

Private foundation; minimum investment return; paintings for public exhibitions. A collection of paintings, owned by a private foundation formed to further the arts, that are loaned under an active loan program for exhibition in museums, universities, and similar institutions, are being used directly in carrying out the foundation's exempt purposes within the meaning of section 4942(e)(1)(A) of the Code, and the value of the paintings is excludable in computing the foundation's minimum investment return.

The Internal Revenue Service has been asked whether, in the situation discussed below, the value of paintings owned by a private foundation will be taken into account in computing the private foundation's minimum investment return under section 4942(e) of the Internal Revenue Code of 1954.

The foundation, formed to further the arts, owns a collection of well-known paintings. In addition to its collection, the foundation is endowed with income producing assets. Part of the income is used in a program of grants intended to further the arts. Its collection and part of the income from its endowment are used in a program of loaning paintings for display in museums, universities, and similar institutions.

The foundation's loan program is managed by a professional staff including a curator and research officer and an art historian. The staff's responsibilities include arrangements for exhibition in the borrowing institution, acquiring new paintings for the collection, overseeing the packing, shipment and eventual return of a work to be exhibited, and maintaining the condition of the collection.

The foundation has publicized its program to the extent that arranging for exhibition constitutes a major part of its staff work. In considering whether to send a painting for exhibit, the staff evaluates the potential borrower's security arrangements, facilities for display, and ability to protect against heat, dampness, and other threats to the condition of a painting. In addition the foundation's staff makes a judgment of the value of the loan on artistic and curatorial grounds. Such considerations as the quality of a potential borrower's collection and the contribution a loan would make to the artistic resources of the community in which it would be displayed are involved in this judgment. Although many of the foundation's loans are to large museums in major cities, its staff makes an effort to loan paintings to institutions in smaller communities. This effort is consistent with its policy of displaying its paintings as widely as possible. Once a loan is agreed upon the staff is actively involved in the shipment of the painting to the borrowing institution. Normally the foundation pays the costs of either insurance or transportation. Sometimes it pays both.

At any given time all but a very few paintings are in the hands of exhibiting institutions. Generally when they are not loaned out, the foundation's paintings are in transit, being reconditioned or restored, or being stored pending a scheduled exhibit.

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, 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 that, in part, 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 an example of assets which are used (or held for use) directly in carrying out a foundation's exempt purposes, paintings or other works of art which are on public display.

Since the foundation's paintings are being used in an active loan program, they are being used directly to carry out its exempt purposes in the manner indicated in the regulations example cited above.

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