

26 USC 508: Special rules with respect to section 501(c)(3) organizationsText contains those laws in effect on November 15, 2021

From Title 26-INTERNAL REVENUE CODESubtitle A-Income TaxesCHAPTER 1-NORMAL TAXES AND SURTAXESSubchapter F-Exempt OrganizationsPART II-PRIVATE FOUNDATIONS

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

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

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

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

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

(b) Presumption that organizations are private foundations

Except as provided in subsection (c), any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3) and which does not notify the Secretary, at such time and in such manner as the Secretary may by regulations prescribe, that it is not a private foundation shall be presumed to be a private foundation.

(c) Exceptions

(1) Mandatory exceptions

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

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

(B) any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than \$5,000.

(2) Exceptions by regulations

The Secretary may by regulations exempt (to the extent and subject to such conditions as may be prescribed in such regulations) from the provisions of subsection (a) or (b) or both-

(A) educational organizations described in section 170(b)(1)(A)(ii), and

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

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

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

No gift or bequest made to an organization upon which the tax provided by section 507(c) has been imposed shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made-

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

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

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

No gift or bequest made to an organization shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made-

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

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

(3) Exception

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

(e) Governing instruments

(1) General rule

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

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

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

(2) Special rules for existing private foundations

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

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

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

(f) Additional provisions relating to sponsoring organizations

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

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

EDITORIAL NOTES

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2006 AMENDMENT

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

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which

such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under [section 1 of this title](#).

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE

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

SAVINGS PROVISION

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