

**8 TREASURY DEPARTMENT REPORT ON PRIVATE FOUNDATIONS****D. FAMILY USE OF FOUNDATIONS TO CONTROL CORPORATE AND OTHER PROPERTY**

Donors have frequently transferred to private foundations stock of corporations over which the donor maintains control. The resulting relationships among the foundation, corporation, and donor have serious undesirable consequences which require correction. Similar problems arise when a donor contributes an interest in an unincorporated business, or an undivided interest in property, in which he or related parties continue to have substantial rights. In all of these situations, there is substantial likelihood that private interests will be preferred at the expense of charity. Indeed, each of the three major abuses discussed thus far may be presented in acute form here. The problems here are sufficiently intensified, complex, and possessed of novel ramifications to require a special remedy.

To provide such a remedy, the Treasury Department recommends the adoption of legislation which, for gifts made in the future, would recognize that the transfer of an interest in a family corporation or other controlled property lacks the finality which should characterize a deductible charitable contribution. Under this recommendation, where the donor and related parties maintain control of a business or other property after the contribution of an interest in it to a private foundation, no income tax deduction would be permitted for the gift until (a) the foundation disposes of the contributed asset, (b) the foundation devotes the property to active charitable operations, or (c) donor control over the business or property terminates. Correlatively, the recommended legislation would treat transfers of such interests, made at or before death, as incomplete for all estate tax purposes unless one of the three qualifying events occurs within a specified period (subject to limited extension) after the donor's death. For the purposes of this rule, control would be presumed to exist if the donor and related parties own 20 percent of the voting power of a corporation or a 20 percent interest in an unincorporated business or other property. This presumption could be rebutted by a showing that a particular interest does not constitute control. In determining whether or not the donor and related parties possess control, interests held by the foundation would be attributed to them until all of their own rights in the business or other underlying property cease.

The Treasury Department has given careful consideration to a modification of this proposal which would postpone the donor's deduction only where, after the contribution, he and related parties control the business or other underlying property and, in addition, exercise substantial influence upon the foundation to which the contribution was made. Such a rule would permit an immediate deduction to a donor who transfers controlled property to a foundation over which he does not have substantial influence. Analysis of this modification indicates that it possesses both advantages and disadvantages. Congressional evaluation of the matter, hence, will require careful balancing of the two.