

Private foundations; interest in pre-1969 estate. Appreciated stock distributed to a private foundation in 1971, in satisfaction of a specific bequest and a percentage of the residuary estate of an individual who died in 1967, will be considered held by the foundation on December 31, 1969, and the basis of the stock for purposes of computing capital gain includible in net investment income will be the fair market value of the stock as of December 31, 1969 under section 4940(c)(4)(B) of the Code.

Advice has been requested concerning the basis of shares of stock for purposes of determining net investment income of a private foundation under section 4940 of the Internal Revenue Code of 1954.

The will of an individual who died on April 22, 1967, provided for a specific bequest to a private foundation of 100 shares of stock in a particular corporation and for an additional distribution to the private foundation of 5 percent of the residuary estate.

On February 3, 1971, the executor of the estate transferred 300 shares of the corporate stock to the private foundation. Of this amount 100 shares of the stock were in satisfaction of the specific bequest and 200 shares were in satisfaction of the 5 percent residuary bequest.

The basis of the stock to the private foundation, determined under normal basis rules, is 6x dollars. Its fair market value on December 31, 1969, was 28x dollars.

Section 4940(a) of the Code imposes on a private foundation exempt under section 501(c)(3) an excise tax equal to 4 percent of its net investment income for the taxable year.

Net investment income is defined in section 4940(c)(1) of the Code as the amount by which the sum of the gross investment income (from dividends, interest, rents, and royalties) and the net capital gain exceeds the deductions allowed under section 4940(c)(3).

Section 4940(c)(4)(B) of the Code provides that for purposes of determining net capital gain includible in net investment income, the basis for determining gain in the case of property held on December 31, 1969, and continuously thereafter to the date of disposition shall be deemed to be not less than the fair market value of such property on December 31, 1969.

Section 53.4940-1(f)(2)(i) of the Foundation Excise Tax Regulations provides that the basis for purposes of determining gain from the sale or other disposition of property shall be the greater of (a) the fair market value on December 31, 1969, (plus

or minus all adjustments after that date and before the date of disposition under the rules of Part II of Subchapter O of Chapter 1) provided that the property was held by the private foundation on December 31, 1969, and continuously thereafter to the date of disposition, or (b) the basis as determined under the normal basis rules (but without regard to section 362(c)).

The purpose of the section 4940(c)(4)(B) and section 53.4940-1(f)(2)(i) rules regarding the basis of property for computing capital gain is to avoid taxing appreciation of property prior to the enactment of the taxing statute.

Accordingly, for purposes of section 4940(c)(4)(B) of the Code, the 300 shares of stock that were distributed to the private foundation in 1971 will be considered to have been held by the foundation on December 31, 1969, even though the stock was held by an estate on that date and even though, in the case of the residuary bequest, the property that ultimately passed to the foundation had not been identified on that date. Thus, if the foundation holds the stock continuously to the date of disposition, its basis for computing capital gain will be the December 31, 1969, value of 28x dollars, plus or minus any adjustments after that date and before the date of disposition.

This Ruling with respect to when property will be considered to have been held by a private foundation on December 31, 1969, reflects the purpose of section 4940(c)(4)(B) of the Code and is limited in scope and application to that section.