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Editorial Notes

AMENDMENTS

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

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

§ 4940. Excise tax based on investment income

(a) Tax-exempt foundations

There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to 1.39 percent of the net investment income of such foundation for the taxable year.

(b) Taxable foundations

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

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

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

(c) Net investment income defined

(1) In general

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

(2) Gross investment income

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

(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 not be taken into account any gain or loss from the sale or other disposition of property to the extent that such gain or loss is taken into account for purposes of computing the tax imposed by section 511.

(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 or carrybacks.

(D) Except to the extent provided by regulation, under rules similar to the rules of section 1031 (including the exception under subsection (a)(2) thereof), no gain or loss shall be taken into account with respect to any portion of property used for a period of not less than 1 year for a purpose or function constituting the basis of the private foundation's exemption if the entire property is exchanged immediately following such period solely for property of like kind which is to be used primarily for a purpose or function constituting the basis for such foundation's exemption.

(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).

(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; Pub. L. 109-280, title XII, §1221(a)(1), (b), Aug. 17, 2006, 120 Stat. 1089; Pub. L. 110-172, §3(f), Dec. 29, 2007, 121 Stat. 2475; Pub. L. 116-94, div. Q, title II, §206(a), (b), Dec. 20, 2019, 133 Stat. 3246.)

Editorial Notes

CODIFICATION

Section 1221(a)(1), (b) of Pub. L. 109-280, which directed the amendment of section 4940 without speci-

fying the act to be amended, was executed to this section, which is section 4940 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116-94, §206(a), substituted “1.39 percent” for “2 percent”.

Subsec. (e). Pub. L. 116-94, §206(b), struck out subsec. (e) which provided for reduction in tax where private foundation met certain distribution requirements.

2007—Subsec. (c)(4)(A). Pub. L. 110-172 amended text generally. Prior to amendment, text read as follows: “There shall be taken into account only gains and losses from the sale or other disposition of property used for the production 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).”

2006—Subsec. (c)(2). Pub. L. 109-280, §1221(a)(1), inserted at end “Such term shall also include income from sources similar to those in the preceding sentence.” See Codification note above.

Subsec. (c)(4)(A). Pub. L. 109-280, §1221(b)(1), substituted “gross investment income (as defined in paragraph (2))” for “interest, dividends, rents, and royalties”. See Codification note above.

Subsec. (c)(4)(C). Pub. L. 109-280, §1221(b)(2), inserted “or carrybacks” after “carryovers”. See Codification note above.

Subsec. (c)(4)(D). Pub. L. 109-280, §1221(b)(3), added subpar. (D). See Codification note above.

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”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-94, div. Q, title II, §206(c), Dec. 20, 2019, 133 Stat. 3246, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 20, 2019].”

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109-280, to which such amendment relates, see section 3(j) of Pub. L. 110-172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to taxable years beginning after Aug. 17, 2006, see section 1221(c) of Pub. L. 109-280, set out as a note under section 509 of this title.

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

Pub. L. 98-369, div. A, title III, § 302(c)(1), July 18, 1984, 98 Stat. 780, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984."

Pub. L. 98-369, div. A, title III, § 303(b), July 18, 1984, 98 Stat. 782, 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

Pub. L. 95-600, title V, § 520(b), Nov. 6, 1978, 92 Stat. 2884, 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

Pub. L. 91-172, title I, § 101(k), Dec. 30, 1969, 83 Stat. 533, 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

Pub. L. 91-172, title I, § 101(l), Dec. 30, 1969, 83 Stat. 533, 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.”

[Pub. L. 98-369, div. A, title III, §314(b)(2), July 18, 1984, 98 Stat. 787, 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(7)(4) of the Tax Reform Act of 1969 [Pub. L. 91-172].”]

[Pub. L. 94-455, title XIII, §1301(b), Oct. 4, 1976, 90 Stat. 1713, 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.”]

[Pub. L. 94-455, title XIII, §1309(b), Oct. 4, 1976, 90 Stat. 1729, 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].”]

[Pub. L. 93-490, §4(b), Oct. 26, 1974, 88 Stat. 1467, 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

Pub. L. 98-369, div. A, title III, §302(c)(3), July 18, 1984, 98 Stat. 781, 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 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. In the case of a government official (as defined in section 4946(c)), a tax shall be imposed by this paragraph only if such disqualified person participates in the act of self-dealing knowing that it is such an act.

(2) On foundation manager

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, a tax equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in

the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the act of self-dealing.

(b) Additional taxes

(1) On self-dealer

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

(2) On foundation manager

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

(c) Special rules

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

(1) Joint and several liability

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

(2) \$20,000 limit for management

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

(d) Self-dealing

(1) In general

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

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

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

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

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

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

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