

§ 1.508-4

26 CFR Ch. I (4-1-09 Edition)

foundation will be treated as meeting the requirements of section 508(e)(2) (B) and (C) if it has commenced a necessary and timely proceeding in an appropriate court of original jurisdiction and such court has ruled that the foundation's governing instrument or any other instrument does not permit it to meet the requirements of section 508(e)(1). Such foundation is not required to commence proceedings in any court of appellate jurisdiction in order to comply with section 508(e)(2)(C). See also § 1.508-2(b)(2).

(g) *Extension of time for compliance with section 508(e)*. (1) Except as provided in subparagraph (2) of this paragraph, section 508(e)(1) shall not apply to any private foundation (regardless of when organized) with respect:

(i) To any taxable year beginning before the transitional date,

(ii) To any period on or after the transitional date during the pendency of any judicial proceeding begun before the transitional date 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 section 508(e)(1), and

(iii) To any period after the termination of any judicial proceeding described in subdivision (ii) of this subparagraph during which its governing instrument or any other instrument does not permit it to meet the requirements of section 508(e)(1).

(2) Subparagraph (1) of this paragraph shall apply only to gifts or bequests referred to in section 508(d)(2)(A) that are made before the transitional date.

(3) For purposes of this paragraph the term *transitional dates* means the earlier of the following dates:

(i) In the case of a medical research organization, May 21, 1976 or in the case of a community trust February 10, 1977, or

(ii) The 91st day after the date an organization receives a final ruling or determination letter that it is a private foundation under section 509(a).

[T.D. 7232, 37 FR 28292, Dec. 22, 1972, as amended by T.D. 7440, 41 FR 50656, Nov. 17, 1976; T.D. 7678, 45 FR 12415, Feb. 26, 1980]

§ 1.508-4 Effective date.

Except as otherwise provided, §§ 1.508-1 through 1.508-3 shall take effect on January 1, 1970.

(Sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[T.D. 7232, 37 FR 28294, Dec. 22, 1972]

§ 1.509(a)-1 Definition of private foundation.

In general. Section 509(a) defines the term *private foundation* to mean any domestic or foreign organization described in section 501(c)(3) other than an organization described in section 509(a) (1), (2), (3), or (4). Organizations which fall into the categories excluded from the definition of *private foundation* are generally those which either have broad public support or actively function in a supporting relationship to such organizations. Organizations which test for public safety are also excluded.

[T.D. 7212, 37 FR 21907, Oct. 17, 1972]

§ 1.509(a)-2 Exclusion for certain organizations described in section 170(b)(1)(A).

(a) *General rule.* Organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) are excluded from the definition of *private foundation* by section 509(a)(1). For the requirements to be met by organizations described in section 170(b)(1)(A) (i) through (vi), see § 1.170A-9 (a) through (e) and paragraph (b) of this section. For purposes of this section, the parenthetical language *other than in clauses (vii) and (viii)* used in section 509(a)(1) means *other than an organization which is described only in clause (vii) or (viii)*. For purposes of this section, an organization may qualify as a section 509(a)(1) organization regardless of the fact that it does not satisfy section 170(c)(2) because:

(1) Its funds are not used within the United States or its possessions, or

(2) It was created or organized other than in, or under the law of, the United States, any State or territory, the District of Columbia, or any possession of the United States.

(b) *Medical research organizations.* In order to qualify under section 509(a)(1)

as a medical research organization described in section 170(b)(1)(A)(iii), an organization must meet the requirements of section 170(b)(1)(A)(iii) and § 1.170A-9(c)(2), except that, solely for purposes of classification as a section 509(a)(1) organization, such organization need not be committed to spend every contribution for medical research before January 1 of the fifth calendar year which begins after the date such contribution is made.

[T.D. 7212, 37 FR 21907, Oct. 17, 1972]

§ 1.509(a)-3 Broadly, publicly supported organizations.

(a) *In general*—(1) *General rule.* Section 509(a)(2) excludes certain types of broadly, publicly supported organizations from private foundation status. An organization will be excluded under section 509(a)(2) if it meets the one-third support test under section 509(a)(2)(A) and the not-more-than-one-third support test under section 509(a)(2)(B).

(2) *One-third support test.* An organization will meet the one-third support test if it normally (within the meaning of paragraph (c), (d), or (e) of this section) receives more than one-third of its support in each taxable year from any combination of:

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

(ii) Gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), subject to certain limitations described in paragraph (b) of this section

from permitted sources. For purposes of this section, governmental units, organizations described in section 509(a)(1) and persons other than disqualified persons with respect to the organization shall be referred to as permitted sources. For purposes of this section, the amount of support received from the sources described in subdivisions (i) and (ii) of this subparagraph (subject to the limitations referred to in this subparagraph) will be referred to as the numerator of the one-third support total amount of support received (as defined in section 509(d)) will

be referred to as the denominator of the one-third support fraction. For purposes of section 509(a)(2), paragraph (f) of this section distinguishes gifts and contributions from gross receipts; paragraph (g) of this section distinguishes grants from gross receipts; paragraph (h) of this section defines membership fees; paragraph (i) of this section defines *any bureau or similar agency of a governmental unit*; paragraph (j) of this section describes the treatment of certain indirect forms of support; paragraph (k) of this section describes the method of accounting for support; paragraph (l) of this section describes the treatment of gross receipts from section 513(a) (1), (2), or (3) activities; and paragraph (m) of this section distinguishes gross receipts from gross investment income.

(3) *Not-more-than-one-third support test*—(i) *In general.* An organization will meet the not-more-than-one-third support test under section 509(a)(2)(B) if it normally (within the meaning of paragraph (c), (d), or (e) of this section) receives not more than one-third of its support in each taxable year from the sum of its gross investment income (as defined in section 509(e)) and the excess (if any) of the amount of its unrelated business taxable income (as defined in section 512) derived from trades or businesses which were acquired by the organization after June 30, 1975, over the amount of tax imposed on such income by section 511. For purposes of this section the amount of support received from items described in section 509(a)(2)(B) will be referred to as the numerator of the not-more-than-one-third support fraction, and the total amount of support (as defined in section 509(d)) will be referred to as the denominator of the not-more-than-one-third support fraction. For purposes of section 509(a)(2), paragraph (m) of this section distinguishes gross receipts from gross investment income. For purposes of section 509(e), gross investment income includes the items of investment income described in § 1.512(b)-1(a).

(ii) *Trade or business.* For purposes of section 509(a)(2)(B)(ii), a trade or business acquired after June 30, 1975, by an organization shall include, in addition to other trades or businesses: