

EFFECTIVE DATE

Section 10714(e) of Pub. L. 100-203 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. ¹
A. Private foundations	4940
B. Black lung benefit trusts	4951
C. Political expenditures of section 501(c)(3) organizations	4955
D. Failure by certain charitable organizations to meet certain qualification requirements	4958
E. Abatement of first and second tier taxes in certain cases	4961

AMENDMENTS

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 sec-

tion 501(a) for the taxable year, with respect to the carrying on 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.

(3) Deductions

(A) In general

For purposes of paragraph (1), there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications set forth in subparagraph (B).

(B) Modifications

For purposes of subparagraph (A)—

- (i) The deduction provided by section 167 shall be allowed, but only on the basis of the straight line method of depreciation.
- (ii) The deduction for depletion provided by section 611 shall be allowed, but such deduction shall be determined without regard to section 613 (relating to percentage depletion).

(4) Capital gains and losses

For purposes of paragraph (1) in determining capital gain net income—

- (A) There shall be taken into account only gains and losses from the sale or other disposition of property used for the production

¹ Section numbers editorially supplied.

of interest, dividends, rents, and royalties, and property used for the production of income included in computing the tax imposed by section 511 (except to the extent gain or loss from the sale or other disposition of such property is taken into account for purposes of such tax).

(B) The basis for determining gain in the case of property held by the private foundation on December 31, 1969, and continuously thereafter to the date of its disposition shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(C) Losses from sales or other dispositions of property shall be allowed only to the extent of gains from such sales or other dispositions, and there shall be no capital loss carryovers.

(5) Tax-exempt income

For purposes of this section, net investment income shall be determined by applying section 103 (relating to State and local bonds) and section 265 (relating to expenses and interest relating to tax-exempt income).

(d) Exemption for certain operating foundations

(1) In general

No tax shall be imposed by this section on any private foundation which is an exempt operating foundation for the taxable year.

(2) Exempt operating foundation

For purposes of this subsection, the term “exempt operating foundation” means, with respect to any taxable year, any private foundation if—

(A) such foundation is an operating foundation (as defined in section 4942(j)(3)),

(B) such foundation has been publicly supported for at least 10 taxable years,

(C) at all times during the taxable year, the governing body of such foundation—

(i) consists of individuals at least 75 percent of whom are not disqualified individuals, and

(ii) is broadly representative of the general public, and

(D) at no time during the taxable year does such foundation have an officer who is a disqualified individual.

(3) Definitions

For purposes of this subsection—

(A) Publicly supported

A private foundation is publicly supported for a taxable year if it meets the requirements of section 170(b)(1)(A)(vi) or 509(a)(2) for such taxable year.

(B) Disqualified individual

The term “disqualified individual” means, with respect to any private foundation, an individual who is—

(i) a substantial contributor to the foundation,

(ii) 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, or

(iii) a member of the family of any individual described in clause (i) or (ii).

(C) Substantial contributor

The term “substantial contributor” means a person who is described in section 507(d)(2).

(D) Family

The term “family” has the meaning given to such term by section 4946(d).

(E) Constructive ownership

The rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of subparagraph (B)(ii).

(e) Reduction in tax where private foundation meets certain distribution requirements

(1) In general

In the case of any private foundation which meets the requirements of paragraph (2) for any taxable year, subsection (a) shall be applied with respect to such taxable year by substituting “1 percent” for “2 percent”.

(2) Requirements

A private foundation meets the requirements of this paragraph for any taxable year if—

(A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of—

(i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus

(ii) 1 percent of the net investment income of such foundation for such taxable year, and

(B) such private foundation was not liable for tax under section 4942 with respect to any year in the base period.

(3) Average percentage payout for base period

For purposes of this subsection—

(A) In general

The average percentage payout for the base period is the average of the percentage payouts for taxable years in the base period.

(B) Percentage payout

The term “percentage payout” means, with respect to any taxable year, the percentage determined by dividing—

(i) the amount of the qualifying distributions made by the private foundation during the taxable year, by

(ii) the assets of the private foundation for the taxable year.

(C) Special rule where tax reduced under this subsection

For purposes of this paragraph, if the amount of the tax imposed by this section for any taxable year in the base period is reduced by reason of this subsection, the amount of the qualifying distributions made

by the private foundation during such year shall be reduced by the amount of such reduction in tax.

(4) Base period

For purposes of this subsection—

(A) In general

The term “base period” means, with respect to any taxable year, the 5 taxable years preceding such taxable year.

(B) New private foundations, etc.

If an organization has not been a private foundation throughout the base period referred to in subparagraph (A), the base period shall consist of the taxable years during which such foundation has been in existence.

(5) Other definitions

For purposes of this subsection—

(A) Qualifying distribution

The term “qualifying distribution” has the meaning given such term by section 4942(g).

(B) Assets

The assets of a private foundation for any taxable year shall be treated as equal to the excess determined under section 4942(e)(1).

(6) Treatment of successor organizations, etc.

In the case of—

(A) a private foundation which is a successor to another private foundation, this subsection shall be applied with respect to such successor by taking into account the experience of such other foundation, and

(B) a merger, reorganization, or division of a private foundation, this subsection shall be applied under regulations prescribed by the Secretary.

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498; amended Pub. L. 94-455, title XIX, §1901(b)(33)(N), Oct. 4, 1976, 90 Stat. 1802; Pub. L. 95-345, §2(a)(4), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95-600, title V, §520(a), Nov. 6, 1978, 92 Stat. 2884; Pub. L. 98-369, div. A, title III, §§302(a), 303(a), July 18, 1984, 98 Stat. 779, 781; Pub. L. 99-514, title XIII, §1301(j)(6), title XVIII, §1832, Oct. 22, 1986, 100 Stat. 2658, 2851.)

AMENDMENTS

1986—Subsec. (c)(5). Pub. L. 99-514, §1301(j), substituted “(relating to State and local bonds)” for “(relating to interest on certain governmental obligations)”.

Subsec. (e)(2). Pub. L. 99-514, §1832, added subpar. (B) and struck out former subpar. (B) and concluding provision which read as follows:

“(B) the average percentage payout for the base period equals or exceeds 5 percent.

In the case of an operating foundation (as defined in section 4942(j)(3)), subparagraph (B) shall be applied by substituting ‘3½ percent’ for ‘5 percent.’”

1984—Subsec. (d). Pub. L. 98-369, §302(a), added subsec. (d).

Subsec. (e). Pub. L. 98-369, §303(a), added subsec. (e). 1978—Subsec. (a). Pub. L. 95-600 substituted “2 percent” for “4 percent”.

Subsec. (c)(2). Pub. L. 95-345 inserted provision relating to payments with respect to securities loans.

1976—Subsec. (c). Pub. L. 94-455 substituted “capital gain net income” for “net capital gain” in par. (1) after “investment income and the”, and in par. (4) after “par. (1) in determining”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1301(j)(6) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1832 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.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 302(c)(1) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.”

Section 303(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.”

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 520(b) of Pub. L. 95-600 provided that: “The amendment made by the first section of this Act [probably meaning section 520(a), which amended this section] shall apply to taxable years beginning after September 30, 1977.”

Amendment by Pub. L. 95-345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95-345, set out as a note under section 509 of this title.

EFFECTIVE DATE

Section 101(k) of Pub. L. 91-172, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided:

“(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (l) [set out as a note below] the amendments made by this section [enacting this section and sections 507 to 509, 4941 to 4848, 6056, 6684, and 6685 of this title, amending sections 101, 170, 501, 503, 542, 663, 681, 878, 884, 1443, 2039, 2517, 4057, 4221, 4253, 4294, 5214, 6033, 6034, 6043, 6104, 6161, 6201, 6211 to 6214, 6344, 6501, 6503, 6511, 6512, 6601, 6652, 6653, 6659, 6676, 6677, 6679, 6682, 7207, 7422, and 7454 of this title, repealing section 504 of this title, and enacting provisions set out as notes under this section and section 1 of this title] shall take effect on January 1, 1970.

“(2) PROVISIONS EFFECTIVE FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1969.—The following provisions shall apply to taxable years beginning after December 31, 1969:

“(A) Sections 4940, 4942, 4943, and 4948 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section), and

“(B) The amendments made by subsection (d) [enacting section 6056 of this title, and amending sections 6033 and 6652 of this title] and paragraphs (3), (15), (16), (20), (21), (30), (31), (32), (33), (34), (35), and (61) of subsection (j) [amending sections 501, 542, 878, 884, 6033, 6034, and 6043 of this title and repealing section 504 of this title].

“(3) SECTIONS 508(a), (b), AND (c).—Sections 508 (a),(b), and (c) of the Internal Revenue Code of 1986 (as added by this section) shall take effect on October 9, 1969.”

SAVINGS PROVISION

Section 101(l) of Pub. L. 91-172, as amended by Pub. L. 93-490, §4(a), Oct. 26, 1974, 88 Stat. 1467; Pub. L. 94-455, title XIII, §§1301(a), 1309(a), Oct. 4, 1976, 90 Stat. 1713, 1729; Pub. L. 95-600, title VII, §703(f), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98-369, div. A, title III, §314(b)(1), July 18, 1984, 98 Stat. 787; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) REFERENCES TO INTERNAL REVENUE CODE PROVISIONS.—Except as otherwise expressly provided, references in the following paragraphs of this subsection are to sections of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as amended by this section.

“(2) SECTION 4941.—Section 4941 shall not apply to—

“(A) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946), pursuant to the terms of securities of such corporation in existence at the time acquired by the foundation, if such securities were acquired by the foundation before May 27, 1969;

“(B) the sale, exchange, or other disposition of property which is owned by a private foundation on May 26, 1969 (or which is acquired by a private foundation under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter), to a disqualified person, if such foundation is required to dispose of such property in order not to be liable for tax under section 4943 (relating to taxes on excess business holdings) applied, in the case of a disposition before January 1, 1977, without taking section 4943(c)(4) into account and it receives in return an amount which equals or exceeds the fair market value of such property at the time of such disposition or at the time a contract for such disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law);

“(C) the leasing of property or the lending of money or other extension of credit between a disqualified person and a private foundation pursuant to a binding contract in effect on October 9, 1969 (or pursuant to renewals of such a contract), until taxable years beginning after December 31, 1979, if such leasing or lending (or other extension of credit) remains at least as favorable as an arm's-length transaction with an unrelated party and if the execution of such contract was not at the time of such execution a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law);

“(D) the use of goods, services, or facilities which are shared by a private foundation and a disqualified person until taxable years beginning after December 31, 1979, if such use is pursuant to an arrangement in effect before October 9, 1969, and such arrangement was not a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law) at the time it was made and would not be a prohibited transaction if such section continued to apply;

“(E) the use of property in which a private foundation and a disqualified person have a joint or common interest, if the interests of both in such property were acquired before October 9, 1969; and

“(F) the sale, exchange, or other disposition (other than by lease) of property which is owned by a private foundation to a disqualified person if—

“(i) such foundation is leasing substantially all of such property under a lease to which subparagraph (C) applies,

“(ii) the disposition to such disqualified person occurs before January 1, 1978, and

“(iii) such foundation receives in return for the disposition to such disqualified person an amount which equals or exceeds the fair market value of such property at the time of the disposition or at the time (after June 30, 1976) a contract for the disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) or any corresponding provision of prior law).

“(3) SECTION 4942.—In the case of organizations organized before May 27, 1969, section 4942 shall—

“(A) for all purposes other than the determination of the minimum investment return under section 4942(j)(3)(B)(ii), for taxable years beginning before

January 1, 1972, apply without regard to section 4942(e) (relating to minimum investment return), and for taxable years beginning in 1972, 1973, and 1974, apply with an applicable percentage (as prescribed in section 4942(e)(3)) which does not exceed 4½ percent, 5 percent, and 5½ percent, respectively;

“(B) not apply to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on May 26, 1969, and at all times thereafter) of an instrument executed before May 27, 1969, with respect to the transfer of income producing property to such organization, except that section 4942 shall apply to such organization if the organization would have been denied exemption if section 504(a) had not been repealed by this Act, or would have had its deductions under section 642(c) limited if section 681(c) had not been repealed by this Act. In applying the preceding sentence, in addition to the limitations contained in section 504(a) or 681(c) before its repeal, section 504(a)(1) or 681(c)(1) shall be treated as not applying to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on January 1, 1951, and at all times thereafter) of an instrument executed before January 1, 1951, with respect to the transfer of income producing property to such organization before such date, if such transfer was irrevocable on such date;

“(C) apply to a grant to a private foundation described in section 4942(g)(1)(A)(ii) which is not described in section 4942(g)(1)(A)(i), pursuant to a written commitment which was binding on May 26, 1969, and at all times thereafter, as if such grant is a grant to an operating foundation (as defined in section 4942(j)(3)), if such grant is made for one or more of the purposes described in section 170(c)(2)(B) and is to be paid out to such private foundation on or before December 31, 1974;

“(D) apply, for purposes of section 4942(f), in such a manner as to treat any distribution made to a private foundation in redemption of stock held by such private foundation in a business enterprise as not essentially equivalent to a dividend under section 302(b)(1) if such redemption is described in paragraph (2)(B) of this subsection;

“(E) not apply to an organization which is prohibited by its governing instrument or other instrument from distributing capital or corpus to the extent the requirements of section 4942 are inconsistent with such prohibition; and

“(F) apply, in the case of an organization described in paragraph (4)(A) of this subsection,

“(i) by applying section 4942(e) without regard to the stock to which paragraph (4)(A)(ii) of this subsection applies,

“(ii) by applying section 4942(f) without regard to dividend income for such stock, and

“(iii) by defining the distributable amount as the sum of the amount determined under section 4942(d) (after the application of clauses (i) and (ii)), and the amount of the dividend income from such stock.

With respect to taxable years beginning after December 31, 1971, subparagraphs (B) and (E) shall apply only during the pendency of any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to comply with the provisions of section 4942, and in the case of subparagraph (B) for all periods after the termination of such judicial proceeding during which the governing instrument or any other instrument does not permit compliance with such provisions.

“(4) SECTION 4943.—

“(A) In the case of a private foundation—

“(i) which was incorporated before January 1, 1951;

“(ii) substantially all of the assets of which on May 26, 1969, consist of more than 90 percent of the stock of an incorporated business enterprise which

is licensed and regulated, the sales or contracts of which are regulated, and the professional representatives of which are licensed, by State regulatory agencies in at least 10 States; and

“(iii) which acquired such stock solely by gift, devise, or bequest, section 4943(c)(4)(A)(i) shall be applied with respect to the holdings of such foundation in such incorporated business enterprise as if it did not contain the phrase ‘, but in no event shall the percentage so substituted be more than 50 percent’, and section 4943(c)(4)(D) shall not apply with respect to such holdings. For purposes of the preceding sentence, stock of such enterprise in a trust created before May 27, 1969, of which the foundation is the remainder beneficiary shall be deemed to be held by such foundation on May 26, 1969, if such foundation held (without regard to such trust) more than 20 percent of the stock of such enterprise on May 26, 1969.

“(B) Subparagraph (A) shall apply to a private foundation only if—

“(i) the foundation does not purchase any stock or other interest in the enterprise described in subparagraph (A) after May 26, 1969, and does not acquire any stock or other interest in any other business enterprise which constitutes excess business holdings under section 4943; and

“(ii) in the last 5 taxable years ending on or before December 31, 1970, the foundation expends substantially all of its adjusted net income (as defined in section 4942(f)) for the purpose or function for which it is organized and operated.

“(C) For purposes of section 4943(c)(6), the term ‘purchase’ does not include an exchange which is described in paragraph (2)(B) of this subsection and which is pursuant to a plan for disposition of excess business holdings.

“(5) SECTION 4945.—Section 4945(d)(4) and (h) shall not apply to a grant which is described in paragraph (3)(C) of this subsection.

“(6) SECTION 508(e).—Section 508(e) shall not apply to require inclusion in governing instruments of any provisions inconsistent with this subsection.

“(7) SECTION 509(a).—In the case of any trust created under the terms of a will or a codicil to a will executed on or before March 30, 1924, by which the testator bequeathed all of the outstanding common stock of a corporation in trust, the income of which trust is to be used principally for the benefit of those from time to time employed by the corporation and their families, the trustees of which trust are elected or selected from among the employees of such corporation, and which trust does not own directly any stock in any other corporation, if the trust makes an irrevocable election under this paragraph within one year after the date of the enactment of this Act [Dec. 30, 1969], such trust shall be treated as not being a private foundation for purposes of the Internal Revenue Code of 1986 but shall be treated for purposes of such Code as if it were not exempt from tax under section 501(a) for any taxable year beginning after the date of the enactment of this Act [Dec. 30, 1969] and before the date (if any) on which such trust has complied with the requirements of section 507 for termination of the status of an organization as a private foundation.

“(8) CERTAIN REDEMPTIONS.—For purposes of applying section 302(b)(1) to the determination of the amount of gross investment income under sections 4940 and 4948(a), any distribution made to a private foundation in redemption of stock held by such private foundation in a business enterprise shall be treated as not essentially equivalent to a dividend, if such redemption is described in paragraph (2)(B) of this subsection.”

[Section 314(b)(2) of Pub. L. 98-369 provided that: “The amendment made by paragraph (1) [amending section 101(4)(A)(iii) of Pub. L. 91-172, set out above] shall apply as if included in section 101(l)(4) of the Tax Reform Act of 1969 [Pub. L. 91-172].”]

[Section 1301(b) of Pub. L. 94-455 provided that: “The amendments made by subsection (a) [enacting subpar.

(F) of section 101(2) of Pub. L. 91-172, set out above] shall apply to dispositions after the date of the enactment of this Act [Oct. 4, 1976] in taxable years ending after such date.”]

[Section 1309(b) of Pub. L. 94-455 provided that: “The amendment made by this section [amending section 101(2)(B) of Pub. L. 91-172, set out above] shall apply to dispositions made after the date of enactment of this Act [Oct. 4, 1976].”]

[Section 4(b) of Pub. L. 93-490 provided that: “The amendment made by this section [enacting subpar. (F) of section 101(3) of Pub. L. 91-172, set out above] shall apply to taxable years beginning after December 31, 1971.”]

DETERMINATION OF OPERATING FOUNDATION STATUS FOR CERTAIN PURPOSES

Pub. L. 100-647, title VI, §6204, Nov. 10, 1988, 102 Stat. 3730, provided that: “For purposes of section 302(c)(3) of the Deficit Reduction Act of 1984 [Pub. L. 98-369, set out below], a private foundation which constituted an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1986) for its last taxable year ending before January 1, 1983, shall be treated as constituting an operating foundation as of January 1, 1983.”

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.

PUBLIC SUPPORT REQUIREMENT NOT APPLICABLE TO CERTAIN EXISTING FOUNDATIONS

Section 302(c)(3) of Pub. L. 98-369 provided that: “A foundation which was an 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 5 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 2½ 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) \$10,000 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 \$10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed \$10,000.

(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.)

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.

AMENDMENTS

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 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(l)(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, never-

theless, 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) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 15 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year. The tax imposed by this subsection shall not apply to the undistributed income of a private foundation—

(1) for any taxable year for which it is an operating foundation (as defined in subsection (j)(3)), or

(2) to the extent that the foundation failed to distribute any amount solely because of an incorrect valuation of assets under subsection (e), if—

(A) the failure to value the assets properly was not willful and was due to reasonable cause,

(B) such amount is distributed as qualifying distributions (within the meaning of subsection (g)) by the foundation during the allowable distribution period (as defined in subsection (j)(2)),

(C) the foundation notifies the Secretary that such amount has been distributed (within the meaning of subparagraph (B)) to correct such failure, and

(D) such distribution is treated under subsection (h)(2) as made out of the undistributed income for the taxable year for which a tax would (except for this paragraph) have been imposed under this subsection.

(b) Additional tax

In any case in which an initial tax is imposed under subsection (a) on the undistributed income of a private foundation for any taxable year, if any portion of such income remains undistributed at the close of the taxable period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

(c) Undistributed income

For purposes of this section, the term “undistributed income” means, with respect to any private foundation for any taxable year as of any time, the amount by which—

(1) the distributable amount for such taxable year, exceeds

(2) the qualifying distributions made before such time out of such distributable amount.

(d) Distributable amount

For purposes of this section, the term “distributable amount” means, with respect to any

foundation for any taxable year, an amount equal to—

(1) the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by

(2) the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

(e) Minimum investment return

(1) In general

For purposes of subsection (d), the minimum investment return for any private foundation for any taxable year is 5 percent of the excess of—

(A) the aggregate fair market value of all assets of the foundation other than those which are used (or held for use) directly in carrying out the foundation's exempt purpose, over

(B) the acquisition indebtedness with respect to such assets (determined under section 514(c)(1) without regard to the taxable year in which the indebtedness was incurred).

(2) Valuation

(A) In general

For purposes of paragraph (1)(A), the fair market value of securities for which market quotations are readily available shall be determined on a monthly basis. For all other assets, the fair market value shall be determined at such times and in such manner as the Secretary shall by regulations prescribe.

(B) Reductions in value for blockage or similar factors

In determining the value of any securities under this paragraph, the fair market value of such securities (determined without regard to any reduction in value) shall not be reduced unless, and only to the extent that, the private foundation establishes that as a result of—

(i) the size of the block of such securities,

(ii) the fact that the securities held are securities in a closely held corporation, or

(iii) the fact that the sale of such securities would result in a forced or distress sale,

the securities could not be liquidated within a reasonable period of time except at a price less than such fair market value. Any reduction in value allowable under this subparagraph shall not exceed 10 percent of such fair market value.

(f) Adjusted net income

(1) Defined

For purposes of subsection (j), the term "adjusted net income" means the excess (if any) of—

(A) the gross income for the taxable year (determined with the income modifications provided by paragraph (2)), over

(B) the sum of the deductions (determined with the deduction modifications provided by paragraph (3)) which would be allowed to a corporation subject to the tax imposed by section 11 for the taxable year.

(2) Income modifications

The income modifications referred to in paragraph (1)(A) are as follows:

(A) section 103 (relating to State and local bonds) shall not apply,

(B) capital gains and losses from the sale or other disposition of property shall be taken into account only in an amount equal to any net short-term capital gain for the taxable year;

(C) there shall be taken into account—

(i) amounts received or accrued as repayments of amounts which were taken into account as a qualifying distribution within the meaning of subsection (g)(1)(A) for any taxable year;

(ii) notwithstanding subparagraph (B), amounts received or accrued from the sale or other disposition of property to the extent that the acquisition of such property was taken into account as a qualifying distribution (within the meaning of subsection (g)(1)(B)) for any taxable year; and

(iii) any amount set aside under subsection (g)(2) to the extent it is determined that such amount is not necessary for the purposes for which it was set aside; and

(D) section 483 (relating to imputed interest) shall not apply in the case of a binding contract made in a taxable year beginning before January 1, 1970.

(3) Deduction modifications

The deduction modifications referred to in paragraph (1)(B) are as follows:

(A) no deduction shall be allowed other than all the ordinary and necessary expenses paid or incurred for the production or collection of gross income or for the management, conservation, or maintenance of property held for the production of such income and the allowances for depreciation and depletion determined under section 4940(c)(3)(B), and

(B) section 265 (relating to expenses and interest relating to tax-exempt interest) shall not apply.

(4) Transitional rule

For purposes of paragraph (2)(B), the basis (for purposes of determining gain) of property held by a private foundation on December 31, 1969, and continuously thereafter to the date of its disposition, shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(g) Qualifying distributions defined

(1) In general

For purposes of this section, the term "qualifying distribution" means—

(A) any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation

which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or

(B) any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B).

(2) Certain set-asides

(A) In general

For all taxable years beginning on or after January 1, 1975, subject to such terms and conditions as may be prescribed by the Secretary, an amount set aside for a specific project which comes within one or more purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution if it meets the requirements of subparagraph (B).

(B) Requirements

An amount set aside for a specific project shall meet the requirements of this subparagraph if at the time of the set-aside the foundation establishes to the satisfaction of the Secretary that the amount will be paid for the specific project within 5 years, and either—

(i) at the time of the set-aside the private foundation establishes to the satisfaction of the Secretary that the project is one which can better be accomplished by such set-aside than by immediate payment of funds, or

(ii)(I) the project will not be completed before the end of the taxable year of the foundation in which the set-aside is made,

(II) the private foundation in each taxable year beginning after December 31, 1975 (or after the end of the fourth taxable year following the year of its creation, whichever is later), distributes amounts, in cash or its equivalent, equal to not less than the distributable amount determined under subsection (d) (without regard to subsection (i)) for purposes described in section 170(c)(2)(B) (including but not limited to payments with respect to set-asides which were treated as qualifying distributions in one or more prior years), and

(III) the private foundation has distributed (including but not limited to payments with respect to set-asides which were treated as qualifying distributions in one or more prior years) during the four taxable years immediately preceding its first taxable year beginning after December 31, 1975, or the fifth taxable year following the year of its creation, whichever is later, an aggregate amount, in cash or its equivalent, of not less than the sum of the following: 80 percent of the first preceding taxable year's distributable amount; 60 percent of the second preceding taxable year's distributable amount; 40 percent of the third preceding taxable year's distributable amount; and 20 percent of the fourth preceding taxable year's distributable amount.

(C) Certain failures to distribute

If, for any taxable year to which clause (ii)(II) of subparagraph (B) applies, the pri-

vate foundation fails to distribute in cash or its equivalent amounts not less than those required by such clause and—

(i) the failure to distribute such amounts was not willful and was due to reasonable cause, and

(ii) the foundation distributes an amount in cash or its equivalent which is not less than the difference between the amounts required to be distributed under clause (ii)(II) of subparagraph (B) and the amounts actually distributed in cash or its equivalent during that taxable year within the correction period (as defined in section 4963(e)),

such distribution in cash or its equivalent shall be treated for the purposes of this subparagraph as made during such year.

(D) Reduction in distribution amount

If, during the taxable years in the adjustment period for which the organization is a private foundation, the foundation distributes amounts in cash or its equivalent which exceed the amount required to be distributed under clause (ii)(II) of subparagraph (B) (including but not limited to payments with respect to set-asides which were treated as qualifying distributions in prior years), then for purposes of this subsection the distribution required under clause (ii)(II) of subparagraph (B) for the taxable year shall be reduced by an amount equal to such excess.

(E) Adjustment period

For purposes of subparagraph (D), with respect to any taxable year of a private foundation, the taxable years in the adjustment period are the taxable years (not exceeding 5) beginning after December 31, 1975, and immediately preceding the taxable year.

In the case of a set-aside which satisfies the requirements of clause (i) of subparagraph (B), for good cause shown, the period for paying the amount set aside may be extended by the Secretary.

(3) Certain contributions to section 501(c)(3) organizations

For purposes of this section, the term "qualifying distribution" includes a contribution to a section 501(c)(3) organization described in paragraph (1)(A)(i) or (ii) if—

(A) not later than the close of the first taxable year after its taxable year in which such contribution is received, such organization makes a distribution equal to the amount of such contribution and such distribution is a qualifying distribution (within the meaning of paragraph (1) or (2), without regard to this paragraph) which is treated under subsection (h) as a distribution out of corpus (or would be so treated if such section 501(c)(3) organization were a private foundation which is not an operating foundation), and

(B) the private foundation making the contribution obtains adequate records or other sufficient evidence from such organization showing that the qualifying distribution described in subparagraph (A) has been made by such organization.

(4) Limitation on administrative expenses allocable to making of contributions, gifts, and grants

(A) In general

The amount of the grant administrative expenses paid during any taxable year which may be taken into account as qualifying distributions shall not exceed the excess (if any) of—

(i) .65 percent of the sum of the net assets of the private foundation for such taxable year and the immediately preceding 2 taxable years, over

(ii) the aggregate amount of grant administrative expenses paid during the 2 preceding taxable years which were taken into account as qualifying distributions.

(B) Grant administrative expenses

For purposes of this paragraph, the term “grant administrative expenses” means any administrative expenses which are allocable to the making of qualified grants.

(C) Qualified grants

For purposes of this paragraph, the term “qualified grant” means any contribution, gift, or grant which is a qualifying distribution.

(D) Net asset

For purposes of this paragraph, the term “net assets” means, with respect to any taxable year, the excess determined under subsection (e)(1) for such taxable year.

(E) Transitional rule

In the case of any preceding taxable year which begins before January 1, 1985, the amount of the grant administrative expenses taken into account under subparagraph (A)(ii) shall not exceed .65 percent of the net assets of the private foundation for such taxable year.

(F) Termination

This paragraph shall not apply to taxable years beginning after December 31, 1990.

(h) Treatment of qualifying distributions

(1) In general

Except as provided in paragraph (2), any qualifying distribution made during a taxable year shall be treated as made—

(A) first out of the undistributed income of the immediately preceding taxable year (if the private foundation was subject to the tax imposed by this section for such preceding taxable year) to the extent thereof,

(B) second out of the undistributed income for the taxable year to the extent thereof, and

(C) then out of corpus.

For purposes of this paragraph, distributions shall be taken into account in the order of time in which made.

(2) Correction of deficient distributions for prior taxable years, etc.

In the case of any qualifying distribution which (under paragraph (1)) is not treated as made out of the undistributed income of the

immediately preceding taxable year, the foundation may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year or out of corpus. The election shall be made by the foundation at such time and in such manner as the Secretary shall by regulations prescribe.

(i) Adjustment of distributable amount where distributions during prior years have exceeded income

(1) In general

If, for the taxable years in the adjustment period for which an organization is a private foundation—

(A) the aggregate qualifying distributions treated (under subsection (h)) as made out of the undistributed income for such taxable year or as made out of corpus (except to the extent subsection (g)(3) with respect to the recipient private foundation or section 170(b)(1)(E)(ii) applies) during such taxable years, exceed

(B) the distributable amounts for such taxable years (determined without regard to this subsection),

then, for purposes of this section (other than subsection (h)), the distributable amount for the taxable year shall be reduced by an amount equal to such excess.

(2) Taxable years in adjustment period

For purposes of paragraph (1), with respect to any taxable year of a private foundation the taxable years in the adjustment period are the taxable years (not exceeding 5) beginning after December 31, 1969, and immediately preceding the taxable year.

(j) Other definitions

For purposes of this section—

(1) Taxable period

The term “taxable period” means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

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

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

(2) Allowable distribution period

The term “allowable distribution period” means, with respect to any private foundation, the period beginning with the first day of the first taxable year following the taxable year in which the incorrect valuation (described in subsection (a)(2)) occurred and ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (a)) under section 6212 extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary determines is reasonable and necessary to permit a distribution of undistributed income under this section.

(3) Operating foundation

For purposes of this section, the term “operating foundation” means any organization—

(A) which makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of the lesser of—

(i) its adjusted net income (as defined in subsection (f)), or

(ii) its minimum investment return; and

(B)(i) substantially more than half of the assets of which are devoted directly to such activities or to functionally related businesses (as defined in paragraph (4)), or to both, or are stock of a corporation which is controlled by the foundation and substantially all of the assets of which are so devoted.

(ii) which normally makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated in an amount not less than two-thirds of its minimum investment return (as defined in subsection (e)), or

(iii) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is normally received from the general public and from 5 or more exempt organizations which are not described in section 4946(a)(1)(H) with respect to each other or the recipient foundation; not more than 25 percent of the support (other than gross investment income) of which is normally received from any one such exempt organization; and not more than half of the support of which is normally received from gross investment income.

Notwithstanding the provisions of subparagraph (A), if the qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) of an organization for the taxable year exceed the minimum investment return for the taxable year, clause (ii) of subparagraph (A) shall not apply unless substantially all of such qualifying distributions are made directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated.

(4) Functionally related business

The term “functionally related business” means—

(A) a trade or business which is not an unrelated trade or business (as defined in section 513), or

(B) an activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization.

(5) Certain elderly care facilities

For purposes of this section (but no other provisions of this title), the term “operating

foundation” includes any organization which, on May 26, 1969, and at all times thereafter before the close of the taxable year, operated and maintained as its principal functional purpose facilities for the long-term care, comfort, maintenance, or education of permanently and totally disabled persons, elderly persons, needy widows, or children but only if such organization meets the requirements of paragraph (3)(B)(ii).

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 502; amended Pub. L. 94-455, title XIII, §§1302(a), 1303(a), 1310(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1713, 1715, 1729, 1834; Pub. L. 95-600, title V, §522(a), Nov. 6, 1978, 92 Stat. 2885; Pub. L. 96-596, §2(a)(1)(C), (2)(B), (3)(B), (4)(A), Dec. 24, 1980, 94 Stat. 3469-3472; Pub. L. 97-34, title VIII, §823(a), Aug. 13, 1981, 95 Stat. 351; Pub. L. 97-448, title I, §108(b), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98-369, div. A, title III, §§304(a), (b), 305(b)(4), 314(a)(1), (2), July 18, 1984, 98 Stat. 782-784, 787; Pub. L. 99-514, title XIII, §1301(j)(6), Oct. 22, 1986, 100 Stat. 2658.)

AMENDMENTS

1986—Subsec. (f)(2)(A). Pub. L. 99-514 substituted “(relating to State and local bonds)” for “(relating to interest on certain governmental obligations)”.

1984—Subsec. (a)(2)(B). Pub. L. 98-369, §314(a)(1), substituted “subsection (j)(2)” for “subsection (j)(4)”.

Subsec. (d)(1). Pub. L. 98-369, §304(b), substituted “the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by” for “the minimum investment return reduced by”.

Subsec. (f)(1). Pub. L. 98-369, §314(a)(2), substituted “subsection (j)” for “subsection (d)”.

Subsec. (g)(1)(A). Pub. L. 98-369, §304(a)(2), substituted “including that portion of reasonable and necessary administrative expenses” for “including administrative expenses”.

Subsec. (g)(2)(C)(ii). Pub. L. 98-369, §305(b)(4), substituted “section 4963(e)” for “section 4962(e)”.

Subsec. (g)(4). Pub. L. 98-369, §304(a)(1), added par. (4).

1983—Subsec. (j)(3)(A)(i). Pub. L. 97-448 substituted “or” for “and” at the end.

1981—Subsec. (d)(1). Pub. L. 97-34, §823(a)(1), struck out “or the adjusted net income (whichever is higher)” after “return”.

Subsec. (j)(3). Pub. L. 97-34, §823(a)(2), (3), inserted in subpar. (A) “the lesser of” after “substantially all of”, designated existing provisions as cl. (i), added cl. (ii), and inserted provision respecting applicability of subpar. (A)(ii).

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

Subsec. (g)(2)(C)(ii). Pub. L. 96-596, §2(a)(4)(A), substituted “the correction period (as defined in section 4962(e))” for “the initial correction period provided in subsection (j)(2)”.

Subsec. (j)(1). Pub. L. 96-596, §2(a)(2)(B), substituted provision ending the taxable period on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section under section 6212 of this title or the date on which the tax imposed by subsec. (a) of this section is assessed for provision ending the taxable period on the date of mailing the notice of deficiency with respect to a tax imposed by subsec. (a) of this section under section 6212 of this title.

Subsec. (j)(2). Pub. L. 96-596, §2(a)(3)(B)(i), (iii), redesignated par. (4) as (2) and struck out former par. (2), which defined correction period, with respect to any private foundation for any taxable year, as the period beginning with the first day of the taxable year and ending 90 days after the date of mailing a notice of defi-

ciency with respect to the tax imposed by subsec. (b) 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 permit a distribution of undistributed income.

Subsec. (j)(3)(B)(i). Pub. L. 96-596, §2(a)(3)(B)(ii), substituted “paragraph (4)” for “paragraph (5)”.

Subsec. (j)(4) to (6). Pub. L. 96-596, §2(a)(3)(B)(iii), (iv), redesignated pars. (5) and (6) as (4) and (5), respectively.

1978—Subsec. (j)(6). Pub. L. 95-600 added par. (6).

1976—Subsec. (a)(2)(C). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (e). Pub. L. 94-455, §1303(a), among other changes, substituted provisions establishing a fixed percentage rate to be used in computing the minimum investment return for any private foundation for provisions establishing a variable applicable percentage rate of 7 percent in 1970 and an applicable rate to be determined by the Secretary after 1970, for use in computing the minimum investment return for any private foundation and inserted provisions relating to reduction in value for blockage or similar factors.

Subsec. (f)(2)(D). Pub. L. 94-455, §1310(a), added subpar. (D).

Subsec. (g)(2). Pub. L. 94-455, §1302(a), among other changes, inserted reference to all taxable years beginning on or after Jan. 1, 1975, requirement that the project will not be completed before the end of the taxable year of the foundation in which the set-aside is made, and subpars. (C) to (E).

Subsecs. (h)(2), (j)(2)(B). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 304(c) of Pub. L. 98-369 provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984.”

Amendment by section 305(b)(4) of Pub. L. 98-369 applicable to taxable events occurring after Dec. 31, 1984, see section 305(c) of Pub. L. 98-369, set out as an Effective Date note under section 4962 of this title.

Section 314(a)(4) of Pub. L. 98-369 provided that: “The amendments made by this subsection [amending this section and section 6501 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984].”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 823(b) of Pub. L. 97-34 provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981.”

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 522(b) of Pub. L. 95-600 provided that: “The amendment made by subsection (a) [amending this sec-

tion] shall apply to taxable years beginning after December 31, 1969.”

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1302(c) of Pub. L. 94-455 provided that: “The amendments made by this section [amending this section and section 6501 of this title] shall apply to taxable years beginning after December 31, 1974.”

Section 1303(b) of Pub. L. 94-455 provided that: “The amendment made by this section [amending this section] applies to taxable years beginning after December 31, 1975.”

Section 1310(b) of Pub. L. 94-455 provided that: “The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976].”

SAVINGS PROVISION

Applicability of section to organizations organized before May 27, 1969, see section 101(l)(3) of Pub. L. 91-172, set out as a note under section 4940 of this title.

§ 4943. Taxes on excess business holdings

(a) Initial tax

(1) Imposition

There is hereby imposed on the excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period a tax equal to 5 percent of the value of such holdings.

(2) Special rules

The tax imposed by paragraph (1)—

(A) shall be imposed on the last day of the taxable year, but

(B) with respect to the private foundation's holdings in any business enterprise, shall be determined as of that day during the taxable year when the foundation's excess holdings in such enterprise were the greatest.

(b) Additional tax

In any case in which an initial tax is imposed under subsection (a) with respect to the holdings of a private foundation in any business enterprise, if, at the close of the taxable period with respect to such holdings, the foundation still has excess business holdings in such enterprise, there is hereby imposed a tax equal to 200 percent of such excess business holdings.

(c) Excess business holdings

For purposes of this section—

(1) In general

The term “excess business holdings” means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

(2) Permitted holdings in a corporation

(A) In general

The permitted holdings of any private foundation in an incorporated business enterprise are—

(i) 20 percent of the voting stock, reduced by

(ii) the percentage of the voting stock owned by all disqualified persons.

In any case in which all disqualified persons together do not own more than 20 percent of the voting stock of an incorporated business enterprise, nonvoting stock held by the private foundation shall also be treated as permitted holdings.

(B) 35 percent rule where third person has effective control of enterprise

If—

(i) the private foundation and all disqualified persons together do not own more than 35 percent of the voting stock of an incorporated business enterprise, and

(ii) it is established to the satisfaction of the Secretary that effective control of the corporation is in one or more persons who are not disqualified persons with respect to the foundation,

then subparagraph (A) shall be applied by substituting 35 percent for 20 percent.

(C) 2 percent de minimis rule

A private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in section 4946(a)(1)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

(3) Permitted holdings in partnerships, etc.

The permitted holdings of a private foundation in any business enterprise which is not incorporated shall be determined under regulations prescribed by the Secretary. Such regulations shall be consistent in principle with paragraphs (2) and (4), except that—

(A) in the case of a partnership or joint venture, “profits interest” shall be substituted for “voting stock”, and “capital interest” shall be substituted for “nonvoting stock”.

(B) in the case of a proprietorship, there shall be no permitted holdings, and

(C) in any other case, “beneficial interest” shall be substituted for “voting stock”.

(4) Present holdings

(A)(i) In applying this section with respect to the holdings of any private foundation in a business enterprise, if such foundation and all disqualified persons together have holdings in such enterprise in excess of 20 percent of the voting stock on May 26, 1969, the percentage of such holdings shall be substituted for “20 percent,” and for “35 percent” (if the percentage of such holdings is greater than 35 percent), wherever it appears in paragraph (2), but in no event shall the percentage so substituted be more than 50 percent.

(ii) If the percentage of the holdings of any private foundation and all disqualified persons together in a business enterprise (or if the percentage of the holdings of the private foundation in such enterprise) decreases for any reason, clause (i) and subparagraph (D) shall, except as provided in the next sentence, be ap-

plied for all periods after such decrease by substituting such decreased percentage for the percentage held on May 26, 1969, but in no event shall the percentage substituted be less than 20 percent. For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as—

(I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and

(II) the number of shares held by the foundation is not affected by any such issuance or redemption.

(iii) The percentage substituted under clause (i), and any percentage substituted under subparagraph (D), shall be applied both with respect to the voting stock and, separately, with respect to the value of all outstanding shares of all classes of stock.

(iv) In the case of any merger, recapitalization, or other reorganization involving one or more business enterprises, the application of clauses (i), (ii), and (iii) shall be determined under regulations prescribed by the Secretary.

(B) Any interest in a business enterprise which a private foundation holds on May 26, 1969, if the private foundation on such date has excess business holdings, shall (while held by the foundation) be treated as held by a disqualified person (rather than by the private foundation)—

(i) during the 20-year period beginning on such date, if the private foundation and all disqualified persons have more than a 95 percent voting stock interest on such date,

(ii) except as provided in clause (i), during the 15-year period beginning on such date, if the foundation and all disqualified persons have more than a 75 percent voting stock interest (or more than a 75 percent profits or beneficial interest in the case of any unincorporated enterprise) on such date or more than a 75 percent interest in the value of all outstanding shares of all classes of stock (or more than a 75 percent capital interest in the case of a partnership or joint venture) on such date, or

(iii) during the 10-year period beginning on such date, in any other case.

(C) The 20-year, 15-year, and 10-year periods described in subparagraph (B) for the disposition of excess business holdings shall be suspended during the pendency of any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to allow disposition of such holdings.

(D)(i) If, at any time during the second phase, all disqualified persons together have holdings in a business enterprise in excess of 2 percent of the voting stock of such enterprise, then subparagraph (A)(i) shall be applied by substituting for “50 percent” the following: “50 percent, of which not more than 25 percent shall be voting stock held by the private foundation”.

(ii) If, immediately before the close of the second phase, clause (i) of this subparagraph did not apply with respect to a business enterprise, then for all periods after the close of the second phase subparagraph (A)(i) shall be applied by substituting for “50 percent” the following: “35 percent, or if at any time after the close of the second phase all disqualified persons together have had holdings in such enterprise which exceed 2 percent of the voting stock, 35 percent, of which not more than 25 percent shall be voting stock held by the private foundation”.

(iii) For purposes of this subparagraph, the term “second phase” means the 15-year period immediately following the 20-year, 15-year, or 10-year period described in subparagraph (B), whichever applies, as modified by subparagraph (C).

(E) Clause (ii) of subparagraph (B) shall not apply with respect to any business enterprise if before January 1, 1971, one or more individuals who are substantial contributors (or members of the family (within the meaning of section 4946(d)) of one or more substantial contributors) to the private foundation and who on May 26, 1969, held more than 15 percent of the voting stock of the enterprise elect, in such manner as the Secretary may by regulations prescribe, not to have such clause (ii) apply with respect to such enterprise.

(5) Holdings acquired by trust or will

Paragraph (4) (other than subparagraph (B)(i)) shall apply to any interest in a business enterprise which a private foundation acquires under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter, as if such interest were held on May 26, 1969, except that the 15-year and 10-year periods prescribed in clauses (ii) and (iii) of paragraph (4)(B) shall commence with respect to such interest on the date of distribution under the trust or will in lieu of May 26, 1969.

(6) 5-year period to dispose of gifts, bequests, etc.

Except as provided in paragraph (5), if, after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have—

(A) excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings; or

(B) an increase in excess business holdings in such enterprise (determined without regard to subparagraph (A)), subparagraph (A) shall apply, except that the excess holdings immediately preceding the increase therein shall not be treated, solely because of such increase, as held by a disqualified person (rather than by the foundation).

In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase “or by a disqualified person” in the material preceding subparagraph (A).

(7) 5-year extension of period to dispose of certain large gifts and bequests

The Secretary may extend for an additional 5-year period the period under paragraph (6) for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if—

(A) the foundation establishes that—

(i) diligent efforts to dispose of such holdings have been made within the initial 5-year period, and

(ii) disposition within the initial 5-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of such holdings,

(B) before the close of the initial 5-year period—

(i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the extension, and

(ii) the private foundation submits the plan described in clause (i) to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Secretary any response received by the private foundation from the Attorney General (or other appropriate State official) to such plan during such 5-year period, and

(C) the Secretary determines that such plan can reasonably be expected to be carried out before the close of the extension period.

(d) Definitions; special rules

For purposes of this section—

(1) Business holdings

In computing the holdings of a private foundation, or a disqualified person (as defined in section 4946) with respect thereto, in any business enterprise, any stock or other interest owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. The preceding sentence shall not apply with respect to an income or remainder interest of a private foundation in a trust described in section 4947(a)(2), but only if, in the case of property transferred in trust after May 26, 1969, such foundation holds only an income interest or only a remainder interest in such trust.

(2) Taxable period

The term “taxable period” means, with respect to any excess business holdings of a pri-

vate foundation in a business enterprise, the period beginning on the first day on which there are excess holdings and ending on the earlier of—

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

(B) the date on which the tax imposed by subsection (a) in respect of such holdings is assessed.

(3) Business enterprise

The term “business enterprise” does not include—

(A) a functionally related business (as defined in section 4942(j)(4)), or

(B) a trade or business at least 95 percent of the gross income of which is derived from passive sources.

For purposes of subparagraph (B), gross income from passive sources includes the items excluded by section 512(b)(1), (2), (3), and (5), and income from the sale of goods (including charges or costs passed on at cost to purchasers of such goods or income received in settlement of a dispute concerning or in lieu of the exercise of the right to sell such goods) if the seller does not manufacture, produce, physically receive or deliver, negotiate sales of, or maintain inventories in such goods.

(4) Disqualified person

The term “disqualified person” (as defined in section 4946(a)) does not include a plan described in section 4975(e)(7) with respect to the holdings of a private foundation described in paragraphs (4) and (5) of subsection (c).

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 507; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-596, §2(a)(1)(D), (2)(C), (3)(C), (4)(B), Dec. 24, 1980, 94 Stat. 3469-3472; Pub. L. 98-369, div. A, title III, §§307(a), 308(a), 309(a), 310(a), 314(c)(1), July 18, 1984, 98 Stat. 784, 785, 787.)

AMENDMENTS

1984—Subsec. (c)(4)(A)(ii). Pub. L. 98-369, §308(a), substituted “For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as (I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and (II) the number of shares held by the foundation is not affected by any such issuance or redemption” for “For purposes of this clause, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be determined only as of the close of each taxable year of the private foundation unless the aggregate of the percentage decreases attributable to the issuances of stock (or such issuances and redemptions) during such taxable year equals or exceeds 1 percent”.

Subsec. (c)(4)(B)(i). Pub. L. 98-369, §309(a), substituted “the private foundation and all disqualified persons have” for “the private foundation has”.

Subsec. (c)(6). Pub. L. 98-369, §310(a), inserted following subpar. (B) “In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase ‘or by a disqualified person’ in the material preceding subparagraph (A).”

Subsec. (c)(7). Pub. L. 98-369, §307(a), added par. (7).

Subsec. (d)(4). Pub. L. 98-369, §314(c)(1), added par. (4). 1980—Subsec. (b). Pub. L. 96-596, §2(a)(1)(D), substituted “taxable period” for “correction period”.

Subsec. (d)(2). Pub. L. 96-596, §2(a)(2)(C), substituted provision ending the taxable period on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section under section 6212 of this title in respect to such holdings or the date on which the tax imposed by subsec. (a) of this section in respect to such holdings is assessed for provision ending the taxable period on the date of mailing the notice of deficiency with respect to a tax imposed by subsec. (a) of this section under section 6212 of this title in respect to such holdings.

Subsec. (d)(3), (4). Pub. L. 96-596, §2(a)(3)(C), (4)(B), redesignated par. (4) as (3), and in subpar. (A) of par. (3) as so redesignated, substituted “section 4942(j)(4)” for “section 4942(j)(5)”, and struck out par. (3), which defined correction period, with respect to excess business holdings of a private foundation in a business enterprise, as the period ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b) 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 permit orderly disposition of such excess business holdings.

1976—Subsecs. (c), (d). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 307(b) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to business holdings with respect to which the 5-year period described in section 4943(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] ends on or after November 1, 1983.

“(2) TRANSITIONAL RULE.—Any plan submitted to the Secretary of the Treasury or his delegate on or before the 60th day after the date of the enactment of this Act [July 18, 1984] shall be treated as submitted before the close of the initial 5-year period referred to in section 4943(c)(7)(B) of the Internal Revenue Code of 1986 (as added by subsection (a)).”

Section 308(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall apply to increases and decreases occurring after the date of the enactment of this Act [July 18, 1984].”

Section 309(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 101(b) of the Tax Reform Act of 1969 [section 101(b) of Pub. L. 91-172 which enacted this section].”

Section 310(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [July 18, 1984].”

Section 314(c)(2) of Pub. L. 98-369 provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to taxable years beginning after the date of the enactment of this Act [July 18, 1984].”

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 section to private foundations, see section 101(l)(4) of Pub. L. 91-172, set out as a note under section 4940 of this title.

§ 4944. Taxes on investments which jeopardize charitable purpose

(a) Initial taxes

(1) On the private foundation

If a private foundation invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes, there is hereby imposed on the making of such investment a tax equal to 5 percent of the amount so invested for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in the making of the investment, knowing that it is jeopardizing the carrying out of any of the foundation's exempt purposes, a tax equal to 5 percent of the amount so invested 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 making of the investment.

(b) Additional taxes

(1) On the foundation

In any case in which an initial tax is imposed by subsection (a)(1) on the making of an investment and such investment is not removed from jeopardy within the taxable period, there is hereby imposed a tax equal to 25 percent of the amount of the investment. 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 removal from jeopardy, there is hereby imposed a tax equal to 5 percent of the amount of the investment. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the removal from jeopardy.

(c) Exception for program-related investments

For purposes of this section, investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property, shall not be considered as investments which jeopardize the carrying out of exempt purposes.

(d) 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 any one investment, all such persons shall be jointly and severally liable under such paragraph with respect to such investment.

(2) Limit for management

With respect to any one investment, the maximum amount of the tax imposed by sub-

section (a)(2) shall not exceed \$5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed \$10,000.

(e) Definitions

For purposes of this section—

(1) Taxable period

The term “taxable period” means, with respect to any investment which jeopardizes the carrying out of exempt purposes, the period beginning with the date on which the amount is so invested and ending on the earliest of—

(A) the date of mailing of 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 the amount so invested is removed from jeopardy.

(2) Removal from jeopardy

An investment which jeopardizes the carrying out of exempt purposes shall be considered to be removed from jeopardy when such investment is sold or otherwise disposed of, and the proceeds of such sale or other disposition are not investments which jeopardize the carrying out of exempt purposes.

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 511; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-596, §2(a)(1)(E), (2)(D), (3)(D), Dec. 24, 1980, 94 Stat. 3469-3471.)

AMENDMENTS

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

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

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 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 10 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 2½ 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 making 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 \$5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed \$10,000.

(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 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

(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 (excluding therefrom any preceding taxable year which begins before January 1, 1970). 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” means, 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.)

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.

AMENDMENTS

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 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

Section 302(c)(2) of Pub. L. 98-369 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

- (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

Section 1606(b) of Pub. L. 99-514 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

Section 306(c) of Pub. L. 98-369 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.

(3) Segregated amounts

For purposes of paragraph (2)(B), a trust with respect to which amounts are segregated shall separately account for the various income, deduction, and other items properly attributable to each of such segregated amounts.

(b) Special rules

(1) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(2) Limit to segregated amounts

If any amounts in the trust are segregated within the meaning of subsection (a)(2)(B) of this section, the value of the net assets for purposes of subsections (c)(2) and (g) of section 507 shall be limited to such segregated amounts.

(3) Sections 4943 and 4944

Sections 4943 and 4944 shall not apply to a trust which is described in subsection (a)(2) if—

(A) all the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170(c)(2)(B), and all amounts in such trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value not more than 60 percent of the aggregate fair market value of all amounts in such trusts, or

(B) a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

(4) Section 507

The provisions of section 507(a) shall not apply to a trust which is described in subsection (a)(2) by reason of a distribution of qualified employer securities (as defined in section 664(g)(4)) to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by section 664(g)).

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 517; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title XV, §1530(c)(9), Aug. 5, 1997, 111 Stat. 1079; Pub. L. 107-16, title V, §542(e)(4), June 7, 2001, 115 Stat. 85; Pub. L. 108-357, title IV, §413(c)(30), Oct. 22, 2004, 118 Stat. 1509.)

AMENDMENT OF SUBSECTION (a)(2)(A)

Pub. L. 107-16, title V, §542(e)(4), (f)(3), title IX, §901, June 7, 2001, 115 Stat. 85, 86, 150, provided that, applicable to deductions for taxable years beginning after Dec. 31, 2009, subsection (a)(2)(A) of this section is temporarily amended by inserting “642(c),” after “170(f)(2)(B),”. See Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2004—Subsecs. (a)(1), (2), (b)(3). Pub. L. 108-357 struck out “556(b)(2),” after “545(b)(2),” wherever appearing.

1997—Subsec. (b)(4). Pub. L. 105-34 added par. (4).

1976—Subsec. (b)(1). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to deductions for taxable years beginning after Dec. 31, 2009, see section 542(f)(3) of Pub. L. 107-16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

§ 4948. Application of taxes and denial of exemption with respect to certain foreign organizations

(a) Tax on income of certain foreign organizations

In lieu of the tax imposed by section 4940, there is hereby imposed for each taxable year on the gross investment income (within the meaning of section 4940(c)(2)) derived from sources within the United States (within the meaning of section 861) by every foreign organization which is a private foundation for the taxable year a tax equal to 4 percent of such income.

(b) Certain sections inapplicable

Section 507 (relating to termination of private foundation status), section 508 (relating to special rules with respect to section 501(c)(3) organizations), and this chapter (other than this section) shall not apply to any foreign organization which has received substantially all of its support (other than gross investment income) from sources outside the United States.

(c) Denial of exemption to foreign organizations engaged in prohibited transactions

(1) General rule

A foreign organization described in subsection (b) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.

(2) Prohibited transactions

For purposes of this subsection, the term “prohibited transaction” means any act or failure to act (other than with respect to section 4942(e)) which would subject a foreign organization described in subsection (b), or a disqualified person (as defined in section 4946) with respect thereto, to liability for a penalty under section 6684 or a tax under section 507 if such foreign organization were a domestic organization.

(3) Taxable years affected

(A) Except as provided in subparagraph (B), a foreign organization described in subsection (b) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) for all taxable years beginning with the taxable year during which it is notified by the Secretary that it has engaged in a prohibited transaction. The Secretary shall publish such notice in the Federal Register on the day on which he so notifies such foreign organization.

(B) Under regulations prescribed by the Secretary any foreign organization described in subsection (b) which is denied exemption from taxation under section 501(a) by reason of paragraph (1) may, with respect to the second taxable year following the taxable year in which notice is given under subparagraph (A) (or any taxable year thereafter), file claim for exemption from taxation under section 501(a). If the Secretary is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall not, with respect to taxable years beginning with the taxable year with respect to which such claim is filed, be denied exemption from taxation under section 501(a) by reason of

any prohibited transaction which was engaged in before the date on which such notice was given under subparagraph (A).

(4) Disallowance of certain charitable deductions

No gift or bequest shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if made—

(A) to a foreign organization described in subsection (b) after the date on which the Secretary publishes notice under paragraph (3)(A) that he has notified such organization that it has engaged in a prohibited transaction, and

(B) in a taxable year of such organization for which it is not exempt from taxation under section 501(a) by reason of paragraph (1).

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 518; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108-357, title IV, §413(c)(30), Oct. 22, 2004, 118 Stat. 1509.)

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108-357 struck out “556(b)(2),” after “545(b)(2),” in introductory provisions.

1976—Subsec. (c). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Subchapter B—Black Lung Benefit Trusts

Sec.	
4951.	Taxes on self-dealing.
4952.	Taxes on taxable expenditures.
4953.	Tax on excess contributions to black lung benefit trusts.

§ 4951. 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 trust described in section 501(c)(21). 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 trustee acting only as a trustee of the trust) who participates in the act of self-dealing.

(2) On trustee

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any trustee of such a trust in an act of self-dealing between a disqualified person and the trust, knowing that it is such an act, a tax equal to 2½ 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 such trustee 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 trust described in section 501(c)(21) and in which the act is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of such a trust) who participated in the act of self-dealing.

(2) On trustee

In any case in which an additional tax is imposed by paragraph (1), if a trustee of such a trust 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 such trustee who refused to agree to part or all of the correction.

(c) 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.

(d) Self-dealing

(1) In general

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

(A) sale, exchange, or leasing of real or personal property between a trust described in section 501(c)(21) and a disqualified person;

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

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

(D) payment of compensation (or payment or reimbursement of expenses) by such a trust to a disqualified person; and

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of such a trust.

(2) Special rules

For purposes of paragraph (1)—

(A) the transfer of personal property by a disqualified person to such a trust shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien;

(B) the furnishing of goods, services, or facilities by a disqualified person to such a trust 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 the purposes specified in section 501(c)(21)(A); and

(C) the payment of compensation (and the payment or reimbursement of expenses) by

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

(e) 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)(C), 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 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 trust in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(4) Disqualified person

The term “disqualified person” means, with respect to a trust described in section 501(c)(21), a person who is—

- (A) a contributor to the trust,
- (B) a trustee of the trust,
- (C) an owner of more than 10 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 contributor to the trust,

(D) an officer, director, or employee of a person who is a contributor to the trust,

(E) the spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in subparagraph (A), (B), (C), or (D),

(F) a corporation of which persons described in subparagraph (A), (B), (C), (D), or

(E) own more than 35 percent of the total combined voting power,

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

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

For purposes of subparagraphs (C)(i) and (F), 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 only those individuals described in subparagraph (E) of this paragraph. For purposes of subparagraphs (C) (ii) and (iii), (G), and (H), 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 only those individuals described in subparagraph (E) of this paragraph.

(f) Payments of benefits

For purposes of this section, a payment, out of assets or income of a trust described in section 501(c)(21), for the purposes described in subclause (I) or (IV) of section 501(c)(21)(A)(i) shall not be considered an act of self-dealing.

(Added Pub. L. 95-227, §4(c)(1), Feb. 10, 1978, 92 Stat. 18; amended Pub. L. 96-596, §2(a)(1)(G), (H), (2)(F), (3)(E), Dec. 24, 1980, 94 Stat. 3469-3471; Pub. L. 102-486, title XIX, §1940(b), Oct. 24, 1992, 106 Stat. 3035.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102-486 substituted “subclause (I) or (IV) of section 501(c)(21)(A)(i)” for “clause (i) of section 501(c)(21)(A)”.

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

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

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

Subsec. (e)(4), (5). Pub. L. 96-596, §2(a)(3)(E), redesignated par. (5) as (4) and struck out former 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 under section 6212 of this title with respect to the tax imposed by subsec. (b)(1) of this section, 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 correction of the act of self-dealing.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-486 applicable to taxable years beginning after Dec. 31, 1991, see section 1940(d) of Pub. L. 102-486, set out as a note under section 192 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.

EFFECTIVE DATE

Subchapter effective 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 a note under section 192 of this title.

§ 4952. Taxes on taxable expenditures

(a) Tax imposed

(1) On the fund

There is hereby imposed on each taxable expenditure (as defined in subsection (d)) from the assets or income of a trust described in section 501(c)(21) a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

(2) On the trustee

There is hereby imposed on the agreement of any trustee of such a trust to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 2½ 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 the trustee who agreed to the making of the expenditure.

(b) Additional taxes

(1) On the fund

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 trustee out of the assets of the trust.

(2) On the trustee

In any case in which an additional tax is imposed by paragraph (1), if a trustee refused to agree to a 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 trustee who refused to agree to part or all of the correction.

(c) Joint and several liability

For purposes of subsections (a) and (b), if more than one person is liable under subsection (a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

(d) Taxable expenditure

For purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a trust described in section 501(c)(21) other than for a purpose specified in such section.

(e) Definitions

(1) Correction

The terms "correction" and "correct" mean, with respect to any taxable expenditure, re-

covering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible, contributions by the person or persons whose liabilities for black lung benefit claims (as defined in section 192(e)) are to be paid out of the trust to the extent necessary to place the trust in a financial position not worse than that in which it would be if the taxable expenditure had not been made.

(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. 95-227, §4(c)(1), Feb. 10, 1978, 92 Stat. 21; amended Pub. L. 96-596, §2(a)(1)(I), (2)(G), Dec. 24, 1980, 94 Stat. 3469, 3471.)

AMENDMENTS

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

Subsec. (e)(2). Pub. L. 96-596, §2(a)(2)(G), 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 a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b)(1) of this section, 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 reasonable and necessary to bring about the correction of the taxable expenditure.

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.

§ 4953. Tax on excess contributions to black lung benefit trusts

(a) Tax imposed

There is hereby imposed for each taxable year a tax in an amount equal to 5 percent of the amount of the excess contributions made by a person to or under a trust or trusts described in section 501(c)(21). The tax imposed by this subsection shall be paid by the person making the excess contribution.

(b) Excess contribution

For purposes of this section, the term "excess contribution" means the sum of—

(1) the amount by which the amount contributed for the taxable year to a trust or trusts described in section 501(c)(21) exceeds the amount of the deduction allowable to such person for such contributions for the taxable year under section 192, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the excess of the maximum amount allowable as a deduction under section 192 for the taxable year over the amount contributed to the trust or trusts for the taxable year, and

(B) amounts distributed from the trust to the contributor which were excess contributions for the preceding taxable year.

(c) Treatment of withdrawal of excess contributions

Amounts distributed during the taxable year from a trust described in section 501(c)(21) to the contributor thereof the sum of which does not exceed the amount of the excess contribution made by the contributor shall not be treated as—

(1) an act of self-dealing (within the meaning of section 4951),

(2) a taxable expenditure (within the meaning of section 4952), or

(3) an act contrary to the purposes for which the trust is exempt from taxation under section 501(a).

(Added Pub. L. 95-227, §4(c)(1), Feb. 10, 1978, 92 Stat. 22.)

Subchapter C—Political Expenditures of Section 501(c)(3) Organizations

Sec.
4955. Taxes on political expenditures of section 501(c)(3) organizations.

PRIOR PROVISIONS

A prior subchapter C, consisting of sections 4961 to 4963 of this title, was redesignated subchapter E.

§ 4955. Taxes on political expenditures of section 501(c)(3) organizations

(a) Initial taxes

(1) On the organization

There is hereby imposed on each political expenditure by a section 501(c)(3) organization a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the organization.

(2) On the management

There is hereby imposed on the agreement of any organization manager to the making of any expenditure, knowing that it is a political expenditure, a tax equal to 2½ 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 organization manager who agreed to the making of the expenditure.

(b) Additional taxes

(1) On the organization

In any case in which an initial tax is imposed by subsection (a)(1) on a political 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 organization.

(2) On the management

In any case in which an additional tax is imposed by paragraph (1), if an organization 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 political expenditure. The tax imposed by this paragraph shall be paid by any organization 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 1 person is liable under subsection (a)(2) or (b)(2) with respect to the making of a political expenditure, all such persons shall be jointly and severally liable under such subsection with respect to such expenditure.

(2) Limit for management

With respect to any 1 political expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed \$10,000.

(d) Political expenditure

For purposes of this section—

(1) In general

The term “political expenditure” means any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(2) Certain other expenditures included

In the case of an organization which is formed primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office (or which is effectively controlled by a candidate or prospective candidate and which is availed of primarily for such purposes), the term “political expenditure” includes any of the following amounts paid or incurred by the organization:

(A) Amounts paid or incurred to such individual for speeches or other services.

(B) Travel expenses of such individual.

(C) Expenses of conducting polls, surveys, or other studies, or preparing papers or other materials, for use by such individual.

(D) Expenses of advertising, publicity, and fundraising for such individual.

(E) Any other expense which has the primary effect of promoting public recognition, or otherwise primarily accruing to the benefit, of such individual.

(e) Coordination with sections 4945 and 4958

If tax is imposed under this section with respect to any political expenditure, such expenditure shall not be treated as a taxable expenditure for purposes of section 4945 or an excess benefit for purposes of section 4958.

(f) Other definitions

For purposes of this section—

(1) Section 501(c)(3) organization

The term “section 501(c)(3) organization” means any organization which (without regard

to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a).

(2) Organization manager

The term “organization manager” means—
 (A) any officer, director, or trustee of the organization (or individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization), and

(B) with respect to any expenditure, any employee of the organization having authority or responsibility with respect to such expenditure.

(3) Correction

The terms “correction” and “correct” mean, with respect to any political expenditure, recovering part or all of the expenditure to the extent recovery is possible, establishment of safeguards to prevent future political expenditures, and where full recovery is not possible, such additional corrective action as is prescribed by the Secretary by regulations.

(4) Taxable period

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

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

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

(Added Pub. L. 100-203, title X, §10712(a), Dec. 22, 1987, 101 Stat. 1330-465; amended Pub. L. 104-168, title XIII, §1311(c)(1), July 30, 1996, 110 Stat. 1478.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-168 substituted “sections 4945 and 4958” for “section 4945” in heading and inserted “or an excess benefit for purposes of section 4958” before period at end of text.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1311(d)(1), (2) of Pub. L. 104-168 provided that: “(1) IN GENERAL.—The amendments made by this section [enacting section 4958 of this title and amending this section and sections 4963, 6213, 7422, and 7454 of this title] (other than subsection (b)) [amending section 501 of this title] shall apply to excess benefit transactions occurring on or after September 14, 1995.

“(2) BINDING CONTRACTS.—The amendments referred to in paragraph (1) shall not apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.”

EFFECTIVE DATE

Section 10712(d) of Pub. L. 100-203 provided that: “The amendments made by this section [enacting this section and amending sections 4962, 4963, 6213, 6501, 6503, 6684, 7422, and 7454 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 1987].”

Subchapter D—Failure by Certain Charitable Organizations To Meet Certain Qualification Requirements

Sec.
 4958. Taxes on excess benefit transactions.

Sec.

PRIOR PROVISIONS

A prior subchapter D, consisting of sections 4961 to 4963 of this title, was redesignated subchapter E.

§ 4958. Taxes on excess benefit transactions

(a) Initial taxes

(1) On the disqualified person

There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(2) On the management

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

(b) Additional tax on the disqualified person

In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(c) Excess benefit transaction; excess benefit

For purposes of this section—

(1) Excess benefit transaction

(A) In general

The term “excess benefit transaction” means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

(B) Excess benefit

The term “excess benefit” means the excess referred to in subparagraph (A).

(2) Authority to include certain other private inurement

To the extent provided in regulations prescribed by the Secretary, the term “excess benefit transaction” includes any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization but only if such transaction results in

inurement not permitted under paragraph (3) or (4) of section 501(c), as the case may be. In the case of any such transaction, the excess benefit shall be the amount of the inurement not so permitted.

(d) Special rules

For purposes of this section—

(1) Joint and several liability

If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.

(2) Limit for management

With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000.

(e) Applicable tax-exempt organization

For purposes of this subchapter, the term “applicable tax-exempt organization” means—

(1) any organization which (without regard to any excess benefit) would be described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a), and

(2) any organization which was described in paragraph (1) at any time during the 5-year period ending on the date of the transaction.

Such term shall not include a private foundation (as defined in section 509(a)).

(f) Other definitions

For purposes of this section—

(1) Disqualified person

The term “disqualified person” means, with respect to any transaction—

(A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization,

(B) a member of the family of an individual described in subparagraph (A), and

(C) a 35-percent controlled entity.

(2) Organization manager

The term “organization manager” means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).

(3) 35-percent controlled entity

(A) In general

The term “35-percent controlled entity” means—

(i) a corporation in which persons described in subparagraph (A) or (B) of paragraph (1) own more than 35 percent of the total combined voting power,

(ii) a partnership in which such persons own more than 35 percent of the profits interest, and

(iii) a trust or estate in which such persons own more than 35 percent of the beneficial interest.

(B) Constructive ownership rules

Rules similar to the rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of this paragraph.

(4) Family members

The members of an individual’s family shall be determined under section 4946(d); except that such members also shall include the brothers and sisters (whether by the whole or half blood) of the individual and their spouses.

(5) Taxable period

The term “taxable period” means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of—

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

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

(6) Correction

The terms “correction” and “correct” mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the organization 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. 104-168, title XIII, §1311(a), July 30, 1996, 110 Stat. 1475.)

EFFECTIVE DATE

Section applicable to excess benefit transactions occurring on or after Sept. 14, 1995, and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104-168, set out as an Effective Date of 1996 Amendment note under section 4955 of this title.

Subchapter E—Abatement of First and Second Tier Taxes in Certain Cases

Sec. 4961.	Abatement of second tier taxes where there is correction.
4962.	Abatement of first tier taxes in certain cases.
4963.	Definitions.

AMENDMENTS

1996—Pub. L. 104-168, title XIII, §1311(a), July 30, 1996, 110 Stat. 1475, redesignated former subchapter D as E.
1987—Pub. L. 100-203, title X, §10712(a), (b)(5), Dec. 22, 1987, 101 Stat. 1330-465, 1330-467, redesignated former subchapter C as D, and struck out “private foundation” before “first tier taxes” in item 4962.

1984—Pub. L. 98-369, div. A, title III, §305(b)(1), (2), July 18, 1984, 98 Stat. 783, 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 the subchapter heading, added item 4962, and renumbered former item 4962 as 4963.

§ 4961. Abatement of second tier taxes where there is correction

(a) General rule

If any taxable event is corrected during the correction period for such event, then any second tier tax imposed with respect to such event (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if

collected shall be credited or refunded as an overpayment.

(b) Supplemental proceeding

If the determination by a court that the taxpayer is liable for a second tier tax has become final, such court shall have jurisdiction to conduct any necessary supplemental proceeding to determine whether the taxable event was corrected during the correction period. Such a supplemental proceeding may be begun only during the period which ends on the 90th day after the last day of the correction period. Where such a supplemental proceeding has begun, the reference in the second sentence of section 6213(a) to a final decision of the Tax Court shall be treated as including a final decision in such supplemental proceeding.

(c) Suspension of period of collection for second tier tax

(1) Proceeding in District Court or United States Court of Federal Claims

If, not later than 90 days after the day on which the second tier tax is assessed, the first tier tax is paid in full and a claim for refund of the amount so paid is filed, no levy or proceeding in court for the collection of the second tier tax shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2) (and of any supplemental proceeding with respect thereto under subsection (b)). Notwithstanding section 7421(a), the collection by levy or proceeding may be enjoined during the time such prohibition is in force by a proceeding in the proper court.

(2) Suit must be brought to determine liability

If, within 90 days after the day on which his claim for refund is denied, the person against whom the second tier tax was assessed fails to begin a proceeding described in section 7422 for the determination of his liability for such tax, paragraph (1) shall cease to apply with respect to such tax, effective on the day following the close of the 90-day period referred to in this paragraph.

(3) Suspension of running of period of limitations on collection

The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court with respect to any second tier tax described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

(4) Jeopardy collection

If the Secretary makes a finding that the collection of the second tier tax is in jeopardy, nothing in this subsection shall prevent the immediate collection of such tax.

(Added Pub. L. 96-596, §2(c)(1), Dec. 24, 1980, 94 Stat. 3472; amended Pub. L. 99-514, title XVIII, §1899A(50), Oct. 22, 1986, 100 Stat. 2961; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsec. (c)(1). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court” in heading.

1986—Subsec. (c)(1). Pub. L. 99-514 substituted “United States Claims Court” for “Court of Claims” in heading.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section 2(d) of Pub. L. 96-596, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) FIRST TIER TAXES.—The amendments made by this section [enacting this section and section 4962 of this title and amending sections 4941 to 4945, 4951, 4952, 4971, 4975, 6213, 6214, 6503, and 7422 of this title] with respect to any first tier tax shall take effect as if included in the Internal Revenue Code of 1986 [formerly I.R.C. 1954] when such tax was first imposed.

“(2) SECOND TIER TAXES.—The amendments made by this section with respect to any second tier tax shall apply only with respect to taxes assessed after the date of the enactment of this Act [Dec. 24, 1980]. Nothing in the preceding sentence shall be construed to permit the assessment of a tax in a case to which, on the date of the enactment of this Act, the doctrine of res judicata applies.

“(3) FIRST AND SECOND TIER TAX.—For purposes of this subsection, the terms ‘first tier tax’ and ‘second tier tax’ have the respective meanings given to such terms by section 4962 of the Internal Revenue Code of 1986.”

§ 4962. Abatement of first tier taxes in certain cases

(a) General rule

If it is established to the satisfaction of the Secretary that—

(1) a taxable event was due to reasonable cause and not to willful neglect, and

(2) such event was corrected within the correction period for such event,

then any qualified first tier tax imposed with respect to such event (including interest) shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be credited or refunded as an overpayment.

(b) Qualified first tier tax

For purposes of this section, the term “qualified first tier tax” means any first tier tax imposed by subchapter A, C, or D of this chapter, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing).

(c) Special rule for tax on political expenditures of section 501(c)(3) organizations

In the case of the tax imposed by section 4955(a), subsection (a)(1) shall be applied by substituting “not willful and flagrant” for “due to reasonable cause and not to willful neglect”.

(Added Pub. L. 98-369, div. A, title III, §305(a), July 18, 1984, 98 Stat. 783; amended Pub. L. 100-203, title X, §10712(b)(1), (2), (4), Dec. 22, 1987, 101 Stat. 1330-467; Pub. L. 105-34, title XVI, §1603(a), Aug. 5, 1997, 111 Stat. 1096.)

PRIOR PROVISIONS

A prior section 4962 was renumbered section 4963 of this title.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-34 substituted “subchapter A, C, or D” for “subchapter A or C”.

1987—Pub. L. 100-203, §10712(b)(4), struck out “private foundation” before “first tier taxes” in section catchline.

Subsec. (a). Pub. L. 100-203, §10712(b)(2), substituted “any qualified first tier tax” for “any private foundation first tier tax” in closing provisions.

Subsec. (b). Pub. L. 100-203, §10712(b)(1), added subsec. (b) and struck out former subsec. (b) “Private foundation first tier tax” which read as follows: “For purposes of this section, the term ‘private foundation first tier tax’ means any first tier tax imposed by subchapter A of chapter 42, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing).”

Subsec. (c). Pub. L. 100-203, §10712(b)(1), added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1603(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and section 6033 of this title] shall take effect as if included in the provisions of the Taxpayer Bill of Rights 2 [Pub. L. 104-168] to which such amendments relate.”

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100-203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE

Section 305(c) of Pub. L. 98-369 provided that: “The amendments made by this section [enacting this section, redesignating former section 4962 as 4963, and amending sections 4942, 6213, and 6503 of this title] shall apply to taxable events occurring after December 31, 1984.”

§ 4963. Definitions

(a) First tier tax

For purposes of this subchapter, the term “first tier tax” means any tax imposed by subsection (a) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975.

(b) Second tier tax

For purposes of this subchapter, the term “second tier tax” means any tax imposed by subsection (b) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975.

(c) Taxable event

For purposes of this subchapter, the term “taxable event” means any act (or failure to act) giving rise to liability for tax under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975.

(d) Correct

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), the term “correct” has the same meaning as when used in the section which imposes the second tier tax.

(2) Special rules

The term “correct” means—

(A) in the case of the second tier tax imposed by section 4942(b), reducing the amount of the undistributed income to zero,

(B) in the case of the second tier tax imposed by section 4943(b), reducing the amount of the excess business holdings to zero, and

(C) in the case of the second tier tax imposed by section 4944, removing the investment from jeopardy.

(e) Correction period

For purposes of this subchapter—

(1) In general

The term “correction period” means, with respect to any taxable event, the period beginning on the date on which such event occurs and ending 90 days after the date of mailing under section 6212 of a notice of deficiency with respect to the second tier tax imposed on such taxable event, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a) (determined without regard to the last sentence of section 4961(b)), and

(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the taxable event.

(2) Special rules for when taxable event occurs

For purposes of paragraph (1), the taxable event shall be treated as occurring—

(A) in the case of section 4942, on the first day of the taxable year for which there was a failure to distribute income,

(B) in the case of section 4943, on the first day on which there are excess business holdings,

(C) in the case of section 4971, on the last day of the plan year in which there is an accumulated funding deficiency, and

(D) in any other case, the date on which such event occurred.

(Added Pub. L. 96-596, §2(c)(1), Dec. 24, 1980, 94 Stat. 3473, §4962; renumbered §4963, Pub. L. 98-369, div. A, title III, §305(a), July 18, 1984, 98 Stat. 783; amended Pub. L. 100-203, title X, §10712(b)(3), Dec. 22, 1987, 101 Stat. 1330-467; Pub. L. 104-168, title XIII, §1311(c)(2), July 30, 1996, 110 Stat. 1478.)

AMENDMENTS

1996—Subsecs. (a) to (c). Pub. L. 104-168 inserted “4958,” after “4955.”

1987—Subsecs. (a) to (c). Pub. L. 100-203 inserted reference to section 4955 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-168 applicable to excess benefit transactions occurring on or after Sept. 14, 1995, and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104-168, set out as a note under section 4955 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100-203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE

For effective date of section 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 a note under section 4961 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.
4978.	Tax on certain dispositions by employee stock ownership plans and certain cooperatives.
[4978A, 4978B. Repealed.]	
4979.	Tax on certain excess contributions.
4979A.	Tax on certain prohibited allocations of qualified securities.
4980.	Tax on reversion of qualified plan assets to employer.
4980A.	Tax on excess distributions from qualified retirement plans. ¹
4980B.	Failure to satisfy continuation coverage requirements of group health plans.
4980C.	Requirements for issuers of qualified long-term care insurance contracts.
4980D.	Failure to meet certain group health plan requirements.
4980E.	Failure of employer to make comparable Archer MSA contributions.
4980F.	Failure of applicable plans reducing benefit accruals to satisfy notice requirements.
4980G.	Failure of employer to make comparable health savings account contributions.

AMENDMENTS

2003—Pub. L. 108-173, title XII, §1201(d)(4)(B), Dec. 8, 2003, 117 Stat. 2478, added item 4980G.

2002—Pub. L. 107-147, title IV, §417(17)(B), Mar. 9, 2002, 116 Stat. 56, substituted “Archer MSA contributions” for “medical savings account contributions” in item 4980E.

2001—Pub. L. 107-16, title VI, §659(a)(2), June 7, 2001, 115 Stat. 139, added item 4980F.

1998—Pub. L. 105-206, title VI, §6023(18)(B), July 22, 1998, 112 Stat. 825, substituted “certain tax-favored accounts and annuities” for “individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities” in item 4973.

1996—Pub. L. 104-191, title III, §§301(c)(4)(B), 326(b), title IV, §402(b), Aug. 21, 1996, 110 Stat. 2050, 2066, 2087, added items 4980C, 4980D, and 4980E.

Pub. L. 104-188, title I, §1602(b)(5)(B), Aug. 20, 1996, 110 Stat. 1834, struck out item 4978B “Tax on disposition of employer securities to which section 133 applied”.

1989—Pub. L. 101-239, title VII, §§7301(d)(2), 7304(a)(2)(C)(iii), Dec. 19, 1989, 103 Stat. 2348, 2353, struck out item 4978A “Tax on certain dispositions of employer securities to which section 2057 applied” and added item 4978B.

1988—Pub. L. 100-647, title I, §1011A(g)(1)(B), title III, §3011(c), Nov. 10, 1988, 102 Stat. 3479, 3625, redesignated item 4981A as 4980A and added item 4980B.

1987—Pub. L. 100-203, title X, §10413(b)(2), Dec. 22, 1987, 101 Stat. 1330-438, added item 4978A.

1986—Pub. L. 99-514, title XI, §§1117(b)(2), 1121(a)(2), 1131(c)(2), 1132(b), 1133(b), title XVIII, §§1854(a)(9)(C), 1899A(75), Oct. 22, 1986, 100 Stat. 2462, 2465, 2478, 2480, 2483, 2877, 2963, added item 4972, inserted “section” in item 4973, substituted “Excise tax on certain accumula-

tions in qualified retirement plans” for “Tax on certain accumulations in individual retirement accounts” in item 4974, struck out “and allocations” after “certain dispositions” in item 4978, and added items 4979, 4979A, 4980, and 4981A.

1984—Pub. L. 98-369, div. A, title IV, §491(d)(56), title V, §§511(c)(2), 531(e)(2), 545(b), July 18, 1984, 98 Stat. 852, 862, 886, 896, substituted “and certain individual retirement annuities” for “certain individual retirement annuities, and certain retirement bonds” in item 4973 and added items 4976 to 4978.

1982—Pub. L. 97-248, title II, §237(c)(2), Sept. 3, 1982, 96 Stat. 511, struck out item 4972 “Tax on excess contributions for self-employed individuals”.

1974—Pub. L. 93-406, title II, §§1013(b), 2001(f)(2), 2002(h)(3), Sept. 2, 1974, 88 Stat. 920, 957, 970, added chapter heading and analysis of sections 4971 to 4975.

§ 4971. Taxes on failure to meet minimum funding standards

(a) Initial tax

For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 10 percent (5 percent in the case of a multiemployer plan) on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year.

(b) Additional tax

In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected.

(c) Definitions

For purposes of this section—

(1) Accumulated funding deficiency

The term “accumulated funding deficiency” has the meaning given to such term by the last two sentences of section 412(a).

(2) Correct

The term “correct” means, with respect to an accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

(3) Taxable period

The term “taxable period” means, with respect to an accumulated funding deficiency, the period beginning with the end of the plan year in which there is an accumulated funding deficiency and ending on the earlier of—

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

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

(d) Notification of the Secretary of Labor

Before issuing a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity (but not more than 60 days)—

(1) to require the employer responsible for contributing to or under the plan to eliminate the accumulated funding deficiency, or

¹Section repealed by Pub. L. 105-34 without corresponding amendment of chapter analysis.