

Private foundation minimum investment return; unrelated business income. In determining its minimum investment return, a private foundation need not take into account assets used in a trade or business for which substantially all the work is performed without compensation.

A private foundation, as defined in section 509(a) of the Internal/Revenue Revenue Code of 1954, carries on a trade or business the conduct of which is not substantially related to the exercise or performance of the foundation's exempt purpose. However, substantially all of the work in carrying on such trade or business is performed for the foundation without compensation and, therefore, by reason of section 513(a)(1), the trade or business is not 'unrelated trade or business,' as that term is defined in section 513.

In determining a private foundation's 'minimum investment return' under section 4942(e) of the Code, assets used (or held for use) directly in carrying out the foundation's exempt purpose are not taken into account. Section 53.4942(a)-2(c)(3)(ii)(d) of the Foundation Excise Tax Regulations cites, as an example of such assets, any interest in a 'functionally related business.' Section 53.4942(a)-2(c)(3)(iii)(a)(1) of the regulations defines the term 'functionally related business' as a trade or business which is not 'unrelated trade or business,' as defined in section 513.

Held, since the trade or business that the foundation carries on is not 'unrelated trade or business,' it constitutes a 'functionally related business' and, therefore, the foundation's interest in such trade or business is not taken into account in determining its minimum investment return under section 4942(e) of the Code.