

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>
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AMENDMENTS

2017—Pub. L. 115-97, title I, § 13701(b), Dec. 22, 2017, 131 Stat. 2168, added item for subchapter H.

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”.

**Subchapter A—Private Foundations**

Sec.	
4940.	Excise tax based on investment income.
4941.	Taxes on self-dealing.
4942.	Taxes on failure to distribute income.
4943.	Taxes on excess business holdings.
4944.	Taxes on investments which jeopardize charitable purpose.
4945.	Taxes on taxable expenditures.
4946.	Definitions and special rules.
4947.	Application of taxes to certain nonexempt trusts.
4948.	Application of taxes and denial of exemption with respect to certain foreign organizations.

AMENDMENTS

1978—Pub. L. 95-227, § 4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, added subchapter A heading and designated sections 4940 to 4948 as subchapter A.

1969—Pub. L. 91-172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 498, added analysis of sections.

**§ 4940. Excise tax based on investment income**

**(a) Tax-exempt foundations**

There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

**(b) Taxable foundations**

There is hereby imposed on each private foundation which is not exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to—

(1) the amount (if any) by which the sum of (A) the tax imposed under subsection (a) (computed as if such subsection applied to such private foundation for the taxable year), plus (B) the amount of the tax which would have been imposed under section 511 for the taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds

(2) the tax imposed under subtitle A on such private foundation for the taxable year.

**(c) Net investment income defined**

**(1) In general**

For purposes of subsection (a), the net investment income is the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the deductions allowed by paragraph (3). Except to the extent inconsistent with the provisions of this section, net investment income shall be determined under the principles of subtitle A.

**(2) Gross investment income**

For purposes of paragraph (1), the term “gross investment income” means the gross amount of income from interest, dividends, rents, payments with respect to securities loans (as defined in section 512(a)(5)), and royalties, but not including any such income to the extent included in computing the tax imposed by section 511. Such term shall also in-

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