

Internal Revenue Service, Treasury

§ 1.170A-9

(\$55,000 - \$15,000) which would have been recognized as long-term capital gain if the property had been sold by C at its fair market value at the time of its contribution to the church. Under section 170(b)(1)(A) and paragraph (b) of this section, C is allowed a charitable contributions deduction for 1970 of \$25,000 $(\$2,000 + \$35,000)$ but not to exceed $[\$50,000 \times 50\%]$. Under section 170(d)(1) and paragraph (b) of § 1.170A-10, C is allowed a carryover from 1970 to 1971 of \$12,000 $(\$37,000 - \$25,000)$. No deduction is allowed for 1970 for the contribution in that year of \$3,000 cash to the private foundation since section 170(b)(1)(B) and paragraph (c) of this section limit the deduction for such contribution to the smaller of \$10,000 $(\$50,000 \times 20\%)$ or \$0 $(\$50,000 \times 50\%) - \$25,000$. C is not allowed a carryover from 1970 for any of the \$3,000 cash contribution in that year which is not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example 15. (a) D, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of \$100,000. During 1970 he makes a charitable contribution to a church of 30-percent capital gain property with a fair market value of \$40,000 and an adjusted basis of \$21,000. In addition, he contributes \$23,000 cash in 1970 to a private foundation not described in section 170(b)(1)(E). For 1970, D elects under paragraph (d)(2) of this section to have section 170(e)(1)(B) and § 1.170A-4(a) apply to his contribution of property to the church. Accordingly, for 1970 D's contribution of property to the church is reduced from \$40,000 to \$30,500, the reduction of \$9,500 being 50 percent of the gain of \$19,000 $(\$40,000 - \$21,000)$ which would have been recognized as long-term capital gain if the property had been sold by D at its fair market value at the time of its contribution to the church. Under section 170(b)(1)(A) and paragraph (b) of this section, D is allowed a charitable contributions deduction for 1970 of \$30,500 for the property contributed to the church. In addition, under section 170(b)(1)(B) and paragraph (c) of this section D is allowed a deduction of \$19,500 for the cash contributed to the private foundation, since such contribution of \$23,000 is allowed to the extent of the lesser of \$20,000 $(20\% \text{ of } \$100,000)$ or \$19,500 $([\$100,000 \times 50\%] - \$30,500)$. D is not allowed a carryover to 1971 or to any other taxable year for any of the \$3,500 $(\$23,000 - \$19,500)$ of cash not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(b) If D had not made the election under paragraph (d)(2) of this section for 1970, his deduction for 1970 under section 170(a) for the \$40,000 contribution of property to the church would have been limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to \$30,000 $(30\% \text{ of } \$100,000)$, and under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10 he would have been allowed a car-

ryover to 1971 of \$10,000 $(\$40,000 - \$30,000)$ for his contribution of such property. In addition, he would have been allowed under section 170(b)(1)(B)(ii) and paragraph (c) of this section for 1970 a charitable contributions deduction of \$10,000 $([\$100,000 \times 50\%] - \$40,000)$ for the cash contributed to the private foundation. In such case, D would not have been allowed a carryover to 1971 or to any other taxable year for any of the \$13,000 $(\$23,000 - \$10,000)$ of cash not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(g) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

[T.D. 7207, 37 FR 20783, Oct. 4, 1972; 37 FR 22982, Oct. 27, 1972]

§ 1.170A-9 Definition of section 170(b)(1)(A) organization.

(a) The term *section 170(b)(1)(A) organization* as used in the regulations under section 170 means any organization described in paragraphs (b) through (j) of this section, effective with respect to taxable years beginning after December 31, 1969, except as otherwise provided. Section 1.170-2(b) shall continue to be applicable with respect to taxable years beginning prior to January 1, 1970. The term *one or more organizations described in section 170(b)(1)(A) (other than clauses (vii) and (viii))* as used in sections 507 and 509 of the Internal Revenue Code (Code) and the regulations means one or more organizations described in paragraphs (b) through (f) of this section, except as modified by the regulations under part II of subchapter F of chapter 1 or under chapter 42.

(b) *Church or a convention or association of churches.* An organization is described in section 170(b)(1)(A)(i) if it is a church or a convention or association of churches.

(c) *Educational organization and organizations for the benefit of certain State and municipal colleges and universities—*
(1) *Educational organization.* An educational organization is described in section 170(b)(1)(A)(ii) if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at

the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities. It includes Federal, State, and other public-supported schools which otherwise come within the definition. It does not include organizations engaged in both educational and noneducational activities unless the latter are merely incidental to the educational activities. A recognized university which incidentally operates a museum or sponsors concerts is an educational organization within the meaning of section 170(b)(1)(A)(ii). However, the operation of a school by a museum does not necessarily qualify the museum as an educational organization within the meaning of this subparagraph.

(2) *Organizations for the benefit of certain State and municipal colleges and universities.* (i) An organization is described in section 170(b)(1)(A)(iv) if it meets the support requirements of subdivision (ii) of this subparagraph and is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization described in subdivision (iii) of this subparagraph. The phrase “expenditures to or for the benefit of a college or university” includes expenditures made for any one or more of the normal functions of colleges and universities such as the acquisition and maintenance of real property comprising part of the campus area; the erection of, or participation in the erection of, college or university buildings; the acquisition and maintenance of equipment and furnishings used for, or in conjunction with, normal functions of colleges and universities; or expenditures for scholarships, libraries and student loans.

(ii) To qualify under section 170(b)(1)(A)(iv), the organization receiving the contribution must normally receive a substantial part of its support from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, or from a combination of two or more of such sources. For such purposes, the term “support” does not include income received in the ex-

ercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a). An example of an indirect contribution from the public is the receipt by the organization of its share of the proceeds of an annual collection campaign of a community chest, community fund, or united fund. In determining the amount of support received by such organization with respect to a contribution of property which is subject to reduction under section 170(e), the fair market value of the property shall be taken into account.

(iii) The college or university (including a land grant college or university) to be benefited must be an educational organization referred to in section 170(b)(1)(A)(ii) and subparagraph (1) of this paragraph which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions.

(d) *Hospitals and medical research organizations*—(1) *Hospitals.* An organization (other than one described in paragraph (d)(2) of this section) is described in section 170(b)(1)(A)(iii) if—

- (i) It is a hospital; and
- (ii) Its principal purpose or function is the providing of medical or hospital care or medical education or medical research.

(A) The term *hospital* includes—

- (1) Federal hospitals; and
- (2) State, county, and municipal hospitals which are instrumentalities of governmental units referred to in section 170(c)(1) and otherwise come within the definition. A rehabilitation institution, outpatient clinic, or community mental health or drug treatment center may qualify as a “hospital” within the meaning of paragraph (d)(1)(i) of this section if its principal purpose or function is the providing of hospital or medical care. For purposes of this paragraph (d)(1)(ii), the term *medical care* shall include the treatment of any physical or mental disability or condition, whether on an inpatient or outpatient basis, provided the cost of such treatment is deductible under section 213 by the person

treated. An organization, all the accommodations of which qualify as being part of a “skilled nursing facility” within the meaning of 42 U.S.C. 1395x(j), may qualify as a “hospital” within the meaning of paragraph (d)(1)(i) of this section if its principal purpose or function is the providing of hospital or medical care. For taxable years ending after June 28, 1968, the term *hospital* also includes cooperative hospital service organizations which meet the requirements of section 501(e) and § 1.501(e)-1.

(B) The term *hospital* does not, however, include convalescent homes or homes for children or the aged, nor does the term include institutions whose principal purpose or function is to train handicapped individuals to pursue some vocation. An organization whose principal purpose or function is the providing of medical education or medical research will not be considered a “hospital” within the meaning of paragraph (d)(1)(i) of this section, unless it is also actively engaged in providing medical or hospital care to patients on its premises or in its facilities, on an inpatient or outpatient basis, as an integral part of its medical education or medical research functions. See, however, paragraph (d)(2) of this section with respect to certain medical research organizations.

(2) *Certain medical research organizations*—(i) *Introduction*. A medical research organization is described in section 170(b)(1)(A)(iii) if the principal purpose or functions of such organization are medical research and if it is directly engaged in the continuous active conduct of medical research in conjunction with a hospital. In addition, for purposes of the 50 percent limitation of section 170(b)(1)(A) with respect to a contribution, during the calendar year in which the contribution is made such organization must be committed to spend such contribution for such research before January 1 of the fifth calendar year which begins after the date such contribution is made. An organization need not receive contributions deductible under section 170 to qualify as a medical research organization and such organization need not be committed to spend amounts to which the limitation of section 170(b)(1)(A)

does not apply within the 5-year period referred to in this paragraph (d)(2)(i). However, the requirement of continuous active conduct of medical research indicates that the type of organization contemplated in this paragraph (d)(2) is one which is primarily engaged directly in the continuous active conduct of medical research, as compared to an inactive medical research organization or an organization primarily engaged in funding the programs of other medical research organizations. As in the case of a hospital, since an organization is ordinarily not described in section 170(b)(1)(A)(iii) as a hospital unless it functions primarily as a hospital, similarly a medical research organization is not so described unless it is primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital. Accordingly, the rules of this paragraph (d)(2) shall only apply with respect to such medical research organizations.

(ii) *General rule*. An organization (other than a hospital described in paragraph (d)(1) of this section) is described in section 170(b)(1)(A)(iii) only if within the meaning of this paragraph (d)(2):

(A) The principal purpose or functions of such organization are to engage primarily in the conduct of medical research; and

(B) It is primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital which is—

(1) Described in section 501(c)(3);

(2) A Federal hospital; or

(3) An instrumentality of a governmental unit referred to in section 170(c)(1).

(C) In order for a contribution to such organization to qualify for purposes of the 50 percent limitation of section 170(b)(1)(A), during the calendar year in which such contribution is made or treated as made, such organization must be committed (within the meaning of paragraph (d)(2)(viii) of this section) to spend such contribution for such active conduct of medical research before January 1 of the fifth calendar year beginning after the date such contribution is made. For the

meaning of the term “medical research” see paragraph (d)(2)(iii) of this section. For the meaning of the term “principal purpose or functions” see paragraph (d)(2)(iv) of this section. For the meaning of the term “primarily engaged directly in the continuous active conduct of medical research” see paragraph (d)(2)(v) of this section. For the meaning of the term “medical research in conjunction with a hospital” see paragraph (d)(2)(vii) of this section.

(iii) *Definition of medical research.* *Medical research* means the conduct of investigations, experiments, and studies to discover, develop, or verify knowledge relating to the causes, diagnosis, treatment, prevention, or control of physical or mental diseases and impairments of man. To qualify as a medical research organization, the organization must have or must have continuously available for its regular use the appropriate equipment and professional personnel necessary to carry out its principal function. Medical research encompasses the associated disciplines spanning the biological, social and behavioral sciences. Such disciplines include chemistry (biochemistry, physical chemistry, bioorganic chemistry, etc.), behavioral sciences (psychiatry, physiological psychology, neuropsychology, neurobiology, and social psychology, etc.), biomedical engineering (applied biophysics, medical physics, and medical electronics, for example, developing pacemakers and other medically related electrical equipment), virology, immunology, biophysics, cell biology, molecular biology, pharmacology, toxicology, genetics, pathology, physiology, microbiology, parasitology, endocrinology, bacteriology, and epidemiology.

(iv) *Principal purpose or functions.* An organization must be organized for the principal purpose of engaging primarily in the conduct of medical research in order to be an organization meeting the requirements of this paragraph (d)(2). An organization will normally be considered to be so organized if it is expressly organized for the purpose of conducting medical research and is actually engaged primarily in the conduct of medical research. Other facts and circumstances, however, may

indicate that an organization does not meet the principal purpose requirement of this paragraph (d)(2)(iv) even where its governing instrument so expressly provides. An organization that otherwise meets all of the requirements of this paragraph (d)(2) (including this paragraph (d)(2)(iv)) to qualify as a medical research organization will not fail to so qualify solely because its governing instrument does not specifically state that its principal purpose is to conduct medical research.

(v) *Primarily engaged directly in the continuous active conduct of medical research—*(A) In order for an organization to be primarily engaged directly in the continuous active conduct of medical research, the organization must either devote a substantial part of its assets to, or expend a significant percentage of its endowment for, such purposes, or both. Whether an organization devotes a substantial part of its assets to, or makes significant expenditures for, such continuous active conduct depends upon the facts and circumstances existing in each specific case. An organization will be treated as devoting a substantial part of its assets to, or expending a significant percentage of its endowment for, such purposes if it meets the appropriate test contained in paragraph (d)(2)(v)(B) of this section. If an organization fails to satisfy both of such tests, in evaluating the facts and circumstances, the factor given most weight is the margin by which the organization failed to meet such tests. Some of the other facts and circumstances to be considered in making such a determination are—

(1) If the organization fails to satisfy the tests because it failed to properly value its assets or endowment, then upon determination of the improper valuation it devotes additional assets to, or makes additional expenditures for, such purposes, so that it satisfies such tests on an aggregate basis for the prior year in addition to such tests for the current year;

(2) The organization acquires new assets or has a significant increase in the value of its securities after it had developed a budget in a prior year based on the assets then owned and the then current values;

(3) The organization fails to make expenditures in any given year because of the interrelated aspects of its budget and long-term planning requirements, for example, where an organization prematurely terminates an unsuccessful program and because of long-term planning requirements it will not be able to establish a fully operational replacement program immediately; and

(4) The organization has as its objective to spend less than a significant percentage in a particular year but make up the difference in the subsequent few years, or to budget a greater percentage in an earlier year and a lower percentage in a later year.

(B) For purposes of this section, an organization which devotes more than one half of its assets to the continuous active conduct of medical research will be considered to be devoting a substantial part of its assets to such conduct within the meaning of paragraph (d)(2)(v)(A) of this section. An organization which expends funds equaling 3.5 percent or more of the fair market value of its endowment for the continuous active conduct of medical research will be considered to have expended a significant percentage of its endowment for such purposes within the meaning of paragraph (d)(2)(v)(A) of this section.

(C) Engaging directly in the continuous active conduct of medical research does not include the disbursing of funds to other organizations for the conduct of research by them or the extending of grants or scholarships to others. Therefore, if an organization's primary purpose is to disburse funds to other organizations for the conduct of research by them or to extend grants or scholarships to others, it is not primarily engaged directly in the continuous active conduct of medical research.

(vi) *Special rules.* The following rules shall apply in determining whether a substantial part of an organization's assets are devoted to, or its endowment is expended for, the continuous active conduct of medical research activities:

(A) An organization may satisfy the tests of paragraph (d)(2)(v)(B) of this section by meeting such tests either for a computation period consisting of the immediately preceding taxable

year, or for the computation period consisting of the immediately preceding four taxable years. In addition, for taxable years beginning in 1970, 1971, 1972, 1973, and 1974, if an organization meets such tests for the computation period consisting of the first four taxable years beginning after December 31, 1969, an organization will be treated as meeting such tests, not only for the taxable year beginning in 1974, but also for the preceding four taxable years. Thus, for example, if a calendar year organization failed to satisfy such tests for a computation period consisting of 1969, 1970, 1971, and 1972, but on the basis of a computation period consisting of the years 1970 through 1973, it expended funds equaling 3.5 percent or more of the fair market value of its endowment for the continuous active conduct of medical research, such organization will be considered to have expended a significant percentage of its endowment for such purposes for the taxable years 1970 through 1974. In applying such tests for a four-year computation period, although the organization's expenditures for the entire four-year period shall be aggregated, the fair market value of its endowment for each year shall be summed, even though, in the case of an asset held throughout the four-year period, the fair market value of such an asset will be counted four times. Similarly, the fair market value of an organization's assets for each year of a four-year computation period shall be summed.

(B) Any property substantially all the use of which is "substantially related" (within the meaning of section 514(b)(1)(A)) to the exercise or performance of the organization's medical research activities will not be treated as part of its endowment.

(C) The valuation of assets must be made with commonly accepted methods of valuation. A method of valuation made in accordance with the principles stated in the regulations under section 2031 constitutes an acceptable method of valuation. Assets may be valued as of any day in the organization's taxable year to which such valuation applies, provided the organization follows a consistent practice of valuing such asset as of such date in all

taxable years. For purposes of paragraph (d)(2)(v) of this section, an asset held by the organization for part of a taxable year shall be taken into account by multiplying the fair market value of such asset by a fraction, the numerator of which is the number of days in such taxable year that the organization held such asset and the denominator of which is the number of days in such taxable year.

(vii) *Medical research in conjunction with a hospital.* The organization need not be formally affiliated with a hospital to be considered primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital, but in any event there must be a joint effort on the part of the research organization and the hospital pursuant to an understanding that the two organizations will maintain continuing close cooperation in the active conduct of medical research. For example, the necessary joint effort will normally be found to exist if the activities of the medical research organization are carried on in space located within or adjacent to a hospital, the organization is permitted to utilize the facilities (including equipment, case studies, etc.) of the hospital on a continuing basis directly in the active conduct of medical research, and there is substantial evidence of the close cooperation of the members of the staff of the research organization and members of the staff of the particular hospital or hospitals. The active participation in medical research by members of the staff of the particular hospital or hospitals will be considered to be evidence of such close cooperation. Because medical research may involve substantial investigation, experimentation and study not immediately connected with hospital or medical care, the requisite joint effort will also normally be found to exist if there is an established relationship between the research organization and the hospital which provides that the cooperation of appropriate personnel and the use of facilities of the particular hospital or hospitals will be required whenever it would aid such research.

(viii) *Commitment to spend contributions.* The organization's commitment

that the contribution will be spent within the prescribed time only for the prescribed purposes must be legally enforceable. A promise in writing to the donor in consideration of his making a contribution that such contribution will be so spent within the prescribed time will constitute a commitment. The expenditure of contributions received for plant, facilities, or equipment, used solely for medical research purposes (within the meaning of paragraph (d)(2)(ii) of this section), shall ordinarily be considered to be an expenditure for medical research. If a contribution is made in other than money, it shall be considered spent for medical research if the funds from the proceeds of a disposition thereof are spent by the organization within the five-year period for medical research; or, if such property is of such a kind that it is used on a continuing basis directly in connection with such research, it shall be considered spent for medical research in the year in which it is first so used. A medical research organization will be presumed to have made the commitment required under this paragraph (d)(2)(viii) with respect to any contribution if its governing instrument or by-laws require that every contribution be spent for medical research before January 1 of the fifth year which begins after the date such contribution is made.

(ix) *Organizational period for new organizations.* A newly created organization, for its "organizational" period, shall be considered to be primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital within the meaning of paragraphs (d)(2)(v) and (d)(2)(vii) of this section if during such period the organization establishes to the satisfaction of the Commissioner that it reasonably can be expected to be so engaged by the end of such period. The information to be submitted shall include detailed plans showing the proposed initial medical research program, architectural drawings for the erection of buildings and facilities to be used for medical research in accordance with such plans, plans to assemble a professional staff and detailed projections showing the timetable for the expected accomplishment of the

foregoing. The “organizational” period shall be that period which is appropriate to implement the proposed plans, giving effect to the proposed amounts involved and the magnitude and complexity of the projected medical research program, but in no event in excess of three years following organization.

(x) *Examples.* The application of this paragraph (d)(2) may be illustrated by the following examples:

Example 1. N, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. All of N’s assets were contributed to it by A and consist of a diversified portfolio of stocks and bonds. N’s endowment earns 3.5 percent annually, which N expends in the conduct of various medical research programs in conjunction with Y hospital. N is located adjacent to Y hospital, makes substantial use of Y’s facilities, and there is close cooperation between the staffs of N and Y. N is directly engaged in the continuous active conduct of medical research in conjunction with a hospital, meets the principal purpose test described in paragraph (d)(2)(iv) of this section, and is therefore an organization described in section 170(b)(1)(A)(iii).

Example 2. O, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. All of O’s assets consist of a diversified portfolio of stocks and bonds. O’s endowment earns 3.5 percent annually, which O expends in the conduct of various medical research programs in conjunction with certain hospitals. However, in 1974, O receives a substantial bequest of additional stocks and bonds. O’s budget for 1974 does not take into account the bequest and as a result O expends only 3.1 percent of its endowment in 1974. However, O establishes that it will expend at least 3.5 percent of its endowment for the active conduct of medical research for taxable years 1975 through 1978. O is therefore directly engaged in the continuous active conduct of medical research in conjunction with a hospital for taxable year 1975. Since O also meets the principal purpose test described in paragraph (d)(2)(iv) of this section, it is therefore an organization described in section 170(b)(1)(A)(iii) for taxable year 1975.

Example 3. M, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. M’s activities consist of the conduct of medical research programs in conjunction with various hospitals. Under such programs, researchers employed by M engage in research at laboratories set aside for M within the various hos-

pitals. Substantially all of M’s assets consist of 100 percent of the stock of X corporation, which has a fair market value of approximately 100 million dollars. X pays M approximately 3.3 million dollars in dividends annually, which M expends in the conduct of its medical research programs. Since M expends only 3.3 percent of its endowment, which does not constitute a significant percentage, in the active conduct of medical research, M is not an organization described in section 170(b)(1)(A)(iii) because M is not engaged in the continuous active conduct of medical research.

(xi) *Special rule for organizations with existing ruling.* This paragraph (d)(2)(xi) shall apply to an organization that prior to January 1, 1970, had received a ruling or determination letter which has not been expressly revoked holding the organization to be a medical research organization described in section 170(b)(1)(A)(iii) and with respect to which the facts and circumstances on which the ruling was based have not substantially changed. An organization to which this paragraph (d)(2)(xi) applies shall be treated as an organization described in section 170(b)(1)(A)(iii) for a period not ending prior to 90 days after February 13, 1976 (or where appropriate, for taxable years beginning before such 90th day). In addition, with respect to a grantor or contributor under sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, the status of an organization to which this paragraph (d)(2)(xi) applies will not be affected until notice of change of status under section 170(b)(1)(A)(iii) is made to the public (such as by publication in the Internal Revenue Bulletin). The preceding sentence shall not apply if the grantor or contributor had previously acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from classification as a section 170(b)(1)(A)(iii) organization.

(e) *Governmental unit.* A governmental unit is described in section 170(b)(1)(A)(v) if it is referred to in section 170(c)(1).

(f) *Definition of section 170(b)(1)(A)(vi) organization—(1) In general.* An organization is described in section 170(b)(1)(A)(vi) if it—

(i) Is referred to in section 170(c)(2) (other than an organization specifically described in paragraphs (b) through (e) of this section); and

(ii) Normally receives a substantial part of its support from a governmental unit referred to in section 170(c)(1) or from direct or indirect contributions from the general public (“publicly supported”). For purposes of this paragraph (f), an organization is publicly supported if it meets the requirements of either paragraph (f)(2) of this section (33⅓ percent support test) or paragraph (f)(3) of this section (facts and circumstances test). Paragraph (f)(4) of this section defines “normally” for purposes of the 33⅓ percent support test and the facts and circumstances test, and for new organizations in the first five years of the organization’s existence as a section 501(c)(3) organization. Paragraph (f)(5) of this section provides for determinations of foundation classification and rules for reliance by donors and contributors. Paragraphs (f)(6), (f)(7), and (f)(8) of this section list the items that are included and excluded from the term support. Paragraph (f)(9) of this section provides examples of the application of this paragraph. Types of organizations that, subject to the provisions of this paragraph (f), generally qualify under section 170(b)(1)(A)(vi) as “publicly supported” are publicly or governmentally supported museums of history, art, or science, libraries, community centers to promote the arts, organizations providing facilities for the support of an opera, symphony orchestra, ballet, or repertory drama or for some other direct service to the general public.

(2) *Determination whether an organization is “publicly supported”; 33⅓ percent support test.* An organization is publicly supported if the total amount of support (see paragraphs (f)(6), (f)(7), and (f)(8) of this section) that the organization normally (see paragraph (f)(4)(i) of this section) receives from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources, equals at least 33⅓ percent of the total support normally received by the organization. See paragraph (f)(9), *Example 1* of this section.

(3) *Determination whether an organization is “publicly supported”; facts and circumstances test.* Even if an organization fails to meet the 33⅓ percent support test described in paragraph (f)(2) of this section, it is publicly supported if it normally (see paragraph (f)(4)(i) of this section) receives a substantial part of its support from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources, and meets the other requirements of this paragraph (f)(3). In order to satisfy the facts and circumstances test, an organization must meet the requirements of paragraphs (f)(3)(i) and (f)(3)(ii) of this section. In addition, the organization must be in the nature of an organization that is publicly supported, taking into account all pertinent facts and circumstances, including the factors listed in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(E) of this section.

(i) *Ten-percent support limitation.* The percentage of support (see paragraphs (f)(6), (f)(7) and (f)(8) of this section) normally received by an organization from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources, must be substantial. For purposes of this paragraph (f)(3), an organization will not be treated as normally receiving a substantial amount of governmental or public support unless the total amount of governmental and public support normally received equals at least 10 percent of the total support normally received by such organization.

(ii) *Attraction of public support.* An organization must be so organized and operated as to attract new and additional public or governmental support on a continuous basis. An organization will be considered to meet this requirement if it maintains a continuous and bona fide program for solicitation of funds from the general public, community, or membership group involved, or if it carries on activities designed to attract support from governmental units or other organizations described in section 170(b)(1)(A)(i) through (b)(1)(A)(vi). In determining whether an organization maintains a continuous and bona fide program for solicitation of funds from the general public or

community, consideration will be given to whether the scope of its fundraising activities is reasonable in light of its charitable activities. Consideration will also be given to the fact that an organization, in its early years of existence, may limit the scope of its solicitation to persons deemed most likely to provide seed money in an amount sufficient to enable it to commence its charitable activities and expand its solicitation program.

(iii) In addition to the requirements set forth in paragraphs (f)(3)(i) and (f)(3)(ii) of this section that must be satisfied, all pertinent facts and circumstances, including the following factors, will be taken into consideration in determining whether an organization is “publicly supported” within the meaning of paragraph (f)(1) of this section. However, an organization is not generally required to satisfy all of the factors in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(E) of this section. The factors relevant to each case and the weight accorded to any one of them may differ depending upon the nature and purpose of the organization and the length of time it has been in existence.

(A) *Percentage of financial support.* The percentage of support received by an organization from public or governmental sources will be taken into consideration in determining whether an organization is “publicly supported.” The higher the percentage of support above the 10 percent requirement of paragraph (f)(3)(i) of this section from public or governmental sources, the lesser will be the burden of establishing the publicly supported nature of the organization through other factors, including those described in this paragraph (f)(3), while the lower the percentage, the greater will be the burden. If the percentage of the organization’s support from public or governmental sources is low because it receives a high percentage of its total support from investment income on its endowment funds, such fact will be treated as evidence of an organization being “publicly supported” if such endowment funds were originally contributed by a governmental unit or by the general public. However, if such endowment funds were originally contributed

by a few individuals or members of their families, such fact will increase the burden on the organization of establishing that it is “publicly supported” taking into account all pertinent facts and circumstances, including the other factors described in paragraph (f)(3)(iii) of this section.

(B) *Sources of support.* The fact that an organization meets the requirement of paragraph (f)(3)(i) of this section through support from governmental units or directly or indirectly from a representative number of persons, rather than receiving almost all of its support from the members of a single family, will be considered evidence of an organization being “publicly supported.” In determining what is a “representative number of persons,” consideration will be given to the type of organization involved, the length of time it has been in existence, and whether it limits its activities to a particular community or region or to a special field which can be expected to appeal to a limited number of persons.

(C) *Representative governing body.* The fact that an organization has a governing body which represents the broad interests of the public, rather than the personal or private interests of a limited number of donors (or persons standing in a relationship to such donors which is described in section 4946(a)(1)(C) through (a)(1)(G)), will be considered evidence of an organization being “publicly supported.” An organization will be treated as having a representative governing body if it has a governing body (whether designated in the organization’s governing instrument or bylaws as a Board of Directors, Board of Trustees, or similar governing body) which is comprised of public officials acting in their capacities as such; of individuals selected by public officials acting in their capacities as such; of persons having special knowledge or expertise in the particular field or discipline in which the organization is operating; of community leaders, such as elected or appointed officials, clergymen, educators, civic leaders, or other such persons representing a broad cross-section of the views and interests of the community; or, in the case of a

membership organization, of individuals elected pursuant to the organization's governing instrument or bylaws by a broadly based membership.

(D) *Availability of public facilities or services; public participation in programs or policies.* (1) The fact that an organization generally provides facilities or services directly for the benefit of the general public on a continuing basis (such as a museum or library which holds open its building or facilities to the public, a symphony orchestra which gives public performances, a conservation organization which provides educational services to the public through the distribution of educational materials, or an old age home which provides domiciliary or nursing services for members of the general public) will be considered evidence that such organization is "publicly supported."

(2) The fact that an organization is an educational or research institution which regularly publishes scholarly studies that are widely used by colleges and universities or by members of the general public will also be considered evidence that such organization is "publicly supported."

(3) The following factors will also be considered evidence that an organization is "publicly supported":

(i) The participation in, or sponsorship of, the programs of the organization by members of the public having special knowledge or expertise, public officials, or civic or community leaders.

(ii) The maintenance of a definitive program by an organization to accomplish its charitable work in the community, such as combating community deterioration in an economically depressed area that has suffered a major loss of population and jobs.

(iii) The receipt of a significant part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant, contract, or contribution.

(E) *Additional factors pertinent to membership organizations.* The following are additional factors to be considered in determining whether a membership organization is "publicly supported":

(1) Whether the solicitation for dues-paying members is designed to enroll a

substantial number of persons in the community or area, or in a particular profession or field of special interest (taking into account the size of the area and the nature of the organization's activities).

(2) Whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross section of the interested public, rather than to restrict membership to a limited number of persons.

(3) Whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations. See *Example 2* through *Example 5* contained in paragraph (f)(9) of this section for illustrations of this paragraph (f)(3).

(4) *Definition of normally; general rule—*(i) *Normally; 33 $\frac{1}{3}$ percent support test.* An organization "normally" receives the requisite amount of public support and meets the 33 $\frac{1}{3}$ percent support test for a taxable year and the taxable year immediately succeeding that year, if, for the taxable year being tested and the four taxable years immediately preceding that taxable year, the organization meets the 33 $\frac{1}{3}$ percent support test on an aggregate basis.

(ii) *Normally; facts and circumstances test.* An organization "normally" receives the requisite amount of public support and meets the facts and circumstances test of paragraph (f)(3) for a taxable year and the taxable year immediately succeeding that year, if, for the taxable year being tested and the four taxable years immediately preceding that taxable year, the organization meets the facts and circumstances test on an aggregate basis. In the case of paragraphs (f)(3)(iii)(A) and (f)(3)(iii)(B) of this section, facts pertinent to years preceding the five-year period may also be taken into consideration. The combination of factors set forth in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(E) of this section that an organization normally must meet does not have to be the same for

each five-year period so long as there exists a sufficient combination of factors to show compliance with the facts and circumstances test.

(iii) *Special rule.* The fact that an organization has normally met the requirements of the 33½ percent support test for a current taxable year, but is unable normally to meet such requirements for a succeeding taxable year, will not in itself prevent such organization from meeting the facts and circumstances test for such succeeding taxable year.

(iv) *Example.* The application of paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section may be illustrated by the following example:

Example. (i) X is recognized as an organization described in section 501(c)(3). On the basis of support received during taxable years 2008, 2009, 2010, 2011, and 2012, in the aggregate, X receives at least 33½ percent of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. Consequently, X meets the 33½ percent support test for taxable year 2012 (the current taxable year). X also meets the 33½ support test for 2013, as the immediately succeeding taxable year.

(ii) In taxable years 2009, 2010, 2011, 2012, and 2013, in the aggregate, X does not receive at least 33½ percent of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. However, X still meets the 33½ percent support test for taxable year 2013 based on the aggregate support received for taxable years 2008 through 2012.

(iii) In taxable years 2010, 2011, 2012, 2013, and 2014, in the aggregate, X does not receive at least 33½ percent of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. X does not meet the 33½ percent support test for taxable year 2014.

(iv) X meets the facts and circumstances test for taxable year 2013 and for taxable year 2014 (the immediately succeeding taxable year) based on the aggregate support X receives, X's fundraising program, and consideration of other factors, including those listed in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(E) of this section, during taxable years 2009, 2010, 2011, 2012, and 2013. Therefore, even though X does not meet the 33½ percent support test for taxable year 2014, X

is still an organization described in section 170(b)(1)(A)(vi) for that year.

(v) *Normally; first five years of an organization's existence.* (A) An organization "normally" receives the requisite amount of public support and meets the 33½ percent public support test or the facts and circumstances test during its first five taxable years as a section 501(c)(3) organization if the organization can reasonably be expected to meet the requirements of the 33½ percent support test or the facts and circumstances test during that period. With respect to such organization's sixth taxable year, the general definition of normally set forth in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section apply. Alternatively, the organization shall be treated as "normally" meeting the 33½ percent support test or the facts and circumstances test for its sixth taxable year (but not its seventh taxable year) if it meets the 33½ percent support test or the facts and circumstances test under the definition of normally set forth in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section for its fifth taxable year (based on support received in its first through fifth taxable years).

(B) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of paragraph (f)(4)(v)(A) of this section) to meet the requirements of the 33½ percent support test or the facts and circumstances test during its first five taxable years, the basic consideration is whether its organizational structure, current or proposed programs or activities, and actual or intended method of operation are such as can reasonably be expected to attract the type of broadly based support from the general public, public charities, and governmental units that is necessary to meet such tests. The factors that are relevant to this determination, and the weight accorded to each of them, may differ from case to case, depending on the nature and functions of the organization. The information to be considered for this purpose shall consist of all pertinent facts and circumstances, including the factors set forth in paragraph (f)(3) of this section.

(vi) *Example.* The application of paragraph (f)(4)(v) of this section may be illustrated by the following example:

Example. (i) Organization Y was formed in January 2008, and uses a taxable year ending December 31. After September 9, 2008, and before December 31, 2008, Organization Y filed Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3) and in sections 170(b)(1)(A)(vi) and 509(a)(1). In its application, Organization Y established that it can reasonably be expected to operate as a publicly supported organization under paragraph (f)(2) or (f)(3) and paragraph (f)(4)(v) of this section. Subsequently, Organization Y received a ruling or determination letter that it is an organization described in section 501(c)(3) and sections 170(b)(1)(A)(vi) and 509(a)(1) effective as of the date of its formation.

(ii) Organization Y is described in sections 170(b)(1)(A)(vi) and 509(a)(1) for its first five taxable years (the taxable years ending December 31, 2008, through December 31, 2012).

(iii) Organization Y can qualify as a publicly supported organization for the taxable year ending December 31, 2013, if Organization Y can meet the requirements of either paragraph (f)(2) or paragraph (f)(3) of this section or § 1.509(a)-3(a) and § 1.509(a)-(3)(b) for the taxable years ending December 31, 2009, through December 31, 2013, or for the taxable years ending December 31, 2008, through December 31, 2012.

(vii) *Organizations reclassified as private foundations.* (A) *New publicly supported organizations.* If a new publicly supported organization described under section 170(b)(1)(A)(vi) cannot meet the requirements of the 33⅓ percent test of paragraph (f)(2) or the facts and circumstances test of paragraph (f)(3) for its sixth taxable year under the general definition of normally set forth in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section or under the alternate rule set forth in paragraph (f)(4)(v) of this section (effectively failing to meet a public support test for both its fifth and sixth taxable years), it will be treated as a private foundation as of the first day of its sixth taxable year only for purposes of sections 507, 4940, and 6033. Such an organization must file a Form 990-PF, "Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation," and will be liable for the net investment tax imposed by section 4940 and, if applicable, the private foundation termination tax imposed by section 507(c),

for its sixth taxable year. For succeeding taxable years, the organization will be treated as a private foundation for all purposes.

(B) *Other publicly supported organizations.* A publicly supported organization described in section 170(b)(1)(A)(vi) (other than a new publicly supported organization described in paragraph (f)(4)(vii)(A) of this section) that has failed to meet both the 33⅓ percent support test and the facts and circumstances test for any two consecutive taxable years will be treated as a private foundation as of the first day of the second consecutive taxable year only for purposes of sections 507, 4940, and 6033. Such an organization must file a Form 990-PF, "Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation," and will be liable for the net investment tax imposed by section 4940 and, if applicable, the private foundation termination tax imposed by section 507(c), for the second consecutive failed taxable year. For succeeding taxable years, the organization will be treated as a private foundation for all purposes.

(5) *Determinations of foundation classification and reliance.* (i) A ruling or determination letter that an organization is described in section 170(b)(1)(A)(vi) may be issued to an organization. Such determination may be made in conjunction with the recognition of the organization's tax-exempt status or at such other time as the organization believes it is described in section 170(b)(1)(A)(vi). The ruling or determination letter that the organization is described in section 170(b)(1)(A)(vi) may be revoked if, upon examination, the organization has not met the requirements of paragraph (f) of this section. The ruling or determination letter that the organization is described in section 170(b)(1)(A)(vi) also may be revoked if the organization's application for a ruling or determination contained one or more material misstatements or omissions of fact or if such application was part of a scheme or plan to avoid or evade any provision of the Internal Revenue Code. The revocation of the determination that an organization is described in

section 170(b)(1)(A)(vi) does not preclude revocation of the determination that the organization is described in section 501(c)(3).

(ii) *Status of grantors or contributors.* For purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 4966, 2055, 2106(a)(2), and 2522, grantors or contributors may rely upon a determination letter or ruling that an organization is described in section 170(b)(1)(A)(vi) until the IRS publishes notice of a change of status (for example, in the Internal Revenue Bulletin or Publication 78, “Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986,” which can be searched at <http://www.irs.gov>.) For this purpose, grantors or contributors also may rely on an advance ruling that expires on or after June 9, 2008. However, a grantor or contributor may not rely on such an advance ruling or any determination letter or ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification under section 170(b)(1)(A)(vi) or acquired knowledge that the IRS had given notice to such organization that it would be deleted from such classification.

(iii) *Reliance by grantors or contributors.* A grantor or contributor, other than one of the organization's founders, creators, or foundation managers (within the meaning of section 4946(b)), will not be considered to be responsible for, or aware of, the act or failure to act that resulted in the loss of the organization's “publicly supported” classification under section 170(b)(1)(A)(vi), if such grantor or contributor has made such grant or contribution in reliance upon a written statement by the grantee organization that such grant or contribution will not result in the loss of such organization's classification as a publicly supported organization as described in section 170(b)(1)(A)(vi). Such statement must be signed by a responsible officer of the grantee organization and must set forth sufficient information, including a summary of the pertinent financial data for the five taxable years immediately preceding the current taxable year, to assure a reasonably prudent person that his grant or contribution

will not result in the loss of the grantee organization's classification as a publicly supported organization as described in section 170(b)(1)(A)(vi). If a reasonable doubt exists as to the effect of such grant or contribution, or if the grantor or contributor is one of the organization's founders, creators, or foundation managers, the procedure set forth in paragraph (f)(6)(iv) of this section for requesting a determination from the IRS may be followed by the grantee organization for the protection of the grantor or contributor.

(6) *Definition of support; meaning of general public—(i) In general.* In determining whether the 33½ percent support test or the 10 percent support limitation described in paragraph (f)(3)(i) of this section is met, contributions by an individual, trust, or corporation shall be taken into account as support from direct or indirect contributions from the general public only to the extent that the total amount of the contributions by any such individual, trust, or corporation during the period described in paragraph (f)(4)(i) or paragraph (f)(4)(ii) of this section does not exceed two percent of the organization's total support for such period, except as provided in paragraph (f)(6)(ii) of this section. Therefore, for example, any contribution by one individual will be included in full in the denominator of the fraction determining the 33½ percent support or the 10 percent support limitation, but will be includible in the numerator of such fraction only to the extent that such amount does not exceed two percent of the denominator. In applying the two percent limitation, all contributions made by a donor and by any person or persons standing in a relationship to the donor that is described in section 4946(a)(1)(C) through (a)(1)(G) and the related regulations shall be treated as made by one person. The two percent limitation shall not apply to support received from governmental units referred to in section 170(c)(1) or to contributions from organizations described in section 170(b)(1)(A)(vi), except as provided in paragraph (f)(6)(v) of this section. For purposes of paragraphs (f)(2), (f)(3)(i), and (f)(7)(iii)(A)(2) of this section, the

term *indirect contributions from the general public* includes contributions received by the organization from organizations (such as section 170(b)(1)(A)(vi) organizations) that normally receive a substantial part of their support from direct contributions from the general public, except as provided in paragraph (f)(6)(v) of this section. See the examples in paragraph (f)(9) of this section for the application of this paragraph (f)(6)(i). For purposes of this paragraph (f), the term *contributions* includes qualified sponsorship payments (as defined in § 1.513-4) in the form of money or property (but not services).

(ii) *Exclusion of unusual grants.* (A) For purposes of applying the two percent limitation described in paragraph (f)(6)(i) of this section to determine whether the 33 $\frac{1}{3}$ percent support test or the 10 percent support limitation in paragraph (f)(3)(i) of this section is satisfied, one or more contributions may be excluded from both the numerator and the denominator of the applicable support fraction if such contributions meet the requirements of paragraph (f)(6)(iii) of this section. The exclusion provided by this paragraph (f)(6)(ii) is generally intended to apply to substantial contributions or bequests from disinterested parties, which contributions or bequests—

(1) Are attracted by reason of the publicly supported nature of the organization;

(2) Are unusual or unexpected with respect to the amount thereof; and

(3) Would, by reason of their size, adversely affect the status of the organization as normally being publicly supported for the applicable period described in paragraph (f)(4) of this section.

(B) In the case of a grant (as defined in § 1.509(a)-3(g)) that meets the requirements of this paragraph (f)(6)(ii), if the terms of the granting instrument require that the funds be paid to the recipient organization over a period of years, the grant amounts received by the organization may be excluded for such year or years in which they would otherwise be includible in computing support under the method of accounting on the basis of which the organization regularly computes its income in keeping its books under section 446.

However, no item of gross investment income may be excluded under this paragraph (f)(6). The provisions of this paragraph (f)(6) shall apply to exclude unusual grants made during any of the applicable periods described in paragraph (f)(4) or paragraph (f)(6) of this section. See paragraph (f)(6)(iv) of this section as to reliance by a grantee organization upon an unusual grant ruling under this paragraph (f)(6).

(iii) *Determining factors.* In determining whether a particular contribution may be excluded under paragraph (f)(6)(ii) of this section, all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. For some of the factors similar to the factors to be considered, see § 1.509(a)-3(c)(4).

(iv) *Grantors and contributors.* Prior to the making of any grant or contribution that will allegedly meet the requirements for exclusion under paragraph (f)(6)(ii) of this section, a potential grantee organization may request a determination whether such grant or contribution may be so excluded. Requests for such determination may be filed by the grantee organization in the time and manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The issuance of such determination will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination on the factors referred to in paragraph (f)(6)(iii) of this section. If a favorable determination is issued, such determination may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 4966, 2055, 2106(a)(2), and 2522 and by the grantee organization for purposes of paragraph (f)(6)(ii) of this section.

(v) *Grants from public charities.* Pursuant to paragraph (f)(6)(i) of this section, contributions received from a governmental unit or from a section 170(b)(1)(A)(vi) organization are not subject to the two percent limitation described in paragraph (f)(6)(i) of this section unless such contributions represent amounts which have been expressly or impliedly earmarked by a

donor to such governmental unit or section 170(b)(1)(A)(vi) organization as being for, or for the benefit of, the particular organization claiming section 170(b)(1)(A)(vi) status. See § 1.509(a)-3(j)(3) for examples illustrating the rules of this paragraph (f)(6)(v).

(7) *Definition of support; special rules and meaning of terms*—(i) *Definition of support.* For purposes of this paragraph (f), the term “support” shall be as defined in section 509(d) (without regard to section 509(d)(2)). The term “support” does not include—

(A) Any amounts received from the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a). In general, such amounts include amounts received from any activity the conduct of which is substantially related to the furtherance of such purpose or function (other than through the production of income); or

(B) Contributions of services for which a deduction is not allowable.

(ii) For purposes of the 33½ percent support test and the 10 percent support limitation in paragraph (f)(3)(i) of this section, all amounts received that are described in paragraph (f)(7)(i)(A) or paragraph (f)(7)(i)(B) of this section are to be excluded from both the numerator and the denominator of the fractions determining compliance with such tests, except as provided in paragraph (f)(7)(iii) of this section.

(iii) *Organizations dependent primarily on gross receipts from related activities.*

(A) Notwithstanding the provisions of paragraph (f)(7)(i) of this section, an organization will not be treated as satisfying the 33½ percent support test or the 10 percent support limitation in paragraph (f)(3)(i) of this section if it receives—

(1) Almost all of its support (as defined in section 509(d)) from gross receipts from related activities; and

(2) An insignificant amount of its support from governmental units (without regard to amounts referred to in paragraph (f)(7)(i)(A) of this section) and contributions made directly or indirectly by the general public.

(B) *Example.* The application of this paragraph (f)(7)(iii) may be illustrated by the following example:

Example. Z, an organization described in section 501(c)(3), is controlled by A, its president. Z received \$500,000 during the period consisting of the current taxable year and the four immediately preceding taxable years under a contract with the Department of Transportation, pursuant to which Z has engaged in research to improve a particular vehicle used primarily by the Federal government. During this same period, the only other support received by Z consisted of \$5,000 in small contributions primarily from Z's employees and business associates. The \$500,000 amount constitutes support under sections 509(d)(2) and 509(a)(2)(A). Under these circumstances, Z meets the conditions of paragraphs (f)(7)(iii)(A)(1) and (f)(7)(iii)(A)(2) of this section and will not be treated as meeting the requirements of either the 33½ percent support test or the facts and circumstances test. As to the rules applicable to organizations that fail to qualify under section 170(b)(1)(A)(vi) because of the provisions of this paragraph (f)(7)(iii), see section 509(a)(2) and the related regulations. For the distinction between gross receipts (as referred to in section 509(d)(2)) and gross investment income (as referred to in section 509(d)(4)), see § 1.509(a)-3(m).

(iv) *Membership fees.* For purposes of this paragraph (f)(7), the term *support* shall include “membership fees” within the meaning of § 1.509(a)-3(h) (that is, if the basic purpose for making a payment is to provide support for the organization rather than to purchase admissions, merchandise, services, or the use of facilities).

(v) *Unrelated business activities.* The term *net income from unrelated business activities* in section 509(d)(3) includes (but is not limited to) an organization's unrelated business taxable income (UBTI) within the meaning of section 512. However, when calculating UBTI for purposes of determining support (within the meaning of this paragraph (f)(7)), section 512(a)(6) does not apply. Accordingly, in the case of an organization that derives gross income from the regular conduct of two or more unrelated business activities, support includes the aggregate of gross income from all such unrelated business activities less the aggregate of the deductions allowed with respect to all such unrelated business activities. Nonetheless, when determining support, such organization can use either its UBTI calculated under section 512(a)(6) or its UBTI calculated in the aggregate.

(8) *Support from a governmental unit.*

(i) For purposes of the 33½ percent support test and the 10 percent support limitation described in paragraph (f)(3)(i) of this section, the term *support from a governmental unit* includes any amounts received from a governmental unit, including donations or contributions and amounts received in connection with a contract entered into with a governmental unit for the performance of services or in connection with a government research grant. However, such amounts will not constitute support from a governmental unit for such purposes if they constitute amounts received from the exercise or performance of the organization's exempt functions as provided in paragraph (f)(7)(i)(A) of this section.

(ii) For purposes of paragraph (f)(8)(i) of this section, any amount paid by a governmental unit to an organization is not to be treated as received from the exercise or performance of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a) (within the meaning of paragraph (f)(7)(i)(A) of this section) if the purpose of the payment is primarily to enable the organization to provide a service to, or maintain a facility for, the direct benefit of the public (regardless of whether part of the expense of providing such service or facility is paid for by the public), rather than to serve the direct and immediate needs of the payor. For example—

(A) Amounts paid for the maintenance of library facilities which are open to the public;

(B) Amounts paid under government programs to nursing homes or homes for the aged in order to provide health care or domiciliary services to residents of such facilities; and

(C) Amounts paid to child placement or child guidance organizations under government programs for services rendered to children in the community, are considered payments the purpose of which is primarily to enable the recipient organization to provide a service or maintain a facility for the direct benefit of the public, rather than to serve the direct and immediate needs of the payor. Furthermore, any amount received from a governmental unit under circumstances such that the amount would be treated as a “grant” within the meaning of § 1.509(a)-3(g) will generally constitute “support from a governmental unit” described in this paragraph (f)(8), rather than an amount described in paragraph (f)(7)(i)(A) of this section.

(9) *Examples.* The application of paragraphs (f)(1) through (f)(8) of this section may be illustrated by the following examples:

Example 1. (i) M is recognized as an organization described in section 501(c)(3). For the years 2008 through 2012 (the applicable period with respect to the taxable year 2012 under paragraph (f)(4) of this section), M received support (as defined in paragraphs (f)(6) through (8) of this section) of \$600,000 from the following sources:

Investment income	\$300,000
City R (a governmental unit described in section 170(c)(1))	40,000
United Fund (an organization described in section 170(b)(1)(A)(vi))	40,000
Contributions (including six contributions in excess of the two-percent limit, totaling \$170,000)	220,000
Total support	600,000

(ii) With respect to the taxable year 2012, M's public support is computed as follows:

Support from a governmental unit described in section 170(c)(1)	\$40,000
Indirect contributions from the general public (United Fund)	40,000
Contributions by various donors that were not in excess of \$12,000, or two percent of total support	50,000

Six contributions that were each in excess of \$12,000, or two percent of total support, up to the two-percent limitation, $6 \times \$12,000$	72,000
Total support	202,000

(iii) M's support from governmental units referred to in section 170(c)(1) and from direct and indirect contributions from the general public (as defined in paragraph (f)(6) of this section) with respect to the taxable year 2012 normally exceeds 33⅓ percent of M's total support ($\$202,000/\$600,000 = 33.67$ percent) for the applicable period (2008 through 2012). M meets the 33⅓ percent support test with respect to 2012 and is therefore publicly supported for the taxable years 2012 and 2013.

Example 2. (i) N is recognized as an organization described in section 501(c)(3). It was created to maintain public gardens containing botanical specimens and displaying statuary and other art objects. The facilities, works of art, and a large endowment were all contributed by a single contributor. The members of the governing body of the organization are unrelated to its creator. The gardens are open to the public without charge and attract a substantial number of visitors each year. For the current taxable year and the four taxable years immediately preceding the current taxable year, 95 percent of the organization's total support was received from investment income from its original endowment. N also maintains a membership society that is supported by members of the general public who wish to contribute to the upkeep of the gardens by paying a small annual membership fee. Over the five-year period in question, these fees from the general public constituted the remaining five percent of the organization's total support for such period.

(ii) Under these circumstances, N does not meet the 33⅓ percent support test for its current taxable year. Furthermore, because only five percent of its total support is, with respect to the current taxable year, normally received from the general public, N does not satisfy the 10 percent support limitation described in paragraph (f)(3)(i) of this section and therefore does not qualify as publicly supported under the facts and circumstances test. Because N has failed to satisfy the 10 percent support limitation under paragraph (f)(3)(i) of this section, none of the other requirements or factors set forth in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(E) of this section can be considered in determining whether N qualifies as a publicly supported organization. For its current taxable year, therefore, N is not an organization described in section 170(b)(1)(A)(vi).

Example 3. (i) O, an art museum, is recognized as an organization described in section 501(c)(3). In 1930, O was founded in S City by the members of a single family to collect, preserve, interpret, and display to the public important works of art. O is governed by a Board of Trustees that originally consisted almost entirely of members of the founding family. However, since 1945, members of the founding family or persons standing in a relationship to the members of such family described in section 4946(a)(1)(C) through (G) have annually constituted less than one-fifth of the Board of Trustees. The remaining board members are citizens of S City from a variety of professions and occupations who represent the interests and views of the people of S City in the activities carried on by the organization rather than the personal or private interests of the founding family. O solicits contributions from the general public and, for the current taxable year and each of the four taxable years immediately preceding the current taxable year, O has received total contributions (in small sums of less than \$100, none of which exceeds two percent of O's total support for such period) in excess of \$10,000. These contributions from the general public (as defined in paragraph (f)(6) of this section) represent 25 percent of the organization's total support for such five-year period. For this same period, investment income from several large endowment funds has constituted 75 percent of O's total support. O expends substantially all of its annual income for its exempt purposes and thus depends upon the funds it annually solicits from the public as well as its investment income in order to carry out its activities on a normal and continuing basis and to acquire new works of art. O has, for the entire period of its existence, been open to the public and more than 300,000 people (from S City and elsewhere) have visited the museum in each of the current taxable year and the four immediately preceding taxable years.

(ii) Under these circumstances, O does not meet the 33⅓ percent support test for its current year because it has received only 25 percent of its total support for the applicable five-year period from the general public. However, under the facts set forth above, O meets the 10 percent support limitation under paragraph (f)(3)(i) of this section, as well as the requirements of paragraph (f)(3)(ii) of this section. Under all of the facts set forth in this example, O is considered as meeting the requirements of the facts and circumstances test on the basis of satisfying

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paragraphs (f)(3)(i) and (f)(3)(ii) of this section and the factors set forth in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(D) of this section. O is therefore publicly supported for its current taxable year and the immediately succeeding taxable year.

Example 4. (i) In 1960, the P Philharmonic Orchestra was organized in T City through the combined efforts of a local music society and a local women's club to present to the public a wide variety of musical programs intended to foster music appreciation in the community. P is recognized as an organization described in section 501(c)(3). The orchestra is composed of professional musicians who are paid by the association. Twelve performances open to the public are scheduled each year. A small admission fee is charged for each of these performances. In addition, several performances are staged annually without charge. During the current taxable year and the four taxable years immediately preceding the current taxable year, P has received separate contributions

of \$200,000 each from A and B (not members of a single family) and support of \$120,000 from the T Community Chest, a public federated fundraising organization operating in T City. P depends on these funds in order to carry out its activities and will continue to depend on contributions of this type to be made in the future. P has also begun a fundraising campaign in an attempt to expand its activities for the coming years. P is governed by a Board of Directors comprised of five individuals. A faculty member of a local college, the president of a local music society, the head of a local banking institution, a prominent doctor, and a member of the governing body of the local chamber of commerce currently serve on P's Board and represent the interests and views of the community in the activities carried on by P.

(ii) With respect to P's current taxable year, P's sources of support are computed on the basis of the current taxable year and the four taxable years immediately preceding the current taxable year, as follows:

Contributions	\$520,000
Receipts from performances	100,000
Total support	620,000
Less:	
Receipts from performances (excluded under paragraph (f)(7)(i)(A) of this section)	100,000
Total support for purposes of paragraphs (f)(2) and (f)(3)(i) of this section	520,000
(iii) For purposes of paragraphs (f)(2) and (f)(3)(i) of this section, P's public support is computed as follows:	
T Community Chest (indirect support from the general public)	120,000
Two contributions from A & B (each in excess of \$10,400 – 2 percent of total support) $2 \times \$10,400$	20,800
Total	140,800

(iv) Under these circumstances, P does not meet the 33 $\frac{1}{3}$ percent support test for its current year because it has received only 27 percent of its total support (\$140,800/\$520,000) for the applicable five-year period from the general public. However, under the facts set forth above, P meets the 10 percent support limitation under paragraph (f)(3)(i) of this section, as well as the requirements of paragraph (f)(3)(ii) of this section. Under all of the facts set forth in this example, P is considered as meeting the requirements of the facts and circumstances test on the basis of satisfying paragraphs (f)(3)(i) and (f)(3)(ii) of this section and the factors set forth in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(D) of

this section. P is therefore publicly supported for its current taxable year and the immediately succeeding taxable year.

Example 5. (i) Q is recognized as an organization described in section 501(c)(3). It is a philanthropic organization founded in 1965 by C for the purpose of making annual contributions to worthy charities. C created Q as a charitable trust by the transfer of appreciated securities worth \$500,000 to Q. Pursuant to the trust agreement, C and two other members of his family are the sole trustees of Q and are vested with the right to appoint successor trustees. In each of the current taxable year and the four taxable years immediately preceding the current

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taxable year, Q received \$12,000 in investment income from its original endowment. Each year Q makes a solicitation for funds by operating a charity ball at C's residence. Guests are invited and requested to make contributions of \$100 per couple. During the five-year period at issue, \$15,000 was received from the proceeds of these events. C and his family have also made contributions to Q of

\$25,000 over the five-year period at issue. Q makes disbursements each year of substantially all of its net income to the public charities chosen by the trustees.

(ii) Q's sources of support for the current taxable year and the four taxable years immediately preceding the current taxable year as follows:

Investment income	\$60,000
Contributions	40,000
Total support	100,000

(iii) For purposes of paragraphs (f)(2) and (f)(3)(i) of this section, Q's public support is computed as follows:

Contributions from the general public	\$ 15,000
C's contribution (in excess of \$ 2,000 – 2 percent of total support) 1 × \$2,000	2,000
Total	17,000

(iv) Under these circumstances, Q does not meet the 33⅓ percent support test for its current year because it has received only 17 percent of its total support (\$17,000/\$100,000) for the applicable five-year period from the general public. Thus, Q's classification as a "publicly supported" organization depends on whether it meets the requirements of the facts and circumstances test. Even though it satisfies the 10 percent support limitation under paragraph (f)(3)(i) of this section, its method of solicitation makes it questionable whether Q satisfies the requirements of paragraph (f)(3)(ii) of this section. Because of its method of operating, Q also has a greater burden of establishing its publicly supported nature under paragraph (f)(3)(iii)(A) of this section. Based upon the foregoing facts and circumstances, including Q's failure to receive favorable consideration under the factors set forth in paragraphs (f)(3)(iii)(B), (f)(3)(iii)(C), and (f)(3)(iii)(D) of this section, Q does not satisfy the facts and circumstances test.

(10) *Community trust; introduction.* Community trusts have often been established to attract large contributions of a capital or endowment nature for the benefit of a particular community or area, and often such contributions have come initially from a small number of donors. While the community trust generally has a governing body comprised of representatives of the particular community or area, its contributions are often received and main-

tained in the form of separate trusts or funds, which are subject to varying degrees of control by the governing body. To qualify as a "publicly supported" organization, a community trust must meet the 33⅓ percent support test, or, if it cannot meet that test, be organized and operated so as to attract new and additional public or governmental support on a continuous basis sufficient to meet the facts and circumstances test. Such facts and circumstances test includes a requirement of attraction of public support in paragraph (f)(3)(ii) of this section which, as applied to community trusts, generally will be satisfied if they seek gifts and bequests from a wide range of potential donors in the community or area served, through banks or trust companies, through attorneys or other professional persons, or in other appropriate ways that call attention to the community trust as a potential recipient of gifts and bequests made for the benefit of the community or area served. A community trust is not required to engage in periodic, community-wide, fundraising campaigns directed toward attracting a large number of small contributions in a manner similar to campaigns conducted by a

community chest or united fund. Paragraph (f)(11) of this section provides rules for determining the extent to which separate trusts or funds may be treated as component parts of a community trust, fund, or foundation (herein collectively referred to as a “community trust,” and sometimes referred to as an “organization”) for purposes of meeting the requirements of this paragraph for classification as a publicly supported organization. Paragraph (f)(12) of this section contains rules for trusts or funds that are prevented from qualifying as component parts of a community trust by paragraph (f)(11) of this section.

(11) *Community trusts; requirements for treatment as a single entity*—(i) *General rule.* For purposes of sections 170, 501, 507, 508, 509, and Chapter 42, any organization that meets the requirements contained in paragraphs (f)(11)(iii) through (f)(11)(vi) of this section will be treated as a single entity, rather than as an aggregation of separate funds, and except as otherwise provided, all funds associated with such organization (whether a trust, not-for-profit corporation, unincorporated association, or a combination thereof) which meet the requirements of paragraph (f)(11)(ii) of this section will be treated as component parts of such organization.

(ii) *Component part of a community trust.* In order to be treated as a component part of a community trust referred to in this paragraph (f)(11) (rather than as a separate trust or not-for-profit corporation or association), a trust or fund:

(A) Must be created by a gift, bequest, legacy, devise, or other transfer to a community trust which is treated as a single entity under this paragraph (f)(11); and

(B) May not be directly or indirectly subjected by the transferor to any material restriction or condition (within the meaning of § 1.507-2(a)(7)) with respect to the transferred assets. For purposes of this paragraph (f)(11)(ii)(B), if the transferor is not a private foundation, the provisions of § 1.507-2(a)(7) shall be applied to the trust or fund as if the transferor were a private foundation established and funded by the person establishing the trust or fund and

such foundation transferred all its assets to the trust or fund. Any transfer made to a fund or trust which is treated as a component part of a community trust under this paragraph (f)(11)(ii) will be treated as a transfer made “to” a “publicly supported” community trust for purposes of sections 170(b)(1)(A) and 507(b)(1)(A) if such community trust meets the requirements of section 170(b)(1)(A)(vi) as a “publicly supported” organization at the time of the transfer, except as provided in paragraph (f)(5)(ii) of this section or §§ 1.508-1(b)(4) and 1.508-1(b)(6) (relating, generally, to reliance by grantors and contributors). See also paragraphs (f)(12)(ii) and (f)(12)(iii) of this section for special provisions relating to split-interest trusts and certain private foundations described in section 170(b)(1)(F)(iii).

(iii) *Name.* The organization must be commonly known as a community trust, fund, foundation, or other similar name conveying the concept of a capital or endowment fund to support charitable activities (within the meaning of section 170(c)(1) or section 170(c)(2)(B)) in the community or area it serves.

(iv) *Common instrument.* All funds of the organization must be subject to a common governing instrument or a master trust or agency agreement (herein referred to as the “governing instrument”), which may be embodied in a single document or several documents containing common language. Language in an instrument of transfer to the community trust making a fund subject to the community trust’s governing instrument or master trust or agency agreement will satisfy the requirements of this paragraph (f)(11)(iv). In addition, if a community trust adopts a new governing instrument (or creates a corporation) to put into effect new provisions (applying to future transfers to the community trust), the adoption of such new governing instrument (or creation of a corporation with a governing instrument) which contains common language with the existing governing instrument shall not preclude the community trust from meeting the requirements of this paragraph (f)(11)(iv).

(v) *Common governing body.* (A) The organization must have a common governing body or distribution committee (herein referred to as the "governing body") which either directs or, in the case of a fund designated for specified beneficiaries, monitors the distribution of all of the funds exclusively for charitable purposes (within the meaning of section 170(c)(1) or section 170(c)(2)(B)). For purposes of this paragraph (f)(11)(v), a fund is designated for specified beneficiaries only if no person is left with the discretion to direct the distribution of the fund.

(B) *Powers of modification and removal.* The fact that the exercise of any power described in this paragraph (f)(11)(v)(B) is reviewable by an appropriate State authority will not preclude the community trust from meeting the requirements of this paragraph (f)(11)(v)(B). Except as provided in paragraph (f)(11)(v)(C) of this section, the governing body must have the power in the governing instrument, the instrument of transfer, the resolutions or by-laws of the governing body, a written agreement, or otherwise—

(1) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served;

(2) To replace any participating trustee, custodian, or agent for breach of fiduciary duty under State law; and

(3) To replace any participating trustee, custodian, or agent for failure to produce a reasonable (as determined by the governing body) return of net income (within the meaning of paragraph (f)(11)(v)(F) of this section) over a reasonable period of time (as determined by the governing body).

(C) *Transitional rule.*—(1) Notwithstanding paragraph (f)(11)(v)(B) of this section, if a community trust meets the requirements of paragraph (f)(11)(v)(C)(3) of this section, then in the case of any instrument of transfer which is executed before July 19, 1977,

and is not revoked or amended thereafter (with respect to any dispositive provision affecting the transfer to the community trust), and in the case of any instrument of transfer which is irrevocable on January 19, 1982, the governing body must have the power to cause proceedings to be instituted (by request to the appropriate State authority)—

(i) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the judgment of the governing body such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served; and

(ii) To remove any participating trustee, custodian, or agent for breach of fiduciary duty under State law.

(2) The necessity for the governing body to obtain the approval of a participating trustee to exercise the powers described in paragraph (f)(11)(v)(C)(1) of this section shall be treated as not preventing the governing body from having such power, unless (and until) such approval has been (or is) requested by the governing body and has been (or is) denied.

(3) Paragraph (f)(11)(v)(C)(1) of this section shall not apply unless the community trust meets the requirements of paragraph (f)(11)(v)(B) of this section, with respect to funds other than those under instruments of transfer described in the first sentence of such paragraph (f)(11)(v)(C)(1) of this section, by January 19, 1978, or such later date as the Commissioner may provide for such community trust, and unless the community trust does not, once it so complies, thereafter solicit for funds that will not qualify under the requirements of paragraph (f)(11)(v)(B) of this section.

(D) *Inconsistent State law.*—(1) For purposes of paragraphs (f)(11)(v)(B)(1), (f)(11)(v)(B)(2), (f)(11)(v)(B)(3), (f)(11)(v)(C)(1)(i), (f)(11)(v)(C)(1)(ii), and (f)(11)(v)(E) of this section, if a power described in such a provision is inconsistent with State law even if such power were expressly granted to the governing body by the governing instrument and were accepted without

limitation under an instrument of transfer, then the community trust will be treated as meeting the requirements of such a provision if it meets such requirements to the fullest extent possible consistent with State law (if such power is or had been so expressly granted).

(2) For example, if, under the conditions of paragraph (f)(11)(v)(D)(I) of this section, the power to modify is inconsistent with State law, but the power to institute proceedings to modify, if so expressly granted, would be consistent with State law, the community trust will be treated as meeting such requirements to the fullest extent possible if the governing body has the power (in the governing instrument or otherwise) to institute proceedings to modify a condition or restriction. On the other hand, if in such a case the community trust has only the power to cause proceedings to be instituted to modify a condition or restriction, it will not be treated as meeting such requirements to the fullest extent possible.

(3) In addition, if, for example, under the conditions of paragraph (f)(11)(v)(D)(I) of this section, the power to modify and the power to institute proceedings to modify a condition or restriction is inconsistent with State law, but the power to cause such proceedings to be instituted would be consistent with State law, if it were expressly granted in the governing instrument and if the approval of the State Attorney General were obtained, then the community trust will be treated as meeting such requirements to the fullest extent possible if it has the power (in the governing instrument or otherwise) to cause such proceedings to be instituted, even if such proceedings can be instituted only with the approval of the State Attorney General.

(E) *Exercise of powers.* The governing body shall (by resolution or otherwise) commit itself to exercise the powers described in paragraphs (f)(11)(v)(B), (f)(11)(v)(C), and (f)(11)(v)(D) of this section in the best interests of the community trust. The governing body will be considered not to be so committed where it has grounds to exercise such a power and fails to exercise it by taking

appropriate action. Such appropriate action may include, for example, consulting with the appropriate State authority prior to taking action to replace a participating trustee.

(F) *Reasonable return.* In addition to the requirements of paragraphs (f)(11)(v)(B), (f)(11)(v)(C), (f)(11)(v)(D), or (f)(11)(v)(E) of this section, the governing body shall (by resolution or otherwise) commit itself to obtain information and take other appropriate steps with the view to seeing that each participating trustee, custodian, or agent, with respect to each restricted trust or fund that is, and with respect to the aggregate of the unrestricted trusts or funds that are, a component part of the community trust, administers such trust or fund in accordance with the terms of its governing instrument and accepted standards of fiduciary conduct to produce a reasonable return of net income (or appreciation where not inconsistent with the community trust's need for current income), with due regard to safety of principal, in furtherance of the exempt purposes of the community trust (except for assets held for the active conduct of the community trust's exempt activities). In the case of a low return of net income (and, where appropriate, appreciation), the IRS will examine carefully whether the governing body has, in fact, committed itself to take the appropriate steps. For purposes of this paragraph (f)(11)(v)(F), any income that has been designated by the donor of the gift or bequest to which such income is attributable as being available only for the use or benefit of a broad charitable purpose, such as the encouragement of higher education or the promotion of better health care in the community, will be treated as unrestricted. However, any income that has been designated for the use or benefit of a named charitable organization or agency or for the use or benefit of a particular class of charitable organizations or agencies, the members of which are readily ascertainable and are less than five in number, will be treated as restricted.

(vi) *Common reports.* The organization must prepare periodic financial reports treating all of the funds which are held

by the community trust, either directly or in component parts, as funds of the organization.

(12) *Community trusts; treatment of trusts and not-for-profit corporations and associations not included as components.*

(i) For purposes of sections 170, 501, 507, 508, 509, and Chapter 42, any trust or not-for-profit corporation or association that is alleged to be a component part of a community trust, but that fails to meet the requirements of paragraph (f)(11)(ii) of this section, shall not be treated as a component part of a community trust and, if a trust, shall be treated as a separate trust and be subject to the provisions of section 501, section 4947(a)(1), or section 4947(a)(2), as the case may be. If such organization is a not-for-profit corporation or association, it will be treated as a separate entity, and, if it is described in section 501(c)(3), it will be treated as a private foundation unless it is described in section 509(a)(1), section 509(a)(2), section 509(a)(3), or section 509(a)(4). In the case of a fund that is ultimately treated as not being a component part of a community trust pursuant to this paragraph (f)(12), if the Forms 990 filed annually by the community trust included financial information with respect to such fund and treated such fund in the same manner as other component parts thereof, such returns filed by the community trust prior to the taxable year in which the Commissioner notifies such fund that it will not be treated as a component part will be treated as its separate return for purpose of Subchapter A of Chapter 61 of Subtitle F, and the first such return filed by the community trust will be treated as the notification required of the separate entity for purposes of section 508(a).

(ii) If a transfer is made in trust to a community trust to make income or other payments for a period of a life or lives in being or a term of years to any individual or for any noncharitable purpose, followed by payments to or for the use of the community trust (such as in the case of a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 or a pooled income fund described in section 642(c)(5)), such trust will be treated as a component part of the commu-

nity trust upon the termination of all intervening noncharitable interests and rights to the actual possession or enjoyment of the property if such trust satisfies the requirements of paragraph (f)(11) of this section at such time. Until such time, the trust will be treated as a separate trust. If a transfer is made in trust to a community trust to make income or other payments to or for the use of the community trust, followed by payments to any individual or for any noncharitable purpose, such trust will be treated as a separate trust rather than as a component part of the community trust. See section 4947(a)(2) and the related regulations for the treatment of such split-interest trusts. The provisions of this paragraph (f)(12)(ii) provide rules only for determining when a charitable remainder trust or pooled income fund may be treated as a component part of a community trust and are not intended to preclude a community trust from maintaining a charitable remainder trust or pooled income fund. For purposes of grantors and contributors, a pooled income fund of a publicly supported community trust shall be treated no differently than a pooled income fund of any other publicly supported organization.

(iii) An organization described in section 170(b)(1)(F)(iii) will not ordinarily satisfy the requirements of paragraph (f)(11)(ii) of this section because of the unqualified right of the donor to designate the recipients of the income and principal of the trust. Such organization will therefore ordinarily be treated as other than a component part of a community trust under paragraph (f)(12)(i) of this section. However, see section 170(b)(1)(F)(iii) and the related regulations with respect to the treatment of contributions to such organizations.

(13) *Method of accounting.* For purposes of section 170(b)(1)(A)(vi), an organization's support will be determined under the method of accounting on the basis of which the organization regularly computes its income in keeping its books under section 446. For example, if a grantor makes a grant to an organization payable over a term of years, such grant will be includible in

the support fraction of the grantee organization under the method of accounting on the basis of which the grantee organization regularly computes its income in keeping its books under section 446.

(14) *Transition rules.* (i) An organization that received an advance ruling, that expires on or after June 9, 2008, that it will be treated as an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) will be treated as meeting the requirements of paragraph (f)(2) or paragraph (f)(3) of this section for the first five taxable years of its existence as a section 501(c)(3) organization unless the IRS issued to the organization a proposed determination prior to September 9, 2008, that the organization is not described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(ii) Paragraph (f)(4)(v) of this section shall not apply with respect to an organization that received an advance ruling that expired prior to June 9, 2008, and that did not timely file with the Internal Revenue Service the required information to establish that it is an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(iii) An organization that fails to meet a public support test for its first taxable year beginning on or after January 1, 2008, under the regulations in this section may use the prior tests set forth in § 1.170A-9(e)(2) or § 1.170A-9(e)(3), or in §§ 1.509(a)-3(a)(2) and 1.509(a)-3(a)(3), as in effect before September 9, 2008 (as contained in 26 CFR part 1 revised April 1, 2008), to determine whether the organization was publicly supported for its 2008 taxable year based on its satisfaction of a public support test for taxable year 2007, computed over the period 2003 through 2006.

(iv) *Examples.* The application of this paragraph (f)(14) may be illustrated by the following examples:

Example 1. (i) Organization X was formed in January 2004 and uses a taxable year ending June 30. Organization X received an advance ruling letter that it is recognized as an organization described in section 501(c)(3) effective as of the date of its formation and that it is treated as a publicly supported organization under sections 170(b)(1)(A)(vi) and 509(a)(1) during the five-year advance ruling

period that will end on June 30, 2008. This date is on or after June 9, 2008.

(ii) Under the transition rule, Organization X is a publicly supported organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) for the taxable years ending June 30, 2004, through June 30, 2008. Organization X does not need to establish within 90 days after June 30, 2008, that it met a public support test under § 1.170A-9(e) or § 1.509(a)-3, as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008), for its advance ruling period.

(iii) Organization X can qualify as a publicly supported organization for the taxable year ending June 30, 2009, if Organization X can meet the requirements of paragraph (f)(2) or (f)(3) of this section or §§ 1.509(a)-3(a)(2) and 1.509(a)-3(a)(3) for the taxable years ending June 30, 2005, through June 30, 2009, or for the taxable years ending June 30, 2004, through June 30, 2008. In addition, for its taxable year ending June 30, 2009, Organization X may qualify as a publicly supported organization by availing itself of the transition rule contained in paragraph (f)(14)(iii) of this section, which looks to support received by X in the taxable years ending June 30, 2004, through June 30, 2007.

Example 2. (i) Organization Y was formed in January 2000, and uses a taxable year ending December 31. Organization Y received a final determination that it was recognized as tax-exempt under section 501(c)(3) and as a publicly supported organization prior to September 9, 2008.

(ii) For taxable year 2008, Organization Y will qualify as publicly supported if it meets the requirements under either paragraph (f)(2) or (f)(3) of this section or §§ 1.509(a)-3(a)(2) or 1.509(a)-3(a)(3) for the five-year period January 1, 2004, through December 31, 2008. Organization Y will also qualify as publicly supported for taxable year 2008 if it meets the requirements under § 1.170A-9(e)(2) or § 1.170A-9(e)(3), or under §§ 1.509(a)-3(a)(2) and 1.509(a)-3(a)(3), as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) for taxable year 2007, using the four-year period from January 1, 2003, through December 31, 2006.

(g) *Private operating foundation.* An organization is described in section 170(b)(1)(A)(vii) and (E)(i) if it is a private “operating foundation” as defined in section 4942(j)(3) and the regulations thereunder.

(h) *Private nonoperating foundation distributing amount equal to all contributions received—(1) In general.* (i) An organization is described in section 170(b)(1)(A)(vii) and (E)(ii) if it is a private foundation which, not later than the 15th day of the third month after the close of its taxable year in which

any contributions are received, distributes an amount equal in value to 100 percent of all contributions received in such year. Such distributions must be qualifying distributions (as defined in section 4942(g) without regard to paragraph (3) thereof) which are treated, after the application of section 4942(g)(3), as distributions out of corpus in accordance with section 4942(h). Qualifying distributions, as defined in section 4942(g) without regard to paragraph (3) thereof, cannot be made to (i) an organization controlled directly or indirectly by the foundation or by one or more disqualified persons (as defined in section 4946) with respect to the foundation or (ii) a private foundation which is not an operating foundation (as defined in section 4942(j)(3)). The phrase "after the application of section 4942(g)(3)" means that every contribution described in section 4942(g)(3) received by a private foundation described in this subparagraph in a particular taxable year must be distributed (within the meaning of section 4942(g)(3)(A)) by such foundation not later than the 15th day of the third month after the close of such taxable year in order for any other distribution by such foundation to be counted toward the 100-percent requirement described in this subparagraph.

(ii) In order for an organization to meet the distribution requirements of subdivision (i) of this subparagraph, it must, not later than the 15th day of the third month after the close of its taxable year in which any contributions are received, distribute (within the meaning of subdivision (i) of this subparagraph) an amount equal in value to 100 percent of all contributions received in such year and have no remaining undistributed income for such year.

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example 1. X is a private foundation on a calendar year basis. As of January 1, 1971, X had no undistributed income for 1970. X's distributable amount for 1971 was \$600,000. In July 1971, A, an individual, contributed \$500,000 (fair market value determined at the time of the contribution) of appreciated property to X (which, if sold, would give rise to long-term capital gain). X did not receive any other contribution in either 1970 or 1971.

During 1971, X made qualifying distributions of \$700,000 which were treated as made out of the undistributed income for 1971 and \$100,000 out of corpus. X will meet the requirements of section 170(b)(1)(E)(ii) for 1971 if it makes additional qualifying distributions of \$400,000 out of corpus by March 15, 1972.

Example 2. Assume the facts as stated in *Example 1*, except that as of January 1, 1971, X had \$100,000 of undistributed income for 1970. Under these circumstances, the \$700,000 distributed by X in 1971 would be treated as made out of the undistributed income for 1970 and 1971. X would therefore have to make additional qualifying distributions of \$500,000 out of corpus between January 1, 1972, and March 15, 1972, in order to meet the requirements of section 170(b)(1)(E)(ii) for 1971.

(2) *Special rules.* In applying subparagraph (1) of this paragraph:

(i) For purposes of section 170(b)(1)(A)(vii), an organization described in section 170(b)(1)(E)(ii) must distribute all contributions received in any year, whether of cash or property. However, solely for purposes of section 170(e)(1)(B)(ii), an organization described in section 170(b)(1)(E)(ii) is required to distribute all contributions of property only received in any year. Contributions for purposes of this paragraph do not include bequests, legacies, devises, or transfers within the meaning of section 2055 or 2106(a)(2) with respect to which a deduction was not allowed under section 170.

(ii) Any distributions made by a private foundation pursuant to subparagraph (1) of this paragraph with respect to a particular taxable year shall be treated as made first out of contributions of property and then out of contributions of cash received by such foundation in such year.

(iii) A private foundation is not required to trace specific contributions of property, or amounts into which such contributions are converted, to specific distributions.

(iv) For purposes of satisfying the requirements of section 170(b)(1)(D)(ii), except as provided to the contrary in this subdivision (iv), the fair market value of contributed property, determined on the date of contribution, is required to be used for purposes of determining whether an amount equal in value to 100 percent of the contribution received has been distributed. However,

reasonable selling expenses, if any, incurred by the foundation in the sale of the contributed property may be deducted from the fair market value of the contributed property on the date of contribution, and distribution of the balance of the fair market value will satisfy the 100 percent distribution requirement. If a private foundation receives a contribution of property and, within 30 days thereafter, either sells the property or makes an in kind distribution of the property to a public charity, then at the choice of the private foundation the gross amount received on the sale (less reasonable selling expenses incurred) or the fair market value of the contributed property at the date of its distribution to the public charity, and not the fair market value of the contributed property on the sale of contribution (less reasonable selling expenses, if any), is considered to be the amount of the fair market value of the contributed property for purposes of the requirements of section 170(b)(1)(D)(ii).

(v) A private foundation may satisfy the requirements of subparagraph (1) of this paragraph for a particular taxable year by electing (pursuant to section 4942(h)(2) and the regulations thereunder) to treat a portion or all of one or more distributions, made not later than the 15th day of the third month after the close of such year, as made out of corpus.

(3) *Transitional rules*—(i) *Taxable years beginning before January 1, 1970, and ending after December 31, 1969.* In order for an organization to meet the distribution requirements of subparagraph (1)(i) of this paragraph for a taxable year which begins before January 1, 1970, and ends after December 31, 1969, it must, not later than the 15th day of the third month after the close of such taxable year, distribute (within the meaning of subparagraph (1)(i) of this paragraph) an amount equal in value to 100 percent of all contributions (other than contributions described in section 4942(g)(3)) which were received between January 1, 1970, and the last day of such taxable year. Because the organization is not subject to the provisions of section 4942 for such year, the organization need not satisfy subparagraph (1)(ii) of this paragraph

or the phrase “after the application of section 4942(g)(3)” for such year.

(ii) *Extension of period.* For purposes of section 170(b)(1)(A)(vii) and 170(e)(1)(B)(ii), in the case of a taxable year ending in either 1970, 1971 or 1972, the period referred to in section 170(b)(1)(E)(ii) for making distributions shall not expire before April 2, 1973.

(4) *Adequate records required.* A taxpayer claiming a deduction under section 170 for a charitable contribution to a foundation described in subparagraph (1) of this paragraph must obtain adequate records or other sufficient evidence from such foundation showing that the foundation made the required qualifying distributions within the time prescribed. Such records or other evidence must be attached to the taxpayer's return for the taxable year for which the charitable contribution deduction is claimed. If necessary, an amended income tax return or claim for refund may be filed in accordance with § 301.6402-2 and § 301.6402-3 of this chapter (procedure and administration regulations).

(i) *Private foundation maintaining a common fund*—(1) *Designation by substantial contributors.* An organization is described in section 170(b)(1) (A)(vii) and (E)(iii) if it is a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any donor who is a substantial contributor or his spouse to designate annually the recipients, from among public charities, of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to public charities, of the corpus in the common fund attributable to the donor's contribution. For purposes of this paragraph, the private foundation is to be treated as meeting the requirements of section 509(a)(3) (A) and (B) even though donors to the foundation, or their spouses, retain the right to, and in fact do, designate public charities to receive income or corpus from the fund.

(2) *Distribution requirements.* To qualify under subparagraph (1) of this paragraph, the private foundation described therein must be required by its governing instrument to distribute, and it

must in fact distribute (including administrative expenses):

(i) All of the adjusted net income (as defined in section 4942(f)) of the common fund to one or more public charities not later than the 15th day of the third month after the close of the taxable year in which such income is realized by the fund, and

(ii) All the corpus attributable to any donor's contribution to the fund to one or more public charities not later than 1 year after the donor's death or after the death of the donor's surviving spouse if such surviving spouse has the right to designate the recipients of such corpus.

(3) *Failure to designate.* A private foundation will not fail to qualify under this paragraph merely because a substantial contributor or his spouse fails to exercise his right to designate the recipients of income or corpus of the fund, provided that the income and corpus attributable to his contribution are distributed as required by subparagraph (2) of this paragraph.

(4) *Definitions.* For purposes of this paragraph:

(i) The term *substantial contributor* is as defined in section 507(d)(2) and the regulations thereunder.

(ii) The term *public charity* means an organization described in section 170(b)(1)(A) (i) through (vi). If an organization is described in section 170(b)(1)(A) (i) through (vi), and is also described in section 170(b)(1)(A)(viii), it shall be treated as a public charity for purposes of this paragraph.

(iii) The term *income attributable to* means the income earned by the fund which is properly allocable to the contributed amount by any reasonable and consistently applied method. See, for example, §1.642(c)-5(c).

(iv) The term *corpus attributable to* means the portion of the corpus of the fund attributable to the contributed amount. Such portion may be determined by any reasonable and consistently applied method.

(v) The term *donor* means any individual who makes a contribution (whether of cash or property) to the private foundation, whether or not such individual is a substantial contributor.

(j) *Section 509(a) (2) or (3) organization.* An organization is described in section 170(b)(1)(A)(viii) if it is described in section 509(a) (2) or (3) and the regulations thereunder.

(k) *Effective/applicability date*—(1) *In general.* These regulations shall apply to taxable years beginning after December 31, 1969.

(2) *Applicability date.* The regulations in paragraph (f) of this section shall apply to taxable years beginning on or after January 1, 2008. For tax years beginning after December 31, 1969, and beginning before January 1, 2008, see §1.170A-9(e) (as contained in 26 CFR part 1 revised April 1, 2008).

(3) *Applicability date.* Paragraph (f)(7)(v) of this section applies to taxable years beginning on or after December 2, 2020. Taxpayers may choose to apply this section to taxable years beginning on or after January 1, 2018, and before December 2, 2020.

[T.D. 7242, 38 FR 12, Jan. 3, 1973; 38 FR 3598, Feb. 8, 1973, as amended by T.D. 7406, 41 FR 7096, Feb. 17, 1976; T.D. 7440, 41 FR 50650, Nov. 17, 1976; T.D. 7456, 42 FR 4436, Jan. 25, 1977; T.D. 7679, 45 FR 13452, Feb. 29, 1980; T.D. 8100, 51 FR 31614, Sept. 4, 1986; T.D. 8991, 67 FR 20437, Apr. 25, 2002; T.D. 9423, 73 FR 52533, Sept. 9, 2008; T.D. 9549, 76 FR 55750, Sept. 8, 2011; T.D. 9933, 85 FR 77978, Dec. 2, 2020]

§ 1.170A-10 Charitable contributions carryovers of individuals.

(a) *In general.* (1) Section 170(d)(1), relating to carryover of charitable contributions in excess of 50 percent of contribution base, and section 170(b)(1)(D)(ii), relating to carryover of charitable contributions in excess of 30 percent of contribution base, provide for excess charitable contributions carryovers by individuals of charitable contributions to section 170(b)(1)(A) organizations described in §1.170A-9. These carryovers shall be determined as provided in paragraphs (b) and (c) of this section. No excess charitable contributions carryover shall be allowed with respect to contributions “for the use of,” rather than “to,” section 170(b)(1)(A) organizations or with respect to contributions “to” or “for the use of” organizations which are not section 170(b)(1)(A) organizations. See §1.170A-8(a)(2) for definitions of “to” or “for the use of” a charitable organization.