

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

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

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

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

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

(7) *Exceptions from notice.* Subparagraphs (1) and (2) of this paragraph are

inapplicable to the following organizations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

for the entire year. Therefore, even if a donee organization fails to meet the requirements of section 508(e) on the date it receives a grant from a donor, the donor's grant will not be disallowed by operation of section 508(d)(2)(A) and subdivision (i)(a) of this subparagraph, if the organization meets the requirements of section 508(e) (determined without regard to section 508(e)(2)(B) or (C)) by the end of its taxable year.

(iv) No deduction will be disallowed under section 508(d)(2)(A) with respect to a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 if during the taxable year in question, the private foundation or trust described in section 4947(a)(2) has instituted a judicial proceeding which is necessary to reform its governing instrument or other instrument in order to meet the requirements of section 508(e)(1). This subdivision shall not apply unless within a reasonable time such judicial proceedings succeed in so reforming such instrument.

(v) No deduction will be disallowed under section 508(d)(2)(A) and subdivision (i)(a) of this subparagraph for any taxable year beginning before January 1, 1972, with respect to a private foundation or trust described in section 4947 organized before January 1, 1970. See also § 1.508-3(g) regarding transitional rules for extending compliance with section 508(e)(1).

(vi)(a) In the case of a contribution or bequest to a trust described in section 4947(a)(2) other than to a trust to which subdivision (vii) of this subparagraph applies, no deduction shall be disallowed by reason of section 508(d)(2)(A) on the grounds that such trust's governing instrument contains no provisions with respect to section 4942. Similarly, if for a taxable year such trust is also a trust described in section 4947(b)(3), no deduction for such year shall be so disallowed on the grounds that the governing instrument contains no provision with respect to section 4943 or 4944.

(b) This subdivision may be illustrated by the following example:

Example. H executes a will on January 1, 1977, establishing a charitable remainder

trust (as described in section 664) with income payable to W, his wife, for life, remainder to X university, an organization described in section 170(b)(1)(A)(ii). The will provides that the trust is prohibited from engaging in activities which would subject itself, its foundation manager or a disqualified person to taxes under section 4941 or 4945 of the Code. The will is silent as to sections 4942, 4943, and 4944. H dies February 12, 1978. Section 508(d)(2)(A) will not operate to disallow any deduction to H's estate under section 2055 with respect to such trust.

(vii)(a) In the case of a trust described in section 4947(a)(2) which by its terms will become a trust described in section 4947(a)(1) and the governing instrument of which is executed after March 22, 1973, the governing instrument shall not meet the requirements of section 508(e)(1) if it does not contain provisions to the effect that the trust must comply with the provisions of section 4942, or sections 4942, 4943, and 4944 (as the case may be) to the extent such section or sections shall become applicable to such trust.

(b) This subdivision may be illustrated by the following example:

Example. H executes a will on January 1, 1977, establishing a charitable remainder trust (as described in section 664) with income payable to W, his wife, for life, remainder in trust in perpetuity for the benefit of an organization described in section 170(c). By its terms the trust will become a trust described in section 4947(a)(1), and will become a private foundation. The will provides that the trust is prohibited from engaging in activities which would subject itself, its foundation manager or a disqualified person to taxes under sections 4941 or 4945 of the Code. The will is silent as to sections 4942, 4943, and 4944. H dies February 12, 1978. Unless the trust's governing instrument is amended prior to the end of the trust's first taxable year, or judicial proceedings have been instituted under subdivision (iv) of this subparagraph, section 508(d)(2)(A) will operate to disallow any deduction to H's estate under section 2055 with respect to such trust.

(viii) Since a charitable trust described in section 4947(a)(1) is not required to file a notice under section 508(a), section 508(d)(2)(B) and subdivision (i)(b) of this subparagraph are not applicable to such a trust.

(2) *Transitional rules.* Any deduction which would otherwise be allowable under section 642(c)(2), 2106(a)(2), or 2055 shall not be disallowed under sec-

tion 508(d)(2)(A) if such deduction is attributable to:

(i) Property passing under the terms of a will executed on or before October 9, 1969,

(a) If the decedent dies after October 9, 1969, but before October 9, 1972, without having amended any dispositive provision of the will after October 9, 1969, by codicil or otherwise,

(b) If the decedent dies after October 9, 1969, and at no time after that date had the right to change the portions of the will which pertains to the passing of property to, or for the use of, an organization described in section 170(c)(2)(B) or 2055(a), or

(c) If no dispositive provision of the will is amended by the decedent, by codicil or otherwise, before October 9, 1972, and the decedent is on October 9, 1972, and at all times thereafter under a mental disability (as defined in § 1.642(c)-2(b)(3)(ii)) to amend the will by codicil or otherwise, or

(ii) Property transferred in trust on or before October 9, 1969,

(a) If the grantor dies after October 9, 1969, but before October 9, 1972, without having amended, after October 9, 1969, any dispositive provision of the instrument governing the disposition of the property,

(b) If the property transferred was an irrevocable interest to, or for the use of, an organization described in section 170(c)(2)(B) or 2055(a),

(c) In the case of a deduction under section 2106(a)(2) or 2055; if no dispositive provision of the instrument governing the disposition of the property is amended by the grantor before October 9, 1972, and the grantor is on October 9, 1972, and at all times thereafter under a mental disability (as defined in § 1.642(c)-2(b)(3)(ii)) to change the disposition of the property, or

(d) In the case of a deduction under section 642(c)(2)(A), if the grantor is at all times after October 9, 1969, and up to, and including, the last day of the taxable year for which the deduction under such section is claimed, under a mental disability (as defined in § 1.642(c)-2(b)(3)(ii)) to change the terms of the trust.

See also § 1.508-3(g) regarding the extension of time for compliance with section 508(e), § 1.664-1(f)(3) (ii) and (g)

regarding the special transitional rules for charitable remainder annuity and unitrusts described in section 664 which were created prior to December 31, 1972, and §20.2055-2(e)(4) of this chapter regarding the rules for determining if the dispositive provisions have been amended.

[T.D. 7232, 37 FR 28291, Dec. 22, 1972]

§ 1.508-3 Governing instruments.

(a) *General rule.* A private foundation shall not be exempt from taxation under section 501(a) for a taxable year unless by the end of such taxable year its governing instrument includes provisions the effects of which are:

(1) To require distributions at such times and in such manner as not to subject the foundation to tax under section 4942, and

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

(b) *Effect and nature of governing instrument—*(1) *In general.* Except as provided in paragraph (d) of this section, the provisions of a foundation's governing instrument must require or prohibit, as the case may be, the foundation to act or refrain from acting so that the foundation, and any foundation managers or other disqualified persons with respect thereto, shall not be liable for any of the taxes imposed by sections 4941, 4942, 4943, 4944, and 4945 of the Code or, in the case of a split-interest trust described in section 4947(a)(2), any of the taxes imposed by those sections of chapter 42 made applicable under section 4947. Specific reference to these sections of the Code will generally be required to be included in the governing instrument, unless equivalent language is used which is deemed by the Commissioner to have the same full force and effect. However, a governing instrument which contains only language sufficient to satisfy the requirements of the organizational test under §1.501(c)(3)-1(b) will not be considered as meeting

the requirements of this subparagraph, regardless of the interpretation placed on such language as a matter of law by a State court in a particular jurisdiction, unless the requirements of paragraph (d) of this section are satisfied.

(2) *Corpus.* A governing instrument does not meet the requirements of paragraph (a)(1) of this section if it expressly prohibits the distribution of capital or corpus.

(3) *Savings provisions.* For purposes of sections 508(d)(2) (A) and (e), a governing instrument need not include any provision which is inconsistent with section 101(l) (2), (3), (4), or (5) of the Tax Reform Act of 1969 (83 Stat. 533), as amended by sections 1301 and 1309 of the Tax Reform Act of 1976 (90 Stat. 1713, 1729), with respect to the organization. Accordingly, a governing instrument complying with the requirements of subparagraph (1) of this paragraph may incorporate any savings provision contained in section 101(l) (2), (3), (4), or (5) of the Tax Reform Act of 1969, as amended by sections 1301 and 1309 of the Tax Reform Act of 1976, as a specific exception to the general provisions of paragraph (a) of this section. In addition, in the absence of any express provisions to the contrary, the exceptions contained in such savings provisions will generally be regarded as contained in a governing instrument meeting the requirements of subparagraph (1) of this paragraph.

(4) *Excess holdings.* For purposes of paragraph (a)(2) of this section, the prohibition against *retaining any excess business holdings (as defined in section 4943(c))* shall be deemed only to prohibit the foundation from retaining any excess business holdings when such holdings would subject the foundation to tax under section 4943(a).

(5) *Revoked ruling on status.* In the case of an organization which:

(i) Has been classified as an organization described in section 509(a) (1), (2), (3), or (4), and

(ii) Subsequently receives a ruling or determination letter stating that it is no longer described in section 509(a) (1), (2), (3), or (4), but is a private foundation within the meaning of section 509, such organization shall have 1 year from the date of receipt of such ruling or determination letter, or the final