

## Section 994

solely dedicated to simplifying and eliminating documents and related procedures in international trade are "export promotion expenses" under section 994(c) of the Code provided they qualify as ordinary and necessary business expenses.

### Rev. Rul. 72-582

A domestic corporation qualifies as a Domestic International Sales Corporation (DISC) under section 992 of the Internal Revenue Code of 1954. The DISC is a member of, and contributes to, a non-profit research organization contributions to which are not allowable a deduction under section 170 of the Code. The organization is solely dedicated to simplifying and eliminating documents and related procedures in international trade and its primary objective is the removal of barriers against international trade. The organization's activities include the research, development and dissemination of simplified export procedures to its members and it assists United States governmental agencies in the formulation and improvement of simplified export procedures. All of the organization's income is provided by the voluntary contributions of its members, and it receives no funds from the United States government or other sources.

Section 994(a) of the Code provides, in part, that in the case of a sale of export property to a DISC by a person described in section 482 of the Code, the DISC can obtain an allocation attributable to such sale out of combined taxable income of up to four percent of the DISC's qualified export receipts on the resale of such property or 50 percent of the combined taxable income derived by both the seller and the DISC from the sale and resale of the property that is attributable to the qualified export receipts whichever is greater. Moreover, the DISC is entitled to an additional allocation equal to 10 percent of the export promotion expenses of such DISC attributable to such receipts.

Section 994(c) of the Code defines "export promotion expenses" to mean, in part, those expenses incurred to advance the distribution or sale of export property for use, consumption, or distribution outside of the United States, but does not include income taxes.

Senate Report No. 92-437, Ninety-second Congress, at page 108, states that "export promotion expenses" include a DISC's ordinary and necessary expenses paid or incurred to obtain the qualified export receipts. These expenses include advertising, salaries, rentals, sales commissions, warehousing and other selling expenses. They do not include income taxes or any expenses which do not further the distribution or sale of export property for use or consumption abroad.

*Held*, in the instant case, contributions by the DISC to the non-profit research organization are "export promotion expenses" under section 994(c) of the Code provided such contributions are ordinary and necessary business expenses under section 162 of the Code.

#### Subchapter O. Gain or Loss on Disposition of Property

##### Part II.—Basis Rules of General Application

### Section 1011.—Adjusted Basis for Determining Gain or Loss

26 CFR 1.1011: Statutory provisions; adjusted basis for determining gain or loss.

Adjusted basis for determining gain or loss on bargain sales to charitable organizations made after December 19, 1969. See T.D. 7207, page 106.

26 CFR 1.1011-2: Bargain sale to a charitable organization.

Rates for determining the value of certain annuity contracts. See Rev. Rul. 72-438, page 38.

### Section 1012.—Basis of Property—Cost

26 CFR 1.1012-1: Basis of property. (Also Section 1014; 1.1014-1.)

Determination of basis of securities transferred to a trust and subsequently reconveyed to the transferor by the trustees; I.T. 1994, S.M. 4882, and G.C.M. 14350 superseded.

### Rev. Rul. 72-406<sup>1</sup>

The purpose of this Revenue Ruling is to update and restate, under the current statute and regulations, the positions set forth in I.T. 1994, C.B. III-1, 46 (1924), S.M. 4882, C.B. V-2, 13 (1926), and G.C.M. 14350, C.B. XIV-1, 201 (1935).

The question presented is whether the basis of securities is affected by a transfer of the securities to a trust and the subsequent return of the securities to the transferor under the circumstances described below.

*Situation 1.* A taxpayer purchased certain securities during 1968. In 1970, the taxpayer created a trust and conveyed the securities to the trustees. The trust instrument provided that the taxpayer was to receive the income from the trust principal during his lifetime. The taxpayer also retained the power to appoint the persons to whom the principal would go at his death, and the power to revoke the trust in whole or in part with the approval of one of the trustees. In response to a request by the taxpayer, the securities were reconveyed to him by the trustees during 1971.

*Situation 2.* A taxpayer inherited securities in 1967. He created a trust and transferred the securities to the trustees in 1969. Under the trust instrument, the income from the trust property was to be paid to the taxpayer's mother during her lifetime. Upon the death of the mother, all trust property was to revert to the taxpayer. The mother died in 1971 and the taxpayer received a distribution of the securities from the trustees of the terminated trust during such year.

*Situation 3.* A taxpayer purchased

<sup>1</sup> Prepared pursuant to Rev. Proc. 67-6, C.B. 1967-1, 576.

securities prior to March 1, 1913. The fair market value of the securities on March 1, 1913, was in excess of the purchase price. The taxpayer created a trust in 1969 and transferred the securities to the trustees with the provision that the income from the securities should be paid to his wife during her lifetime. Upon her death the trust was to terminate and the securities were to be returned to the taxpayer. The taxpayer's wife died in 1972 and the securities were returned to the taxpayer.

Section 1012 of the Internal Revenue Code of 1954 provides, generally, that the basis of property shall be the cost of such property, adjusted as required by section 1016(a) of the Code.

Section 1014(a) of the Code provides, in part, that the basis of property in the hands of a person acquiring the property from a decedent, or to whom property passed from a decedent, shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death, or, in the case of an election under section 2032 of the Code, its value at the applicable valuation date prescribed by that section.

Section 1014(b) of the Code provides, in part, that for purposes of subsection (a), property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent shall be considered to have been acquired from or to have passed from the decedent.

Section 1053 of the Code provides, in part, that in the case of property acquired before March 1, 1913, if the basis otherwise determined under subtitle A, adjusted (for the period before March 1, 1913) as provided in section 1016, is less than the fair market value of the property as of March 1, 1913, then the basis for determining gain shall be such fair market value.

Section 1.1053-1 of the Income Tax Regulations provides, in part, as follows:

(b) Basis for determining loss. In the case of property acquired before March 1, 1913, the basis as of March 1, 1913, for determining loss is the basis determined in accordance with part II (section 1011 and following), subchapter 0, chapter 1 of the Code, or other applicable provisions of chapter 1 of the Code, without reference to the fair market value as of March 1, 1913.

In *Pierre S. du Pont v. Commissioner*, 18 B.T.A. 1028 (1930), acquiescence, C.B. XIV-1, 6 (1935), revoking nonacquiescence, C.B. IX-2, 72 (1930), a taxpayer acquired certain stock that he subsequently placed in trust under the terms of an agreement by which the stock would be held by a trustee until the income therefrom should aggregate a certain amount, such income to be paid to a hospital therein designated. Upon the termination of the trust agreement, the stock was returned to the taxpayer, who sold a portion of the stock. The Board of Tax Appeals held that in determining gain or loss on the sale of such stock, no reduction of the cost or acquisition value was necessary because of the creation and existence of a trust estate between the dates of acquisition and sale. The Board stated that:

What we have is an individual who owned stock, a nonwasting asset, and we are asked to decide whether the cost of that stock should be reduced (in determining gain or loss upon its ultimate sale) because an estate for a short period had been carved therefrom, but had expired prior to a sale of the stock. On a careful consideration of the entire situation, we are of the opinion that the petitioner's contention to the effect that cost is not affected thereby should be sustained. Certainly, the rights which the petitioner had in the stock, the corpus so to speak, were no different (leaving out of consideration the stock dividend feature not here material) after the termination of the trust than they were prior to its creation, and both parties seem agreed, and we think rightfully so, that nothing came to the petitioner, either by gift or sale, in so far as corpus is concerned, which he did not already have, when the trust was terminated and there was a falling in of the precedent estate. \* \* \*

In each of the three situations set forth above, the taxpayer did not divest himself of all interest in the securities transferred in trust. The right

of the taxpayer to request the return of the securities or the provision for the return of such securities upon the happening of some future event was contained in the trust instrument.

Accordingly, it is held that the basis of the securities reconveyed to the taxpayer in Situation 1 is the original cost to the taxpayer as determined under section 1012 of the Code. The basis of the securities distributed to the taxpayer in Situation 2 is the fair market value of such securities on the date of the death of the decedent from whom the taxpayer inherited such securities as determined under section 1014 of the Code or on the alternate valuation date under section 2032 of the Code. The basis of the securities returned to the taxpayer in Situation 3 is the fair market value of the securities as of March 1, 1913, for purposes of determining gain as provided in section 1053 of the Code. The basis for determining loss from the sale or other disposition of the securities in Situation 3 is cost as provided in section 1.1053-1(b) of the regulations.

I.T. 1994, S.M. 4882, and G.C.M. 14350 are superseded, since the positions set forth therein are restated under current law in this Revenue Ruling.

#### 26 CFR 1.1012-1: Basis of property.

A method is described with respect to stock sales that will be acceptable as "adequate identification" of the basis and holding period of shares purchased in more than one lot at different times and prices, and represented by one or more large denomination certificates.

#### Rev. Rul. 72-415

Advice has been requested whether the method described below of identifying shares of capital stock sold by the taxpayer constitutes "adequate identification" within the meaning of section 1.1012-1(c) of the Income Tax Regulations.