

SECTION 1. PURPOSE

The purpose of this Revenue Procedure is to update and restate conditions under which certain private foundations will be deemed to have reasonable cause for failure to comply with the private foundation requirements of sections 6011, 6033, 6056, 6104, and 6151 of the Internal Revenue Code of 1954 for filing of returns and payment of taxes.

SEC. 2. BACKGROUND

.01 Under section 6033 of the Code, most organizations described in section 501(c)(3) are required to file Form 990 if their gross receipts are normally more than \$5,000 per year. (However, under the discretionary authority provided him by section 6033(a)(2)(B), the Commissioner has determined that returns from organizations with gross receipts normally between \$5,000 and \$10,000 were not necessary for the efficient administration of the Internal Revenue laws.) Under sections 6011 and 6033, private foundations defined in section 509 are required to file returns regardless of the amount of gross receipts. In addition, section 6056 requires that private foundations having at least \$5,000 of assets at any time during the taxable year must file an annual report of their activities; section 6104 requires that they publish notice of the availability of this report for public inspection. Private foundations must also pay an excise tax on their net investment income and they may, by their actions, be required to pay certain other taxes imposed by chapter 42. Organizations that fail to comply with any of the preceding requirements may be liable for the penalties provided by sections 6651 and 6652 if they are private foundations unless they have reasonable cause for such failure to comply. Therefore, it is necessary that organizations described in section 501(c)(3) know their foundation status under section 509 in order to determine their filing responsibilities as well as their liability for the excise tax on net investment income and any other excise taxes that may be imposed on private foundations by chapter 42.

.02 Section 508(b) of the Code provides, with certain exceptions, that an organization described in section 501(c)(3) will be presumed to be a private foundation unless it files notice with the Internal Revenue Service that it is not a private foundation. Section 1.508-1(b)(2) of the Income Tax Regulations provides that an organization required to file such notice must do so within 15 months from the end of the month in which it was organized or before March 22, 1973, whichever occurs later. Organizations file such notice by submitting a properly completed and executed Form 1023, Application For Recognition of Exemption, claiming not to be a private foundation.

.03 Revenue Procedure 72-31, 1972-1 C.B. 759, provided temporary relief from the penalty provisions of sections 6651 and 6652 of the Code for certain organizations awaiting publication of regulations under section 509(a) or section 170(b)(1)(A) to help them determine their filing requirements under sections 6033, 6056, and 6104 and payment requirement under section 6151. This Revenue Procedure extends and modifies those relief provisions.

SEC. 3. INSTRUCTIONS

.01 To the extent provided below, an organization that is in fact a private foundation will be deemed to have reasonable cause for failure to comply with the private foundation requirements of sections 6011, 6033, 6056, 6104, and 6151 of the Code for filing of returns and payment of taxes until ninety days after it is issued a letter from the Service containing a determination of foundation status or a determination that the organization cannot reasonably be expected to be a public charity. Consequently, it will not be subject to the penalty provisions of sections 6651 and 6652 for this period.

.02 This relief will only apply to a taxable year for which, prior to the due date for filing Form 990-PF, the organization has filed notice on Form 1023, Application For Recognition of Exemption, claiming not to be a private foundation. Relief will continue for subsequent years until 90 days after the date of the letter from the Service containing the determination of foundation status or a determination that the organization cannot reasonably be expected to be a public charity. However, the relief will not apply to returns and schedules that would be required of the organization whether or not it was a private foundation.

.03 Within ninety days after the date of the letter containing the determination of foundation status, an organization that is in fact a private foundation must comply with all the pertinent requirements of sections 6011, 6033, 6056, 6104 and 6151 of the Code for all prior years and pay all taxes due, with interest as provided by law. It must also attach a statement to the returns that explains the basis for reasonable cause for failure to file timely and cites this Revenue Procedure. This statement, together with the late returns, must be submitted to the appropriate Internal Revenue Service Center within the prescribed time period.

SEC. 4. EFFECT ON OTHER DOCUMENTS

This Revenue Procedure supersedes Rev. Proc. 72-31, 1972-1 C.B. 759.