

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. If disposition, application to active charitable uses, or cessation of control occurs after the donor's death but within 3 years of the date of death, the deduction would be granted for the donor's last taxable year; if none of the three qualifying events takes place within that period, the contribution would not be deductible for income tax purposes. Correlatively, this approach would treat transfers of such interests, made at or before death, as incomplete for all estate tax purposes unless one of the qualifying events occurs within 3 years after the donor's death (or an extension of that period determined by the Secretary of the Treasury to be appropriate). Absent such a post-transfer qualification, the contributed asset would be included in the donor's gross estate and would not give rise to an estate tax charitable deduction. Such transfers, similarly, would not be deemed to constitute gifts, within the meaning of the gift tax statute, until a qualifying event occurs.

For the purposes of this recommendation, control of an incorporated business would be presumed to consist of ownership of 20 percent or more of the total combined voting power of the corporation; control of an unincorporated business or other property would be presumed to consist of ownership of a 20 percent or larger interest in it. The 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 should be attributed to them until all of their own rights in the business or other underlying property cease. A qualifying disposition of contributed property by a foundation could consist of a gift to another organization, in harmony with the foundation's own purposes, or a sale; but it would not include a gift to another private foundation, since the donor could not have secured a deduction by making a direct contribution of the controlled interest to such an organization. An application of contributed property to active charitable operations would occur through the permanent and direct commitment of the asset to use in the conduct of the active charitable pursuits for which the foundation was organized, if it was organized for such pursuits. Water rights or land, for example, would be applied to charitable uses when they are employed in the activities of a foundation which operates a beach or a park. Because of the rule requiring attribution of ownership from the foundation to the donor, a termination of control, in the relevant sense, could come about by a reduction in the holdings of either the foundation or the donor and related parties; but the termination would be recognized only where no offsetting reacquisition by one of the specified parties occurs within a prescribed subsequent period. The value of the contributed property at the time of disposition, devotion to charitable use, or cessation of control would determine the amount of the income tax deduction to which the donor would become entitled. The amount deductible for estate tax purposes would be the value of the property on the date of