

Subchapter G—Donor Advised Funds

Sec. 4966. 4967.	Taxes on taxable distributions. Taxes on prohibited benefits.
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CODIFICATION

Pub. L. 109-280, title XII, §1231(a), Aug. 17, 2006, 120 Stat. 1094, which directed the addition of subchapter G at the end of chapter 42, without specifying the act to be amended, was executed by adding subchapter G at the end of chapter 42 of this title, which consists of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

§ 4966. Taxes on taxable distributions

(a) Imposition of taxes

(1) On the sponsoring organization

There is hereby imposed on each taxable distribution a tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the sponsoring organization with respect to the donor advised fund.

(2) On the fund management

There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that it is a taxable distribution, a tax equal to 5 percent of the amount thereof. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

(b) Special rules

For purposes of subsection (a)—

(1) Joint and several liability

If more than one person is liable under subsection (a)(2) with respect to the making of a taxable distribution, all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

(2) Limit for management

With respect to any one taxable distribution, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000.

(c) Taxable distribution

For purposes of this section—

(1) In general

The term “taxable distribution” means any distribution from a donor advised fund—

- (A) to any natural person, or
- (B) to any other person if—

(i) such distribution is for any purpose other than one specified in section 170(c)(2)(B), or

(ii) the sponsoring organization does not exercise expenditure responsibility with respect to such distribution in accordance with section 4945(h).

(2) Exceptions

Such term shall not include any distribution from a donor advised fund—

- (A) to any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization),
- (B) to the sponsoring organization of such donor advised fund, or
- (C) to any other donor advised fund.

(d) Definitions

For purposes of this subchapter—

(1) Sponsoring organization

The term “sponsoring organization” means any organization which—

(A) is described in section 170(c) (other than in paragraph (1) thereof, and without regard to paragraph (2)(A) thereof),

(B) is not a private foundation (as defined in section 509(a)), and

(C) maintains 1 or more donor advised funds.

(2) Donor advised fund

(A) In general

Except as provided in subparagraph (B) or (C), the term “donor advised fund” means a fund or account—

(i) which is separately identified by reference to contributions of a donor or donors,

(ii) which is owned and controlled by a sponsoring organization, and

(iii) with respect to which a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor’s status as a donor.

(B) Exceptions

The term “donor advised fund” shall not include any fund or account—

(i) which makes distributions only to a single identified organization or governmental entity, or

(ii) with respect to which a person described in subparagraph (A)(iii) advises as to which individuals receive grants for travel, study, or other similar purposes, if—

(I) such person’s advisory privileges are performed exclusively by such person in the person’s capacity as a member of a committee all of the members of which are appointed by the sponsoring organization,

(II) no combination of persons described in subparagraph (A)(iii) (or persons related to such persons) control, directly or indirectly, such committee, and

(III) all grants from such fund or account are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the board of directors of the sponsoring organization, and such procedure is designed to ensure that all such grants meet the requirements of paragraph (1), (2), or (3) of section 4945(g).

(C) Secretarial authority

The Secretary may exempt a fund or account not described in subparagraph (B) from treatment as a donor advised fund—

(i) if such fund or account is advised by a committee not directly or indirectly controlled by the donor or any person appointed or designated by the donor for the purpose of advising with respect to distributions from such fund (and any related parties), or

(ii) if such fund benefits a single identified charitable purpose.

(3) Fund manager

The term “fund manager” means, with respect to any sponsoring organization—

(A) an officer, director, or trustee of such sponsoring organization (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the sponsoring organization), and

(B) with respect to any act (or failure to act), the employees of the sponsoring organization having authority or responsibility with respect to such act (or failure to act).

(4) Disqualified supporting organization

(A) In general

The term “disqualified supporting organization” means, with respect to any distribution—

(i) any type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(ii) any organization which is described in subparagraph (B) or (C) if—

(I) the donor or any person designated by the donor for the purpose of advising with respect to distributions from a donor advised fund (and any related parties) directly or indirectly controls a supported organization (as defined in section 509(f)(3)) of such organization, or

(II) the Secretary determines by regulations that a distribution to such organization otherwise is inappropriate.

(B) Type I and type II supporting organizations

An organization is described in this subparagraph if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

(ii) supervised or controlled in connection with one or more such organizations.

(C) Functionally integrated type III supporting organizations

An organization is described in this subparagraph if the organization is a functionally integrated type III supporting organization (as defined under section 4943(f)(5)(B)).

(Added Pub. L. 109-280, title XII, §1231(a), Aug. 17, 2006, 120 Stat. 1095.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Aug. 17, 2006, see section 1231(c) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 4963 of this title.

§ 4967. Taxes on prohibited benefits

(a) Imposition of taxes

(1) On the donor, donor advisor, or related person

There is hereby imposed on the advice of any person described in subsection (d) to have a

sponsoring organization make a distribution from a donor advised fund which results in such person or any other person described in subsection (d) receiving, directly or indirectly, a more than incidental benefit as a result of such distribution, a tax equal to 125 percent of such benefit. The tax imposed by this paragraph shall be paid by any person described in subsection (d) who advises as to the distribution or who receives such a benefit as a result of the distribution.

(2) On the fund management

There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that such distribution would confer a benefit described in paragraph (1), a tax equal to 10 percent of the amount of such benefit. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

(b) Exception

No tax shall be imposed under this section with respect to any distribution if a tax has been imposed with respect to such distribution under section 4958.

(c) Special rules

For purposes of subsection (a)—

(1) Joint and several liability

If more than one person is liable under paragraph (1) or (2) of subsection (a) with respect to a distribution described in subsection (a), all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

(2) Limit for management

With respect to any one distribution described in subsection (a), the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000.

(d) Person described

A person is described in this subsection if such person is described in section 4958(f)(7) with respect to a donor advised fund.

(Added Pub. L. 109-280, title XII, §1231(a), Aug. 17, 2006, 120 Stat. 1097.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Aug. 17, 2006, see section 1231(c) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 4963 of this title.

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

Sec. 4971.	Taxes on failure to meet minimum funding standards.
4972.	Tax on nondeductible contributions to qualified employer plans.
4973.	Tax on excess contributions to certain tax-favored accounts and annuities.
4974.	Excise tax on certain accumulations in qualified retirement plans.
4975.	Tax on prohibited transactions.
4976.	Taxes with respect to funded welfare benefit plans.
4977.	Tax on certain fringe benefits provided by an employer.