

§ 1.509(a)-4T

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case of a religious organization operated in connection with a church, the fact that the majority of the organization's governing body is composed of lay persons who are substantial contributors to the organization will not disqualify the organization under section 509(a)(3)(C) if a representative of the church, such as a bishop or other official, has control over the policies and decisions of the organization.

(k) *Organizations operated in conjunction with certain section 501(c) (4), (5), or (6) organizations.* (1) For purposes of section 509(a)(3), an organization which is operated in conjunction with an organization described in section 501(c) (4), (5), or (6) (such as a social welfare organization, labor or agricultural organization, business league, or real estate board) shall, if it otherwise meets the requirements of section 509(a)(3), be considered an organization described in section 509(a)(3) if such section 501(c) (4), (5), or (6) organization would be described in section 509(a)(2) if it were an organization described in section 501(c)(3). The section 501(c) (4), (5), or (6) organization, which the supporting organization is operating in conjunction with, must therefore meet the one-third tests of a publicly supported organization set forth in section 509(a)(2).

(2) This paragraph may be illustrated by the following example:

Example. X medical association, described in section 501(c)(6), is supported by membership dues and funds resulting from the performance of its exempt activities. This support, which is entirely from permitted sources, constitutes more than one-third of X's support. X does not normally receive more than one-third of its support from items described in section 509(a)(2)(B). X organized and operated an endowment fund for the sole purpose of furthering medical education. The fund is an organization described in section 501(c)(3). Since more than one-third of X's support is derived from membership dues and from funds resulting from the performance of exempt purposes (all of which are from permitted sources) and not more than one-third of its support is from items described in section 509(a)(2)(B), it would be a publicly supported organization described in section 509(a)(2) if it were described in section 501(c)(3) rather than section 501(c)(6). Accordingly, if the fund otherwise meets the requirements of section 509(a)(3) with respect to X, it will be considered an organization described in section 509(a)(3).

(1) *Effective/applicability date.* Paragraphs (a)(6), (f)(5), and (i) of this section are effective on December 28, 2012.

[T.D. 7212, 37 FR 21916, Oct. 17, 1972, as amended by T.D. 7784, 46 FR 37890, July 23, 1981; 77 FR 76394, Dec. 28, 2012]

§ 1.509(a)-4T Supporting organizations (temporary).

(a) through (i)(5)(ii)(A) [Reserved] For further guidance, see § 1.509(a)-4(a) through (i)(5)(ii)(A).

(B) *Distributable amount.* Except as provided in §§ 1.509(a)-4(i)(5)(ii)(D) and 1.509(a)-4(i)(5)(ii)(E), the distributable amount for a taxable year is an amount equal to the greater of 85 percent of the supporting organization's adjusted net income (as determined by applying the principles of section 4942(f) and § 53.4942(a)-2(d) of this chapter) for the taxable year immediately preceding the taxable year of the required distribution ("immediately preceding taxable year") or its minimum asset amount (as defined in paragraph (i)(5)(ii)(C) of this section) for the immediately preceding taxable year, reduced by the amount of taxes imposed on the supporting organization under subtitle A of the Internal Revenue Code during the immediately preceding taxable year.

(C) *Minimum asset amount.* For purposes of this paragraph (i)(5), a supporting organization's minimum asset amount for the immediately preceding taxable year is 3.5 percent of the excess of the aggregate fair market value of all of the supporting organization's non-exempt-use assets (determined under paragraph (i)(8) of this section) in that immediately preceding taxable year over the acquisition indebtedness with respect to such non-exempt-use assets (determined under section 514(c)(1) without regard to the taxable year in which the indebtedness was incurred), increased by—

(1) Amounts received or accrued during the immediately preceding taxable year as repayments of amounts which were taken into account by the organization to meet the distribution requirement imposed in § 1.509(a)-4(i)(5)(ii)(A) for any taxable year;

(2) Amounts received or accrued during the immediately preceding taxable year from the sale or other disposition

of property to the extent that the acquisition of such property was taken into account by the organization to meet the distribution requirement imposed in §1.509(a)-4(i)(5)(ii)(A) for any taxable year; and

(3) Any amount set aside under §1.509(a)-4(i)(6)(v) to the extent it is determined during the immediately preceding taxable year that such amount is not necessary for the purposes for which it was set aside and such amount was taken into account by the organization to meet the distribution requirement imposed in §1.509(a)-4(i)(5)(ii)(A) for any taxable year.

(i)(5)(ii)(D) through (i)(7) [Reserved] For further guidance, see §1.509(a)-4(i)(5)(ii)(D) through (i)(7).

(8) *Valuation of non-exempt-use assets.* For purposes of determining its distributable amount for a taxable year, a supporting organization determines its minimum asset amount, as defined in paragraph (i)(5)(ii)(C) of this section, by determining the aggregate fair market value of all of its non-exempt-use assets in the immediately preceding taxable year. For these purposes, the determination of the aggregate fair market value of all non-exempt-use assets shall be made using the valuation methods described in §53.4942(a)-2(c) of this chapter. The aggregate fair market value of the supporting organization's non-exempt-use assets shall not be reduced by any amount that is set aside under §1.509(a)-4(i)(6)(v). For these purposes, the non-exempt-use assets of the supporting organization are all assets of the supporting organization other than—

(i) Assets described in §53.4942(a)-2(c)(2)(i) through (iv) of this chapter (with “supporting organization” being substituted for “foundation” or “private foundation” and “August 17, 2006” being substituted for “December 31, 1969”); and

(ii) Exempt-use assets, which are assets that are used (or held for use) to carry out the exempt purposes of the supporting organization's supported organization(s) (determined by applying the principles described in §53.4942(a)-2(c)(3) of this chapter) by either—

(A) The supporting organization; or

(B) One or more supported organizations, but only if the supporting organiza-

nization makes the asset available to the supported organization(s) at no cost (or nominal rent) to the supported organization(s).

(i)(9) through (l) [Reserved] For further guidance, see §1.509(a)-4(i)(9) through (l).

(m) *Effective/applicability date.* This section is effective on December 28, 2012. The applicability of this section expires on or before December 21, 2015.

[77 FR 76399, Dec. 28, 2012]

§ 1.509(a)-5 Special rules of attribution.

(a) *Retained character of gross investment income.* (1) For purposes of determining whether an organization meets the not-more-than-one-third support test set forth in section 509(a)(2)(B), amounts received by such organization from:

(i) An organization which seeks to be described in section 509(a)(3) by reason of its support of such organization; or

(ii) A charitable trust, corporation, fund, or association described in section 501(c)(3) (including a charitable trust described in section 4947(a)(1)) or a split interest trust described in section 4947(a)(2), which is required by its governing instrument or otherwise to distribute, or which normally does distribute, at least 25 percent of its adjusted net income (within the meaning of section 4942(f)) to such organization, and such distribution normally comprises at least 5 percent of such distributee organization's adjusted net income

will retain their character as gross investment income (rather than gifts or contributions) to the extent that such amounts are characterized as gross investment income in the possession of the distributing organization described in subdivision (i) or (ii) of this subparagraph or, if the distributing organization is a split interest trust described in section 4947(a)(2), to the extent that such amounts would be characterized as gross investment income attributable to transfers in trust after May 26, 1969, if such trust were a private foundation. For purposes of this section, all income which is characterized as gross investment income in the possession of the distributing organization