Rev. Rul. 75-391, 1975-2 C.B. 446

Private foundation; self-dealing; applicable tax year. A disqualified person with a tax year differing from that of the private foundation from which he borrows money computes the initial tax on self-dealing based upon his own tax year.

The Internal Revenue Service has been asked how to compute the initial tax on self-dealing under section 4941(a)(1) of the Internal Revenue Code of 1954 where the foundation and the self-dealer do not share the same 'taxable year.'

On July 1, 1972, a private foundation loaned $100,000 at an annual rate of 10 percent to an individual who was a disqualified person with respect to the foundation. Taking into account the credit rating of the borrower, the nature and amount of security, and all other factors, 10 percent was also the fair market value for use of the money. All interest payments were paid as they became due and the loan was repaid on June 30, 1974, at which time correction of the act of self-dealing was completed. The disqualified person files his tax returns on a calendar year basis and the foundation keeps its books and records on a fiscal year ending September 30.

Section 4941(a)(1) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax is equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. Generally, disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing is liable for the tax.

Section 53.4941(e)-1(e)(1)(i) of the Foundation Excise Tax Regulations states, with respect to the leasing of property, the lending of money or other extension of credit, other use of money or property, or payment of compensation, that, for purposes of section 4941 of the Code, the transaction will generally be treated as giving rise to an act of self-dealing on the day the transaction occurs and on the first day of each taxable year or portion thereof which is within the taxable period and which begins after the taxable year in which the transaction occurs.

Taxable period is defined in section 4941(e)(1) of the Code as meaning, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by section 4941(a)(1), or the date on which correction of the act of self-dealing is completed.

Section 53.4941(e)-1(b)(2)(ii) of the regulations states that where the use of money is involved, the amount involved shall be the greater of the amount paid for such use or the fair market value of such use for the period for which the money is used.

The specific question is whether the 'taxable year' referred to in section 53.4941(e)-1(e)(1)(i) of the regulations is that of the private foundation or of the disqualified person. Section 4941(a)(1) of the Code imposes a tax upon the disqualified person, not the private foundation. Examples (1) and (2) under section 53.4941(e)-1(e)(1)(ii) illustrate the method for computing the number of acts of self-dealing in a transaction involving the use of money or property and the initial tax attributable to them. Both examples specifically refer to the taxable year of the disqualified person, and do not mention the taxable year of the private foundation in performing these computations. Thus, the term 'taxable year' means the taxable year of the disqualified person for purposes of computing the initial tax under section 4941(a)(1). The taxable year of the private foundation is irrelevant for purposes of that computation.

In the present case the section 4941(a)(1) initial tax would be computed and reported as follows:

Act	Taxable Period	Amount Involved	Number of Years
(1)	7/1/72 through 6/30/74	$5,000	3
(2)	1/1/73 through 6/30/74	10,000	2
(3)	1/1/74 through 6/30/74	5,000	1

			Tax Liability to be Reported on Annual Return of Excise Tax		
Initial Tax			1972	1973	1974
First Act ($5,000 X 5% X 3)	=	$750	$250	$250	$250
Second Act ($10,000 X 5% X 2)	=	1,000	---	500	500
Third Act ($5,000 X 5% X 1)	=	250	---	---	250
Total initial tax on disqualified person for the self-dealing transaction		$2,000	$250	$750	$1,000