

tion may deduct only the latter. The interest of the foundation, on the other hand, lies in keeping salaries as low as is consonant with the employment of competent personnel. The requirements of charity may dictate current expenditures by the foundation; the donor may be tempted to have the foundation retain its funds to meet the possible future needs of the business. In all of these situations it is unrealistic to expect the donor, as director of the foundations, to bring to bear upon problems which involve his personal interest the same judgment which an independent party, concerned only with the welfare of charity, would employ.

Problems of the same nature arise where the donor contributes to a private foundation an interest in an unincorporated business, or an undivided interest in property, in which he or those related to him retain substantial rights. Current tax deductions have been claimed, for example, for contributions of rights in the air space over the donor's land, water rights adjacent to a private beach which the donor owns, or fractional interests in vacant land which the donor controls. Here again, because of the donor's close continuing connection with the property, it is hardly realistic to expect the foundation to make independent decisions about its use and disposition of the property.

While the abuses generated by family dominion over foundation property in many respects are similar to those dealt with by other portions of this Report, the problems here are sufficiently intensified, complex, and possessed of novel ramifications to require a special remedy. This Report elsewhere recommends that foundations be required to pay out annually at least a minimum approximation of a normal return upon their assets; but that requirement cannot obviate the need for foundations to have sufficient independent command over their assets to enable them to realize—whether by sale, conversion to more productive investments, or otherwise—the means to exceed the minimum when their charitable objectives demand it. Indeed, the payout rule may create pressures upon a foundation to liquidate other, useful assets in order to preserve its holdings of unproductive family corporation stock; or the rule may be satisfied simply by the donor employing the foundation as a conduit for his ordinary annual charitable giving—while charity continues to derive no benefit from the foundation's family corporation stock. Similarly, rules concrete enough to possess real efficacy in the prohibition of specific self-dealing practices cannot cope successfully and decisively with the subtle and continuing conflicts of interest which arise in the family stock situation. Finally, a foundation which is itself under the influence of a donor and which holds stock in a corporation controlled by the donor will, even where its stock holdings amount to less than 20 percent of the corporate equity, almost necessarily find itself involved in the business affairs of the corporation: for the foundation's stock will be used in combination with that of the donor and related parties to govern the commercial enterprise.

(3) Possible solution

To deal directly with the problems in this area, the Treasury Department recommends consideration of an approach which, for gifts made to private foundations 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