

**PRIVATE FOUNDATION PROVISIONS IN
THE OMNIBUS CONSOLIDATED AND
EMERGENCY SUPPLEMENTAL
APPROPRIATIONS ACT**

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NOVEMBER 2, 1998

Congress recently passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act (the "Act"). The Act contains two provisions of interest to private foundations and their donors, to the amount equal to the donor's basis in the stock. However, a special rule allows a deduction, the term "qualified appreciated stock" means stock:

- for which market quotations are summarized below. The Act was signed into law on October 22, 1998.

CONTRIBUTIONS OF QUALIFIED APPRECIATED STOCK

In general, the amount of the deduction for a contribution of appreciated stock to a private foundation is currently limited to the fair market value of "qualified appreciated stock" contributed to a private foundation. This special rule was enacted in 1984, expired in 1994, and was periodically extended and allowed to expire. The special rule had expired on June 30, 1998. The Act permanently extends the special rule, which will avoid the recent annual anxiety about expiration and extension.

For purposes of the special provisions are available on an established securities market,

- which is capital gain property in the donor's hands, and
- in a company of which the donor and any family member will have contributed less than 10% in value, counting prior contributions. For these purposes, a "family member" includes a brother, sister, spouse, ancestor or lineal descendant.

The permanent extension of the rule is retroactive to all contributions of qualified appreciated stock to private foundations made on or after July 1, 1998.

PUBLIC INSPECTION OF PRIVATE FOUNDATION ANNUAL RETURNS

Private foundations will be subject to new public inspection requirements that have been enacted, but which are not yet effective, for public charities and all other tax-exempt organizations that file annual information returns. In summary, a private foundation will be

required to make available for inspection its annual information return (IRS Form 990-PF) for any of the three most recent taxable years and its application for recognition of exemption (IRS Form 1023) and related correspondence. These materials must be made available at a foundation's principal office and any regional or district office having three or more employees. In addition, a private foundation will be required to provide copies, upon request, of these materials. If the request for copies is made in person, a private foundation must provide the copies immediately; if the request is made in writing, a private foundation has thirty days to comply. In either case, a private foundation may charge only a reasonable fee for reproduction and mailing costs. The proposed regulations would allow a private foundation to charge \$1.00 for the first page and \$.15 for each subsequent page plus actual postage, although these amounts may change when final regulations are published.

A private foundation will be relieved of these public inspection and copying requirements if, in accordance with regulations to be issued by the Secretary of the Treasury, it has made the requested documents "widely available," or the Secretary of the Treasury has determined, upon the organization's application, that it was subject to a harassment campaign such that a waiver of the obligation to provide copies would be in the public interest. One way to make these documents widely available is by posting them on the foundation's World Wide Web page on the Internet. Other methods are likely to be included in the final regulations, when published.

When complying with a request for inspection materials, a private foundation is not required to disclose the name or address of any contributor. Also, private foundations will no longer be subject to the special publication requirements of Internal Revenue section 6104(d). This provision requires that a private foundation publish a notice, in a newspaper having general circulation in the county where the foundation's principal office is located, stating that its annual information return is available for public inspection upon request and providing certain contact information.

These provisions apply to requests made after the later of 60 days after the Treasury Department issues regulations defining when requested documents have been made widely available or when a request is part of a harassment campaign, or December 31, 1998. Although proposed regulations have been issued, final regulations have not yet been published. Final regulations are expected within the next few months.

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If you have any questions about the Act or would like more information regarding specific provisions, please do not hesitate to contact Victoria B. Bjorklund (212-455-2875), Christina L. Nooney (212-455-2740) or Jennifer I. Goldberg (212-455-2668) of our Exempt Organizations group.

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