

§ 1.507-4 Imposition of tax.

(a) *General rule.* Section 507(c) imposes on each organization the private foundation status of which is terminated under section 507(a) a tax equal to the lower of:

(1) The amount which such organization substantiates by adequate records (or other corroborating evidence which may be required by the Commissioner) as the aggregate tax benefit (as defined in section 507(d)) resulting from the section 501(c)(3) status of such organization, or

(2) The value of the net assets of such organization.

(b) *Transfers not subject to section 507(c).* Private foundations which make transfers described in section 507(b)(1)(A) or (2) are not subject to the tax imposed under section 507(c) with respect to such transfers unless the provisions of section 507(a) become applicable. See §§ 1.507-1(b), 1.507-2(a)(6) and 1.507-3(d).

[T.D. 7233, 37 FR 28161, Dec. 21, 1972]

§ 1.507-5 Aggregate tax benefit; in general.

(a) *General rule.* For purposes of section 507(c)(1), the aggregate tax benefit resulting from the section 501(c)(3) status of any private foundation is the sum of:

(1) The aggregate increases in tax under chapters 1, 11, and 12 (or the corresponding provisions of prior law) which would have been imposed with respect to all substantial contributors to the foundation if deductions for all contributions made by such contributors to the foundation after February 28, 1913, had been disallowed,

(2) The aggregate increases in tax under chapter 1 (or the corresponding provisions of prior law) which would have been imposed with respect to the income of the private foundation for taxable years beginning after December 31, 1912, if (i) it had not been exempt from tax under section 501(a) (or the corresponding provisions of prior law), and (ii) in the case of a trust, deductions under section 642(c) (or the corresponding provisions of prior law) had been limited to 20 percent of the taxable income of the trust (computed without the benefit of section 642(c)

but with the benefit of section 170(b)(1)(A)),

(3) The amount succeeded to from transferors under § 1.507-3(a) and section 507(b)(2), and

(4) Interest on the increases in tax determined under subparagraphs (1), (2), and (3) of this paragraph from the first date on which each such increase would have been due and payable to the date on which the organization ceases to be a private foundation.

(b) *Contributions.* In computing the amount of the aggregate increases in tax under subparagraph (1) of this paragraph, all deductions attributable to a particular contribution shall be included. For example, if a substantial contributor has taken deductions under sections 170 and 2522 (or the corresponding provisions of prior law) with respect to the same contribution, the amount of each deduction shall be included in the computations under section 507(d)(1)(A). Accordingly, the aggregate tax benefit may exceed the fair market value of the property transferred.

[T.D. 7233, 37 FR 28161, Dec. 21, 1972]

§ 1.507-6 Substantial contributor defined.

(a) *Definition—(1) In general.* Except as provided in subparagraph (2) of this paragraph, the term *substantial contributor* means, with respect to a private foundation, any person (within the meaning of section 7701(a)(1)), whether or not exempt from taxation under section 501(a), who contributed or bequeathed an aggregate amount of more than \$5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the private foundation before the close of the taxable year of the private foundation in which a contribution or bequest is received by the foundation from such person. In the case of a trust, the term *substantial contributor* also means the creator of the trust. Such term does not include a governmental unit described in section 170(c)(1).

(2) *Special rules.* For purposes of sections 170(b)(1)(E)(iii), 507(d)(1), 508(d), 509(a) (1) and (3), and chapter 42, the term *substantial contributor* shall not

include an organization which is described in section 509(a) (1), (2), or (3) or any other organization which is wholly owned by such section 509(a) (1), (2), or (3) organization. Furthermore, taking section 4941 (relating to taxes on self-dealing) in context, it would unduly restrict the activities of private foundations if the term *substantial contributor* were to include any section 501(c)(3) organizations. It was not intended, for example, that a large grant for charitable purposes from one private foundation to another world forever preclude the latter from making any grants to, or otherwise dealing with, the former. Accordingly, for purposes of section 4941 only, the term *substantial contributor* shall not only include any organization which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

(b) *Determination of substantial contributor*—(1) *In general.* In determining under paragraph (a) of this section whether the aggregate of contributions and bequests from a person exceeds 2 percent of the total contributions and bequests received by a private foundation, both the total of such amounts received by the private foundation, and the aggregate of such amounts contributed and bequeathed by such person, shall be determined as of the last day of each taxable year commencing with the first taxable year ending after October 9, 1969. Generally, under section 507(d)(2) and this section, except for purposes of valuation under section 507(d)(2)(B)(i), all contributions and bequests made before October 9, 1969, are deemed to have been made on October 9, 1969. For purposes of section 509(a)(2) and the support test described in § 1.509(a)-3(c), contributions and bequests before October 9, 1969, will be taken into account in the year when actually made. For example, in the case of a contribution or bequest of \$6,000 in 1967, such contribution or bequest shall be treated as made by a substantial contributor in 1967 for purposes of section 509(a)(2) and § 1.509(a)-3(c) if such person met the \$5,000—2 percent test as of December 31, 1967, and December 31, 1969 (in the case of a calendar year accounting period). Although the determination of the percentage of total contributions and be-

quests represented by a given donor's contributions and bequests is not made until the end of the foundation's taxable year, a donor is a substantial contributor as of the first date when the foundation received from him an amount sufficient to make him a substantial contributor. Except as otherwise provided in this subparagraph, such amount is treated for all purposes as made by a substantial contributor. Thus, the total contributions and bequests received by the private foundation from all persons, and the aggregate contributions and bequests made by a particular person, are to be determined as of December 31, 1969 (in the case of a calendar year organization which was in existence on that date), and the amounts included in each respective total would be all contributions and bequests received by the organization on or before that date, and all contributions and bequests made by the person on or before that date. Thereafter, a similar determination is to be made with respect to such private foundation as of the end of each of its succeeding taxable years. Status as a substantial contributor, however, will date from the time when the donor first met the \$5,000 and 2 percent test. Once a person is a substantial contributor with respect to a private foundation, he remains a substantial contributor even though he might not be so classified if a determination were first made at some later date. For instance, even though the aggregate contributions and bequests of a person become less than 2 percent of the total received by a private foundation (for example, because of subsequent contributions and bequests by other persons), such person remains a substantial contributor with respect to the foundation.

(2) *Examples.* The provisions of paragraph (a) of this section and this paragraph (b) may be illustrated by the following examples:

Example 1. On January 1, 1968, A, an individual, gave \$4,500 to M, a private foundation on a calendar year basis. On June 1, 1969, A gave M the further sum of \$1,500. Throughout its existence, through December 31, 1969, M has received \$250,000 in contributions and bequests from all sources. As of June 1, 1969, A is a substantial contributor to M for purposes of section 509(a)(2).

Example 2. On September 9, 1966, B, an individual, gave \$3,500 to N, a private foundation on a calendar year basis. On March 15, 1970, B gave N the further sum of \$3,500. Throughout its existence, through December 31, 1970, N has received \$200,000 in contributions and bequests from all sources. B is a substantial contributor to N as of March 15, 1970, since that is the first date on which his contributions met the 2 percent-\$5,000 test.

Example 3. On July 21, 1964, X, a corporation, gave \$2,000 to O, a private foundation on a calendar year basis. As of December 31, 1969, O had received \$150,000 from all sources. On September 17, 1970, X gave O the further sum of \$3,100. Through September 17, 1970, O had received \$245,000 from all sources as total contributions and bequests. Between September 17, 1970, and December 31, 1970, however, O received \$50,000 in contributions and bequests from others. X is not a substantial contributor to O, since X's contributions to O were not more than 2 percent of the total contributions and bequests received by O by December 31, 1970, the end of O's taxable year, even though X's contributions met that test at one point during the year.

Example 4. On September 16, 1970, C, an individual, gave \$10,000 to P, a private foundation on a calendar year basis. Throughout its existence, and through December 31, 1970, the close of its taxable year, P had received a total of \$100,000 in contributions and bequests. On January 3, 1971, P received a bequest of \$1 million. C is a substantial contributor to P since he was a substantial contributor as of September 16, 1970, and therefore remains one even though he no longer meets the 2-percent test on a later date after the end of the taxable year of the foundation in which he first became a substantial contributor.

(c) *Special rules*—(1) *Contributions defined.* The term *contribution* shall, for purposes of section 507(d)(2), have the same meaning as such term has under section 170(c) and also include bequests, legacies, devises, and transfers within the meaning of section 2055 or 2106(a)(2). Thus, for purposes of section 507(d)(2), any payment of money or transfer of property without adequate consideration shall be considered a *contribution*. Where payment is made or property transferred as consideration for admissions, sales of merchandise, performance of services, or furnishing of facilities to the donor, the qualification of all or any part of such payment or transfer as a contribution under section 170(c) shall determine whether and to what extent such payment or trans-

fer constitutes a *contribution* under section 507(d)(2).

(2) *Valuation of contributions and bequests.* Each contribution or bequest to a private foundation shall be valued at fair market value when actually received by the private foundation.

(3) *Contributions and bequests by a spouse.* An individual shall be considered, for purposes of this section, to have made all contributions and bequests made by his spouse during the period of their marriage. Thus, for example, where W contributed \$500,000 to P, a private foundation, in 1941 and that amount exceeded 2 percent of the total contributions received by P as of the end of P's first taxable year ending after October 9, 1969, H (W's spouse at the time of the 1941 gift) is considered to have made such contribution (even if W died prior to October 9, 1969, or their marriage was otherwise terminated prior to such date). Similarly, any bequest or devise shall be treated as having been made by the decedent's surviving spouse.

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§ 1.507-7 Value of assets.

(a) *In general.* For purposes of section 507(c), the value of the net assets shall be determined at whichever time such value is higher:

(1) The first day on which action is taken by the organization which culminates in its ceasing to be a private foundation, or

(2) The date on which it ceases to be a private foundation.

(b) *Valuation dates.* (1) In the case of a termination under section 507(a)(1), the date referred to in paragraph (a)(1) of this section shall be the date on which the terminating foundation gives the notification described in section 507(a)(1).

(2) In the case of a termination under section 507(a)(2), the date referred to in paragraph (a)(1) of this section shall be the date of occurrence of the willful and flagrant act (or failure to act) or the first of the series of willful repeated acts (or failures to act) giving rise to liability for tax under chapter 42 and the imposition of tax under section 507(a)(2).