

22 TREASURY DEPARTMENT REPORT ON PRIVATE FOUNDATIONS

- (4) purchasing or leasing its property from; and
- (5) selling or leasing its property to—

the donor and certain parties who are so closely connected with the foundation as to lead to potential abuse. Indirect transactions, such as a loan by the donor to a corporation which he controls—followed by a gift of the corporation's note to the foundation, would also be prohibited.

A permissible exception to this rule would allow a foundation to purchase incidental supplies from the donor or business organizations with which he may be connected. This would, for example, allow a foundation to purchase its office supplies from a stationery concern owned by a contributor.

A second exception which may be appropriate would permit the donor and certain donor-related parties to purchase at fair market value those assets which the foundation would be required to dispose of under the recommendations set forth in subsequent portions of this report.

The only other exception which should be made would allow a donor to make an interest-free loan to a foundation if such a loan were to be used for bona fide charitable purposes. Such a transaction would not appear to raise a danger of abuse.

The desirability of permitting a foundation to purchase property from a donor where the market value of the property can clearly be established and the purchase price is substantially less than such market value has been considered. Such an exception, however, would be unwise. First, it would encourage a donor to sell appreciated property to a foundation for an amount equal to his cost and claim as a charitable contribution the difference between his cost and market value. Such transactions, commonly referred to as "bargain sales," allow a donor to contribute only the portion of the value of the property which represents unrealized (and untaxed) appreciation and to obtain cash equal to his cost without the imposition of any tax on the untaxed appreciation. Such transactions give unusual benefits to the donor and, at least in the area of private foundations, should not be encouraged. Second, and perhaps more important, it is not always possible to distinguish between property whose value can be readily ascertained and property whose value it is difficult to ascertain. Such a rule, therefore, would be difficult to administer. Furthermore, a distinction between stocks which are traded on a stock exchange or in an over-the-counter market and stocks which are not, as such a rule would probably entail, would introduce a discriminatory feature into the law of private foundations. For these reasons the exception would not be desirable.

To make these suggested rules fully effective, the existing definition of parties who are considered to be related to the donor should be expanded somewhat to include corporations in which the donor and the members of his family own 20 percent or more of the stock. Directors, officers, and persons who hold 20 percent or more of the stock or a corporation which is a substantial contributor to a foundation should also be considered donor-related parties. This would, in effect, prevent a company foundation from lending its funds to an officer of its major contributor. In addition, a donor to a private foundation should not be permitted to enter into financial transactions with a business corporation which the foundation controls. Thus, if