

deduction to the Government will be justified by its correlative benefit to charity. Here, plainly, the result is not worth the price.

The recommendations of other sections of this Report bear upon the present problem; but, designed to deal with difficulties of broader thrust, they do not provide an entirely satisfactory solution to it. A requirement that foundations disburse annually at least a minimum approximation of a normal return upon their property cannot convert an unproductive asset into a productive one. A foundation utilized as a conduit for its donor's normal annual charitable gifts may well be able to comply with this requirement year after year without ever being compelled to apply an unproductive asset to uses which benefit charity. Again, many contributions of unproductive property would appear to be made only because the donor has practical assurance that he will continue to enjoy the use of the property; and this Report's self-dealing recommendations, which would proscribe such use, might be expected to inhibit these contributions.¹ But the Internal Revenue Service should not be compelled to assign revenue agents to make certain that the jewels remain in the safe deposit box, or the painting in the storeroom, when their former owner entertains. And self-dealing rules can, by their very nature, have no impact upon those situations in which the unproductive asset is transferred to the foundation precisely because the donor has no further use for it. Hence, the Part II-A proposals will not, in themselves, be sufficient to eliminate abuses of the sort with which we are presently concerned. Similarly, while the rules suggested in Part II-D of the report cope adequately with the major abuses which have arisen through contributions of unproductive interests in property over which the donor maintains control (principally stock in controlled corporations), they do not apply to gifts of other kinds of unproductive assets.

Where property unproductive of income is transferred to a private foundation, the policy reason underlying the grant of the charitable deduction does not become operative until the asset is (a) made productive, (b) disposed of, or (c) applied to charitable uses. Consequently, the Treasury Department recommends that, with the limited exceptions described below, the donor's income tax deduction for such a contribution be postponed until one of those three events occurs. This measure would defer the deduction to the point in time at which it becomes justified, and, in addition, would resolve a number of complex valuation problems.² Rules similar to those explained in Part II-D in connection with the controlled property provision should, for this purpose, govern the definition of "disposition" and "application to charitable use"; the determination of the amount of the donor's deduction when he becomes entitled to one; and the length of the period within which qualification for a deduction could occur. An asset should be considered unproductive of income unless substantial income is regularly derived from it. Since the controlled property rule of Part II-D affords ample solution for the problems to which it

¹ Sec. 170(f), added to the Internal Revenue Code in 1964, might also be expected to have this effect for similarly motivated donations of tangible personal property. That section provides that contributions of future interests in such property shall become deductible only upon the expiration of intervening rights held by the donor or related parties. Where the donor retains a real ability to use the contributed property, whether or not his power is set forth in any of the legal documents governing the transfer, the arrangement can be argued to constitute, in substance, the gift of a future interest. But the criticisms of the utility of the self-dealing rules in this area, explained in the text above, would seem to apply with equal force to the usefulness of sec. 170(f) here.

² Where the foundation sells the property, valuation would, of course, present no difficulty; where it makes the property productive, valuation should be easier; and where it does nothing with the property, valuation would never have to be undertaken.