when the difference between the 1% and 2% tax rate would require a distribution. For example:

- Tax on net investment income at 2% = \$40,000; tax on 1% is \$20,000
- If paying an extra \$20,000 in distributions the 1% tax could be obtained

Tips:

- Don't let it drive your grant-making; but you may want to accelerate your grant-making
- The tax is based on a 5 year average of distribution giving, so a foundation needs to distribute more and more of its assets to qualify. During periods of slow asset growth it may be better to pay the 2% tax than try to distribute more to qualify for the 1% rate
- Work with your accountant or tax preparer about 1 month before the end of the year to project the 1% v. 2% tax
- Work with investment adviser in a year when you'll be at the 2% rate
- **Be aware of the undistributed number (Must distribute this year)**

Planning Tips

Miscellaneous

- A word about alternative investments. Determine whether the investment will generate unrelated business income tax. We often see funds that trade on margin generating UBIT.
- Since capital losses can't be carried forward or backward, consider strategically selling appreciated assets in the same year you have losses
- Consider donating highly appreciated securities with low cost basis
- Investments in limited partnerships and foreign hedge funds should be reviewed to make sure no foreign tax filings are required
- Form 926 (Return by a U.S. Transferor of Property to a Foreign Corporation) and Form 8865 (Return of U.S. Persons with Respect to Certain Foreign Partnerships).
- Make sure FBAR(s) (Foreign Bank Account Report) are filed
- If officers or managers are paid, have an independent consultant review their compensation plan

Recordkeeping and Processes

- Develop a systematic way of recording and capturing a foundation's monetary transactions
- Maintain a database that tracks grants made and evaluating the success of grant-making policy
- Keep track of grant requests received, awarded, rejected
- Maintain a database of follow up actions taken with grantees, including due dates for multiyear grants
- Develop a system of internal controls to protect foundation assets, including check signing controls
- Conflict of interest
- Develop a compliance calendar, including filing (extension dates), excise tax payment dates, taxes due on real or intangible personal property
- Follow up reports for expenditure responsibility grants
- Board responsibilities - meet at least annually
- Develop an investment policy