Rev. Rul. 75-207, 1975-1 C.B. 361

Private foundation's ownership and maintenance of island. The value of an island, owned by a private foundation dedicated to preserve the natural ecosystems and historical and archaeological remains on the island that has no residential use and to which present access is limited to invited public and private researchers, may be excluded from the foundation's minimum investment return under section 4942(e) of the Code.

The Internal Revenue Service has been asked whether, in the situation discussed below, the value of an island owned and maintained by a private foundation may be excluded from the computation of the foundation's minimum investment return under section 4942(e) of the Internal Revenue Code of 1954.

The foundation, formed to further conservation, education, and the arts, owns and maintains an island located several miles off the coast of the United States. The island is uninhabited except for a small professional staff.

The island may be best characterized by the delicate and uniquely inviolate natural ecosystems and historical and archaeological remains present. Many common and rare varieties of flora and fauna coexist on the island in harmony with hard sand beaches, dunes, open meadows, forests, tidal flats, and wetlands. Further, the island is a historical repository of pre-colonial Indian, colonial Spanish and English, and American Revolutionary archaeological remains and artifacts. In consideration of the island's historical significance and pristine natural condition, the United States Department of Interior designated it as a National Historic Landmark.

The foundation is dedicated to the preservation of the island in its present state and to that and must restrict general public access at this time. There is no residential use made of the island. The foundation fully attempts to develop the educational value of the island through working relationships with public and private educational institutions, scientific and conservation organizations, and the Federal government. Their researchers are invited to the island and their findings are published and disseminated to the general public.

Section 4942 of the Code generally provides for an excise tax on the failure of a private foundation to distribute income. The amount of income required to be distributed by a private foundation with respect to a particular taxable year is its 'distributable amount.' The term distributable amount is defined in the Code as an amount equal to (1) the minimum investment return or the adjusted net income (whichever is higher), reduced by (2) the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

Section 4942(e)(1)(A) of the Code excludes from the computation of the 'minimum investment return' assets that are 'being used (or held for use) directly in carrying out the foundation's exempt purpose.'

Section 53.4942(a)-2(c)(3)(i) of the Foundation Excise Tax Regulations provides, in part, that an asset is 'used (or held for use) directly in carrying out a foundation's exempt purpose' only if the asset is actually used by the foundation in carrying out its exempt purposes.

Section 53.4942(a)-2(c)(3)(ii) of the regulations illustrates this principle by including as examples real estate used by the foundation directly in its charitable, educational, or other similar exempt activities, and research facilities which under the facts and circumstances serve a useful purpose in the conduct of such activities.

The limited access to the island is uniquely essential to the fulfillment of the foundation's educational and charitable purposes under the facts and circumstances described. Thus, the island is being used directly to carry out the foundation's exempt purposes in the manner indicated in the regulations examples cited above.

Accordingly, the foundation may exclude the value of the island in computing its minimum investment return under section 4942(e) of the Code.