

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”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title XII, §1212(f), Aug. 17, 2006, 120 Stat. 1075, provided that: “The amendments made by this section [amending this section and sections 4942 to 4945 and 4958 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].”

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, nevertheless, 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 30 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

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 private 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 distributions by nonoperating private foundations to supporting organizations

(A) In general

For purposes of this section, the term “qualifying distribution” shall not include any amount paid by a private foundation which is not an operating foundation to—

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

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

(I) a disqualified person of the private foundation directly or indirectly controls such organization or a supported organization (as defined in section 509(f)(3)) of such organization, or

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

(B) Type I and type II supporting organizations

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

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

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

(C) Functionally integrated type III supporting organizations

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

(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)(F)(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) 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 re-

turn 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; Pub. L. 109-280, title XII, §§ 1212(b), 1244(a), Aug. 17, 2006, 120 Stat. 1074, 1107; Pub. L. 110-172, § 11(a)(14)(D), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 113-295, div. A, title II, § 221(a)(105), Dec. 19, 2014, 128 Stat. 4053.)

Editorial Notes

CODIFICATION

Sections 1212(b) and 1244(a) of Pub. L. 109-280, which directed the amendment of section 4942 without specifying the act to be amended, were executed to this section, which is section 4942 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2014—Subsec. (g)(2)(A). Pub. L. 113-295, § 221(a)(105)(A), substituted “Subject” for “For all taxable years beginning on or after January 1, 1975, subject”.

Subsec. (i)(2). Pub. L. 113-295, § 221(a)(105)(B), struck out “beginning after December 31, 1969, and” after “(not exceeding 5)”.

2007—Subsec. (i)(1)(A). Pub. L. 110-172 substituted “section 170(b)(1)(F)(ii)” for “section 170(b)(1)(E)(ii)”.

2006—Subsec. (a). Pub. L. 109-280, § 1212(b), substituted “30 percent” for “15 percent” in introductory provisions. See Codification note above.

Subsec. (g)(4). Pub. L. 109-280, §1244(a), amended heading and text of par. (4) generally, substituting provisions relating to limitation on distributions by nonoperating private foundations to supporting organizations for provisions relating to limitation on administrative expenses allocable to making of contributions, gifts, and grants. See Codification note above.

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 subparagraph. (A) “the lesser of” after “substantially all of”, designated existing provisions as cl. (i), added cl. (ii), and inserted provision respecting applicability of subparagraph. (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 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 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 subparagraph. (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”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

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

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(b) of Pub. L. 109-280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109-280, set out as a note under section 4941 of this title.

Pub. L. 109-280, title XII, §1244(c), Aug. 17, 2006, 120 Stat. 1108, provided that: “The amendments made by this section [amending this section and section 4945 of this title] shall apply to distributions and expenditures after the date of the enactment of this Act [Aug. 17, 2006].”

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

Pub. L. 98-369, div. A, title III, §304(c), July 18, 1984, 98 Stat. 783, 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.

Pub. L. 98-369, div. A, title III, §314(a)(4), July 18, 1984, 98 Stat. 787, 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

Pub. L. 97-34, title VIII, §823(b), Aug. 13, 1981, 95 Stat. 352, 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

Pub. L. 95-600, title V, §522(b), Nov. 6, 1978, 92 Stat. 2885, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.”

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIII, §1302(c), Oct. 4, 1976, 90 Stat. 1715, 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.”

Pub. L. 94-455, title XIII, §1303(b), Oct. 4, 1976, 90 Stat. 1715, provided that: “The amendment made by this section [amending this section] applies to taxable years beginning after December 31, 1975.”

Pub. L. 94-455, title XIII, §1310(b), Oct. 4, 1976, 90 Stat. 1729, 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 10 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 applied 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