

the extent not inconsistent with this subparagraph.

(3) Upon receipt of certification from the appropriate State officer that action has been ordered or approved by a court of competent jurisdiction, the Commissioner may abate the unpaid portion of the assessment of tax imposed by section 507(c), or any liability in respect thereof, if in his judgment such action is corrective action within the meaning of paragraph (c) of this section. In the event that such action is not corrective action, the Commissioner may in his discretion again suspend action on the assessment and collection of such tax until corrective action is obtained, or if in his judgment corrective action cannot be obtained, he may resume the assessment and collection of such tax.

(c) *Corrective action.* The term *corrective action* referred to in paragraph (b) of this section means vigorous enforcement of State laws sufficient to assure implementation of the provisions of chapter 42 and insure that the assets of such private foundation are preserved for such charitable or other purposes specified in section 501(c)(3). Except where assets of the terminated private foundation are transferred to an organization described in section 509(a) (1) through (4) the State is required to take such action to assure that the provisions of section 508(e)(1) (A) and (B) are applicable to the terminated foundation (or any transferee) with respect to such assets as if such organization were a private foundation. Thus, the governing instrument of such organization must include provisions with respect to such assets:

(1) Requiring its income therefrom for each taxable year to be distributed at such time and in such manner as not to subject such organization to tax under section 4942 (as if the organization were a private foundation),

(2) Prohibiting such organization from engaging in any act of self-dealing (as defined in section 4941(d) as if the organization were a private foundation),

(3) Prohibiting such organization from retaining any excess business holdings (as defined in section 4943(c) as if the organization were a private foundation),

(4) Prohibiting such organization from making any investments in such manner as to subject such organization to tax under section 4944 (as if the organization were a private foundation), and

(5) Prohibiting such organization from making any taxable expenditures (as defined in section 4945(d) as if the organization were a private foundation). Consequently, in cases where the preceding sentence applies, although the private foundation status of an organization is terminated for tax purposes, it is contemplated that its status under State law would remain unchanged, because the tax under section 507(c) has been abated solely because the Commissioner has been given effective assurance that there is vigorous enforcement of State laws sufficient to assure implementation of the provisions of chapter 42. Therefore, in such a case while chapter 42 will not apply to acts occurring subsequent to termination which previously would have resulted in the imposition of tax under chapter 42, it is contemplated that there will be vigorous enforcement of State laws (including laws made applicable by the provisions in the governing instrument) with respect to such acts. Notwithstanding the preceding three sentences, no amendment to the organization's governing instrument is necessary where there are provisions of State law which have the effect of requiring a terminated private foundation to which the rules of subparagraphs (1) through (5) of this paragraph apply to be subject to such rules whether or not there are such provisions in such terminated private foundation's governing instrument.

[T.D. 7233, 37 FR 28161, Dec. 21, 1972]

§ 1.508-1 Notices.

(a) *New organizations must notify the Commissioner that they are applying for recognition of section 501(c)(3) status—(1) In general.* Except as provided in subparagraph (3) of this paragraph, an organization that is organized after October 9, 1969, will not be treated as described in section 501(c)(3):

(i) Unless such organization has given the Commissioner notice in the manner prescribed in subparagraph (2) of this paragraph; or

(ii) For any period before the giving of such notice, unless such notice is given in the manner and within the time prescribed in subparagraph (2) of this paragraph

No organization shall be exempt from taxation under section 501(a) by reason of being described in section 501(c)(3) whenever such organization is not treated as described in section 501(c)(3) by reason of section 508(a) and this paragraph. See section 508(d)(2)(B) and § 1.508-2(b) regarding the deductibility of charitable contributions to an organization during the period such organization is not exempt under section 501(a) as an organization described in section 501(c)(3) by reason of failing to file a notice under section 508(a) and this subparagraph. See also § 1.508-2(b)(1)(viii) regarding the deductibility of charitable contributions to trusts described in section 4947(a)(1).

(2) *Filing of notice.* (i) For purposes of subparagraph (1) of this paragraph, except as provided in subparagraph (3) of this paragraph, an organization seeking exemption under section 501(c)(3) must file the notice described in section 508(a) within 15 months from the end of the month in which the organization was organized, or before March 22, 1973, whichever comes later. Such notice is filed by submitting a properly completed and executed Form 1023, exemption application. Notice should be filed with the district director. A request for extension of time for the filing of such notice should be submitted to such district director. Such request may be granted if it demonstrates that additional time is required.

(ii) Although the information required by Form 1023 must be submitted to satisfy the notice required by this section, the failure to supply, within the required time, all of the information required to complete such form is not alone sufficient to deny exemption from the date of organization to the date such complete information is submitted by the organization. If the information which is submitted within the required time is incomplete, and the organization supplies the necessary additional information at the request of the Commissioner within the additional time period allowed by him, the

original notice will be considered timely.

(iii) For purposes of subdivision (i) of this subparagraph and paragraph (b)(2)(i) of this section, an organization shall be considered *organized* on the date it becomes an organization described in section 501(c)(3) (determined without regard to section 508(a)).

(iv) Since a trust described in section 4947(a)(2) is not an organization described in section 501(c)(3), it is not required to file a notice described in section 508(a).

(v) For the treatment of community trusts, and the trusts or funds comprising them, under section 508, see the special rules under § 1.170A-9(e).

(vi) A foreign organization shall, for purposes of section 508, be treated in the same manner as a domestic organization, except that section 508 shall not apply to a foreign organization which is described in section 4948(b).

(3) *Exceptions from notice.* (i) Paragraphs (a) (1) and (2) of this section are inapplicable to the following organizations:

(a) Churches, interchurch organizations of local units of a church, conventions or associations of churches, or integrated auxiliaries of a church. See § 1.6033-2(h) regarding the definition of integrated auxiliary of a church;

(b) Any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than \$5,000 (as described in subdivision (ii) of this subparagraph);

(c) Subordinate organizations (other than private foundations) covered by a group exemption letter;

(d) Solely for purposes of sections 507, 508(d)(1), 508(d)(2)(A) and 508(d)(3), 508(e), 509 and chapter 42, a trust described in section 4947(a)(1). (However, a trust described in section 501(c)(3) which was organized after October 9, 1969, shall be exempt under section 501(a) by reason of being described in section 501(c)(3) only if it files such notice); and

(e) Any other class of organization that the Commissioner from time to time excludes from the requirement of filing notice under section 508(a).

(ii) For purposes of subdivision (i) (b) of this subparagraph and paragraph (b)(7)(ii) of this section, the gross receipts (as defined in subdivision (iii) of this subparagraph) of an organization are normally not more than \$5,000 if:

(a) During the first taxable year of the organization the organization has received gross receipts of \$7,500 or less;

(b) During its first 2 taxable years the aggregate gross receipts received by the organization are \$12,000 or less; and

(c) In the case of an organization which has been in existence for at least 3 taxable years, the aggregate gross receipts received by the organization during the immediately preceding 2 taxable years, plus the current year are \$15,000 or less

If an organization fails to meet the requirements of (a), (b), or (c) of this subdivision, then with respect to the organization, such organization shall be required to file the notices described in section 508 (a) and (b) within 90 days after the end of the period described in (a), (b), or (c) of this subdivision or before March 22, 1973, whichever is later, in lieu of the period prescribed in subparagraph (2)(i) of this paragraph. Thus, for example, if an organization meets the \$7,500 requirement of (a) of this subdivision for its first taxable year, but fails to meet the \$12,000 requirement of (b) of this subdivision for the period ending with its second taxable year, then such organization shall meet the notification requirements of section 508(a)(1) and 508(b) and subparagraph (2)(i) of this paragraph if it files such notification within 90 days after the close of its second taxable year. If an organization which has been in existence at least 3 taxable years meets the requirements of (a), (b), and (c) with respect to all prior taxable years, but fails to meet the requirements of (c) of this subdivision with respect to the current taxable year, then even if the organization fails to make such notification within 90 days after the close of the current taxable year, section 508(a)(1) and 508(b) shall not apply with respect to its prior years. In such a case, the organization shall not be treated as described in section 501(c)(3) for a period beginning with such current taxable year and ending when

such notice is given under section 508(a)(2).

(iii) For a definition of *gross receipts* for purposes of subdivision (i)(b) of this subparagraph and paragraph (b)(7)(ii) of this section, see §1.6033-2(g)(4).

(4) *Voluntary filings by new organizations excepted from filing notice.* Any organization excepted from the requirement of filing notice under section 508(a) will be exempt from taxation under section 501(c)(3) if it meets the requirements of that section, whether or not it files such notice. However, in order to establish its exemption with the Internal Revenue Service and receive a ruling or determination letter recognizing its exempt status, an organization excepted from the notice requirement by reason of subparagraph (3) of this paragraph should file proof of its exemption in the manner prescribed in §1.501(a)-1.

(b) *Presumption that old and new organizations are private foundations—(1) In general.* Except as provided in subparagraph (7) of this paragraph, any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3), and which does not notify the Commissioner within the time and in the manner prescribed in subparagraph (2) that it is not a private foundation, will be presumed to be a private foundation.

(2) *Filing of notice.* (i) Except as provided in subparagraph (7) of this paragraph, an organization must file the notice described in section 508(b) and subparagraph (1) of this paragraph within 15 months from the end of the month in which such organization was organized, or before March 22, 1973, whichever comes later. See paragraph (a)(2)(iii) of this section, for rules pertaining to when an organization is *organized*.

(ii) Any organization filing notice under this paragraph that has received a ruling or determination letter from the Internal Revenue Service dated on or before July 13, 1970, recognizing its exemption from taxation under section 501(c)(3) (or the corresponding provisions of prior law), shall file the notice described in section 508(b) by submitting a properly completed and executed Form 4653, Notification Concerning Foundation Status.

(iii) The financial schedule on Form 4653 need be completed only if the organization is, or thinks it might be, described in section 170(b)(1)(A) (iv) or (vi) or section 509(a)(2).

(iv) Any organization filing notice under this paragraph that has not received a ruling or determination letter from the Internal Revenue Service dated on or before July 13, 1970, recognizing its exemption from taxation under section 501(c)(3) (or the corresponding provisions of prior law), shall file its notice by submitting a properly completed and executed Form 1023 and providing information that it is not a private foundation. The organization shall also submit all information required by the regulations under section 170 or 509 (whichever is applicable) necessary to establish recognition of its classification as an organization described in section 509(a) (1), (2), (3), or (4). A Form 1023 submitted prior to July 14, 1970, will satisfy this requirement if the organization submits an additional statement that it is not a private foundation together with all pertinent additional information required. Any statement filed under this subdivision shall be accompanied by a written declaration by the principal officer, manager or authorized trustee that there is a reasonable basis in law and in fact for the statement that the organization so filing is not a private foundation, and that to the best of the knowledge and belief of such officer, manager or trustee, the information submitted is complete and correct.

(v) The notice filed under subdivision (ii) of this subparagraph should be filed in accordance with the instructions applicable to Form 4653. The notice required by subdivision (iv) of this subparagraph should be filed with the district director. An extension of time for the filing of such notice may be granted by the Director of the Internal Revenue Service Center or district director upon timely request by the organization to such person, if the organization demonstrates that additional time is required.

(3) *Effect of notice upon the filing organization.* (i) The notice filed under this paragraph may not be relied upon by the organization so filing unless and until the Internal Revenue Service no-

tifies the organization that it is an organization described in paragraph (1), (2), (3), or (4), of section 509(a). For purposes of the preceding sentence, an organization that has filed notice under section 508(b), and has previously received a ruling that it is an organization described in section 170(b)(1)(A) (other than clauses (vii) and (viii) thereof), will be considered to have been notified by the Internal Revenue Service that it is an organization described in paragraph (1) of section 509(a) if (a) the facts and circumstances forming the basis for the issuance of such ruling have not substantially changed, and (b) the ruling issued under that section has not been revoked expressly or by a subsequent change of the law or regulations under which the ruling was issued.

(ii) If an organization has filed a notice under section 508(b) stating that it is not a private foundation and designating only one paragraph of section 509(a) under which it claims recognition of its classification (such as an organization described in section 509(a)(2)), and if it has received a ruling or determination letter which recognizes that it is not a private foundation but which fails to designate the paragraph under section 509(a) in which it is described, then such organization will be treated as described under the paragraph designated by it, until such ruling or determination letter is modified or revoked. The rule in the preceding sentence shall not apply to an organization which indicated that it does not know its status under section 509(a) or which claimed recognition of its status under more than one paragraph of section 509(a).

(4) *Effect of notice upon grantors or contributors to the filing organization.* In the case of grants, contributions, or distributions made prior to:

(i) In the case of community trusts, 6 months after the date on which corrective and clarifying regulations designated as §1.170A-9(e)(10) become final;

(ii) In the case of medical research organizations, 6 months after the date on which corrective and clarifying regulations designated as §1.170A-9(b)(2), become final, and

(iii) In all other cases, January 1, 1976, any organization which has properly filed the notice described in section 508(b) prior to March 22, 1973 will not be treated as a private foundation for purposes of making any determination under the internal revenue laws with respect to a grantor, contributor or distributor (as for example, a private foundation distributing all of its net assets pursuant to a section 507(b)(1)(A) termination) thereto, unless the organization is controlled directly or indirectly by such grantor, contributor or distributor, if by the 30th day after the day on which such notice is filed, the organization has not been notified by the Commissioner that the notice filed by such organization has failed to establish that such organization is not a private foundation. See subparagraph (6) of this paragraph for the effect of an adverse notice by the Internal Revenue Service. For purposes of this subparagraph, an organization which has properly filed notice described in section 508(b) prior to March 22, 1973, and which has claimed recognition of its status under only one paragraph of section 509(a) in such notice, will be treated only for purposes of grantors, contributors or distributors as having the classification claimed in the notice if the provisions of this subparagraph are otherwise satisfied.

(5) *Statement that old and new organizations are operating foundations.* (i) Any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3) may submit a statement, in the form and manner provided for notice in subparagraph (2) of this paragraph, that it is an operating foundation (as defined in section 4942(j)(3)) and include in such statement:

(a) Necessary supporting information as required by the regulations under section 4942(j)(3) to confirm such determination (including a statement identifying the clause of section 4942(j)(3)(B) that is applicable); and

(b) A written declaration by the principal officer, manager, or authorized trustee that there is a reasonable basis in law and in fact that the organization so filing is an operating foundation, and that to the best of the knowledge

and belief of such officer, manager or trustee, the information submitted is complete and correct.

(ii) The statement filed under this subparagraph may not be relied upon by the organization so filing unless and until the Internal Revenue Service notifies the organization that it is an operating foundation described in section 4942(j)(3).

(iii) In the case of grants, contributions, or distributions made prior to March 22, 1973, any organization which has properly filed the statement described in this subparagraph prior to such date will be treated as an operating foundation for purposes of making any determination under the internal revenue laws with respect to a grantor, contributor, or distributor thereto, unless the organization is controlled directly or indirectly by such grantor, contributor, or distributor, if by the 30th day after the day on which such statement is filed, the organization has not been notified by the Commissioner or his delegate that its statement has failed to establish that such organization is an operating foundation. See subparagraph (6) of this paragraph for the effect of an adverse notice by the Internal Revenue Service.

(6) *Effect of notice by Internal Revenue Service concerning organization's notice or statement.* Subparagraph (4) and subdivision (iii) of subparagraph (5) of this paragraph shall have no effect:

(i) With respect to a grantor, contributor, or distributor to any organization for any period after the date on which the Internal Revenue Service makes notice to the public (such as by publication in the Internal Revenue Bulletin) that a grantor, contributor, or distributor to such organization can no longer rely upon the notice or statement submitted by such organization; and

(ii) Upon any grant, contribution, or distribution made to an organization on or after the date on which a grantor, contributor, or distributor acquired knowledge that the Internal Revenue Service has given notice to such organization that its notice or statement has failed to establish that such organization either is not a private foundation, or is an operating foundation, as the case may be.

(7) *Exceptions from notice.* Subparagraphs (1) and (2) of this paragraph are inapplicable to the following organizations:

(i) Churches, interchurch organizations of local units of a church, conventions or associations of churches, or integrated auxiliaries of a church, such as a men's or women's organization, religious school, mission society, or youth group;

(ii) Any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than \$5,000 (as determined under paragraph (a)(3)(ii) of this section);

(iii) Subordinate organizations (other than private foundations) covered by a group exemption letter but only if the parent or supervisory organization submits a notice covering the subordinates;

(iv) Trusts described in section 4947(a)(1); and

(v) Any other class of organization that the Commissioner from time to time excludes from the notification requirements of section 508(b).

(8) *Voluntary filings by organizations excepted from filing notice.* Any organization excepted from the requirement of filing notice under section 508(b) by reason of subdivisions (i), (ii), and (v) of subparagraph (7) of this paragraph may receive the benefits of subparagraph (4) of this paragraph by filing such notice.

(Secs. 508 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[T.D. 7232, 37 FR 28289, Dec. 22, 1972, as amended by T.D. 7342, 40 FR 1237, Jan. 7, 1975; T.D. 7395, 41 FR 1063, Jan. 6, 1976; T.D. 8640, 60 FR 65552, Dec. 20, 1995]

§ 1.508-2 Disallowance of certain charitable, etc., deductions.

(a) *Gift or bequest to organizations subject to section 507(c) tax—(1) General rule.* No gift or bequest made to an organization upon which the tax provided by section 507(c) has been imposed shall be allowed as a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made:

(i) By any person after notification has been made by the organization

under section 507(a)(1) or after notification has been made by the Commissioner under section 507(a)(2)(B), or

(ii) By a substantial contributor (as defined in section 507(d)(2)) in his taxable year which includes the first day on which action is taken by such organization which culminates in the imposition of tax under section 507(c) and any subsequent taxable year

For purposes of subdivision (ii) of this subparagraph, the first day on which action is taken by an organization which culminates in the imposition of tax under section 507(c) shall be determined under the rules set forth in § 1.507-7(b) (1) and (2).

(2) *Exception.* Subparagraph (1) of this paragraph shall not apply if the entire amount of the unpaid portion of the tax imposed by section 507(c) is abated by the Commissioner under section 507(g).

(b) *Gift or bequest to taxable private foundation, section 4947 trust, etc.—(1) General rule.* (i) Except as provided in subparagraph (2) of this paragraph, no gift or bequest made to an organization shall be allowed as a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made:

(a) To a private foundation or a trust described in section 4947(a)(2) in a taxable year for which it fails to meet the requirements of section 508(e) (determined without regard to section 508(e)(2) (B) and (C)), or

(b) To any organization in a period for which it is not treated as an organization described in section 501(c)(3) by reason of section 508(a).

(ii) For purposes of subdivision (i)(a) of this subparagraph the term *taxable year* refers to the taxable year of the donee or beneficiary organization. In the event a bequest is made to a private foundation or trust described in section 4947(a)(2) which is not in existence at the date of the testator's death (but which is created under the terms of the testator's will), the term *taxable year* shall mean the first taxable year of the private foundation or trust.

(iii) For purposes of subdivision (i)(a) of this subparagraph, an organization does not fail to meet the requirements of section 508(e) for a taxable year, unless it fails to meet such requirements