

1973, 87 Stat. 12, imposed a tax on each acquisition by a United States person of stock of a foreign issuer or a debt obligation of a foreign obligor, if such obligation had a period remaining to maturity of 1 year or more and provided for modification of tax rate by executive order, rate tables, rates during interim period, rules and regulations, persons liable for tax, and termination date, that no tax shall be imposed on any acquisition made after June 30, 1974.

Section 4912, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 810; amended Pub. L. 89-243, §4(m)(3), Oct. 9, 1965, 79 Stat. 963; Pub. L. 90-59, §5(a)(1), July 31, 1967, 81 Stat. 157; Pub. L. 91-128, §4(a)(1), Nov. 26, 1969, 83 Stat. 263; Pub. L. 92-9, §3(a)(1), Apr. 1, 1971, 85 Stat. 14; Pub. L. 93-17, §3(e), Apr. 10, 1973, 87 Stat. 17, defined term “acquisition” and provided special rules to be applied to certain transfers to foreign trusts, foreign corporations and partnerships, foreign branches, acquisitions from domestic corporations or partnerships formed or availed of to obtain funds for foreign issuer or obligor, and reorganization exchanges.

Section 4913, added Pub. L. 88-563, §2(a), Sept. 12, 1964, 78 Stat. 812, imposed general and special limitations on tax on certain acquisitions relating to stock or debt obligations acquired by surrender, extensions, renewals, and exercises, transfers which are deemed acquisitions and acquisitions by certain domestic corporations and partnerships.

Section 4914, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 813; amended Pub. L. 89-44, title IV, §405(d), June 21, 1965, 79 Stat. 149; Pub. L. 89-243, §§3(a)(2), (3), 4(a)(1)–(3), (b)–(f)(2), (g), (h)(1), Oct. 9, 1965, 79 Stat. 954, 956–960; Pub. L. 89-809, title II, §§213(a), (b)(1), 214(a), Nov. 13, 1966, 80 Stat. 1585; Pub. L. 90-59, §5(b)(1), (c)(1), (2), (d)(1), (e)(1), (f)(1), July 31, 1967, 81 Stat. 157, 158; Pub. L. 91-128, §4(b)(1), (c)(1), (2), (i)(1), (2), Nov. 26, 1969, 83 Stat. 263, 264, 268; Pub. L. 92-9, §3(b)(1), (2), (c)(1), (d)(1), (2), Apr. 1, 1971, 85 Stat. 15–17; Pub. L. 93-17, §3(f), Apr. 10, 1973, 87 Stat. 17, provided exclusions for certain acquisitions including: transactions not considered acquisitions; export credit, etc., transactions; loans to assure raw materials sources; acquisitions by insurance companies doing business in foreign countries; acquisitions by certain tax-exempt organizations such as labor, fraternal, and similar organizations having foreign branches or chapters; sale or liquidation of foreign subsidiary or sale of foreign branch; certain debt obligations secured by United States mortgages, etc.; acquisitions of stock of foreign issuers investing exclusively in the United States, and loss of entitlement to exclusion in case of certain subsequent transfers or acquisitions of stock or debt obligations in connection with nationalization, expropriation, etc.

Section 4915, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 824; amended Pub. L. 90-59, §5(h)(3), July 31, 1967, 81 Stat. 163; Pub. L. 91-128, §4(e)(3), Nov. 26, 1969, 83 Stat. 267; Pub. L. 92-9, §3(e)(1), Apr. 1, 1971, 85 Stat. 17; Pub. L. 93-17, §3(g)(1), Apr. 10, 1973, 87 Stat. 18, related to exclusions for direct investments and provided for excluded acquisitions, overpayment with respect to certain taxable acquisitions, special rule for government-controlled enterprises, exception for foreign corporations or partnerships formed or availed of for tax avoidance, exception for acquisitions made with intent to sell to United States persons, and special rule for investments in certain lending and financial corporations.

Section 4916, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 827; amended Pub. L. 89-243, §4(i), Oct. 9, 1965, 79 Stat. 960; Pub. L. 90-59, §5(g)(1), July 31, 1967, 81 Stat. 159; Pub. L. 92-9, §3(b)(3), Apr. 1, 1971, 85 Stat. 16; Pub. L. 93-17, §3(b), Apr. 10, 1973, 87 Stat. 13, related to exclusion for investment in less developed countries, provided special rules applicable to such investments, subsequent tax liability in certain cases, the repeal of exclusion for issues after Jan. 29, 1973, in the case of less developed country shipping companies, and defined term “less developed country”.

Section 4917, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 830; amended Pub. L. 89-243, §4(j), (k), Oct. 9,

1965, 79 Stat. 960; Pub. L. 90-59, §5(h)(1), July 31, 1967, 81 Stat. 159, related to exclusion for original or new issues where required for international monetary stability.

Section 4918, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 831; amended Pub. L. 89-809, title II, §213(b)(2), Nov. 13, 1966, 80 Stat. 1585; Pub. L. 90-59, §4(a), July 31, 1967, 81 Stat. 148; Pub. L. 90-73, §2(a)–(c), Aug. 29, 1967, 81 Stat. 175, 176; Pub. L. 93-17, §3(h)(1), Apr. 10, 1973, 87 Stat. 18, related to exemption for prior American ownership and compliance, proof of such ownership or compliance, issuance of IET clean confirmation by participating firm, sales effected by participating firms in connection with exempt acquisitions, filing of transition inventory, transfer of custody certificate, certain debt obligations arising out of loans to assure raw material sources, regulations, and definitions of “participating firm,” and “participating custodian”.

Section 4919, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 833; amended Pub. L. 89-243, §4(1), Oct. 9, 1965, 79 Stat. 961; Pub. L. 90-59, §5(i)(1), (2), July 31, 1967, 81 Stat. 159, 160; Pub. L. 91-128, §4(d)(1), Nov. 26, 1969, 83 Stat. 264; Pub. L. 92-9, §3(f)(1), (2), Apr. 1, 1971, 85 Stat. 20; Pub. L. 93-17, §3(i)(1), Apr. 10, 1973, 87 Stat. 19, related to credit or refund on sales by underwriters and dealers to foreign persons, evidence needed to support such credit or refund, and defined terms “underwriter”, “dealer”, and “persons other than United States persons”.

Section 4920, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 835; amended Pub. L. 89-243, §§3(a)(4), 4(m)(1), (2)(A), (n), Oct. 9, 1965, 79 Stat. 954, 961–963; Pub. L. 90-59, §§4(f), 5(j)–(k)(2), July 31, 1967, 81 Stat. 156, 160–163; Pub. L. 91-128, §4(e)(1), (2), (i)(3), Nov. 26, 1969, 83 Stat. 264, 269; Pub. L. 92-9, §3(e)(2), (3), (g)(1), (h)(1), Apr. 1, 1971, 85 Stat. 18, 20, 21; Pub. L. 93-17, §3(g)(2)(j), Apr. 10, 1973, 87 Stat. 18, 19, related to definitions and special rules.

Section 4921, added Pub. L. 92-9, §3(i)(1), Apr. 1, 1971, 85 Stat. 21, related to standby authority of the President to impose tax on debt obligations of foreign obligors having a period remaining to maturity of less than 1 year and provided that such authority may be extended by Executive order.

Section 4922, added Pub. L. 93-17, §3(d)(1), Apr. 10, 1973, 87 Stat. 15, related to exclusion for certain issues to finance new or additional direct investment in the United States, qualification for exclusion, and loss of entitlement to exclusion by subsequent noncompliance.

Section 4931, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 839; amended Pub. L. 89-243, §§3(e)(1), 4(a)(4), (o), Oct. 9, 1965, 79 Stat. 955, 956, 964; Pub. L. 89-809, title II, §215(a), Nov. 13, 1966, 80 Stat. 1587; Pub. L. 90-59, §3(b)(1), July 31, 1967, 81 Stat. 145, related to the standby authority of the President to impose, by Executive order, tax on acquisitions by commercial banks of debt obligations of foreign obligors, made provision for exclusions concerning export loans, foreign currency loans by foreign branches, preexisting commitments, and provided for prescription of regulations by the Secretary.

#### EFFECTIVE DATE OF REPEAL OF PRIOR PROVISIONS

Pub. L. 94-455, title XIX, §1904(a)(21)(B), Oct. 4, 1976, 90 Stat. 1814, provided that: “The repeal made by subparagraph (A) [repealing sections 4911 through 4922 and section 4931 of this title] shall apply with respect to acquisitions of stock and debt obligations made after June 30, 1974.”

### § 4911. Tax on excess expenditures to influence legislation

#### (a) Tax imposed (1) In general

There is hereby imposed on the excess lobbying expenditures of any organization to which this section applies a tax equal to 25 percent of the amount of the excess lobbying expenditures for the taxable year.

**(2) Organizations to which this section applies**

This section applies to any organization with respect to which an election under section 501(h) (relating to lobbying expenditures by public charities) is in effect for the taxable year.

**(b) Excess lobbying expenditures**

For purposes of this section, the term “excess lobbying expenditures” means, for a taxable year, the greater of—

(1) the amount by which the lobbying expenditures made by the organization during the taxable year exceed the lobbying nontaxable amount for such organization for such taxable year, or

(2) the amount by which the grass roots expenditures made by the organization during the taxable year exceed the grass roots nontaxable amount for such organization for such taxable year.

**(c) Definitions**

For purposes of this section—

**(1) Lobbying expenditures**

The term “lobbying expenditures” means expenditures for the purpose of influencing legislation (as defined in subsection (d)).

**(2) Lobbying nontaxable amount**

The lobbying nontaxable amount for any organization for any taxable year is the lesser of (A) \$1,000,000 or (B) the amount determined under the following table:

<b>If the exempt purpose expenditures are—</b>	<b>The lobbying nontaxable amount is—</b>
Not over \$500,000 .....	20 percent of the exempt purpose expenditures.
Over \$500,000 but not over \$1,000,000.	\$100,000, plus 15 percent of the excess of the exempt purpose expenditures over \$500,000.
Over \$1,000,000 but not over \$1,500,000.	\$175,000 plus 10 percent of the excess of the exempt purpose expenditures over \$1,000,000.
Over \$1,500,000 .....	\$225,000 plus 5 percent of the excess of the exempt purpose expenditures over \$1,500,000.

**(3) Grass roots expenditures**

The term “grass roots expenditures” means expenditures for the purpose of influencing legislation (as defined in subsection (d) without regard to paragraph (1)(B) thereof).

**(4) Grass roots nontaxable amount**

The grass roots nontaxable amount for any organization for any taxable year is 25 percent of the lobbying nontaxable amount (determined under paragraph (2)) for such organization for such taxable year.

**(d) Influencing legislation****(1) General rule**

Except as otherwise provided in paragraph (2), for purposes of this section, the term “influencing legislation” means—

(A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and

(B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

**(2) Exceptions**

For purposes of this section, the term “influencing legislation”, with respect to an organization, does not include—

(A) making available the results of non-partisan analysis, study, or research;

(B) providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be;

(C) appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(D) communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications described in paragraph (3); and

(E) any communication with a governmental official or employee, other than—

(i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or

(ii) a communication the principal purpose of which is to influence legislation.

**(3) Communications with members**

(A) A communication between an organization and any bona fide member of such organization to directly encourage such member to communicate as provided in paragraph (1)(B) shall be treated as a communication described in paragraph (1)(B).

(B) A communication between an organization and any bona fide member of such organization to directly encourage such member to urge persons other than members to communicate as provided in either subparagraph (A) or subparagraph (B) of paragraph (1) shall be treated as a communication described in paragraph (1)(A).

**(e) Other definitions and special rules**

For purposes of this section—

**(1) Exempt purpose expenditures****(A) In general**

The term “exempt purpose expenditures” means, with respect to any organization for any taxable year, the total of the amounts paid or incurred by such organization to accomplish purposes described in section 170(c)(2)(B) (relating to religious, charitable, educational, etc., purposes).

**(B) Certain amounts included**

The term “exempt purpose expenditures” includes—

(i) administrative expenses paid or incurred for purposes described in section 170(c)(2)(B), and

(ii) amounts paid or incurred for the purpose of influencing legislation (whether or not for purposes described in section 170(c)(2)(B)).

**(C) Certain amounts excluded**

The term “exempt purpose expenditures” does not include amounts paid or incurred to or for—

(i) a separate fundraising unit of such organization, or

(ii) one or more other organizations, if such amounts are paid or incurred primarily for fundraising.

**(2) Legislation**

The term “legislation” includes action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

**(3) Action**

The term “action” is limited to the introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items.

**(4) Depreciation, etc., treated as expenditures**

In computing expenditures paid or incurred for the purpose of influencing legislation (within the meaning of subsection (b)(1) or (b)(2)) or exempt purpose expenditures (as defined in paragraph (1)), amounts properly chargeable to capital account shall not be taken into account. There shall be taken into account a reasonable allowance for exhaustion, wear and tear, obsolescence, or amortization. Such allowance shall be computed only on the basis of the straight-line method of depreciation. For purposes of this section, a determination of whether an amount is properly chargeable to capital account shall be made on the basis of the principles that apply under subtitle A to amounts which are paid or incurred in a trade or business.

**(f) Affiliated organizations**

**(1) In general**

Except as otherwise provided in paragraph (4), if for a taxable year two or more organizations described in section 501(c)(3) are members of an affiliated group of organizations as defined in paragraph (2), and an election under section 501(h) is effective for at least one such organization for such year, then—

(A) the determination as to whether excess lobbying expenditures have been made and the determination as to whether the expenditure limits of section 501(h)(1) have been exceeded shall be made as though such affiliated group is one organization,

(B) if such group has excess lobbying expenditures, each such organization as to which an election under section 501(h) is effective for such year shall be treated as an organization which has excess lobbying ex-

penditures in an amount which equals such organization’s proportionate share of such group’s excess lobbying expenditures,

(C) if the expenditure limits of section 501(h)(1) are exceeded, each such organization as to which an election under section 501(h) is effective for such year shall be treated as an organization which is not described in section 501(c)(3) by reason of the application of 501(h), and

(D) subparagraphs (C) and (D) of subsection (d)(2), paragraph (3) or subsection (d), and clause (i) of subsection (e)(1)(C) shall be applied as if such affiliated group were one organization.

**(2) Definition of affiliation**

For purposes of paragraph (1), two organizations are members of an affiliated group of organizations but only if—

(A) the governing instrument of one such organization requires it to be bound by decisions of the other organization on legislative issues, or

(B) the governing board of one such organization includes persons who—

(i) are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and

(ii) by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

**(3) Different taxable years**

If members of an affiliated group of organizations have different taxable years, their expenditures shall be computed for purposes of this section in a manner to be prescribed by regulations promulgated by the Secretary.

**(4) Limited control**

If two or more organizations are members of an affiliated group of organizations (as defined in paragraph (2) without regard to subparagraph (B) thereof), no two members of such affiliated group are affiliated (as defined in paragraph (2) without regard to subparagraph (A) thereof), and the governing instrument of no such organization requires it to be bound by decisions of any of the other such organizations on legislative issues other than as to action with respect to Acts, bills, resolutions, or similar items by the Congress, then—

(A) in the case of any organization whose decisions bind one or more members of such affiliated group, directly or indirectly, the determination as to whether such organization has paid or incurred excess lobbying expenditures and the determination as to whether such organization has exceeded the expenditure limits of section 501(h)(1) shall be made as though such organization has paid or incurred those amounts paid or incurred by such members of such affiliated group to influence legislation with respect to Acts, bills, resolutions, or similar items by the Congress, and

(B) in the case of any organization to which subparagraph (A) does not apply, but

which is a member of such affiliated group, the determination as to whether such organization has paid or incurred excess lobbying expenditures and the determination as to whether such organization has exceeded the expenditure limits of section 501(h)(1) shall be made as though such organization is not a member of such affiliated group.

(Added Pub. L. 94-455, title XIII, §1307(b), Oct. 4, 1976, 90 Stat. 1723; amended Pub. L. 95-600, title VII, §703(g)(1), Nov. 6, 1978, 92 Stat. 2940.)

#### AMENDMENTS

1978—Subsec. (c)(2). Pub. L. 95-600 substituted “exempt purpose expenditures” for “proposed expenditures” in heading of table.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of this title.

### § 4912. Tax on disqualifying lobbying expenditures of certain organizations

#### (a) Tax on organization

If an organization to which this section applies is not described in section 501(c)(3) for any taxable year by reason of making lobbying expenditures, there is hereby imposed a tax on the lobbying expenditures of such organization for such taxable year equal to 5 percent of the amount of such expenditures. The tax imposed by this subsection shall be paid by the organization.

#### (b) On management

If tax is imposed under subsection (a) on the lobbying expenditures of any organization, there is hereby imposed on the agreement of any organization manager to the making of any such expenditures, knowing that such expenditures are likely to result in the organization not being described in section 501(c)(3), a tax equal to 5 percent of the amount of such expenditures, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this subsection shall be paid by any manager who agreed to the making of the expenditures.

#### (c) Organizations to which section applies

##### (1) In general

Except as provided in paragraph (2), this section shall apply to any organization which was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3).

##### (2) Exceptions

This section shall not apply to any organization—

- (A) to which an election under section 501(h) applies,
- (B) which is a disqualified organization (within the meaning of section 501(h)(5)), or
- (C) which is a private foundation.

#### (d) Definitions

##### (1) Lobbying expenditures

The term “lobbying expenditure” means any amount paid or incurred by the organization

in carrying on propaganda, or otherwise attempting to influence legislation.

#### (2) Organization manager

The term “organization manager” has the meaning given to such term by section 4955(f)(2).

#### (3) Joint and several liability

If more than 1 person is liable under subsection (b), all such persons shall be jointly and severally liable under such subsection.

(Added Pub. L. 100-203, title X, §10714(a), Dec. 22, 1987, 101 Stat. 1330-470.)

#### EFFECTIVE DATE

Pub. L. 100-203, title X, §10714(e), Dec. 22, 1987, 101 Stat. 1330-472, provided that: “The amendments made by this section [enacting this section and amending sections 6501 and 7454 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 1987].”

### CHAPTER 42—PRIVATE FOUNDATIONS; AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS

Subchapter	Sec. <sup>1</sup>
A. Private foundations .....	4940
B. Black lung benefit trusts .....	4951
C. Political expenditures of section 501(c)(3) organizations .....	4955
D. Failure by certain charitable organizations to meet certain qualification requirements .....	4958
E. Abatement of first and second tier taxes in certain cases .....	4961
F. Tax shelter transactions .....	4965
G. Donor advised funds .....	4966

#### AMENDMENTS

2006—Pub. L. 109-280, title XII, §1231(b)(2), Aug. 17, 2006, 120 Stat. 1098, which directed the addition of item for subchapter G to the analysis for chapter 42 without specifying the act to be amended, was executed by adding the item to this analysis, which is for chapter 42 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Pub. L. 109-222, title V, §516(a)(2), May 17, 2006, 120 Stat. 371, added item for subchapter F.

1996—Pub. L. 104-168, title XIII, §1311(c)(6), July 30, 1996, 110 Stat. 1478, struck out item for subchapter D “Abatement of first and second-tier taxes in certain cases” and added items for subchapters D and E.

1987—Pub. L. 100-203, title X, §10712(c)(7), (9), Dec. 22, 1987, 101 Stat. 1330-467, substituted in chapter heading “AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS” for “BLACK LUNG BENEFIT TRUSTS”, struck out item for subchapter C “Abatement of first and second tier taxes in certain cases”, and added items for subchapters C and D.

1984—Pub. L. 98-369, div. A, title III, §305(b)(3), July 18, 1984, 98 Stat. 784, substituted “Abatement of first and second tier taxes in certain cases” for “Abatement of second tier taxes where there is correction during correction period” in item for subchapter C.

1980—Pub. L. 96-596, §2(c)(3), Dec. 24, 1980, 94 Stat. 3474, added item for subchapter C.

1978—Pub. L. 95-227, §4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, in chapter heading inserted “; BLACK LUNG BENEFIT TRUSTS” after “FOUNDATIONS”, and added items for subchapters A and B.

1969—Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498, added chapter heading “PRIVATE FOUNDATIONS”.

<sup>1</sup> Section numbers editorially supplied.