

operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1954) as of January 1, 1983, shall be treated as meeting the requirements of section 4940(d)(2)(B) of such Code (as added by subsection (a)).”

§ 4941. Taxes on self-dealing

(a) Initial taxes

(1) On self-dealer

There is hereby imposed a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. In the case of a government official (as defined in section 4946(c)), a tax shall be imposed by this paragraph only if such disqualified person participates in the act of self-dealing knowing that it is such an act.

(2) On foundation manager

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, a tax equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the act of self-dealing.

(b) Additional taxes

(1) On self-dealer

In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a private foundation and the act is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participated in the act of self-dealing.

(2) On foundation manager

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

(c) Special rules

For purposes of subsections (a) and (b)—

(1) Joint and several liability

If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

(2) \$20,000 limit for management

With respect to any one act of self-dealing, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$20,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed \$20,000.

(d) Self-dealing

(1) In general

For purposes of this section, the term “self-dealing” means any direct or indirect—

(A) sale or exchange, or leasing, of property between a private foundation and a disqualified person;

(B) lending of money or other extension of credit between a private foundation and a disqualified person;

(C) furnishing of goods, services, or facilities between a private foundation and a disqualified person;

(D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person;

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and

(F) agreement by a private foundation to make any payment of money or other property to a government official (as defined in section 4946(c)), other than an agreement to employ such individual for any period after the termination of his government service if such individual is terminating his government service within a 90-day period.

(2) Special rules

For purposes of paragraph (1)—

(A) the transfer of real or personal property by a disqualified person to a private foundation shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the foundation assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer;

(B) the lending of money by a disqualified person to a private foundation shall not be an act of self-dealing if the loan is without interest or other charge (determined without regard to section 7872) and if the proceeds of the loan are used exclusively for purposes specified in section 501(c)(3);

(C) the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for purposes specified in section 501(c)(3);

(D) the furnishing of goods, services, or facilities by a private foundation to a disqualified person shall not be an act of self-dealing if such furnishing is made on a basis no more favorable than that on which such goods, services, or facilities are made available to the general public;

(E) except in the case of a government official (as defined in section 4946(c)), the payment of compensation (and the payment or reimbursement of expenses) by a private

foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive;

(F) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946(a)), pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value;

(G) in the case of a government official (as defined in section 4946(c)), paragraph (1) shall in addition not apply to—

(i) prizes and awards which are subject to the provisions of section 74(b) (without regard to paragraph (3) thereof), if the recipients of such prizes and awards are selected from the general public,

(ii) scholarships and fellowship grants which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii),

(iii) any annuity or other payment (forming part of a stock-bonus, pension, or profit-sharing plan) by a trust which is a qualified trust under section 401,

(iv) any annuity or other payment under a plan which meets the requirements of section 404(a)(2),

(v) any contribution or gift (other than a contribution or gift of money) to, or services or facilities made available to, any such individual, if the aggregate value of such contributions, gifts, services, and facilities to, or made available to, such individual during any calendar year does not exceed \$25,

(vi) any payment made under chapter 41 of title 5, United States Code, or

(vii) any payment or reimbursement of traveling expenses for travel solely from one point in the United States to another point in the United States, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus an amount for all other traveling expenses not in excess of 125 percent of the maximum amount payable under section 5702 of title 5, United States Code, for like travel by employees of the United States; and

(H) the leasing by a disqualified person to a private foundation of office space for use by the foundation in a building with other tenants who are not disqualified persons shall not be treated as an act of self-dealing if—

(i) such leasing of office space is pursuant to a binding lease which was in effect on October 9, 1969, or pursuant to renewals of such a lease;

(ii) the execution of such lease was not a prohibited transaction (within the meaning of section 503(b) or any corresponding provision of prior law) at the time of such execution; and

(iii) the terms of the lease (or any renewal) reflect an arm's-length transaction.

(e) Other definitions

For purposes of this section—

(1) Taxable period

The term “taxable period” means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

(C) the date on which correction of the act of self-dealing is completed.

(2) Amount involved

The term “amount involved” means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in subsection (d)(2)(E), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

(B) in the case of the taxes imposed by subsection (b), shall be the highest fair market value during the taxable period.

(3) Correction

The terms “correction” and “correct” mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the private foundation in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 499; amended Pub. L. 94-455, title XIX, §§1901(b)(8)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1795, 1834; Pub. L. 96-596, §2(a)(1)(A), (B), (2)(A), (3)(A), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 96-608, §5, Dec. 28, 1980, 94 Stat. 3553; Pub. L. 99-234, title I, §107(c), Jan. 2, 1986, 99 Stat. 1759; Pub. L. 99-514, title I, §122(a)(2)(A), title XVIII, §1812(b)(1), Oct. 22, 1986, 100 Stat. 2110, 2833; Pub. L. 100-647, title I, §1001(d)(1)(A), Nov. 10, 1988, 102 Stat. 3350; Pub. L. 109-280, title XII, §1212(a)(1), (2), Aug. 17, 2006, 120 Stat. 1074.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(2)(G)(ii), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

CODIFICATION

Section 1212(a)(1), (2) of Pub. L. 109-280, which directed the amendment of section 4941 without specify-

ing the act to be amended, was executed to this section, which is section 4941 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109-280, § 1212(a)(1)(A), substituted “10 percent” for “5 percent”. See Codification note above.

Subsec. (a)(2). Pub. L. 109-280, § 1212(a)(1)(B), substituted “5 percent” for “2½ percent”. See Codification note above.

Subsec. (c)(2). Pub. L. 109-280, § 1212(a)(2), substituted “\$20,000” for “\$10,000” wherever appearing in heading and text. See Codification note above.

1988—Subsec. (d)(2)(G)(ii). Pub. L. 100-647 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “scholarships and fellowship grants which are subject to the provisions of section 117(a) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii).”

1986—Subsec. (d)(2)(B). Pub. L. 99-514, § 1812(b)(1), inserted “(determined without regard to section 7872)” after “without interest or other charge”.

Subsec. (d)(2)(G)(i). Pub. L. 99-514, § 122(a)(2)(A), inserted “(without regard to paragraph (3) thereof)” after “section 74(b)”.

Subsec. (d)(2)(G)(vii). Pub. L. 99-234 substituted “5702” for “5702(a)”.

1980—Subsec. (b)(1). Pub. L. 96-596, § 2(a)(1)(A), substituted “taxable period” for “correction period”.

Subsec. (d)(2)(H). Pub. L. 96-608 added subpar. (H).

Subsec. (e)(1)(B), (C). Pub. L. 96-596, § 2(a)(2)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e)(2)(B). Pub. L. 96-596, § 2(a)(1)(B), substituted “taxable period” for “correction period”.

Subsec. (e)(4). Pub. L. 96-596, § 2(a)(3)(A), struck out par. (4) which defined correction period, with respect to any act of self-dealing, as the period beginning with the date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b)(1) of this section under section 6212 of this title, extended by any period in which the deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about correction of the act of self-dealing.

1976—Subsec. (d)(2)(G)(ii). Pub. L. 94-455, § 1901(b)(8)(H), substituted “educational organization described in section 170(b)(1)(A)(ii)” for “educational institution described in section 151(e)(4)” after “study at an”.

Subsec. (e)(4). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title XII, § 1212(f), Aug. 17, 2006, 120 Stat. 1075, provided that: “The amendments made by this section [amending this section and sections 4942 to 4945 and 4958 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].”

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 AMENDMENTS

Amendment by section 122(a)(2)(A) of 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.

Amendment by section 1812(b)(1) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L.

98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99-234 effective (1) on effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as a note under section 5701 of Title 5, Government Organization and Employees.

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

Exceptions to applicability of section, see section 101(i)(2) of Pub. L. 91-172, set out as a note under section 4940 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

TAX ON SELF-DEALING NOT TO APPLY TO CERTAIN STOCK PURCHASES

Pub. L. 98-369, div. A, title III, § 312, July 18, 1984, 98 Stat. 786, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) GENERAL RULE.—Section 4941 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to taxes on self-dealing) shall not apply to the purchase during 1978 of stock from a private foundation (and to any note issued in connection with such purchase) if—

“(1) consideration for such purchase equaled or exceeded the fair market value of such stock,

“(2) the purchaser of such stock did not make any contribution to such foundation at any time during the 5-year period ending on the date of such purchase,

“(3) the aggregate contributions to such foundation by the purchaser before such date were less than \$10,000 and less than 2 percent of the total contributions received by the foundation as of such date, and

“(4) such purchase was pursuant to the settlement of litigation involving the purchaser.

“(b) STATUTE OF LIMITATIONS.—If credit or refund of any overpayment of tax resulting from subsection (a) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [July 18, 1984] by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.”

APPLICABILITY TO DETERMINATION OF STATUS AS SUBSTANTIAL CONTRIBUTOR FOR PURPOSES OF TAXES ON SELF-DEALING OF CONTRIBUTIONS MADE PRIOR TO OCTOBER 9, 1969

Determination of status as substantial contributor within section 507(d)(2) of this title for purposes of applying this section, see section 3 of Pub. L. 95-170, set out as a note under section 507 of this title.

§ 4942. Taxes on failure to distribute income

(a) Initial tax

There is hereby imposed on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second (or any succeeding) tax-