

Subsec. (e)(3). Pub. L. 96-596, §2(a)(3)(D), struck out par. (3), which defined correction period, with respect to any investment which jeopardizes the carrying out of exempt purposes, as the period beginning with the date on which such investment is entered into 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 a 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 removal from jeopardy.

1976—Subsec. (e)(3)(B). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by 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.

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.

§ 4945. Taxes on taxable expenditures

(a) Initial taxes

(1) On the foundation

There is hereby imposed on each taxable expenditure (as defined in subsection (d)) a tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management

There is hereby imposed on the agreement of any foundation manager to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 5 percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who agreed to the making of the expenditure.

(b) Additional taxes

(1) On the foundation

In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management

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 of the taxable expenditure. 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 subsection (a)(2) or (b)(2) with respect to the mak-

ing of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

(2) Limit for management

With respect to any one taxable expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed \$20,000.

(d) Taxable expenditure

For purposes of this section, the term “taxable expenditure” means any amount paid or incurred by a private foundation—

(1) to carry on propaganda, or otherwise to attempt, to influence legislation, within the meaning of subsection (e),

(2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,

(3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g),

(4) as a grant to an organization unless—

(A) such organization—

(i) is described in paragraph (1) or (2) of section 509(a),

(ii) is an organization described in section 509(a)(3) (other than an organization described in clause (i) or (ii) of section 4942(g)(4)(A)), or

(iii) is an exempt operating foundation (as defined in section 4940(d)(2)), or

(B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or

(5) for any purpose other than one specified in section 170(c)(2)(B).

(e) Activities within subsection (d)(1)

For purposes of subsection (d)(1), the term “taxable expenditure” means any amount paid or incurred by a private foundation for—

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

(2) any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided 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),

other than through making available the results of nonpartisan analysis, study, or research. Paragraph (2) of this subsection shall not apply to any amount paid or incurred in connection with an appearance before, or communication to, any legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation.

(f) Nonpartisan activities carried on by certain organizations

Subsection (d)(2) shall not apply to any amount paid or incurred by any organization—

(1) which is described in section 501(c)(3) and exempt from taxation under section 501(a),

(2) the activities of which are nonpartisan, are not confined to one specific election period, and are carried on in 5 or more States,

(3) substantially all of the income of which is expended directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated,

(4) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is received from exempt organizations, the general public, governmental units described in section 170(c)(1), or any combination of the foregoing; not more than 25 percent of such support is received from any one exempt organization (for this purpose treating private foundations which are described in section 4946(a)(1)(H) with respect to each other as one exempt organization); and not more than half of the support of which is received from gross investment income, and

(5) contributions to which for voter registration drives are not subject to conditions that they may be used only in specified States, possessions of the United States, or political subdivisions or other areas of any of the foregoing, or the District of Columbia, or that they may be used in only one specific election period.

In determining whether the organization meets the requirements of paragraph (4) for any taxable year of such organization, there shall be taken into account the support received by such organization during such taxable year and during the immediately preceding 4 taxable years of such organization. Subsection (d)(4) shall not apply to any grant to an organization which meets the requirements of this subsection.

(g) Individual grants

Subsection (d)(3) shall not apply to an individual grant awarded on an objective and non-discriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that—

(1) the grant constitutes a scholarship or fellowship grant 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 is to be used for study at an educational organization described in section 170(b)(1)(A)(ii),

(2) the grant constitutes a prize or award which is subject to the provisions of section 74(b) (without regard to paragraph (3) thereof), if the recipient of such prize or award is selected from the general public, or

(3) the purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

(h) Expenditure responsibility

The expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures—

(1) to see that the grant is spent solely for the purpose for which made,

(2) to obtain full and complete reports from the grantee on how the funds are spent, and

(3) to make full and detailed reports with respect to such expenditures to the Secretary.

(i) Other definitions

For purposes of this section—

(1) Correction

The terms “correction” and “correct” mean, with respect to any taxable expenditure, (A) recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible such additional corrective action as is prescribed by the Secretary by regulations, or (B) in the case of a failure to comply with subsection (h)(2) or (h)(3), obtaining or making the report in question.

(2) Taxable period

The term “taxable period” means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of—

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

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

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 512; 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)(F), (2)(E), Dec. 24, 1980, 94 Stat. 3469, 3470; Pub. L. 98-369, div. A, title III, §302(b), July 18, 1984, 98 Stat. 780; Pub. L. 99-514, title I, §122(a)(2)(B), Oct. 22, 1986, 100 Stat. 2110; Pub. L. 100-647, title I, §1001(d)(1)(B), Nov. 10, 1988, 102 Stat. 3350; Pub. L. 109-280, title XII, §§1212(e), 1244(b), Aug. 17, 2006, 120 Stat. 1074, 1107; Pub. L. 113-295, div. A, title II, §221(a)(106), Dec. 19, 2014, 128 Stat. 4053.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (g)(1), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

CODIFICATION

Sections 1212(e) and 1244(b) of Pub. L. 109-280, which directed the amendment of section 4945 without specifying the act to be amended, were executed to this section, which is section 4945 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2014—Subsec. (f). Pub. L. 113-295 struck out “(excluding therefrom any preceding taxable year which begins before January 1, 1970)” after “taxable years of such organization” in concluding provisions.

2006—Subsec. (a)(1). Pub. L. 109-280, §1212(e)(1)(A), substituted “20 percent” for “10 percent”. See Codification note above.

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

Subsec. (c)(2). Pub. L. 109-280, § 1212(e)(2), substituted “\$10,000,” for “\$5,000,” and “\$20,000,” for “\$10,000.” See Codification note above.

Subsec. (d)(4)(A). Pub. L. 109-280, § 1244(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “such organization is described in paragraph (1), (2), or (3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or”. See Codification note above.

1988—Subsec. (g)(1). Pub. L. 100-647 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).”

1986—Subsec. (g)(2). Pub. L. 99-514 inserted “(without regard to paragraph (3) thereof)” after “section 74(b)”.

1984—Subsec. (d)(4). Pub. L. 98-369, in amending par. (4) generally, divided existing provisions into subpars. (A) and (B) and inserted reference in subpar. (A) to exempt foundations (as defined in section 4940(d)(2)).

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

Subsec. (i)(2). Pub. L. 96-596, § 2(a)(2)(E), substituted provision defining taxable period as the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of the date of mailing a notice of deficiency with respect to the tax imposed by subsec. (a)(1) of this section under section 6212 of this title or the date on which the tax imposed by subsec. (a)(1) of this section is assessed for provision defining correction period as the period beginning with the date on which the taxable expenditure 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 to be reasonable and necessary, except that such determination not be made with respect to any taxable expenditure within the meaning of pars. (1), (2), (3), or (4) of subsec. (d) of this section because of any action by an appropriate State officer.

1976—Subsec. (g). Pub. L. 94-455, §§ 1901(b)(8)(H), 1906(b)(13)(A), struck out in provisions preceding par. (1) “or his delegate” after “Secretary” and substituted in par. (1) “educational organization described in section 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 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

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(l)(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