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## Nonprofit Update: Timing Asset Valuations for Private Non-Operating Foundations

By Laura A. Lo Bianco and Christian M. Olson

In light of substantial recent declines in real estate values in this county, now may be an opportune time for private non-operating foundations ("foundations") to reappraise the value of their real property holdings. By doing so, such foundations may reduce the amount of their minimum required annual distributions, which amount is directly tied to the aggregate fair market value of their assets. Foundations that reappraise their real estate holdings in accordance with federal regulations will not be required to reappraise such holdings for another five years, thus locking in current values for several years. If foundations wait to reappraise their real estate holdings, the real estate market may improve, and the foundations may thereby miss the opportunity to lock in current values and reduce distribution obligations.

The Internal Revenue Code requires foundations to annually distribute an amount, roughly calculated, that is equal to a value of assets of the foundation, not directly used or held for use in carrying out exempt purposes, reduced by unrelated business income taxes and excise taxes on net investment income. If a foundation fails to annually distribute the full distributable amount to either (1) accomplish one or more exempt purposes defined in IRC § 170(c)(2)(B) or (2) acquire assets used or held for use directly in carrying out such exempt purposes, the amount not so distributed is subject to an excise tax. The tax is equal to 30% of the undistributed portion. By reappraising real estate holdings at current values, foundations may reduce their distribution obligations and the likelihood of paying this excise tax.

For purposes of determining the aggregate fair market value of all assets of a foundation, the value of securities and cash balances are calculated on a monthly basis and all other non-excluded assets on an annual basis. If foundations satisfy the procedural requirements set forth in Treasury Regulations section 53.4942(a)-(2)(c)(4)(iv)(b), they may determine the value of real property on a five-year basis. These procedural requirements include, among other things, a requirement that the foundation use an independent, certified appraiser to appraise the real property.

Foundations owning business interests must value the business annually. To determine the value of business interests, foundations must value the underlying assets of the businesses in the same manner as they would value such assets if the foundations directly held the assets. For example, if a foundation has an interest in a business that holds marketable securities, the foundation would be required to value the business interest on an annual basis and the underlying securities of the business on a monthly basis. The foundation may also elect to value underlying real estate held by the business on a five-year basis by complying with the requirements of Treasury Regulations section 53.4942(a)-(2)(c)(4)(iv)(b).

In summary, if a private non-operating foundation directly or indirectly holds real estate not directly used or held for use in carrying out its exempt purposes, the foundation likely can reduce the size of its minimum annual distribution requirements by reappraising the value of its real property holdings at their current depressed

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values. There may, however, be instances where a foundation's real property holdings have not decreased in value or where the cost of obtaining an appraisal and otherwise complying with the requirements of Treasury Regulations section 53.4942(a)-(2)(c)(4)(iv)(b) exceed any potential minimum distribution reductions.

*Laura A. Lo Bianco focuses her practice on corporate law and transactional matters. Her general corporate experience includes business counseling, formation of organizations, including non-profit, tax-exempt organizations and limited liability companies; corporate governance and maintenance of requisite organizational records. She advises various tax-exempt entities, such as private foundations, support organizations, public charities and other entities that are tax-exempt under the Internal Revenue Code. She earned her B.S. (1992) from Arizona State University and her J.D. (1996) from Santa Clara University, School of Law.*

*Christian M. Olson practices in the areas of business and finance law with a focus on tax-exempt organizations and state and local taxation. He represents clients in various matters relating to corporate formation, qualification for tax-exemption, tax planning and compliance, unrelated business income tax, transaction privilege taxes, property taxes, excise taxes on private foundations, endowment funds, grant-making, joint ventures, charitable solicitations, and other corporate, tax, and regulatory issues. He earned his B.S. (2004) from Brigham Young University and his J.D. (2007) from Arizona State University College of Law.*



Laura A. Lo Bianco  
Director  
602.916.5345  
llobianco@fclaw.com



Christian M. Olson  
Associate  
602.916.5465  
colson@fclaw.com