

IRS Intermediate Sanctions: How They Will Impact Colleges and Universities

04.01.1999 | Article

The Journal of College and University Law

On July 30, 1998, the Department of Treasury issued for public comment its eagerly awaited proposed regulations implementing the intermediate sanctions provisions for public charities under § 4958 of the Internal Revenue Code. The provisions impose penalty excise taxes on transactions with parties who take improper advantage of public charities for their own private benefit. The implementing regulations present the most sweeping governance and administrative rules that nonprofit organizations have faced since the 1959 regulations under § 501(c)(3) defined the parameters for charitable activities.

Colleges and universities will be interested in the intermediate sanctions regulations because they are much more specific than the statute in showing how the taxes could affect many common institutional transactions. Compensation not only for the chief administrative officers of a school but also for influential academic officers, athletic coaches, and board members can potentially be subject to these new taxes. Purchases and sales of property from suppliers with a close relationship to the institution, including suppliers who are substantial donors, can also potentially be subject to these taxes. To balance the risks that are identified more explicitly, the proposed regulations explain how institutions that are conscientious in handling the process for approving transactions with influential individuals and companies can establish important protections from the taxes.

This article provides an overview of the penalty excise tax scheme and a detailed explanation of the proposed regulations. Particular attention is paid to aspects of the rules that make direct reference to colleges and universities or are likely to affect typical college and university operations.

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