

a foundation owns a building, the donor should not be able to avoid the self-dealing rules by having the foundation place the building in a separate corporation which would then rent the building to the donor. Furthermore, this prohibition of financial transactions should be applied with respect to officials (directors, officers, trustees, etc.) of the foundation and parties who are related to such officials.

The imposition of a general prohibition of self-dealing, to be applied only to future transactions, would eliminate an unduly burdensome portion of the Internal Revenue Service's responsibility in auditing private foundations. Such a general prohibition would avoid the invitation to abuse now inherent in the present permissive standards and, coupled with strict sanctions for filing false information returns, would tend to be self-policing. Finally, the lessening of the opportunity to use charitable funds for personal purposes should speed the flow of funds into the charitable stream.

These suggested rules would introduce into the tax law the concept which is fundamental to the law of private trusts: it is better to forbid self-dealing and to strike down all such transactions rather than to attempt to separate those transactions which are harmful from those which are not by permitting a fiduciary (as is the donor when he is dealing with charitable funds) to justify his representation of two interests.

From the standpoint of society as a whole, little if anything would be lost if a general ban upon self-dealing were adopted and much would be gained. A private foundation, especially if it is in corporate form, is usually not limited to the "legal list" from which trustees must choose their investments. Since a foundation may choose from a wide range of possible investments, it is not necessary for it to invest in the business of its donor, or to lend him any money. Similarly, a party who engages in transactions with the foundation on a truly arm's-length basis could, by definition, engage in the same transactions, on the same terms, with strangers.

Accordingly, there appears to be no sound reason to allow donor-private foundation transactions. The imposition of a general prohibition of self-dealing properly limits the deduction for charitable donations to only those situations in which the donor has completely parted with the donated property and thus has committed it without reservation to charitable purposes.

B. DELAY IN BENEFIT TO CHARITY

(1) *Introduction*

Under existing law an immediate deduction is allowed for gifts to both operating³ and nonoperating private foundations. In the case of contributions to operating foundations, an immediate deduction is considered appropriate because the funds generally find their way into the charitable stream within a short period after they are received by the foundation. Thus the delay between the loss of tax revenue and the benefit which accrues to the public from having an equivalent amount of funds devoted to an active charitable program is often not substantial.

³ The Revenue Act of 1964 contains special rules for "unlimited gifts" to private operating foundations. For the purpose of such rules a private operating foundation is defined as a privately supported organization which has substantially more than one-half of its assets directly devoted to active charitable activities (sec. 170(e)(2)(B)). Such an organization must also expend substantially all of its income for charitable purposes on a current basis. This definition could also be used to distinguish between operating and nonoperating private foundations for purposes of this section.