

person, any other person who would be a disqualified person (within the meaning of section 4946) by reason of his relationship to such person. In the case of a contributor which is a corporation, the term also includes any officer or director of such corporation.

(3) Regulations

For purposes of this section, the determination as to whether and to what extent there would have been any increase in tax shall be made in accordance with regulations prescribed by the Secretary.

(e) Value of assets

For purposes of subsection (c), the value of the net assets shall be determined at whichever time such value is higher: (1) the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation, or (2) the date on which it ceases to be a private foundation.

(f) Liability in case of transfers of assets from private foundation

For purposes of determining liability for the tax imposed by subsection (c) in the case of assets transferred by the private foundation, such tax shall be deemed to have been imposed on the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation.

(g) Abatement of taxes

The Secretary may abate the unpaid portion of the assessment of any tax imposed by subsection (c), or any liability in respect thereof, if—

(1) the private foundation distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months, or

(2) following the notification prescribed in section 6104(c) to the appropriate State officer, such State officer within one year notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that corrective action has been initiated pursuant to State law to insure that the assets of such private foundation are preserved for such charitable or other purposes specified in section 501(c)(3) as may be ordered or approved by a court of competent jurisdiction, and upon completion of the corrective action, the Secretary receives certification from the appropriate State officer that such action has resulted in such preservation of assets.

(Added Pub. L. 91-172, title I, §101(a), Dec. 30, 1969, 83 Stat. 492; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title III, §313(a), July 18, 1984, 98 Stat. 786.)

Editorial Notes

AMENDMENTS

1984—Subsec. (d)(2)(C). Pub. L. 98-369 added subpar. (C).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title III, §313(b), July 18, 1984, 98 Stat. 787, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.”

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

APPLICABILITY TO DETERMINATION OF STATUS AS SUBSTANTIAL CONTRIBUTOR FOR PURPOSES OF TAXES ON SELF-DEALING OF CONTRIBUTIONS MADE PRIOR TO OCTOBER 9, 1969

Pub. L. 95-170, §3, Nov. 12, 1977, 91 Stat. 1352, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “In determining whether a person is a substantial contributor within the meaning of section 507(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for purposes of applying section 4941 of such Code (relating to taxes on self-dealing), contributions made before October 9, 1969, which—

“(1) were made on account of or in lieu of payments required under a lease in effect before such date, and

“(2) were coincident with or by reason of the reduction in the required payments under such lease, shall not be taken into account. For purposes of applying section 507(d)(2)(B)(iv) of such Code, the preceding sentence shall be treated as having taken effect on January 1, 1970.”

§ 508. Special rules with respect to section 501(c)(3) organizations

(a) New organizations must notify Secretary that they are applying for recognition of section 501(c)(3) status

Except as provided in subsection (c), an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3)—

(1) unless it has given notice to the Secretary in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

(2) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

(b) Presumption that organizations are private foundations

Except as provided in subsection (c), 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 Secretary, at such time and in such manner as the Secretary may by regulations prescribe, that it is not a private foundation shall be presumed to be a private foundation.

(c) Exceptions

(1) Mandatory exceptions

Subsections (a) and (b) shall not apply to—

(A) churches, their integrated auxiliaries, and conventions or associations of churches, or

(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.

(2) Exceptions by regulations

The Secretary may by regulations exempt (to the extent and subject to such conditions

as may be prescribed in such regulations) from the provisions of subsection (a) or (b) or both—
 (A) educational organizations described in section 170(b)(1)(A)(ii), and

(B) any other class of organizations with respect to which the Secretary determines that full compliance with the provisions of subsections (a) and (b) is not necessary to the efficient administration of the provisions of this title relating to private foundations.

(d) Disallowance of certain charitable, etc., deductions

(1) Gift or bequest to organizations subject to section 507(c) tax

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), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made—

(A) by any person after notification is made under section 507(a), or

(B) 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.

(2) Gift or bequest to taxable private foundation, section 4947 trust, etc.

No gift or bequest made to an organization shall be allowed as a deduction under section 170, 545(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 in a taxable year for which it fails to meet the requirements of subsection (e) (determined without regard to subsection (e)(2)), 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 subsection (a).

(3) Exception

Paragraph (1) shall not apply if the entire amount of the unpaid portion of the tax imposed by section 507(c) is abated by the Secretary under section 507(g).

(e) Governing instruments

(1) General rule

A private foundation shall not be exempt from taxation under section 501(a) unless its governing instrument includes provisions the effects of which are—

(A) to require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under section 4942, and

(B) to prohibit the foundation from engaging in any act of self-dealing (as defined in section 4941(d)), from retaining any excess business holdings (as defined in section 4943(c)), from making any investments in such manner as to subject the foundation to tax under section 4944, and from making any taxable expenditures (as defined in section 4945(d)).

(2) Special rules for existing private foundations

In the case of any organization organized before January 1, 1970, paragraph (1) shall not apply—

(A) to any period after December 31, 1971, during the pendency of any judicial proceeding begun before January 1, 1972, by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument in order to meet the requirements of paragraph (1), and

(B) to any period after the termination of any judicial proceeding described in subparagraph (A) during which its governing instrument or any other instrument does not permit it to meet the requirements of paragraph (1).

(f) Additional provisions relating to sponsoring organizations

A sponsoring organization (as defined in section 4966(d)(1)) shall give notice to the Secretary (in such manner as the Secretary may provide) whether such organization maintains or intends to maintain donor advised funds (as defined in section 4966(d)(2)) and the manner in which such organization plans to operate such funds.

(Added Pub. L. 91-172, title I, §101(a), Dec. 30, 1969, 83 Stat. 494; amended Pub. L. 94-455, title XIX, §§1901(a)(71), (b)(8)(E), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1776, 1794, 1834; Pub. L. 108-357, title IV, §413(c)(30), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 109-280, title XII, §1235(b)(1), Aug. 17, 2006, 120 Stat. 1101.)

Editorial Notes

AMENDMENTS

2006—Subsec. (f). Pub. L. 109-280, which directed the addition of subsec. (f) to section 508, without specifying the act to be amended, was executed by making the addition to this section, which is section 508 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2004—Subsec. (d)(1), (2). Pub. L. 108-357 struck out “556(b)(2),” after “545(b)(2),”.

1976—Subsec. (a). Pub. L. 94-455, §1901(a)(71)(A), struck out last sentence providing that for purposes of paragraph (2), the time prescribed for giving notice under this subsection shall not expire before the 90th day after the day on which regulations first prescribed under this subsection become final.

Subsec. (a)(1), (2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” in three places after “Secretary”.

Subsec. (b). Pub. L. 94-455, §§1901(a)(71)(A), 1906(b)(13)(A), struck out “or his delegate” in two places after “Secretary” and “The time prescribed for giving notice under this subsection shall not expire before the 90th day after the day on which regulations first prescribed under this subsection become final” after “a private foundation”.

Subsec. (c)(2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c)(2)(A). Pub. L. 94-455, §1901(b)(8)(E), substituted “(A) educational organizations described in section 170(b)(1)(A)(ii), and” for “(A) educational organizations which normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place where their educational activities are regularly carried on; and” after “(b) or both—”.

Subsec. (c)(2)(B). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (d)(2)(A). Pub. L. 94-455, § 1901(a)(71)(C), substituted “(e)(2)” for “(e)(2)(B) and (C)” after “regard to subsection”.

Subsec. (d)(3). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (e)(2)(A). Pub. L. 94-455, § 1901(a)(71)(B), struck out subpar. (A) relating to taxable years beginning before 1972, and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (e)(2)(B). Pub. L. 94-455, § 1901(a)(71)(B), redesignated subpar. (C) as (B) and substituted “(A)” for “(B)” after “described in subparagraph”.

Subsec. (e)(2)(C). Pub. L. 94-455, § 1901(a)(71)(B), redesignated subpar. (C) as (B).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title XII, § 1235(b)(2), Aug. 17, 2006, 120 Stat. 1102, provided that: “The amendment made by this subsection [amending this section] shall apply to organizations applying for tax-exempt status after the date of the enactment of this Act [Aug. 17, 2006].”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(71)(A)–(C), (b)(8)(E) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1970, except that subsecs. (a), (b), and (c) effective Oct. 9, 1969, see section 101(k)(1), (3) of Pub. L. 91-172, set out as a note under section 4940 of this title.

SAVINGS PROVISION

Limits on inclusion of provisions inconsistent with subsec. (e) of this section in governing instruments, see section 101(l)(6) of Pub. L. 91-172, set out as a note under section 4940 of this title.

§ 509. Private foundation defined

(a) General rule

For purposes of this title, the term “private foundation” means a domestic or foreign organization described in section 501(c)(3) other than—

(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii));

(2) an organization which—

(A) normally receives more than one-third of its support in each taxable year from any combination of—

(i) gifts, grants, contributions, or membership fees, and

(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section

170(c)(1)), in any taxable year to the extent such receipts exceed the greater of \$5,000 or 1 percent of the organization’s support in such taxable year,

from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

(B) normally receives not more than one-third of its support in each taxable year from the sum of—

(i) gross investment income (as defined in subsection (e)) and

(ii) the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511;

(3) an organization which—

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2), (B) is—

(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2),

(ii) supervised or controlled in connection with one or more such organizations, or

(iii) operated in connection with one or more such organizations, and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2); and

(4) an organization which is organized and operated exclusively for testing for public safety.

For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in section 501(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 501(c)(3).

(b) Continuation of private foundation status

For purposes of this title, if an organization is a private foundation (within the meaning of subsection (a)) on October 9, 1969, or becomes a private foundation on any subsequent date, such organization shall be treated as a private foundation for all periods after October 9, 1969, or after such subsequent date, unless its status as such is terminated under section 507.

(c) Status of organization after termination of private foundation status

For purposes of this part, an organization the status of which as a private foundation is terminated under section 507 shall (except as provided in section 507(b)(2)) be treated as an organization created on the day after the date of such termination.

(d) Definition of support

For purposes of this part and chapter 42, the term “support” includes (but is not limited to)—