Rev. Rul. 75-442, 1975-2 C.B. 448

Private foundation gross income; deferred incentive compensation plan. For purposes of section 4942 of the Code, a private foundation receiving annual payments, as beneficiary of a decedent's deferred incentive compensation income plan, includes each payment as gross income to the extent that it exceeds the amount attributable to the value of the right to receive the payment on the decedent's date of the death.

Advice has been requested concerning the extent to which amounts received by a private foundation described in section 509 of the Internal Revenue Code of 1954, under the deferred compensation plan arrangement described below, are includible as gross income of the foundation for purposes of section 4942.

A participant in a deferred incentive compensation income plan named a private foundation as beneficiary of all payments falling due after his death. The bequest has now become effective. The decedent's right to participate in the plan of his employer corporation was in recognition of services rendered and each payment made to him was includible in his gross income when received.

The payments were initially scheduled to be made at annual intervals over a 15-year period, with the respective amounts falling due from year to year equal to the current fair market value of an allotted number of unissued shares of stock of the employer corporation which were referred to only for valuation purposes. Only four annual payments had been made as of the time of decedent's death.

The right to receive all the remaining annual payments, the first of which fell due a short time less than a full year after decedent's death, was determined to have a value of 80x dollars on the date of death for the purposes of computing decedent's gross estate for Federal estate tax purposes. A charitable contribution deduction of 80x dollars was likewise allowed to the estate under section 2055 of the Code for his bequest of such asset to the foundation. The current value is based on the gross amount of the last 11 annual payments under the decedent's deferred compensation contract which aggregate 100x dollars. See sections 20.2055(a) and 20.2031-10(b)(1) of the Estate Tax Regulations.

Section 4942 of the Code imposes a tax on the undistributed income of a private foundation which, under section 4942(c), is the excess of its distributable amount for any taxable year over its qualifying distributions insofar as the latter have been made out of such distributable amount.

Under section 4942(d) of the Code, the distributable amount for any given year is the higher of the minimum investment return or the adjusted net income of the foundation, after first being reduced by the taxes imposed by subtitle A and section 4940. Section 4942(f) defines the term 'adjusted net income' to be the excess of the gross income (as determined with specified income modifications) which would be allowed to a corporation subject to ordinary income taxes.

Section 53.4942(a)-2(d)(1) of the Foundation Excise Tax Regulations provides that in computing the amount includible as gross income and the deductions allowable from such income, the principles of subtitle A of the Code shall apply except to the extent such principles conflict with section 4942 and the regulations thereunder. This section of the regulations further provides that for such purposes gross income does not include gifts, grants, or contributions received by the private foundation.

The term 'gross income' is defined in section 61(a) of subtitle A of the Code and specifically includes income in respect of a decedent.

Since the amount received under the deferred incentive compensation income plan is in recognition of the services performed by the decedent and would have been includible in his gross income, the payments to the foundation after his death constitute income in respect of a decedent within the meaning of section 61(a) of subtitle A of the Code. However, the value at the decedent's death of the foundation's right to receive these payments was a contribution to the foundation and, under section 53.4942(a)-2(d)(1) of the regulations, does not constitute gross income. Therefore, the principles of subtitle A are in conflict with the regulations under section 4942 and are not applicable to the extent that each annual payment is attributable to such value of the right to receive the payment which the decedent contributed to the foundation.

Since only 80 percent of each annual payment received is attributable to the value of the right to receive payments under the plan, the remaining 20 percent is includible as gross income of the foundation for purposes of section 4942 of the Code.