

## U.S. Master Tax Guide (2011), 640. Involvement in Unrelated Businesses

A private foundation is allowed to own a certain amount of business enterprises jointly with disqualified persons ( ¶635). However, to curb any abuses, the foundation is subject to an excise tax of 10 percent of any "excess business holdings" during the tax year ( Code Sec. 4943). [66](#) If such excess business holdings are not divested within the taxable period ( ¶637), then a second-level tax of 200 percent is imposed. In general, the permitted amount of business ownership that a private foundation and disqualified person may have in any enterprise that is not substantially related to the exempt purposes of the foundation is 20 percent. If third parties have effective control of the business enterprise, then the limit is 35 percent. Special rules apply to certain grandfathered holdings. The IRS has discretionary authority to abate both levels of tax ( ¶647). However, a third-level tax may be imposed if there are repeated or flagrant acts of excess business holdings ( Code Sec. 6684). [67](#)

The excise tax on excess business holdings will apply to donor advised funds ( ¶610) and certain qualified supporting organizations ( ¶607). In applying the tax to donor advised funds, a disqualified person is defined as any donor, a member of the donor's family, or a 35-percent controlled entity ( Code Sec. 4943(e)). A qualified supporting organization will be subject to the excess business holdings tax only if it is a Type III supporting organization, or a Code Sec. 501(c)(3) organization that meets the organizational and operational test of a qualified supporting organization and it is not controlled by a disqualified person ( Code Sec. 4943(f)). For this purpose, a disqualified person with respect to the supporting organization is any person with substantial influence over the organization (or any family member of such a person), as well as any substantial contributor, family member of a substantial contributor, or 35-percent controlled entity.

### Footnotes

[66](#) FED ¶34,060 EXEMPT: 24,500 PTE §33,225.05

[67](#) FED ¶39,865 EXEMPT: 24,502 PTE §33,225.05