

16 TREASURY DEPARTMENT REPORT ON PRIVATE FOUNDATIONS

borrow from a bank. Thus existing law can provide a donor with a certain source of capital upon which he can call in time of need. Furthermore, the foundation might be more willing to withhold collection of the loan at its maturity—especially if it would embarrass the donor—than would be the case if the loan were made by a bank whose obligation to protect its depositors and shareholders would not permit an extension merely to accommodate the borrower. While all of these advantages are intangible, they do provide the donor who takes advantage of the opportunity with a substantial and valuable benefit.

Third, the knowledge that his foundation can be used as a source of capital—even at the prevailing interest rates—can influence the decisions of the donor in his capacity as an official of the foundation as to the assets which the foundation should hold in its portfolio. A donor who thinks that he may want to call upon his foundation for funds at some future date may have the foundation keep its funds in a form readily convertible into cash so as to be immediately available for his use, rather than placed in an investment which would be more appropriate for the production of income, but which would not be readily convertible into the liquid funds which the donor may need. Such action would, in many cases, decrease the amount of income which the foundation would be able to expend for charitable purposes.

Fourth, the ability of a donor to engage in financial transactions with his foundation results in discrimination between taxpayers. For example, if taxpayer A wants to make his funds available to his business he must do so out of after-tax dollars. However, if taxpayer B, who has established a private foundation, wishes to do the same thing he may "donate" cash (or appreciated property) to his foundation and have the foundation immediately lend the "contribution" to B's business. Assuming that B is in the 50-percent bracket, he can place twice as much cash at the disposal of his business as A, even though both have decreased their disposable funds by the same amount. It is true that the amount borrowed by the B company will have to be paid to the B foundation and not to B. However, the present value to B of being able to put twice as much capital into his business than would otherwise be possible may often exceed the value of the right to collect the debt at some time in the future. Similarly, taxpayer C cannot claim as a deduction an amount which he has pledged to his favorite charity, even though the pledge may be enforceable by the charity. On the other hand, taxpayer D, who has established a private foundation, can "contribute" the same amount to his foundation and then borrow the "contribution" from the foundation. Under these facts D could deduct the contribution but C could not, even though in both cases charity has received the same thing—an obligation of the donor.

Finally, the ability of donors to engage in financial transactions with their foundations is adversely affecting taxpayer morale. Many feel that allowing contributions to a foundation to be deductible in situations in which the donor has not irrevocably parted with the "donated" property is improper. The belief is becoming more widespread that the creation of a private foundation is a tax dodge used by some taxpayers to obtain tax advantages, much as expense account living was regarded. Under our self-assessment tax system it is important that the public have confidence in the fact that every taxpayer is paying his fair share of the cost of government.