

PART II—PRIVATE FOUNDATIONS

Sec.	
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509.	Private foundation defined.

AMENDMENTS

1969—Pub. L. 91-172, title I, §101(a), Dec. 30, 1969, 83 Stat. 492, added part heading and analysis for part II.

§ 507. Termination of private foundation status**(a) General rule**

Except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if—

(1) such organization notifies the Secretary (at such time and in such manner as the Secretary may by regulations prescribe) of its intent to accomplish such termination, or

(2)(A) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42, and

(B) the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for the tax imposed by subsection (c),

and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

(b) Special rules**(1) Transfer to, or operation as, public charity**

The status as a private foundation of any organization, with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42, shall be terminated if—

(A) such organization distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution, or

(B)(i) such organization meets the requirements of paragraph (1), (2), or (3) of section 509(a) by the end of the 12-month period beginning with its first taxable year which begins after December 31, 1969, or for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969,

(ii) such organization notifies the Secretary (in such manner as the Secretary may by regulations prescribe) before the commencement of such 12-month or 60-month period (or before the 90th day after the day on which regulations first prescribed under this subsection become final) that it is terminating its private foundation status, and

(iii) such organization establishes to the satisfaction of the Secretary (in such manner as the Secretary may by regulations prescribe) immediately after the expiration of

such 12-month or 60-month period that such organization has complied with clause (i).

If an organization gives notice under subparagraph (B)(ii) of the commencement of a 60-month period and such organization fails to meet the requirements of paragraph (1), (2), or (3) of section 509(a) for the entire 60-month period, this part and chapter 42 shall not apply to such organization for any taxable year within such 60-month period for which it does meet such requirements.

(2) Transferee foundations

For purposes of this part, in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

(c) Imposition of tax

There is hereby imposed on each organization which is referred to in subsection (a) a tax equal to the lower of—

(1) the amount which the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from the section 501(c)(3) status of such foundation, or

(2) the value of the net assets of such foundation.

(d) Aggregate tax benefit**(1) In general**

For purposes of subsection (c), the aggregate tax benefit resulting from the section 501(c)(3) status of any private foundation is the sum of—

(A) the aggregate increases in tax under chapters 1, 11, and 12 (or the corresponding provisions of prior law) which would have been imposed with respect to all substantial contributors to the foundation if deductions for all contributions made by such contributors to the foundation after February 28, 1913, had been disallowed, and

(B) the aggregate increases in tax under chapter 1 (or the corresponding provisions of prior law) which would have been imposed with respect to the income of the private foundation for taxable years beginning after December 31, 1912, if (i) it had not been exempt from tax under section 501(a) (or the corresponding provisions of prior law), and (ii) in the case of a trust, deductions under section 642(c) (or the corresponding provisions of prior law) had been limited to 20 percent of the taxable income of the trust (computed without the benefit of section 642(c) but with the benefit of section 170(b)(1)(A)), and

(C) interest on the increases in tax determined under subparagraphs (A) and (B) from the first date on which each such increase would have been due and payable to the date on which the organization ceases to be a private foundation.

(2) Substantial contributor**(A) Definition**

For purposes of paragraph (1), the term “substantial contributor” means any person who contributed or bequeathed an aggregate amount of more than \$5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. In the case of a trust, the term “substantial contributor” also means the creator of the trust.

(B) Special rules

For purposes of subparagraph (A)—

(i) each contribution or bequest shall be valued at fair market value on the date it was received,

(ii) in the case of a foundation which is in existence on October 9, 1969, all contributions and bequests received on or before such date shall be treated (except for purposes of clause (i)) as if received on such date,

(iii) an individual shall be treated as making all contributions and bequests made by his spouse, and

(iv) any person who is a substantial contributor on any date shall remain a substantial contributor for all subsequent periods.

(C) Person ceases to be substantial contributor in certain cases**(i) In general**

A person shall cease to be treated as a substantial contributor with respect to any private foundation as of the close of any taxable year of such foundation if—

(I) during the 10-year period ending at the close of such taxable year such person (and all related persons) have not made any contribution to such private foundation,

(II) at no time during such 10-year period was such person (or any related person) a foundation manager of such private foundation, and

(III) the aggregate contributions made by such person (and related persons) are determined by the Secretary to be insignificant when compared to the aggregate amount of contributions to such foundation by one other person.

For purposes of subclause (III), appreciation on contributions while held by the foundation shall be taken into account.

(ii) Related person

For purposes of clause (i), the term “related person” means, with respect to any person, any other person who would be a disqualified person (within the meaning of section 4946) by reason of his relationship to such person. In the case of a contributor which is a corporation, the term also includes any officer or director of such corporation.

(3) Regulations

For purposes of this section, the determination as to whether and to what extent there would have been any increase in tax shall be made in accordance with regulations prescribed by the Secretary.

(e) Value of assets

For purposes of subsection (c), the value of the net assets shall be determined at whichever time such value is higher: (1) the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation, or (2) the date on which it ceases to be a private foundation.

(f) Liability in case of transfers of assets from private foundation

For purposes of determining liability for the tax imposed by subsection (c) in the case of assets transferred by the private foundation, such tax shall be deemed to have been imposed on the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation.

(g) Abatement of taxes

The Secretary may abate the unpaid portion of the assessment of any tax imposed by subsection (c), or any liability in respect thereof, if—

(1) the private foundation distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months, or

(2) following the notification prescribed in section 6104(c) to the appropriate State officer, such State officer within one year notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that corrective action has been initiated pursuant to State law to insure that the assets of such private foundation are preserved for such charitable or other purposes specified in section 501(c)(3) as may be ordered or approved by a court of competent jurisdiction, and upon completion of the corrective action, the Secretary receives certification from the appropriate State officer that such action has resulted in such preservation of assets.

(Added Pub. L. 91-172, title I, §101(a), Dec. 30, 1969, 83 Stat. 492; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title III, §313(a), July 18, 1984, 98 Stat. 786.)

AMENDMENTS

1984—Subsec. (d)(2)(C). Pub. L. 98-369 added subpar. (C).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title III, §313(b), July 18, 1984, 98 Stat. 787, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.”

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

APPLICABILITY TO DETERMINATION OF STATUS AS SUBSTANTIAL CONTRIBUTOR FOR PURPOSES OF TAXES ON SELF-DEALING OF CONTRIBUTIONS MADE PRIOR TO OCTOBER 9, 1969

Pub. L. 95-170, §3, Nov. 12, 1977, 91 Stat. 1352, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In determining whether a person is a substantial contributor within the meaning of section 507(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for purposes of applying section 4941 of such Code (relating to taxes on self-dealing), contributions made before October 9, 1969, which—

"(1) were made on account of or in lieu of payments required under a lease in effect before such date, and
 "(2) were coincident with or by reason of the reduction in the required payments under such lease,
 shall not be taken into account. For purposes of applying section 507(d)(2)(B)(iv) of such Code, the preceding sentence shall be treated as having taken effect on January 1, 1970."

§ 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—