

tion 170(b)(1)(A)(ii)” for “educational institution described in section 151(e)(4)”.

Subsecs. (h), (i). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(e) of Pub. L. 109-280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109-280, set out as a note under section 4941 of this title.

Amendment by section 1244(b) of Pub. L. 109-280 applicable to distributions and expenditures after Aug. 17, 2006, see section 1244(c) of Pub. L. 109-280, set out as a note under section 4942 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title III, §302(c)(2), July 18, 1984, 98 Stat. 781, provided that: “The amendment made by subsection (b) [amending this section] shall apply to grants made after December 31, 1984, in taxable years ending after such date.”

#### EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

#### SAVINGS PROVISION

Applicability of subsecs. (d)(4) and (h) of this section to grants to private foundations described in section 101(b)(C)(3) of Pub. L. 91-172, see section 101(l)(5) of Pub. L. 91-172, set out as a note under section 4940 of this title.

### § 4946. Definitions and special rules

#### (a) Disqualified person

##### (1) In general

For purposes of this subchapter, the term “disqualified person” means, with respect to a private foundation, a person who is—

(A) a substantial contributor to the foundation,

(B) a foundation manager (within the meaning of subsection (b)(1)),

(C) an owner of more than 20 percent of—

(i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership,

or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation,

(D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),

(E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,

(H) only for purposes of section 4943, a private foundation—

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question, and

(I) only for purposes of section 4941, a government official (as defined in subsection (c)).

#### (2) Substantial contributors

For purposes of paragraph (1), the term “substantial contributor” means a person who is described in section 507(d)(2).

#### (3) Stockholdings

For purposes of paragraphs (1)(C)(i) and (1)(E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

#### (4) Partnerships; trusts

For purposes of paragraphs (1)(C)(ii) and (iii), (1)(F), and (1)(G), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

#### (b) Foundation manager

For purposes of this subchapter, the term “foundation manager” means, with respect to any private foundation—

(1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

#### (c) Government official

For purposes of subsection (a)(1)(I) and section 4941, the term “government official” means, with respect to an act of self-dealing described in section 4941, an individual who, at the time of

such act, holds any of the following offices or positions (other than as a "special Government employee", as defined in section 202(a) of title 18, United States Code):

(1) an elective public office in the executive or legislative branch of the Government of the United States,

(2) an office in the executive or judicial branch of the Government of the United States, appointment to which was made by the President,

(3) a position in the executive, legislative, or judicial branch of the Government of the United States—

(A) which is listed in schedule C of rule VI of the Civil Service Rules, or

(B) the compensation for which is equal to or greater than the lowest rate of basic pay for the Senior Executive Service under section 5382 of title 5, United States Code,

(4) a position under the House of Representatives or the Senate of the United States held by an individual receiving gross compensation at an annual rate of \$15,000 or more,

(5) an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, held by an individual receiving gross compensation at an annual rate of \$20,000 or more,

(6) a position as personal or executive assistant or secretary to any of the foregoing, or

(7) a member of the Internal Revenue Service Oversight Board.

#### (d) Members of family

For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 515; amended Pub. L. 95-227, §4(c)(2)(B), Feb. 10, 1978, 92 Stat. 22; Pub. L. 98-369, div. A, title III, §306(a), July 18, 1984, 98 Stat. 784; Pub. L. 99-514, title XVI, §1606(a), Oct. 22, 1986, 100 Stat. 2771; Pub. L. 105-206, title I, §1101(c)(1), July 22, 1998, 112 Stat. 696; Pub. L. 106-554, §1(a)(7) [title III, §319(16)], Dec. 21, 2000, 114 Stat. 2763, 2763A-647.)

#### AMENDMENTS

2000—Subsec. (c)(3)(B). Pub. L. 106-554 substituted "the lowest rate of basic pay for the Senior Executive Service under section 5382" for "the lowest rate of compensation prescribed for GS-16 of the General Schedule under section 5332".

1998—Subsec. (c)(7). Pub. L. 105-206 added par. (7).

1986—Subsec. (c)(5). Pub. L. 99-514 substituted "\$20,000" for "\$15,000".

1984—Subsec. (d). Pub. L. 98-369 amended subsec. (d) generally, substituting references to children, grandchildren, and great grandchildren for references to lineal descendants in two places.

1978—Subsecs. (a)(1), (b). Pub. L. 95-227 substituted "subchapter" for "chapter".

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XVI, §1606(b), Oct. 22, 1986, 100 Stat. 2771, provided that: "The amendment made by

this section [amending this section] shall apply to compensation received after December 31, 1985."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title III, §306(c), July 18, 1984, 98 Stat. 784, provided that: "The amendments made by this subsection [probably should be "section", amending this section and section 6104 of this title] shall take effect on January 1, 1985."

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as an Effective Date note under section 192 of this title.

### § 4947. Application of taxes to certain nonexempt trusts

#### (a) Application of tax

##### (1) Charitable trusts

For purposes of part II of subchapter F of chapter 1 (other than section 508(a), (b), and (c)) and for purposes of this chapter, a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 (or the corresponding provisions of prior law), shall be treated as an organization described in section 501(c)(3). For purposes of section 509(a)(3)(A), such a trust shall be treated as if organized on the day on which it first becomes subject to this paragraph.

##### (2) Split-interest trusts

In the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, section 507 (relating to termination of private foundation status), section 508(e) (relating to governing instruments) to the extent applicable to a trust described in this paragraph, section 4941 (relating to taxes on self-dealing), section 4943 (relating to taxes on excess business holdings) except as provided in subsection (b)(3), section 4944 (relating to investments which jeopardize charitable purpose) except as provided in subsection (b)(3), and section 4945 (relating to taxes on taxable expenditures) shall apply as if such trust were a private foundation. This paragraph shall not apply with respect to—

(A) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B),

(B) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such other amounts are segregated from amounts for which no deduction was allowable, or

(C) any amounts transferred in trust before May 27, 1969.