

# AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS

## Applicable Internal Revenue Service Tax Rules

### National, District and Section Officers Questions and Answers *Current Update as of March 31, 2021*

**Preamble:** This document describes, in question-and-answer format, information related to compliance by the American College of Obstetricians and Gynecologists (the College) with Internal Revenue Service tax rules.

The American College of Obstetricians and Gynecologists is incorporated as an Illinois not-for-profit corporation. The College is a 501(c)(6) organization, which allows the College more flexibility in promoting the interests of its members than ACOG Foundation, which is a 501(c)(3) public charity. However, for all practical purposes, a 501(c)(6) entity is subject to the same IRS rules and regulations as a 501(c)(3) entity. These rules include, but are not limited to, dealings with related individuals and third parties, reasonable compensation, documentation and business purpose requirements for meetings, meals, entertainment, spousal travel, fringe benefits, foreign travel, and the like.

In order to be in full compliance with all the tax laws, the College has implemented appropriate practices and procedures not only to ensure such compliance but also to minimize even the appearance of violating any rules. Violation of these rules can result in the loss of the College's tax-exempt status.

#### What IRS rules apply to the College?

Private benefit and private inurement are prohibited by all 501(c)(6) organizations, including the College.

- The private benefit doctrine requires that none of the income or assets of an exempt business league may be permitted to directly or indirectly unduly benefit an individual or other person who has a close relationship with the organization, and is in a position to exercise a significant degree of control over the organization. An organization that confers undue benefits on persons may cause it to serve a private interest within the meaning of the Internal Revenue Code.
- Inurement usually results from "an expenditure of organizational funds resulting in a benefit which is beyond the scope of the benefits which logically flow from the organization's performance of its exempt functions." Typically, inurement issues arise with regard to payments for compensation, loans, payments of member obligations, or transactions between the organization and members, directors, or officers that are not conducted at arms-length.

#### What are the intermediate sanction rules and do they apply to 501(c)(6) organizations?

In 1996, the Congress of the United States passed Public Law 104-168. This law, Section 4958 of the IRC, and implementing regulations has become known as the "intermediate sanction rules". The intermediate sanction rules were the result of concerns by the US Congress and the IRS that tax-exempt funds were being utilized unfairly to benefit the individuals in leadership positions in those organizations. These rules were designed to curb such abuses. The intermediate sanction rules specifically apply to 501(c)(3) and 501(c)(4) tax-exempt organizations but the guidance the ACOG Foundation uses to address the intermediate sanction rules is also good governance and as such is being implemented by the College.

Are there other reasons why the College is following ACOG Foundation guidance on intermediate sanctions rules?

Like all corporate entities, the College is required to abide by the reasonable compensation standards as set out in the Internal Revenue Code, regulations, and the various regulatory and judicial interpretations of the reasonable compensation standard. As a best practice and as a result of the new 990 form, the College must base its compensation, benefits, and other expenditures and expense reimbursement practices on the guidance the ACOG Foundation has followed with respect to intermediate sanctions.

Following the same guidance in both the College and the ACOG Foundation allows the organizations to manage the risks of private inurement and to manage compliance with the various federal income tax rules regarding reasonable compensation and having a valid business purposes for expenditures.

What is meant by disqualified person?

Disqualified person is the term the IRS has assigned to persons who could unfairly benefit from their position. This term is used rather than a title and is all-inclusive. Based on the analysis used to determine disqualified persons for the ACOG Foundation, the following positions would be considered “disqualified persons” for the College:

- Voting members of the College Board of Directors
- District officers, all voting members of the District Advisory Council and program chairs
- Section officers, all voting members of the Section Advisory Council and program chairs
- The College’s Chief Executive Officer and Executive Leadership Team
- College high-level staff to include: the Director of Government Relations and the chief administrative officers of Districts II and IX
- Any individual who has served in a position as a disqualified person within the past 5 years

The intermediate sanction rules provide, the person remains “disqualified” for 5 years after he or she leaves the position. Furthermore, their spouse, children, spouses of children, grandchildren, other family members and lineal descendants are defined by the rules as “disqualified” and all may be subject to the monetary penalties that comprise the sanctions. The intermediate sanction rules also designate others who may have “substantial influence” on decisions as a “disqualified person” even if they are nonvoting or do not hold an official position. Such individuals may be “disqualified persons” under a catchall “by facts and circumstances” category. This category emphasizes the all-inclusive nature of the regulations. In addition, individuals and entities that are considered “disqualified persons” with respect to the ACOG Foundation are also individuals and entities that could give rise to private inurement issues if they held the same positions in the College.

Is the College a disqualified person with respect to the ACOG Foundation?

Section 4958 imposes an excise tax on excess benefit transactions between a disqualified person and an applicable tax-exempt organization. The disqualified person who benefits from an excess benefit transaction is liable for the excise tax. Under Section 4958, the term “disqualified person” includes a 35% (or more) controlled entity. As such, the College will be a disqualified person under Section 4958 with respect to the ACOG Foundation.

Therefore, transactions between the ACOG Foundation and the College will need to be evaluated for potential exposure under the intermediate sanctions rules. Undue or excess benefits flowing from the ACOG Foundation to the College could cause adverse tax and/or reputational damage to both organizations. The intermediate sanction penalties for violating the rules also extend to the party from the ACOG Foundation who approves the excess benefit for the College. It should be noted that inaction, abstaining, or silence on the part of the approving party at the time of the approval of the transaction is considered evidence of approval. In addition, the ACOG Foundation would be required to publish notice of the violation on its public 990 form.

Do IRS tax rules apply to districts and sections of the College as well as national?

The College is one corporation and thus all districts and sections are considered to be the College. As a result, all districts and sections and their officers must be in compliance with all IRS tax rules.

What are the penalties for failure to follow the IRS tax rules?

The IRS has authority to revoke a 501(c)(6) entity's exempt status for violations of the private benefit and private inurement rules. When intermediate sanctions are available, the risk is specific to a disqualified person; but when intermediate sanctions are unavailable, the organization bears the risk of being subject to the ultimate sanction, revocation of tax-exempt status.

Can the ACOG Foundation provide a financial grant to the College?

The ACOG Foundation can provide a financial grant to the College provided that the ACOG Foundation retains expenditure control over the use of the funds to ensure that the funds are used solely for an appropriate educational activity within the ACOG Foundation's 501(c)(3) purposes.

What other tax rules should officers be aware of when conducting meeting or other activities?

The same tax laws regarding reasonable compensation, documentation and business purpose requirements for meetings, meals, entertainment, the foreign travel rules and other IRC sections that govern 501(c)(3) entities also apply to 501(c)(6) entities.

Additionally, the federal income tax rules limit a 501(c)(6) entity from reimbursing or paying for spousal travel, and operate to prevent a 501(c)(6) entity from providing lavish or extravagant meals and lodging.

What is a business expense?

Tax law provides that any accretion of wealth is taxable unless there is a specific provision in the tax code or regulations granting an exemption or exclusion. The IRS provides an exclusion from gross income for business expense reimbursements. In order for the business expense to be tax-free, the expense must meet the IRS's business purpose rules. For a travel business expense to be reimbursed by the College the expense must meet the following conditions:

- There must be a business purpose for the expense
- The expense must be reasonable and necessary to conduct the business
- The primary purpose of the travel must be for business

There are also additional IRS's rules that prohibit deductions for expenses allocable to attendance at a convention, seminar, or similar meeting outside of North America in certain cases.

Are activities such as cocktail parties affected?

The College can only fund cocktail parties that have a specific and valid business purpose. Receptions in suites or other rooms can only be held if there is an identified and valid business purpose. Prior to meals a cash bar may be used if non-College members are in attendance or there is no valid business purpose for the meeting, as this will avoid use of College funds for non-business purposes. The College cannot fund cocktails or hors d'oeuvres for guests, spouses, or children even if there is otherwise a business purpose for an event that provides such refreshments.

I am attending a College meeting; can my spouse, partner, children, or guest attend events and functions?

A spouse, partner, children, or guest can only attend events for which they pay the cost of the event. This includes receptions, meals, tours, presentations or any other activity where College funds are being used. If an overnight stay is included and there is a different room rate for single and double occupancy, then only the single room rate can be reimbursed by the College if a spouse, partner, children, or guest are present. Meeting planners should try to negotiate one rate for hotel rooms that is identical for single or double occupancy.

How do the tax rules affect my spouse or partner?

The College has a policy that prohibits the use of ACOG funds for spouses and partners who are not ACOG members. Members must pay the full cost of spouses' or partners' meals at any event where the College is hosting the meal (eg, business meetings, educational meetings, receptions).

Can the College charge a guest fee for a meeting?

Yes, the College encourages a spouse, partner or guest registration fee or a separate charge for an event, which would cover the actual cost of the event or activities for guests. In most instances, the separate charge will be easier and simpler to use. These fees should be identified in advance.

Can the College pay for personal expenses at meetings?

No, the College cannot pay for personal expenses. Individual attendees must pay for all personal expenses, such as golf fees, spa charges and social tours.

Is there a specific length of meetings?

The College's Board of Directors has established the policy that all College-sponsored educational and other meetings should be a minimum of 5 to 6 hours per day exclusive of breaks and meals. This excludes single speakers such as grand rounds, dinner meetings with speakers, and the first or last day of the meeting.

Can we have a suite for our district chair?

The district chair at the Annual or Interim District Meeting is allowed to have a small suite (eg, a junior suite or similar-sized suite) at district expense in order to have meetings with district members. The sole purpose of the suite is to allow business with Fellows to be conducted, as needed. This will avoid the necessity to pay for a meeting room for their meetings and will allow for confidentiality when needed. Whenever possible, the suite should be included in the hotel contract and without additional cost above the standard room rate.

Can we have amenities in the room of our district or section chair?

No. There can be no amenities such as flowers or stocked bars, paid with College funds. In addition, only regular rooms can be paid by the College. If suites are desired, the additional cost is at the expense of the individual (with the aforementioned exception).

Where can we hold meetings?

Special tax rules apply to foreign meetings. The College can only schedule meetings in North America as defined by the IRS. The current list of countries, which includes Caribbean and Pacific areas as well, can be found on the IRS website or obtained from national. The publication also details the specific factors that apply to meetings outside North America.

Can a district or section hold a meeting on a cruise ship?

Special IRS rules apply to cruise ships and these rules are very restrictive. Since violations of the cruise ship rules can adversely affect the College, cruise ship meetings must comply with the IRS rules. Please consult the IRS website to see the current rules or contact national.

Can we have site visits for annual district meetings and interim district meetings?

Site visits are allowed for annual and interim district meetings following certain guidelines. For all site visits related to annual and interim district meetings, the following applies:

- The site visit shall be limited to two days and two nights plus travel costs at ACOG expense.
- The Internal Revenue Service rules regarding an additional stay or travel must be followed.
- All other travel policies of the district and of the College apply.

Additionally, for interim district meetings not held at the Annual Clinical Meeting (where site visits are not allowed), the following guidelines apply:

- An attempt to determine all relevant information first will be made by telephone or use of the Internet or similar media. If obtaining the relevant information in this manner is successful, no site visit will be made.
- If prior meetings have been held at the same venue, except in unusual circumstances such as major renovations, no site visit will be made.
- If a site visit is necessary, it will be limited to the district chair or his or her designee.

What are the rules on traveling to meetings?

Travel to meetings is affected only if College funds are used. Board policy provides that the College will only reimburse expenses for two travel days for any College meeting. This includes going to and returning from the meeting.

May the College pay the expenses of an invited speaker and/or the speaker's spouse, partner or guest at a district or section meeting?

The College may pay for an invited speaker's reasonable expenses, including transportation, food and lodging associated with being a speaker at the meeting. The College shall not pay for the speaker's expenses for the spouse, partner or guest, including transportation, food and lodging.

May districts waive the annual district meeting (ADM) registration fee for district advisory council members as a business expense?

Yes, the meeting registration fees for district advisory council members (those members who are required to attend the ADM to conduct the necessary governance functions of the district) may be waived.

Is there standard practice on how many days district officers may be reimbursed for travel expenses to attend the College's Annual Clinical and Scientific Meeting (ACSM)?

District chairs are reimbursed for reasonable expenses associated with attendance at the ACSM, including meeting registration, transportation, food, and lodging. The national office reimburses these expenses.

Districts may request that voting members of their district advisory council executive committee attend the ACSM in order to perform official district responsibilities and other business. If permitted in the district policies and procedures, and if such attendance fulfills a district business purpose, the district may reimburse the meeting registration, transportation, food, and lodging expenses of voting members of the district advisory council executive committee.

Can Junior Fellow officers be reimbursed for business-related travel to the ACSM and, if so, for how many days?

Junior Fellow district chairs will be reimbursed by the national office for reasonable expenses, including the ACSM registration fee, transportation, food and lodging, for up to a maximum of six days based on submitted expenses. The districts agreed to fund Junior Fellow district vice chairs using the same guidelines.

What are my options if I plan to take a vacation following my College meeting?

Vacation or add-on travel is travel either before or after a meeting of the College and such travel is at the sole discretion of the individual traveling. All vacation or add-on travel expenses, such as additional transportation costs to destinations other than home, food, lodging and incidentals, are the responsibilities of the individual traveling. Additionally, the trip must be primarily for business purposes in order for the transportation to be allowed as a business expense. As long as at least 40% of the entire trip is business related and travel is in the United States, no allocation of the transportation costs between business and personal is required. If the purpose of the travel is primarily personal, none of the transportation costs will be reimbursed, even if the individual incorporates a few business appointments while at his or her destination. However, a different set of very complex reimbursement rules apply to travel outside the United States when the trip is business and personal. The IRS definition of the United States includes only the 50 states and the District of Columbia. These complex reimbursement rules apply even if the travel was to Mexico, Canada, Puerto Rico, Central America or other geographic regions of the College outside the United States. If any personal travel is contemplated in addition to the business trip, individuals should seek advice from the Finance and Legal Divisions of the College prior to scheduling a trip.

Can the College reimburse hotel expenses for an individual on College business if the hotel charges a different rate for double occupancy versus single occupancy and the individual's spouse, partner or guest is staying in the room?

In general, if a hotel charges a different room rate for double versus single occupancy, the College will reimburse no more than the single occupancy rate for hotel expenses. The difference between the single occupancy rate and the double occupancy rate is considered personal expense. If the hotel's room rate is based on a per person, per day rate (i.e., due to a meal plan), the College will only reimburse the per person, per day charge based on the applicable occupancy. For example, if an individual on College business stayed at a hotel with her spouse and the double per person, per day rate was \$240 a day and the single per person, per day rate was \$270, the College would only reimburse \$240 per day (not the higher \$270) for the individual with spouse on College business.

What are the implications for the future?

Nonprofit organizations, such as the ACOG Foundation and the College have entered a new era of inspection and review by the Congress, the IRS, and the media. Volunteers and staff will have to be constantly aware of and adhere to the rules that apply to each organization.

Whom do I contact if I have a question?

Contact our Chief Legal Officer for specific areas of concern. In addition, you may contact the following:

Chief Executive Officer  
Chief Financial Officer

American College of Obstetricians and Gynecologists  
409 12<sup>th</sup> Street, SW  
Washington, DC 20024-2188

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