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GiftLaw Pro

Sec. 4958 Taxes on Excess Benefit Transactions

Code Sections

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(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) SPECIAL RULES FOR DONOR ADVISED FUNDS

In the case of any donor advised fund (as defined in section 4966(d)(2)) --

(A) the term "excess benefit transaction" includes any grant, loan, compensation, or other similar payment from such fund to a person described in subsection (f)(7) with respect to such fund, and

(B) the term "excess benefit" includes, with respect to any transaction described in subparagraph (A), the amount of any such grant, loan, compensation, or other similar payment.

(3) SPECIAL RULES FOR SUPPORTING ORGANIZATIONS

(A) IN GENERAL

In the case of any organization described in section 509(a)(3)--

(i) the term "excess benefit transaction" includes--

(I) any grant, loan, compensation, or other similar payment provided by such organization to a person described in subparagraph (B), and

(II) any loan provided by such organization to a disqualified person (other than an organization described in subparagraph (C)(ii) and

(ii) the term "excess benefit" includes, with respect to any transaction described in clause (i), the amount of any such grant, loan, compensation, or other similar payment.

(B) PERSON DESCRIBED

A person is described in this subparagraph if such person is--

(i) a substantial contributor to such organization,

(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting 'persons described in clause (i) or (ii) of section 4958(c)(3)(B)' for 'persons described in subparagraph (A) or (B) of paragraph (1)' in subparagraph (A)(i) thereof).

(C) SUBSTANTIAL CONTRIBUTOR

For purposes of this paragraph--

(i) IN GENERAL.--

The term "substantial contributor" means any person who contributed or bequeathed an

aggregate amount of more than \$5,000 to the organization, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received by the organization from such person. In the case of a trust, such term also means the creator of the trust. Rules similar to the rules of subparagraphs (B) and (C) of section 507(d)(2) shall apply for purposes of this subparagraph.

(ii) EXCEPTION- Such term shall not include-

(I) Such term shall not include any organization described in paragraph (1), (2), or (4) of section 509(a), and

(II) any organization which is treated as described in such paragraph (2) by reason of the last sentence of section 509(a) and which is a supported organization (as defined in section 509(f)(3)) of the organization to which subparagraph (A) applies.

(4) 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 \$20,000.

(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),
- (C) a 35-percent controlled entity,
- (D) any person who is described in subparagraph (A), (B), or (C) with respect to an organization described in section 509(a)(3) and organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the applicable tax-exempt organization.
- (E) which involves a donor advised fund (as defined in section 4966(d)(2)), any person who is described in paragraph (7) with respect to such donor advised fund (as so defined), and
- (F) which involves a sponsoring organization (as defined in section 4966(d)(1)), any person who is described in paragraph (8) with respect to such sponsoring organization (as so defined).

(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, except that in the case of any correction of an excess benefit transaction described in subsection (c)(2), no amount repaid in a manner prescribed by the Secretary may be held in any donor advised fund.

(7) DONORS AND DONOR ADVISORS

For purposes of paragraph (1)(E), a person is described in this paragraph if such person --

(A) is described in section 4966(d)(2)(A)(iii),

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

(C) is a 35-percent controlled entity (as defined in paragraph (3) by substituting "persons described in subparagraph (A) or (B) of paragraph (7)" for "persons described in subparagraph (A) or (B) of paragraph (1)" in subparagraph (A)(i) thereof).

(8) INVESTMENT ADVISORS

For purposes of paragraph (1)(F) --

(A) IN GENERAL

A person is described in this paragraph if such person --

(i) is an investment advisor,

(ii) is a member of the family of an individual described in clause (i), or

(iii) is a 35-percent controlled entity (as defined in paragraph (3) by substituting "persons described in clause (i) or (ii) of paragraph (8)(A)" for "persons described in subparagraph (A) or (B) of paragraph (1)" in subparagraph (A)(i) thereof).

(B) INVESTMENT ADVISOR DEFINED

For purposes of subparagraph (A), the term "investment advisor" means, with respect to any sponsoring organization (as defined in section 4966(d)(1)), any person (other than an employee of such organization) compensated by such organization for managing the investment of, or providing investment advice with respect to, assets maintained in donor advised funds (as defined in section 4966(d)(2)) owned by such organization.

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