

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 602**

[TD 9423]

RIN 1545-BH85

Implementation of Form 990**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations necessary to implement the redesigned Form 990, "Return of Organization Exempt From Income Tax." The final regulations contained in this document make only nonsubstantive revisions to comply with **Federal Register** requirements. The temporary regulations make revisions to the regulations under section 6033 and section 6043 to allow for new threshold amounts for reporting compensation, to require that compensation be reported on a calendar year basis, and to modify the scope of organizations subject to information reporting requirements upon a substantial contraction. The temporary regulations also eliminate the advance ruling process for new organizations, change the public support computation period for organizations described in sections 170(b)(1)(A)(vi) and 509(a)(1) and in section 509(a)(2) to five years, consistent with the revised Form 990, and clarify that support must be reported using the organization's overall method of accounting. All tax-exempt organizations required under section 6033 of the Internal Revenue Code (Code) to file annual information returns are affected by these temporary regulations. The text of these temporary regulations also serves as the text of the proposed regulations (REG-142333-07) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on September 9, 2008.*Applicability Date:* These regulations apply to taxable years beginning on or after January 1, 2008.**FOR FURTHER INFORMATION CONTACT:** Terri Harris at (202) 622-6070 (not a toll-free number).**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

The collection of information contained in these temporary regulations has been reviewed and approved by the Office of Management and Budget in accordance with the

Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2117. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background*Form 990*

Under section 6033 of the Code, organizations that are exempt from Federal income tax under section 501(a) are generally required to file an annual information return reporting gross income, receipts, disbursements and such other information as the IRS requires. Certain exceptions to this filing requirement apply. For example, churches are not required to file annual information returns. The Treasury regulations direct that the annual information return shall be filed on Form 990, "Return of Organization Exempt From Income Tax" or Form 990-PF, "Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation." The regulations further specify certain information to be reported on the return.

The IRS revises forms and instructions on an annual basis to reflect changes in the law and evolving tax administration needs. On December 20, 2007, the IRS released a redesigned Form 990. The Form 990 had not been significantly revised since 1979, and both the IRS and stakeholders regarded the form as needing major revision to keep pace with changes in the law and with the increasing size, diversity, and complexity of the exempt sector. The new form incorporates many recommendations made in public comments on the discussion draft released on June 14, 2007. With the exception of certain smaller organizations for which there is a graduated transition period, organizations must begin using the new form for the 2008 tax year (returns filed in 2009). The current Form 990 will be used for tax year 2007 (returns filed in 2008) but will be replaced with the redesigned Form 990 beginning with the 2008 tax year. Earlier this year, the IRS released draft instructions for the new form and schedules for public comment.

These regulations make the revisions that must be made to the regulations under sections 6033 and 6043 of the Code to implement the Form 990 redesign. For example, the regulation that currently gives organizations a choice of using either the calendar year or the organization's annual accounting period as the basis for reporting compensation of officers, directors, trustees and certain employees and contractors is revised to require calendar year reporting. Revisions are also made to allow for new threshold amounts for reporting compensation and to expand the scope of organizations subject to information reporting requirements upon a substantial contraction.

In addition, as discussed in further detail in this preamble, these regulations eliminate the advance ruling process and change the public support computation period for organizations described in sections 170(b)(1)(A)(vi) and 509(a)(1) and in section 509(a)(2) to five years, consistent with the revised Schedule A, "Public Charity Status and Public Support" to the redesigned Form 990. These regulations also clarify that support must be reported using the organization's overall method of accounting.

*Private Foundation Status and Advance Rulings**Public Support Tests*

Under present law, as established in the Tax Reform Act of 1969, an organization described in section 501(c)(3) of the Code is a private foundation unless it meets one of the exceptions described in sections 509(a)(1) through 509(a)(4). Organizations that are described in section 509(a)(1), (2), (3) or (4) are classified as public charities, and are not subject to various excise taxes in Chapter 42 that apply to private foundations. The Code defines two major categories of organizations that are considered public charities and not private foundations because they are broadly publicly supported: (1) Organizations described in section 170(b)(1)(A)(vi), which are not private foundations because they are referenced in section 509(a)(1); and (2) organizations described in section 509(a)(2).

Section 170(b)(1)(A)(vi) encompasses organizations that normally receive a substantial part of their support from a governmental unit or from direct or indirect contributions from the general public. The regulations under section 170 provide that an organization will be described in section 170(b)(1)(A)(vi) if it

normally receives at least 33 $\frac{1}{3}$ percent of its support from governmental units or from the general public. See § 1.170A-9(f). Alternatively, an organization can meet a “facts and circumstances” test, under which it may qualify as a section 170(b)(1)(A)(vi) organization if it normally receives at least 10 percent of its support from governmental units or the general public, and can establish that, under all the facts and circumstances, it normally receives a substantial part of its support from governmental units or the general public.

Section 509(a)(2) encompasses organizations that normally receive more than one-third of their support from a combination of gifts, grants, contributions, membership fees, and gross receipts from performing exempt function activities, and normally receive not more than one-third of their support from investment income and unrelated business taxable income. The major difference between the section 509(a)(2) and section 170(b)(1)(A)(vi) tests is that the former includes in support gross receipts from exempt function activities, for example, admission proceeds for a museum or ticket sales for a symphony, while the latter does not. As noted, section 509(a)(2) also includes an investment income limitation. For ease of reference, the tests in sections 170(b)(1)(A)(vi) and 509(a)(2) will be referred to collectively as the public support tests.

The statute does not define, for either provision, the meaning of “normally.” The current regulations for both public support tests generally use a rolling four-year computation period, with two exceptions: New organizations and organizations that experience “substantial and material changes” in their sources of support for the current year are permitted to use a five-year computation period. For any particular taxable year, the four-year computation period is the four years immediately preceding the current taxable year. For example, for taxable year 1998, the computation period would be taxable years 1994, 1995, 1996, and 1997. The regulations further provide that if the public support test is met for the four-year computation period, the organization will be considered to meet the public support test for the taxable year being tested and the immediately succeeding taxable year. In the example above, a section 170(b)(1)(A)(vi) organization would meet the public support test for 1998 and 1999 if the support it received from the general public and from governmental units for the years 1994 through 1997 exceeded

33 $\frac{1}{3}$ percent of the total support it received for those years.

The effect of the current rule regarding the subsequent taxable year is that an organization must fail to meet a public support test two years in a row to become a private foundation. In the example above, the organization met the public support test for 1998 and 1999, based on support received during the four-year computation period 1994 through 1997. If the organization does not meet a public support test for the 1995 through 1998 computation period, it is still a public charity in 1999 because it met a support test for taxable year 1998. However, if the organization again does not meet a public support test for the 1996 through 1999 computation period, the organization becomes a private foundation effective at the beginning of its taxable year 2000.

Advance Rulings

In its application for recognition of tax-exempt status (Form 1023, “Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code”), a section 501(c)(3) organization also requests a determination of its private foundation status, that is, whether it is a private foundation and, if not, the Code provision excepting it from private foundation classification. Under the current statute and regulations, an organization can request either an advance ruling or a definitive ruling addressing the organization’s exemption under section 501(c)(3) and its private foundation status under section 509(a).

Under the current regulations, a new organization applying for exemption can request a definitive ruling as to its foundation status only if it has completed its first tax year consisting of at least eight full months. In lieu of the general four-year computation period for public support, a new organization requesting a definitive ruling tests its public support based on the years it has been in existence. If an organization qualifies as an organization described in section 509(a)(1) or (2) based on the support received in its initial year(s) of existence, the IRS issues a definitive ruling stating that the organization is recognized as exempt under section 501(c)(3) and classified as a public charity.

If a new organization has not yet completed its first tax year consisting of at least eight full months at the time it applies for recognition of tax exemption, or if the organization so elects, it requests an “advance ruling” regarding its private foundation status in its application for exemption. Current regulations provide for an advance

ruling period of two or three years, depending on the length of the organization’s first tax year, and an additional “extended advance ruling period” of three more years if the organization requests. These current regulations have been overridden. In the conference report to the Tax Reform Act of 1984, Congress directed that the advance ruling period in all cases be five years. See H.R. Rep. No. 98-861, 98th Cong., 2d Sess. 1 (1984), 1984-3 CB (Vol. 2) 1090. The advance ruling period gives new organizations time to build up broad public support in the first few years of their existence. In lieu of the general four-year computation period for public support, a new organization requesting an advance ruling tests its public support over the first five years of its existence as an organization described in section 501(c)(3). If an organization demonstrates to the IRS’s satisfaction that it can reasonably be expected to meet a public support test during its first five years, the IRS issues an advance ruling stating that the organization is recognized as exempt under section 501(c)(3) and classified as a public charity during its first five years. With limited exceptions, donors can rely on this advance ruling as to public charity status.

At the end of the initial five-year advance ruling period, the organization is required to file Form 8734, “Support Schedule for Advance Ruling Period” to establish that it actually met a public support test. As noted above, for this purpose, public support is calculated over the five-year advance ruling period, rather than over a four-year period. If the organization meets a public support test for its advance ruling period, the IRS issues a definitive ruling letter classifying the organization as a public charity. If the organization does not meet a public support test for its advance ruling period, or the organization fails to submit Form 8734, the IRS reclassifies the organization as a private foundation as of its first taxable year and publishes notice of the change in status in the Internal Revenue Bulletin and Publication 78, “Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986,” which can be searched at www.irs.gov. Once notice of a change in status is published, donors can no longer automatically rely on the advance ruling for charitable contribution deduction purposes and must assume that the organization is a private foundation. See § 601.601(d)(2)(ii)(b).

An organization that is reclassified as a private foundation is subject to the

section 4940 investment income tax and the section 507 termination tax for its five-year advance ruling period. The other Chapter 42 excise taxes applicable to private foundations do not apply during the five-year advance ruling period. In year six, the reclassified organization is subject to all Chapter 42 excise taxes that apply to private foundations.

The advance ruling process is complex and burdensome for both taxpayers and the IRS and provides little tax administration or compliance benefit. While statistics vary from year to year, approximately 95 percent of the organizations that receive advance rulings later receive definitive rulings that the organizations are public charities at the end of the advance ruling period. The current regulations governing advance rulings are complex, and, as discussed above, were overridden in part by the Tax Reform Act of 1984. Moreover, the public support information that is reported on Form 8734 will be captured on Schedule A of the redesigned Form 990. For these reasons, in its 2003 report, the IRS Advisory Committee for Tax Exempt and Governmental Entities, a group that includes representatives of exempt organizations and practitioners, recommended that the advance ruling process be eliminated.

The IRS believes that it can more effectively deploy its compliance resources by eliminating the advance ruling process and Form 8734 and instead monitoring public charity status based on public support information reported on the revised Schedule A, to the redesigned Form 990. The revised Schedule A sets forth easier-to-follow rules for calculating public support and captures all of the information necessary for the IRS to monitor and verify compliance with the public support tests.

Explanation of Provisions

Private Foundation Status and Advance Rulings

The temporary regulations eliminate the advance ruling process and provide instead that an organization will be a public charity in its first five years if it can show, in its application for exemption, that it can reasonably be expected to receive the requisite public support during such period. The temporary regulations also change the public support computation period for purposes of sections 170(b)(1)(A)(vi) and 509(a)(1) and section 509(a)(2) from a four-year period prior to the tested year to a five-year period that includes the current year. The temporary

regulations also eliminate the substantial and material changes exception, which is made obsolete by the establishment of a general five-year computation period. In addition, § 1.170A-9T(f), which corresponds to § 1.170A-9(e) of the prior regulations and governs section 170(b)(1)(A)(vi) organizations, has been revised throughout to simplify some of the language and to provide a better “road map” of what the provisions are designed to do.

Elimination of Advance Ruling Process

The temporary regulations eliminate advance rulings and the Form 8734 filing requirement for all new section 501(c)(3) organizations. Under the temporary regulations, if, at the time of the initial application for exemption, an organization can establish to the satisfaction of the IRS that the organization can reasonably be expected to meet a public support test during its first five years, the organization qualifies as publicly supported for its first five years as a section 501(c)(3) organization. The IRS will issue a determination letter stating that the organization is exempt under section 501(c)(3) and is classified as a public charity. The organization will be a public charity for its first five years, regardless of the level of public support it in fact receives during this period. In addition, unlike a new organization’s public charity status under an advance ruling, which was conditioned on its ultimate satisfaction of a public support test on a Form 8734 filed with the IRS, under the temporary regulations a new organization that can show it can reasonably be expected to meet a public support test will be classified as a public charity for all purposes during its first five years. The organization will not owe any section 4940 tax or section 507 termination tax with respect to its first five years. Beginning with the organization’s sixth year, if the organization cannot establish that it is not a private foundation, such as a public charity or a supporting organization under section 509(a)(3), it will be liable for the section 4940 excise tax and other Chapter 42 excise taxes applicable to private foundations for any year for which it cannot establish that it is not a private foundation.

The standards for whether an organization can reasonably be expected to be publicly supported are drawn from the existing regulations. A new organization required to file Form 990 or Form 990-EZ, “Short Form Return of Organization Exempt From Income Tax,” will be required to report its support on Schedule A every year, but

it will not be required to file Form 8734 after its first five years. Organizations will be required to meet a public support test using the general five-year computation period beginning in their sixth taxable years. The five-year computation period is discussed in detail in this preamble.

Computation Period for Public Support

The temporary regulations change the computation period for public support from a four-year period comprised of the four years prior to the tested year to a five-year period that includes the current year. Because all organizations will use a five-year computation period under the temporary regulations, the temporary regulations eliminate the substantial and material change exception, which allowed organizations to use a five-year computation period rather than the four-year computation period under certain circumstances.

An organization that meets a public support test for the current taxable year is treated as publicly supported for the current taxable year and the immediately succeeding taxable year. Thus, for example, a calendar year organization that meets a public support test for taxable year 2011, based on the five-year computation period 2007 through 2011, is a public charity for taxable years 2011 and 2012. If the organization cannot meet a public support test for taxable year 2012 (based on the five-year computation period 2008 through 2012), it still will be a public charity for taxable year 2012, because it met the public support test for taxable year 2011 (based on the five-year computation period 2007 through 2011). If, however, the organization cannot meet a public support test for taxable year 2013 as well, based on the computation period 2009 through 2013, the organization will be classified as a private foundation as of the beginning of taxable year 2013. Because an organization that cannot meet a public support test for the current taxable year is at risk of private foundation classification as of the first day of the subsequent taxable year, organizations may wish to carefully monitor their public support calculations.

The IRS and the Treasury Department recognize that an organization may not be able to compute its public support for the current taxable year until some time in the subsequent taxable year. In the example above, taxable year 2013 may have already begun by the time the calendar year organization computes its public support for taxable year 2012 and realizes (perhaps for the first time) that it is at risk of being classified as a private foundation as of January 1, 2013.

Moreover, the organization may not know definitively that it is a private foundation for taxable year 2013 until some time in 2014, when it is able to definitively calculate its public support. Accordingly, the IRS will not assert private foundation excise taxes and/or penalties for all or part of the first taxable year in which an organization is reclassified as a private foundation due to failure to satisfy a public support test in cases where the imposition of such taxes would lead to unfair or inequitable results, such as where the change in the organization's public support was unforeseeable or due to circumstances beyond the organization's control. Organizations that believe that the imposition of private foundation excise taxes and/or penalties against them for all or part of the first year in which they are reclassified as a private foundation would be unfair or inequitable should contact the IRS, Exempt Organizations, Rulings and Agreements, Washington, DC, at (202) 283-4905. An organization will be required to provide to the IRS all of the relevant facts and circumstances establishing that the imposition of private foundation taxes would be unfair or inequitable. Comments are requested regarding the specific circumstances that may warrant relief.

The existing regulations contain numerous examples reflecting the four-year computation period. The temporary regulations update the examples to reflect the new computation period. These examples are in § 1.170A-9T(f)(9), § 1.509(a)-3T(c)(6) and § 1.509(a)-3T(e)(3).

Method of Accounting

Previously, when a section 501(c)(3) organization computed its public support, it was required to use the cash method of accounting to report the amount of public support it received on Schedule A, even if it used the accrual method of accounting in keeping its books under section 446, and in otherwise reporting on Form 990. Under these temporary regulations, when a section 501(c)(3) organization computes its public support and reports the information on Schedule A, it must use the same accounting method that it uses in keeping its books under section 446 and that it otherwise uses to report on its Form 990. An organization that uses the accrual method will not be able to use the support information reported on Form 990 for prior years (because that support was reported using the cash method) to compute its public support for the current year, and instead must report all support for the computation period on the accrual method.

Reliance

These temporary regulations provide that donors may rely on an organization's ruling that the organization is described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2) until notice of a change in status is provided to the public (such as by publication in the Internal Revenue Bulletin), unless the donor was responsible for or aware of the act or failure to act that results in the organization's loss of public charity status. This rule is substantively the same as the rules contained in the current regulations. The regulations further provide that donors may rely on advance rulings that expire on or after June 9, 2008, until notice of a change in status is provided to the public (such as by publication in the Internal Revenue Bulletin).

Effective/Applicability Date and Transition Rules

These temporary regulations are effective on September 9, 2008, and apply to taxable years beginning on or after January 1, 2008. All organizations, including organizations that received a definitive ruling prior to the effective date of these regulations, must use the new five-year computation period to calculate public support for their first taxable year beginning on or after January 1, 2008 and for all subsequent taxable years.

These regulations provide a transition rule under which an organization that cannot meet a public support test for its first taxable year beginning on or after January 1, 2008, using the five-year computation period will continue to qualify as a public charity for its 2008 taxable year if it satisfied a public support test for its 2007 taxable year, based on public support received over the four-year period 2003 through 2006.

These regulations also provide a transition rule under which organizations that received advance rulings that expire on or after June 9, 2008, are treated as new public charities under the new regulations, that is, public charities for all purposes without regard to public support in fact received during the first five years of their existence as section 501(c)(3) organizations. This rule effectively applies the temporary regulations to all organizations that are in their advance ruling period as of the effective date of these temporary regulations. As such, these organizations will not have to file Form 8734 at the end of the advance ruling period. Grantors and contributors can rely upon these organizations' advance ruling letter as if it were a

definitive ruling letter. The IRS plans to send follow-up letters to such organizations explaining the new rules. An organization that did not timely file Form 8734 at the expiration of its advance ruling period is not covered by the transition rule. Such an organization must file information with the IRS establishing that it met a public support test during its advance ruling period in order to qualify as a public charity during its first five years.

Forms 1023 filed prior to the effective date of these regulations that have not yet been processed by the IRS will be processed under the new regulations. The IRS will issue definitive rulings regarding private foundation status to such organizations.

Community Trust Rules

Sections 1.170A-9(f)(10) through 1.170A-9(f)(14), which establish rules for when multiple trusts can be treated as a single entity for purposes of the public support tests, provide old transition rules that are obsolete, and, therefore, the transition rules are being deleted in these temporary regulations.

Compensation Reporting

Current § 1.6033-2(a)(2)(ii)(g) requires that exempt organizations report on Form 990 the names and addresses of all officers, directors, trustees, and persons having responsibilities or powers similar to those of officers, directors or trustees, of the organization. The reference to a person having responsibilities and powers similar to those of officers, directors or trustees is meant to capture those persons who function as officers, directors or trustees of the organization, regardless of title, as well as the key employees of the organization. The redesigned Form 990 expanded the definition of key employee to cover not only persons having responsibilities or powers similar to those of officers, directors or trustees, but also persons who manage a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization. The redesigned Form 990 requires reporting for only those key employees whose compensation exceeds \$150,000. These temporary regulations add key employees to the list of persons in § 1.6033-2T(a)(2)(ii)(g) who may be required to be reported on Form 990, as prescribed by publication, form or instructions.

Current § 1.6033-2(a)(2)(ii)(g) requires that exempt organizations that make payments of more than \$30,000 annually to employees and independent contractors report these persons' names

and addresses on Form 990. Current § 1.6033-2(a)(2)(ii)(h) requires a schedule showing the compensation or other payments made to the persons listed in paragraph (a)(2)(ii)(g). The redesigned Form 990 requires an organization to report, for each person listed (other than a key employee or a former director or trustee of the organization), compensation and other payments totaling more than \$100,000 annually paid by the organization and its related organizations to the person. For key employees, the redesigned Form 990 requires an organization to report compensation and other payments totaling more than \$150,000 annually paid by the organization and its related organizations to the person. For former directors and trustees, the redesigned Form 990 requires an organization to report compensation and other payments totaling more than \$10,000 annually paid by the organization and its related organizations to the person solely on account of the person's past services as a director or trustee of the organization. As amended in these temporary regulations, § 1.6033-2T(a)(2)(ii)(g) gives the Commissioner discretion to revise the threshold amount for reporting by form and instruction.

Furthermore, the current rule in § 1.6033-2(a)(2)(ii)(h), which requires generally the reporting of compensation paid by an organization during its annual accounting period (or during the calendar year ending within such period), imposes no requirement that the compensation reported on Form 990 be consistent with what is reported on Form W-2, "Wage and Tax Statement," or Form 1099-MISC, "Miscellaneous Income." The current rule permits, but does not require, a fiscal year organization to report paid compensation on a calendar year basis. The redesigned Form 990 (Part VII and Schedule J) requires that compensation reported as paid to officers and other employees be consistent with Form W-2 (box 5) and that compensation reported as paid to directors, individual trustees, and independent contractors be consistent with Form 1099-MISC (box 7). As amended by these temporary regulations, § 1.6033-2T(a)(2)(ii)(h) requires an organization to report compensation it has paid during the calendar year ending with or within the organization's annual accounting period, or during such other period as specified by form or form instructions. The rule in these temporary regulations will ensure consistency in compensation reporting, provide greater certainty about what compensation is to

be reported, and reduce the reporting burden for most filing organizations. A fiscal year organization will continue to be required to use fiscal year accounting when reporting aggregate compensation as an expense item (Form 990, Part IX). In addition, an organization will not be required to reconcile compensation for individuals reported in Part VII with compensation for such individuals included in its Part IX statement of expenses.

Asset Disposition Reporting

Schedule N, "Liquidation, Termination, Dissolution, or Significant Disposition of Assets," of the redesigned Form 990 requires information about organizations that liquidate, terminate, or dissolve, or sell, exchange, dispose of or otherwise transfer more than 25 percent of the organization's assets. The collection of this information is authorized by section 6033, the general authorization for the collection of information on Form 990. The collection of information with respect to liquidations, dissolutions, terminations and substantial contractions is also authorized by section 6043(b). While section 6043(b) and its companion penalty provision section 6652(c) contemplate a separate return, since 1981 this information has been collected on Form 990.

In order to eliminate the potential for inconsistency and confusion by taxpayers, the regulations under section 6043(b) have been amended so that they are consistent with section 6033 and the redesigned Schedule N. Generally, current § 1.6043-3(b)(8) excuses from the information reporting requirement of section 6043(b) organizations other than former section 501(c)(3) organizations. The IRS believes that this exception is too broad, because information reporting from other exempt organizations may facilitate sound tax administration. Therefore, these temporary regulations amend § 1.6043-3(b)(8) to provide discretion to narrow the exception and require reporting from organizations exempt under other Code sections by form or form instructions. In addition, these temporary regulations remove the definition of "substantial contraction" in § 1.6043-3(d)(1), leaving this term to be defined by form or form instructions.

Private Foundation Termination

Section 1.507-2, which addresses private foundation terminations under section 507(b), contains references to the four-year computation period for public support and old transition rules related to 12-month terminations that are obsolete. These temporary

regulations revise § 1.507-2 to delete references to the four-year computation period and the transition rules related to 12-month terminations.

Revisions To Comply With Federal Register

The final regulations make various nonsubstantive revisions to comply with **Federal Register** requirements. For example, the undesignated flush language preceding prior § 1.170A-9(a) was designated as paragraph (a), and all following paragraphs were redesignated accordingly.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply. It is hereby certified that the collection of information in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that burden on tax-exempt entities will be reduced by (1) eliminating the separate advance ruling process and the additional process for subsequently seeking a definitive ruling, (2) clarifying rules regarding the method of accounting and period for reporting certain items, and (3) providing discretion for the IRS to narrow or clarify circumstances under which reporting is required. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Terri Harris, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.170A-9 is amended as follows:

■ 1. Paragraphs (a), (b), (c), (d), (e), (f), (g), (h) and (i) are redesignated as paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j), respectively.

■ 2. The undesignated text following the section heading is designated as paragraph (a).

■ 3. The newly-designated paragraphs (a) and (d) are revised.

■ 4. New paragraph (k) is added.

The addition and revisions read as follows:

§ 1.170A-9 Definition of section 170(b)(1)(A) organization.

(a) The term *section 170(b)(1)(A) organization* as used in the regulations under section 170 means any organization described in paragraphs (b) through (j) of this section, effective with respect to taxable years beginning after December 31, 1969, except as otherwise provided. Section 1.170-2(b) shall continue to be applicable with respect to taxable years beginning prior to January 1, 1970. The term *one or more organizations described in section 170(b)(1)(A) (other than clauses (vii) and (viii))* as used in sections 507 and 509 of the Internal Revenue Code (Code) and the regulations means one or more organizations described in paragraphs (b) through (f) of this section, except as modified by the regulations under part II of subchapter F of chapter 1 or under chapter 42.

* * * * *

(d) *Hospitals and medical research organizations*—(1) *Hospitals.* An organization (other than one described in paragraph (d)(2) of this section) is described in section 170(b)(1)(A)(iii) if—

(i) It is a hospital; and

(ii) Its principal purpose or function is the providing of medical or hospital care or medical education or medical research.

(A) The term *hospital* includes—

(1) Federal hospitals; and

(2) State, county, and municipal hospitals which are instrumentalities of governmental units referred to in section 170(c)(1) and otherwise come within the definition. A rehabilitation institution, outpatient clinic, or community mental health or drug

treatment center may qualify as a “hospital” within the meaning of paragraph (d)(1)(i) of this section if its principal purpose or function is the providing of hospital or medical care. For purposes of this paragraph (d)(1)(ii), the term *medical care* shall include the treatment of any physical or mental disability or condition, whether on an inpatient or outpatient basis, provided the cost of such treatment is deductible under section 213 by the person treated. An organization, all the accommodations of which qualify as being part of a “skilled nursing facility” within the meaning of 42 U.S.C. 1395x(j), may qualify as a “hospital” within the meaning of paragraph (d)(1)(i) of this section if its principal purpose or function is the providing of hospital or medical care. For taxable years ending after June 28, 1968, the term *hospital* also includes cooperative hospital service organizations which meet the requirements of section 501(e) and § 1.501(e)-1.

(B) The term *hospital* does not, however, include convalescent homes or homes for children or the aged, nor does the term include institutions whose principal purpose or function is to train handicapped individuals to pursue some vocation. An organization whose principal purpose or function is the providing of medical education or medical research will not be considered a “hospital” within the meaning of paragraph (d)(1)(i) of this section, unless it is also actively engaged in providing medical or hospital care to patients on its premises or in its facilities, on an inpatient or outpatient basis, as an integral part of its medical education or medical research functions. See, however, paragraph (d)(2) of this section with respect to certain medical research organizations.

(2) *Certain medical research organizations*—(i) *Introduction.* A medical research organization is described in section 170(b)(1)(A)(iii) if the principal purpose or functions of such organization are medical research and if it is directly engaged in the continuous active conduct of medical research in conjunction with a hospital. In addition, for purposes of the 50 percent limitation of section 170(b)(1)(A) with respect to a contribution, during the calendar year in which the contribution is made such organization must be committed to spend such contribution for such research before January 1 of the fifth calendar year which begins after the date such contribution is made. An organization need not receive contributions deductible under section 170 to qualify as a medical research

organization and such organization need not be committed to spend amounts to which the limitation of section 170(b)(1)(A) does not apply within the 5-year period referred to in this paragraph (d)(2)(i). However, the requirement of continuous active conduct of medical research indicates that the type of organization contemplated in this paragraph (d)(2) is one which is primarily engaged directly in the continuous active conduct of medical research, as compared to an inactive medical research organization or an organization primarily engaged in funding the programs of other medical research organizations. As in the case of a hospital, since an organization is ordinarily not described in section 170(b)(1)(A)(iii) as a hospital unless it functions primarily as a hospital, similarly a medical research organization is not so described unless it is primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital. Accordingly, the rules of this paragraph (d)(2) shall only apply with respect to such medical research organizations.

(ii) *General rule.* An organization (other than a hospital described in paragraph (d)(1) of this section) is described in section 170(b)(1)(A)(iii) only if within the meaning of this paragraph (d)(2):

(A) The principal purpose or functions of such organization are to engage primarily in the conduct of medical research; and

(B) It is primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital which is—

(1) Described in section 501(c)(3);

(2) A Federal hospital; or

(3) An instrumentality of a governmental unit referred to in section 170(c)(1).

(C) In order for a contribution to such organization to qualify for purposes of the 50 percent limitation of section 170(b)(1)(A), during the calendar year in which such contribution is made or treated as made, such organization must be committed (within the meaning of paragraph (d)(2)(viii) of this section) to spend such contribution for such active conduct of medical research before January 1 of the fifth calendar year beginning after the date such contribution is made. For the meaning of the term “medical research” see paragraph (d)(2)(iii) of this section. For the meaning of the term “principal purpose or functions” see paragraph (d)(2)(iv) of this section. For the meaning of the term “primarily engaged directly in the continuous active conduct of medical research” see

paragraph (d)(2)(v) of this section. For the meaning of the term “medical research in conjunction with a hospital” see paragraph (d)(2)(vii) of this section.

(iii) *Definition of medical research.*

Medical research means the conduct of investigations, experiments, and studies to discover, develop, or verify knowledge relating to the causes, diagnosis, treatment, prevention, or control of physical or mental diseases and impairments of man. To qualify as a medical research organization, the organization must have or must have continuously available for its regular use the appropriate equipment and professional personnel necessary to carry out its principal function. Medical research encompasses the associated disciplines spanning the biological, social and behavioral sciences. Such disciplines include chemistry (biochemistry, physical chemistry, bioorganic chemistry, etc.), behavioral sciences (psychiatry, physiological psychology, neurophysiology, neurology, neurobiology, and social psychology, etc.), biomedical engineering (applied biophysics, medical physics, and medical electronics, for example, developing pacemakers and other medically related electrical equipment), virology, immunology, biophysics, cell biology, molecular biology, pharmacology, toxicology, genetics, pathology, physiology, microbiology, parasitology, endocrinology, bacteriology, and epidemiology.

(iv) *Principal purpose or functions.*

An organization must be organized for the principal purpose of engaging primarily in the conduct of medical research in order to be an organization meeting the requirements of this paragraph (d)(2). An organization will normally be considered to be so organized if it is expressly organized for the purpose of conducting medical research and is actually engaged primarily in the conduct of medical research. Other facts and circumstances, however, may indicate that an organization does not meet the principal purpose requirement of this paragraph (d)(2)(iv) even where its governing instrument so expressly provides. An organization that otherwise meets all of the requirements of this paragraph (d)(2) (including this paragraph (d)(2)(iv)) to qualify as a medical research organization will not fail to so qualify solely because its governing instrument does not specifically state that its principal purpose is to conduct medical research.

(v) *Primarily engaged directly in the continuous active conduct of medical research—*(A) In order for an

organization to be primarily engaged directly in the continuous active conduct of medical research, the organization must either devote a substantial part of its assets to, or expend a significant percentage of its endowment for, such purposes, or both. Whether an organization devotes a substantial part of its assets to, or makes significant expenditures for, such continuous active conduct depends upon the facts and circumstances existing in each specific case. An organization will be treated as devoting a substantial part of its assets to, or expending a significant percentage of its endowment for, such purposes if it meets the appropriate test contained in paragraph (d)(2)(v)(B) of this section. If an organization fails to satisfy both of such tests, in evaluating the facts and circumstances, the factor given most weight is the margin by which the organization failed to meet such tests. Some of the other facts and circumstances to be considered in making such a determination are—

(1) If the organization fails to satisfy the tests because it failed to properly value its assets or endowment, then upon determination of the improper valuation it devotes additional assets to, or makes additional expenditures for, such purposes, so that it satisfies such tests on an aggregate basis for the prior year in addition to such tests for the current year;

(2) The organization acquires new assets or has a significant increase in the value of its securities after it had developed a budget in a prior year based on the assets then owned and the then current values;

(3) The organization fails to make expenditures in any given year because of the interrelated aspects of its budget and long-term planning requirements, for example, where an organization prematurely terminates an unsuccessful program and because of long-term planning requirements it will not be able to establish a fully operational replacement program immediately; and

(4) The organization has as its objective to spend less than a significant percentage in a particular year but make up the difference in the subsequent few years, or to budget a greater percentage in an earlier year and a lower percentage in a later year.

(B) For purposes of this section, an organization which devotes more than one half of its assets to the continuous active conduct of medical research will be considered to be devoting a substantial part of its assets to such conduct within the meaning of paragraph (d)(2)(v)(A) of this section. An organization which expends funds

equaling 3.5 percent or more of the fair market value of its endowment for the continuous active conduct of medical research will be considered to have expended a significant percentage of its endowment for such purposes within the meaning of paragraph (d)(2)(v)(A) of this section.

(C) Engaging directly in the continuous active conduct of medical research does not include the disbursing of funds to other organizations for the conduct of research by them or the extending of grants or scholarships to others. Therefore, if an organization's primary purpose is to disburse funds to other organizations for the conduct of research by them or to extend grants or scholarships to others, it is not primarily engaged directly in the continuous active conduct of medical research.

(vi) *Special rules.* The following rules shall apply in determining whether a substantial part of an organization's assets are devoted to, or its endowment is expended for, the continuous active conduct of medical research activities:

(A) An organization may satisfy the tests of paragraph (d)(2)(v)(B) of this section by meeting such tests either for a computation period consisting of the immediately preceding taxable year, or for the computation period consisting of the immediately preceding four taxable years. In addition, for taxable years beginning in 1970, 1971, 1972, 1973, and 1974, if an organization meets such tests for the computation period consisting of the first four taxable years beginning after December 31, 1969, an organization will be treated as meeting such tests, not only for the taxable year beginning in 1974, but also for the preceding four taxable years. Thus, for example, if a calendar year organization failed to satisfy such tests for a computation period consisting of 1969, 1970, 1971, and 1972, but on the basis of a computation period consisting of the years 1970 through 1973, it expended funds equaling 3.5 percent or more of the fair market value of its endowment for the continuous active conduct of medical research, such organization will be considered to have expended a significant percentage of its endowment for such purposes for the taxable years 1970 through 1974. In applying such tests for a four-year computation period, although the organization's expenditures for the entire four-year period shall be aggregated, the fair market value of its endowment for each year shall be summed, even though, in the case of an asset held throughout the four-year period, the fair market value of such an asset will be counted four times.

Similarly, the fair market value of an organization's assets for each year of a four-year computation period shall be summed.

(B) Any property substantially all the use of which is "substantially related" (within the meaning of section 514(b)(1)(A)) to the exercise or performance of the organization's medical research activities will not be treated as part of its endowment.

(C) The valuation of assets must be made with commonly accepted methods of valuation. A method of valuation made in accordance with the principles stated in the regulations under section 2031 constitutes an acceptable method of valuation. Assets may be valued as of any day in the organization's taxable year to which such valuation applies, provided the organization follows a consistent practice of valuing such asset as of such date in all taxable years. For purposes of paragraph (d)(2)(v) of this section, an asset held by the organization for part of a taxable year shall be taken into account by multiplying the fair market value of such asset by a fraction, the numerator of which is the number of days in such taxable year that the organization held such asset and the denominator of which is the number of days in such taxable year.

(vii) *Medical research in conjunction with a hospital.* The organization need not be formally affiliated with a hospital to be considered primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital, but in any event there must be a joint effort on the part of the research organization and the hospital pursuant to an understanding that the two organizations will maintain continuing close cooperation in the active conduct of medical research. For example, the necessary joint effort will normally be found to exist if the activities of the medical research organization are carried on in space located within or adjacent to a hospital, the organization is permitted to utilize the facilities (including equipment, case studies, etc.) of the hospital on a continuing basis directly in the active conduct of medical research, and there is substantial evidence of the close cooperation of the members of the staff of the research organization and members of the staff of the particular hospital or hospitals. The active participation in medical research by members of the staff of the particular hospital or hospitals will be considered to be evidence of such close cooperation. Because medical research may involve substantial investigation, experimentation and study not

immediately connected with hospital or medical care, the requisite joint effort will also normally be found to exist if there is an established relationship between the research organization and the hospital which provides that the cooperation of appropriate personnel and the use of facilities of the particular hospital or hospitals will be required whenever it would aid such research.

(viii) *Commitment to spend contributions.* The organization's commitment that the contribution will be spent within the prescribed time only for the prescribed purposes must be legally enforceable. A promise in writing to the donor in consideration of his making a contribution that such contribution will be so spent within the prescribed time will constitute a commitment. The expenditure of contributions received for plant, facilities, or equipment, used solely for medical research purposes (within the meaning of paragraph (d)(2)(ii) of this section), shall ordinarily be considered to be an expenditure for medical research. If a contribution is made in other than money, it shall be considered spent for medical research if the funds thereof are spent by the organization within the five-year period for medical research; or, if such property is of such a kind that it is used on a continuing basis directly in connection with such research, it shall be considered spent for medical research in the year in which it is first so used. A medical research organization will be presumed to have made the commitment required under this paragraph (d)(2)(viii) with respect to any contribution if its governing instrument or by-laws require that every contribution be spent for medical research before January 1 of the fifth year which begins after the date such contribution is made.

(ix) *Organizational period for new organizations.* A newly created organization, for its "organizational" period, shall be considered to be primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital within the meaning of paragraphs (d)(2)(v) and (d)(2)(vii) of this section if during such period the organization establishes to the satisfaction of the Commissioner that it reasonably can be expected to be so engaged by the end of such period. The information to be submitted shall include detailed plans showing the proposed initial medical research program, architectural drawings for the erection of buildings and facilities to be used for medical research in accordance with such plans, plans to assemble a professional staff

and detailed projections showing the timetable for the expected accomplishment of the foregoing. The "organizational" period shall be that period which is appropriate to implement the proposed plans, giving effect to the proposed amounts involved and the magnitude and complexity of the projected medical research program, but in no event in excess of three years following organization.

(x) *Examples.* The application of this paragraph (d)(2) may be illustrated by the following examples:

Example 1. N, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. All of N's assets were contributed to it by A and consist of a diversified portfolio of stocks and bonds. N's endowment earns 3.5 percent annually, which N expends in the conduct of various medical research programs in conjunction with Y hospital. N is located adjacent to Y hospital, makes substantial use of Y's facilities, and there is close cooperation between the staffs of N and Y. N is directly engaged in the continuous active conduct of medical research in conjunction with a hospital, meets the principal purpose test described in paragraph (d)(2)(iv) of this section, and is therefore an organization described in section 170(b)(1)(A)(iii).

Example 2. O, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. All of O's assets consist of a diversified portfolio of stocks and bonds. O's endowment earns 3.5 percent annually, which O expends in the conduct of various medical research programs in conjunction with certain hospitals. However, in 1974, O receives a substantial bequest of additional stocks and bonds. O's budget for 1974 does not take into account the bequest and as a result O expends only 3.1 percent of its endowment in 1974. However, O establishes that it will expend at least 3.5 percent of its endowment for the active conduct of medical research for taxable years 1975 through 1978. O is therefore directly engaged in the continuous active conduct of medical research in conjunction with a hospital for taxable year 1975. Since O also meets the principal purpose test described in paragraph (d)(2)(iv) of this section, it is therefore an organization described in section 170(b)(1)(A)(iii) for taxable year 1975.

Example 3. M, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. M's activities consist of the conduct of medical research programs in conjunction with various hospitals. Under such programs, researchers employed by M engage in research at laboratories set aside for M within the various hospitals. Substantially all of M's assets consist of 100 percent of the stock of X corporation, which has a fair market value of approximately 100 million dollars. X pays M approximately 3.3 million dollars in dividends annually, which M expends in the

conduct of its medical research programs. Since M expends only 3.3 percent of its endowment, which does not constitute a significant percentage, in the active conduct of medical research, M is not an organization described in section 170(b)(1)(A)(iii) because M is not engaged in the continuous active conduct of medical research.

(xi) *Special rule for organizations with existing ruling.* This paragraph (d)(2)(xi) shall apply to an organization that prior to January 1, 1970, had received a ruling or determination letter which has not been expressly revoked holding the organization to be a medical research organization described in section 170(b)(1)(A)(iii) and with respect to which the facts and circumstances on which the ruling was based have not substantially changed. An organization to which this paragraph (d)(2)(xi) applies shall be treated as an organization described in section 170(b)(1)(A)(iii) for a period not ending prior to 90 days after February 13, 1976 (or where appropriate, for taxable years beginning before such 90th day). In addition, with respect to a grantor or contributor under sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, the status of an organization to which this paragraph (d)(2)(xi) applies will not be affected until notice of change of status under section 170(b)(1)(A)(iii) is made to the public (such as by publication in the Internal Revenue Bulletin). The preceding sentence shall not apply if the grantor or contributor had previously acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from classification as a section 170(b)(1)(A)(iii) organization.

* * * * *

(k) *Effective/applicability date.* This section shall apply to taxable years beginning after December 31, 1969. The applicability of paragraph (f) of this section shall be limited to taxable years beginning before January 1, 2008.

■ **Par. 3.** Section 1.170A-9T is added to read as follows:

§ 1.170A-9T Definition of section 170(b)(1)(A) organization (temporary).

(a) through (e) [Reserved]. For further guidance, see § 1.170A-9(a) through (e).

(f) *Definition of section*

170(b)(1)(A)(vi) organization—(1) In general. An organization is described in section 170(b)(1)(A)(vi) if it—

(i) Is referred to in section 170(c)(2) (other than an organization specifically described in paragraphs (b) through (e) of this section); and

(ii) Normally receives a substantial part of its support from a governmental unit referred to in section 170(c)(1) or

from direct or indirect contributions from the general public (“publicly supported”). For purposes of this paragraph (f)(1)(ii), an organization is publicly supported if it meets the requirements of either paragraph (f)(2) of this section (33 $\frac{1}{3}$ percent support test) or paragraph (f)(3) of this section (facts and circumstances test). Paragraph (f)(4) of this section defines normally for purposes of the 33 $\frac{1}{3}$ percent support test, the facts and circumstances test and for new organizations in the first 5 years of the organization’s existence as a section 501(c)(3) organization. Paragraph (f)(5) of this section provides for determinations of foundation classification and rules for reliance by donors and contributors. Paragraphs (f)(6), (7), and (8) of this section list the items that are included and excluded from the term support. Paragraph (f)(9) of this section provides examples of the application of this paragraph. Types of organizations that, subject to the provisions of this paragraph, generally qualify under section 170(b)(1)(A)(vi) as “publicly supported” are publicly or governmentally supported museums of history, art, or science, libraries, community centers to promote the arts, organizations providing facilities for the support of an opera, symphony orchestra, ballet, or repertory drama or for some other direct service to the general public.

(2) *Determination whether an organization is “publicly supported”; 33 $\frac{1}{3}$ percent support test.* An organization is publicly supported if the total amount of support (see paragraphs (f)(6), (7), and (8) of this section) that the organization normally (see paragraph (f)(4)(i) of this section) receives from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources, equals at least 33 $\frac{1}{3}$ percent of the total support normally received by the organization. See paragraph (f)(9) *Example 1* of this section.

(3) *Determination whether an organization is “publicly supported”; facts and circumstances test.* Even if an organization fails to meet the 33 $\frac{1}{3}$ percent support test, it is publicly supported if it normally receives a substantial part of its support from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources, and meets the other requirements of this paragraph (f)(3). In order to satisfy the facts and circumstances test, an organization must meet the requirements of paragraphs (f)(3)(i) and (f)(3)(ii) of this section. In

addition, the organization must be in the nature of an organization that is publicly supported, taking into account all relevant facts and circumstances, including the factors listed in paragraphs (f)(3)(iii)(A) through (E) of this section.

(i) *Ten percent support limitation.* The percentage of support (see paragraphs (f)(6), (7) and (8) of this section) normally (see paragraph (f)(4) of this section) received by an organization from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources, must be substantial. For purposes of this paragraph (f)(3), an organization will not be treated as normally receiving a substantial amount of governmental or public support unless the total amount of governmental and public support normally received equals at least 10 percent of the total support normally received by such organization.

(ii) *Attraction of public support.* An organization must be so organized and operated as to attract new and additional public or governmental support on a continuous basis. An organization will be considered to meet this requirement if it maintains a continuous and bona fide program for solicitation of funds from the general public, community, or membership group involved, or if it carries on activities designed to attract support from governmental units or other organizations described in section 170(b)(1)(A)(i) through (vi). In determining whether an organization maintains a continuous and bona fide program for solicitation of funds from the general public or community, consideration will be given to whether the scope of its fundraising activities is reasonable in light of its charitable activities. Consideration will also be given to the fact that an organization may, in its early years of existence, limit the scope of its solicitation to persons deemed most likely to provide seed money in an amount sufficient to enable it to commence its charitable activities and expand its solicitation program.

(iii) In addition to the requirements set forth in paragraphs (f)(3)(i) and (ii) of this section that must be satisfied, all pertinent facts and circumstances, including the following factors, will be taken into consideration in determining whether an organization is “publicly supported” within the meaning of paragraph (f)(1) of this section. However, an organization is not generally required to satisfy all of the factors in paragraphs (f)(3)(iii)(A) through (E) of this section. The factors relevant to each case and the weight

accorded to any one of them may differ depending upon the nature and purpose of the organization and the length of time it has been in existence.

(A) *Percentage of financial support.* The percentage of support received by an organization from public or governmental sources will be taken into consideration in determining whether an organization is “publicly supported.” The higher the percentage of support above the 10 percent requirement of paragraph (f)(3)(i) of this section from public or governmental sources, the lesser will be the burden of establishing the publicly supported nature of the organization through other factors described in this paragraph (f)(3), while the lower the percentage, the greater will be the burden. If the percentage of the organization’s support from public or governmental sources is low because it receives a high percentage of its total support from investment income on its endowment funds, such fact will be treated as evidence of compliance with this subdivision if such endowment funds were originally contributed by a governmental unit or by the general public. However, if such endowment funds were originally contributed by a few individuals or members of their families, such fact will increase the burden on the organization of establishing compliance with the other factors described in paragraph (f)(3)(iii) of this section.

(B) *Sources of support.* The fact that an organization meets the requirement of paragraph (f)(3)(i) of this section through support from governmental units or directly or indirectly from a representative number of persons, rather than receiving almost all of its support from the members of a single family, will be taken into consideration in determining whether an organization is “publicly supported.” In determining what is a “representative number of persons,” consideration will be given to the type of organization involved, the length of time it has been in existence, and whether it limits its activities to a particular community or region or to a special field which can be expected to appeal to a limited number of persons.

(C) *Representative governing body.* The fact that an organization has a governing body which represents the broad interests of the public, rather than the personal or private interests of a limited number of donors (or persons standing in a relationship to such donors which is described in section 4946(a)(1)(C) through (G)), will be taken into account in determining whether an organization is “publicly supported.” An organization will be treated as meeting this requirement if it has a

governing body (whether designated in the organization’s governing instrument or bylaws as a Board of Directors, Board of Trustees, etc.) which is comprised of public officials acting in their capacities as such; of individuals selected by public officials acting in their capacities as such; of persons having special knowledge or expertise in the particular field or discipline in which the organization is operating; of community leaders, such as elected or appointed officials, clergymen, educators, civic leaders, or other such persons representing a broad cross-section of the views and interests of the community; or, in the case of a membership organization, of individuals elected pursuant to the organization’s governing instrument or bylaws by a broadly based membership.

(D) *Availability of public facilities or services; public participation in programs or policies.* (1) The fact that an organization is of the type which generally provides facilities or services directly for the benefit of the general public on a continuing basis (such as a museum or library which holds open its building or facilities to the public, a symphony orchestra which gives public performances, a conservation organization which provides educational services to the public through the distribution of educational materials, or an old age home which provides domiciliary or nursing services for members of the general public) will be considered evidence that such organization is “publicly supported.” (2) The fact that an organization is an educational or research institution which regularly publishes scholarly studies that are widely used by colleges and universities or by members of the general public will also be considered evidence that such organization is “publicly supported.”

(3) Similarly, the following factors will also be considered evidence that an organization is “publicly supported”:

(i) The participation in, or sponsorship of, the programs of the organization by members of the public having special knowledge or expertise, public officials, or civic or community leaders.

(ii) The maintenance of a definitive program by an organization to accomplish its charitable work in the community, such as combating community deterioration in an economically depressed area that has suffered a major loss of population and jobs.

(iii) The receipt of a significant part of its funds from a public charity or governmental agency to which it is in some way held accountable as a

condition of the grant, contract, or contribution.

(E) *Additional factors pertinent to membership organizations.* The following are additional factors to be considered in determining whether a membership organization is “publicly supported”:

(1) Whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community or area, or in a particular profession or field of special interest (taking into account the size of the area and the nature of the organization’s activities).

(2) Whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross section of the interested public, rather than to restrict membership to a limited number of persons.

(3) Whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations. See *Examples 2* through *5* contained in paragraph (f)(9) of this section for illustrations of this paragraph (f)(3).

(4) *Definition of normally; general rule—(i) Normally; 33 1/3 percent support test.* An organization meets the 33 1/3 percent support test for its current taxable year and the taxable year immediately succeeding its current year, if, for the current taxable year and the 4 taxable years immediately preceding the current taxable year, the organization meets the 33 1/3 percent support test on an aggregate basis.

(ii) *Normally; facts and circumstances test.* An organization meets the facts and circumstances test for its current taxable year and the taxable year immediately succeeding its current year, if, for the current taxable year and the 4 taxable years immediately preceding the current taxable year, the organization meets the facts and circumstances test on an aggregate basis. In the case of paragraphs (f)(3)(iii)(A) and (B) of this section, facts pertinent to the 5-year period may also be taken into consideration. The combination of factors set forth in paragraphs (f)(3)(iii)(A) through (E) of this section that an organization “normally” must meet does not have to be the same for each 5-year period so long as there exists a sufficient combination of factors to show compliance with the facts and circumstances test.

(iii) *Special rule.* The fact that an organization has normally met the requirements of the 33 $\frac{1}{3}$ percent support test for a current taxable year, but is unable normally to meet such requirements for a succeeding taxable year, will not in itself prevent such organization from meeting the facts and circumstances test for such succeeding taxable year.

(iv) *Example.* The application of paragraphs (f)(4)(i), (ii), and (iii) of this section may be illustrated by the following example:

Example. (i) X is recognized as an organization described in section 501(c)(3). On the basis of support received during taxable years 2008, 2009, 2010, 2011 and 2012, it meets the 33 $\frac{1}{3}$ percent support test for taxable year 2012 (the current taxable year). X also meets the 33 $\frac{1}{3}$ support test for 2013, as the immediately succeeding taxable year.

(ii) In taxable years 2009, 2010, 2011, 2012 and 2013, in the aggregate, X does not receive at least 33 $\frac{1}{3}$ percent of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. X still meets the 33 $\frac{1}{3}$ percent support test for taxable year 2013 based on the aggregate support received for taxable years 2008 through 2012.

(iii) In taxable years 2010, 2011, 2012, 2013 and 2014, in the aggregate, X does not receive at least 33 $\frac{1}{3}$ percent of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. X does not meet the 33 $\frac{1}{3}$ percent support test for taxable year 2014.

(iv) Based on the aggregate support and other factors listed in paragraphs (f)(3)(iii)(A) through (E) of this section for taxable years 2009, 2010, 2011, 2012, and 2013, X meets the facts and circumstances test for taxable year 2013 and for taxable year 2014 (as the immediately succeeding taxable year). Therefore, X is still an organization described in section 170(b)(1)(A)(vi) for taxable year 2014, even though X did not meet the 33 $\frac{1}{3}$ percent support test for that year.

(v) *Normally; first five years of an organization's existence.* (A) An organization meets the 33 $\frac{1}{3}$ public support test or the facts and circumstances test during its first five taxable years as a section 501(c)(3) organization if the organization can reasonably be expected to meet the requirements of the 33 $\frac{1}{3}$ percent support test or the facts and circumstances test during that period. With respect to such organization's sixth taxable year, the organization shall be described in section 170(b)(1)(A)(vi) if it meets the 33 $\frac{1}{3}$ percent support test or the facts and circumstances test under the definitions of normally set forth in paragraphs (f)(4)(i) through (iii) of this section for its sixth taxable year

(based on support received in its second through sixth taxable years), or for its fifth taxable year (based on support received in its first through fifth taxable years).

(B) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of paragraph (f)(4)(v)(A) of this section) to meet the requirements of the 33 $\frac{1}{3}$ percent support test or the facts and circumstances test during its first five taxable years, the basic consideration is whether its organizational structure, current or proposed programs or activities, and actual or intended method of operation are such as can reasonably be expected to attract the type of broadly based support from the general public, public charities, and governmental units that is necessary to meet such tests. The factors that are relevant to this determination, and the weight accorded to each of them, may differ from case to case, depending on the nature and functions of the organization. The information to be considered for this purpose shall consist of all pertinent facts and circumstances relating to the requirements set forth in paragraph (f)(3) of this section.

(vi) *Example.* The application of paragraph (f)(4)(v) of this section may be illustrated by the following example:

Example. (i) Organization Y was formed in January 2008, and uses a December 31 taxable year. After September 9, 2008, and before December 31, 2008, Organization Y filed Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3) and in sections 170(b)(1)(A)(vi) and 509(a)(1). In its application, Organization Y established that it can reasonably be expected to operate as a public charity under paragraph (f)(4)(v) of this section. Subsequently, Organization Y received a ruling or determination letter that it is an organization described in section 501(c)(3) and sections 170(b)(1)(A)(vi) and 509(a)(1) effective as of the date of its formation.

(ii) Organization Y is described in sections 170(b)(1)(A)(vi) and 509(a)(1) for its first 5 taxable years (the taxable years ending December 31, 2008, through December 31, 2012).

(iii) Organization Y can qualify as a public charity beginning with the taxable year ending December 31, 2013, if Organization Y can meet the requirements of paragraphs (f)(2) through (3) of this section or § 1.509(a)-3T(a) through (b) for the taxable years ending December 31, 2009, through December 31, 2013, or for the taxable years ending December 31, 2008, through December 31, 2012.

(5) *Determinations on foundation classification and reliance.* (i) A ruling or determination letter that an organization is described in section

170(b)(1)(A)(vi) may be issued to an organization. Such determination may be made in conjunction with the recognition of the organization's tax-exempt status or at such other time as the organization believes it is described in section 170(b)(1)(A)(vi). The ruling or determination letter that the organization is described in section 170(b)(1)(A)(vi) may be revoked if, upon examination, the organization has not met the requirements of paragraph (f) of this section. The ruling or determination letter that the organization is described in section 170(b)(1)(A)(vi) also may be revoked if the organization's application for a ruling or determination contained one or more material misstatements of fact or if such application was part of a scheme or plan to avoid or evade any provision of the Internal Revenue Code. The revocation of the determination that an organization is described in section 170(b)(1)(A)(vi) does not preclude revocation of the determination that the organization is described in section 501(c)(3).

(ii) *Status of grantors or contributors.* For purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, grantors or contributors may rely upon a determination letter or ruling that an organization is described in section 170(b)(1)(A)(vi) until the Internal Revenue Service publishes notice of a change of status (for example, in the Internal Revenue Bulletin or Publication 78, "Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986," which can be searched at www.irs.gov). For this purpose, grantors or contributors also may rely on an advance ruling that expires on or after June 9, 2008.

However, a grantor or contributor may not rely on such an advance ruling or any determination letter or ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification under section 170(b)(1)(A)(vi) or acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from such classification.

(6) *Definition of support; meaning of general public—(i) In general.* In determining whether the 33 $\frac{1}{3}$ percent support test or the 10 percent support limitation described in paragraph (f)(3)(i) of this section is met, contributions by an individual, trust, or corporation shall be taken into account as *support* from direct or indirect contributions from the general public only to the extent that the total amount of the contributions by any such

individual, trust, or corporation during the period described in paragraphs (f)(4)(i) or (ii) of this section does not exceed 2 percent of the organization's total support for such period, except as provided in paragraph (f)(6)(ii) of this section. Therefore, any contribution by one individual will be included in full in the denominator of the fraction determining the 33 $\frac{1}{3}$ percent support or the 10 percent support limitation, but will be includible in the numerator of such fraction only to the extent that such amount does not exceed 2 percent of the denominator. In applying the 2 percent limitation, all contributions made by a donor and by any person or persons standing in a relationship to the donor that is described in section 4946(a)(1)(C) through (G) and the regulations relating to section 4946(a)(1)(C) through (G) shall be treated as made by one person. The 2 percent limitation shall not apply to support received from governmental units referred to in section 170(c)(1) or to contributions from organizations described in section 170(b)(1)(A)(vi), except as provided in paragraph (f)(6)(v) of this section. For purposes of paragraphs (f)(2), (f)(3)(i) and (f)(7)(iii)(A)(2) of this section, the term *indirect contributions from the general public* includes contributions received by the organization from organizations (such as section 170(b)(1)(A)(vi) organizations) that normally receive a substantial part of their support from direct contributions from the general public, except as provided in paragraph (f)(6)(v) of this section. See the examples in paragraph (f)(9) of this section for the application of this paragraph (f)(6)(i). For purposes of this paragraph (f), the term *contributions* includes qualified sponsorship payments (as defined in § 1.513-4) in the form of money or property (but not services).

(ii) *Exclusion of unusual grants.* (A) For purposes of applying the 2 percent limitation described in paragraph (f)(6)(i) of this section to determine whether the 33 $\frac{1}{3}$ percent support test or the 10 percent support limitation in paragraph (f)(3)(i) of this section is satisfied, one or more contributions may be excluded from both the numerator and the denominator of the applicable support fraction if such contributions meet the requirements of paragraph (f)(6)(iii) of this section. The exclusion provided by this paragraph (f)(6)(ii) is generally intended to apply to substantial contributions or bequests from disinterested parties, which contributions or bequests—

(1) Are attracted by reason of the publicly supported nature of the organization;

(2) Are unusual or unexpected with respect to the amount thereof; and

(3) Would, by reason of their size, adversely affect the status of the organization as normally being publicly supported for the applicable period described in paragraph (f)(4) of this section.

(B) In the case of a grant (as defined in § 1.509(a)-3(g)) that meets the requirements of this paragraph (f)(6)(ii), if the terms of the granting instrument (whether executed before or after 1969) require that the funds be paid to the recipient organization over a period of years, the amount received by the organization each year pursuant to the terms of such grant may be excluded for such year. However, no item of gross investment income may be excluded under this paragraph (f)(6). The provisions of this paragraph (f)(6) shall apply to exclude unusual grants made during any of the applicable periods described in paragraph (f)(4) or (f)(6) of this section. See paragraph (f)(6)(iv) of this section as to reliance by a grantee organization upon an unusual grant ruling under this paragraph (f)(6).

(iii) *Determining factors.* In determining whether a particular contribution may be excluded under paragraph (f)(6)(ii) of this section all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. For some of the factors similar to the factors to be considered, see § 1.509(a)-3T(c)(4).

(iv) *Grantors and contributors.* Prior to the making of any grant or contribution that will allegedly meet the requirements for exclusion under paragraph (f)(6)(ii) of this section, a potential grantee organization may request a determination whether such grant or contribution may be so excluded. Requests for such determination may be filed by the grantee organization. The issuance of such determination will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination on the factors referred to in paragraph (f)(6)(iii) of this section. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522 and by the grantee organization for purposes of paragraph (f)(6)(ii) of this section.

(v) *Grants from public charities.* Pursuant to paragraph (f)(6)(i) of this section, contributions received from a governmental unit or from a section

170(b)(1)(A)(vi) organization are not subject to the 2 percent limitation described in paragraph (f)(6)(i) of this section unless such contributions represent amounts which have been expressly or impliedly earmarked by a donor to such governmental unit or section 170(b)(1)(A)(vi) organization as being for, or for the benefit of, the particular organization claiming section 170(b)(1)(A)(vi) status. See § 1.509(a)-3(j)(3) for examples illustrating the rules of this paragraph (f)(6)(v).

(7) *Definition of support; special rules and meaning of terms—*(i) *Definition of support.* For purposes of this paragraph (f)(7), the term "support" shall be as defined in section 509(d) (without regard to section 509(d)(2)). The term "support" does not include—

(A) Any amounts received from the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a). In general, such amounts include amounts received from any activity the conduct of which is substantially related to the furtherance of such purpose or function (other than through the production of income); or

(B) Contributions of services for which a deduction is not allowable.

(ii) For purposes of the 33 $\frac{1}{3}$ percent support test and the 10 percent support limitation in paragraph (f)(3)(i) of this section, all amounts received that are described in paragraphs (f)(7)(i)(A) or (B) of this section are to be excluded from both the numerator and the denominator of the fractions determining compliance with such tests, except as provided in paragraph (f)(7)(iii) of this section.

(iii) *Organizations dependent primarily on gross receipts from related activities.* (A) Notwithstanding the provisions of paragraph (f)(7)(i) of this section, an organization will not be treated as satisfying the 33 $\frac{1}{3}$ percent support test or the 10 percent support limitation in paragraph (f)(3)(i) of this section if it receives—

(1) Almost all of its support (as defined in section 509(d)) from gross receipts from related activities; and

(2) An insignificant amount of its support from governmental units (without regard to amounts referred to in paragraph (f)(7)(i)(A) of this section) and contributions made directly or indirectly by the general public.

(B) *Example.* The application of this paragraph (f)(7)(iii) may be illustrated by the following example:

Example. Z, an organization described in section 501(c)(3), is controlled by A, its

president. Z received \$500,000 during the period consisting of the current taxable year and the four immediately preceding taxable years under a contract with the Department of Transportation, pursuant to which Z has engaged in research to improve a particular vehicle used primarily by the Federal government. During this same period, the only other support received by Z consisted of \$5,000 in small contributions primarily from Z's employees and business associates. The \$500,000 amount constitutes support under sections 509(d)(2) and 509(a)(2)(A). Under these circumstances, Z meets the conditions of paragraphs (f)(7)(iii)(A)(1) and (2) of this section and will not be treated as meeting the requirements of either the 33 1/3 percent support test or the facts and circumstances test. As to the rules applicable to organizations that fail to qualify under section 170(b)(1)(A)(vi) because of the provisions of this paragraph (f)(7)(ii), see section 509(a)(2) and the accompanying regulations. For the distinction between gross receipts (as referred to in section 509(d)(2)) and gross investment income (as referred to in section 509(d)(4)), see § 1.509(a)-3(m).

(iv) *Membership fees.* For purposes of this paragraph (f)(7), the term *support* shall include "membership fees" within the meaning of § 1.509(a)-3(h) (that is, if the basic purpose for making a payment is to provide support for the organization rather than to purchase admissions, merchandise, services, or the use of facilities).

(8) *Support from a governmental unit.*

(i) For purposes of the 33 1/3 percent support test and the 10 percent support limitation described in paragraph (f)(3)(i) of this section, the term *support from a governmental unit* includes any amounts received from a governmental unit, including donations or contributions and amounts received in connection with a contract entered into with a governmental unit for the performance of services or in connection with a government research grant. However, such amounts will not constitute support from a governmental unit for such purposes if they constitute amounts received from the exercise or performance of the organization's exempt functions as provided in paragraph (f)(7)(i)(A) of this section.

(ii) For purposes of paragraph (f)(8)(i) of this section, any amount paid by a governmental unit to an organization is not to be treated as received from the exercise or performance of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a) (within the meaning of paragraph (f)(7)(i)(A) of this section) if the purpose of the payment is primarily to enable the organization to provide a service to, or maintain a facility for, the direct benefit of the public (regardless of whether part of the expense of providing such service

or facility is paid for by the public), rather than to serve the direct and immediate needs of the payor. For example—

(A) Amounts paid for the maintenance of library facilities which are open to the public;

(B) Amounts paid under government programs to nursing homes or homes for the aged in order to provide health care or domiciliary services to residents of such facilities; and

(C) Amounts paid to child placement or child guidance organizations under government programs for services rendered to children in the community, are considered payments the purpose of which is primarily to enable the recipient organization to provide a service or maintain a facility for the direct benefit of the public, rather than to serve the direct and immediate needs of the payor. Furthermore, any amount received from a governmental unit under circumstances such that the amount would be treated as a "grant" within the meaning of § 1.509(a)-3(g) will generally constitute "support from a governmental unit" described in this paragraph (f)(8), rather than an amount described in paragraph (f)(7)(i)(A) of this section.

(9) *Examples.* The application of paragraphs (f)(1) through (8) of this section may be illustrated by the following examples:

Example 1. (i) M is recognized as an organization described in section 501(c)(3). For the years 2008 through 2012 (the applicable period with respect to the taxable year 2012 under paragraph (f)(4) of this section), M received support (as defined in paragraphs (f)(6) through (8) of this section) of \$600,000 from the following sources:

Investment income	\$300,000
City R (a governmental unit described in section 170(c)(1)) ..	40,000
United Fund (an organization described in section 170(b)(1)(A)(vi))	40,000
Contributions	220,000
Total support	\$600,000

(ii) With respect to the taxable year 2012, M's public support is computed as follows:

Support from a governmental unit described in section 170(c)(1)	\$40,000
Indirect contributions from the general public (United Fund) Contributions by various donors (no one having made contributions that total in excess of \$12,000—2 percent of total support)	40,000
Six contributions (each in excess of \$12,000—2 percent total support) 6 × \$12,000	72,000
Total support	\$202,000

(iii) M's support from governmental units referred to in section 170(c)(1) and from direct and indirect contributions from the general public (as defined in paragraph (f)(6) of this section) with respect to the taxable year 2012 normally exceeds 33 1/3 percent of M's total support (\$202,000/\$600,000 = 33.67 percent) for the applicable period (2008 through 2012). M meets the 33 1/3 percent support test with respect to 2012 and is therefore publicly supported for the taxable years 2012 and 2013.

Example 2. N is recognized as an organization described in section 501(c)(3). It was created to maintain public gardens containing botanical specimens and displaying statuary and other art objects. The facilities, works of art, and a large endowment were all contributed by a single contributor. The members of the governing body of the organization are unrelated to its creator. The gardens are open to the public without charge and attract a substantial number of visitors each year. For the current taxable year and the four taxable years immediately preceding the current taxable year, 95 percent of the organization's total support was received from investment income from its original endowment. N also maintains a membership society that is supported by members of the general public who wish to contribute to the upkeep of the gardens by paying a small annual membership fee. Over the 5-year period in question, these fees from the general public constituted the remaining 5 percent of the organization's total support for such period. Under these circumstances, N does not meet the 33 1/3 percent support test for its current taxable year. Furthermore, because only 5 percent of its total support is, with respect to the current taxable year, normally received from the general public, N does not satisfy the 10 percent support limitation described in paragraph (f)(3)(i) of this section and therefore does not qualify as publicly supported under the facts and circumstances test. Because N has failed to satisfy the 10 percent support limitation under paragraph (f)(3)(i) of this section, none of the other requirements or factors set forth in paragraphs (f)(3)(iii)(A) through (E) of this section can be considered in determining whether N qualifies as a publicly supported organization. For its current taxable year, N therefore is not an organization described in section 170(b)(1)(A)(vi).

Example 3. (i) O, an art museum, is recognized as an organization described in section 501(c)(3). In 1930, O was founded in S City by the members of a single family to collect, preserve, interpret, and display to the public important works of art. O is governed by a Board of Trustees that originally consisted almost entirely of members of the founding family. However, since 1945, members of the founding family or persons standing in a relationship to the members of such family described in section 4946(a)(1)(C) through (G) have annually constituted less than one-fifth of the Board of Trustees. The remaining board members are citizens of S City from a variety of professions and occupations who represent the interests and views of the people of S City in the activities carried on by the

organization rather than the personal or private interests of the founding family. O solicits contributions from the general public and for the current taxable year and each of the four taxable years immediately preceding the current taxable year, O has received total contributions (in small sums of less than \$100, none of which exceeds 2 percent of O's total support for such period) in excess of \$10,000. These contributions from the general public (as defined in paragraph (f)(6) of this section) represent 25 percent of the organization's total support for such 5-year period. For this same period, investment income from several large endowment funds has constituted 75 percent of O's total support. O expends substantially all of its annual income for its exempt purposes and thus depends upon the funds it annually solicits from the public as well as its investment income in order to carry out its activities on a normal and continuing basis and to acquire new works of art. O has, for the entire period of its existence, been open to the public and more than 300,000 people (from S City and elsewhere) have visited the museum in each of the current taxable year and the four most recent taxable years.

(ii) Under these circumstances, O does not meet the 33 1/3 percent support test for its current year because it has received only 25 percent of its total support for the applicable 5-year period from the general public. However, under the facts set forth above, O has met the 10 percent support limitation under paragraph (f)(3)(i) of this section, as well as the requirements of paragraph (f)(3)(ii) of this section. Under all of the facts set forth in this example, O is considered as meeting the requirements of the facts and circumstances test on the basis of satisfying paragraphs (f)(3)(i) and (ii) of this section and the factors set forth in paragraphs (f)(3)(iii)(A) through (D) of this section. O is therefore publicly supported for its current taxable year and the immediately succeeding taxable year.

Example 4. (i) In 1960, the P Philharmonic Orchestra was organized in T City through the combined efforts of a local music society and a local women's club to present to the public a wide variety of musical programs intended to foster music appreciation in the community. P is recognized as an organization described in section 501(c)(3). The orchestra is composed of professional musicians who are paid by the association. Twelve performances open to the public are scheduled each year. A small admission fee is charged for each of these performances. In addition, several performances are staged annually without charge. During the current taxable year and the four taxable years immediately preceding the current taxable year, P has received separate contributions of \$200,000 each from A and B (not members of a single family) and support of \$120,000 from the T Community Chest, a public federated fundraising organization operating in T City. P depends on these funds in order to carry out its activities and will continue to depend on contributions of this type to be made in the future. P has also begun a fundraising campaign in an attempt to expand its activities for the coming years. P is governed by a Board of Directors

comprised of 5 individuals. A faculty member of a local college, the president of a local music society, the head of a local banking institution, a prominent doctor, and a member of the governing body of the local chamber of commerce currently serve on P's Board and represent the interests and views of the community in the activities carried on by P.

(ii) With respect to P's current taxable year, P's sources of support are computed on the basis of the current taxable year and the four taxable years immediately preceding the current taxable year, as follows:

Contributions	\$520,000
Receipts from performances	100,000
Total support	\$620,000

Less:

Receipts from performances (excluded under paragraph (f)(7)(i)(A) of this section) ..	100,000
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Total support for purposes of paragraphs (f)(2) and (f)(3)(i) of this section	\$520,000
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(iii) For purposes of paragraphs (f)(2) and (f)(3)(i) of this section, P's support is computed as follows:

T Community Chest (indirect support from the general public)	\$120,000
Two contributions (each in excess of \$10,400—2 percent of total support) 2 × \$10,400	20,800

Total	\$140,800
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(iv) P's support from the direct and indirect contributions from the general public does not meet the 33 1/3 percent support test (\$140,800/\$520,000 = 27 percent of total support). However, because P receives 27 percent of its total support from the general public, it meets the 10 percent support limitation under paragraph (f)(3)(i) of this section. P also meets the requirements of paragraph (f)(3)(ii) of this section. As a result of satisfying these requirements and the factors set forth in paragraphs (f)(3)(iii)(A) through (D) of this section, P is considered to meet the facts and circumstances test and therefore qualifies as a publicly supported organization under paragraph (f)(1) of this section for its current taxable year and the immediately succeeding taxable year.

Example 5. (i) Q is recognized as an organization described in section 501(c)(3). It is a philanthropic organization founded in 1965 by C for the purpose of making annual contributions to worthy charities. C created Q as a charitable trust by the transfer of appreciated securities worth \$500,000 to Q. Pursuant to the trust agreement, C and two other members of his family are the sole trustees of Q and are vested with the right to appoint successor trustees. In each of the current taxable year and the four taxable years immediately preceding the current taxable year, Q received \$15,000 in investment income from its original endowment. Each year Q makes a solicitation for funds by operating a charity ball at C's residence. Guests are invited and requested to make contributions of \$100 per couple.

During the 5-year period at issue, \$15,000 was received from the proceeds of these events. C and his family have also made contributions to Q of \$25,000 over the 5-year period at issue. Q makes disbursements each year of substantially all of its net income to the public charities chosen by the trustees.

(ii) Q's sources of support for the current taxable year and the four taxable years immediately preceding the current taxable year as follows:

Investment income	\$60,000
Contributions	40,000
Total support	\$100,000

(iii) For purposes of paragraphs (f)(2) and (f)(3)(i) of this section, Q's support is computed as follows:

Contributions from the general public	\$15,000
One contribution (in excess of \$2,000—2 percent of total support) 1 × \$2,000	2,000
Total	\$17,000

(iv) Q's support from the general public does not meet the 33 1/3 percent support test (\$17,000/\$100,000 = 17 percent of total support). Thus, Q's classification as a "publicly supported" organization depends on whether it meets the requirements of the facts and circumstances test. Even though it satisfies the 10 percent support limitation under paragraph (f)(3)(i) of this section, its method of solicitation makes it questionable whether Q satisfies the requirements of paragraph (f)(3)(ii) of this section. Because of its method of operating, Q also has a greater burden of establishing its publicly supported nature under paragraph (f)(3)(iii)(A) of this section. Based upon the foregoing and upon Q's failure to receive favorable consideration under the remaining factors set forth in paragraphs (f)(3)(iii)(B), (C) and (D) of this section, Q does not satisfy the facts and circumstances test.

(10) *Community trust; introduction.*

Community trusts have often been established to attract large contributions of a capital or endowment nature for the benefit of a particular community or area, and often such contributions have come initially from a small number of donors. While the community trust generally has a governing body comprised of representatives of the particular community or area, its contributions are often received and maintained in the form of separate trusts or funds, which are subject to varying degrees of control by the governing body. To qualify as a "publicly supported" organization, a community trust must meet the 33 1/3 percent support test, or, if it cannot meet that test, be organized and operated so as to attract new and additional public or governmental support on a continuous basis sufficient to meet the facts and circumstances test. Such facts and circumstances test includes a requirement of attraction of public

support in paragraph (f)(3)(ii) of this section which, as applied to community trusts, generally will be satisfied if they seek gifts and bequests from a wide range of potential donors in the community or area served, through banks or trust companies, through attorneys or other professional persons, or in other appropriate ways that call attention to the community trust as a potential recipient of gifts and bequests made for the benefit of the community or area served. A community trust is not required to engage in periodic, community-wide, fundraising campaigns directed toward attracting a large number of small contributions in a manner similar to campaigns conducted by a community chest or united fund. Paragraph (f)(11) of this section provides rules for determining the extent to which separate trusts or funds may be treated as component parts of a community trust, fund or foundation (herein collectively referred to as a "community trust", and sometimes referred to as an "organization") for purposes of meeting the requirements of this paragraph for classification as a publicly supported organization. Paragraph (f)(12) of this section contains rules for trusts or funds that are prevented from qualifying as component parts of a community trust by paragraph (f)(11) of this section.

(11) *Community trusts; requirements for treatment as a single entity—(i) General rule.* For purposes of sections 170, 501, 507, 508, 509, and Chapter 42, any organization that meets the requirements contained in paragraphs (f)(11)(iii) through (iv) of this section will be treated as a single entity, rather than as an aggregation of separate funds, and except as otherwise provided, all funds associated with such organization (whether a trust, not-for-profit corporation, unincorporated association, or a combination thereof) which meet the requirements of paragraph (f)(11)(ii) of this section will be treated as component parts of such organization.

(ii) *Component part of a community trust.* In order to be treated as a component part of a community trust referred to in this paragraph (f)(11) (rather than as a separate trust or not-for-profit corporation or association), a trust or fund:

(A) Must be created by a gift, bequest, legacy, devise, or other transfer to a community trust which is treated as a single entity under this paragraph (f)(11); and

(B) May not be directly or indirectly subjected by the transferor to any material restriction or condition (within the meaning of § 1.507-2T(a)(7)) with respect to the transferred assets. For

purposes of this paragraph (f)(11)(ii)(B), if the transferor is not a private foundation, the provisions of § 1.507-2T(a)(7) shall be applied to the trust or fund as if the transferor were a private foundation established and funded by the person establishing the trust or fund and such foundation transferred all its assets to the trust or fund. Any transfer made to a fund or trust which is treated as a component part of a community trust under this paragraph (f)(11)(ii) will be treated as a transfer made "to" a "publicly supported" community trust for purposes of section 170(b)(1)(A) and 507(b)(1)(A) if such community trust meets the requirements of section 170(b)(1)(A)(vi) as a "publicly supported" organization at the time of the transfer, except as provided in paragraph (f)(4)(v)(B) of this section or § 1.508-1(b)(4) and (6) (relating, generally, to reliance by grantors and contributors). See also paragraphs (f)(12)(ii) and (iii) of this section for special provisions relating to split-interest trusts and certain private foundations described in section 170(b)(1)(F)(iii).

(iii) *Name.* The organization must be commonly known as a community trust, fund, foundation or other similar name conveying the concept of a capital or endowment fund to support charitable activities (within the meaning of section 170(c)(1) or (2)(B)) in the community or area it serves.

(iv) *Common instrument.* All funds of the organization must be subject to a common governing instrument or a master trust or agency agreement (herein referred to as the "governing instrument"), which may be embodied in a single document or several documents containing common language. Language in an instrument of transfer to the community trust making a fund subject to the community trust's governing instrument or master trust or agency agreement will satisfy the requirements of this paragraph (f)(11)(iv). In addition, if a community trust adopts a new governing instrument (or creates a corporation) to put into effect new provisions (applying to future transfers to the community trust), the adoption of such new governing instrument (or creation of a corporation with a governing instrument) which contains common language with the existing governing instrument shall not preclude the community trust from meeting the requirements of this paragraph (f)(11)(iv).

(v) *Common governing body.* (A) The organization must have a common governing body or distribution committee (herein referred to as the "governing body") which either directs

or, in the case of a fund designated for specified beneficiaries, monitors the distribution of all of the funds exclusively for charitable purposes (within the meaning of section 170(c)(1) or (2)(B)). For purposes of this paragraph (f)(11)(v), a fund is designated for specified beneficiaries only if no person is left with the discretion to direct the distribution of the fund.

(B) *Powers of modification and removal.* The fact that the exercise of any power described in this paragraph (f)(11)(v)(B) is reviewable by an appropriate State authority will not preclude the community trust from meeting the requirements of this paragraph (f)(11)(v)(B). Except as provided in paragraph (f)(11)(v)(C) of this section, the governing body must have the power in the governing instrument, the instrument of transfer, the resolutions or by-laws of the governing body, a written agreement, or otherwise—

(1) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served;

(2) To replace any participating trustee, custodian, or agent for breach of fiduciary duty under State law; and

(3) To replace any participating trustee, custodian, or agent for failure to produce a reasonable (as determined by the governing body) return of net income (within the meaning of paragraph (f)(11)(v)(F) of this section) over a reasonable period of time (as determined by the governing body).

(C) *Transitional rule—(1)* Notwithstanding paragraph (f)(11)(v)(B) of this section, if a community trust meets the requirements of paragraph (f)(11)(v)(C)(3) of this section, then in the case of any instrument of transfer which is executed before July 19, 1977, and is not revoked or amended thereafter (with respect to any dispositive provision affecting the transfer to the community trust), and in the case of any instrument of transfer which is irrevocable on January 19, 1982, the governing body must have the power to cause proceedings to be instituted (by request to the appropriate State authority):

(i) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the

judgment of the governing body such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served; and

(ii) To remove any participating trustee, custodian, or agent for breach of fiduciary duty under State law.

(2) The necessity for the governing body to obtain the approval of a participating trustee to exercise the powers described in paragraph (f)(11)(v)(C)(1) of this section shall be treated as not preventing the governing body from having such power, unless (and until) such approval has been (or is) requested by the governing body and has been (or is) denied.

(3) Paragraph (f)(11)(v)(C)(1) of this section shall not apply unless the community trust meets the requirements of paragraph (f)(11)(v)(B) of this section, with respect to funds other than those under instruments of transfer described in the first sentence of such paragraph (f)(11)(v)(C)(1) of this section, by January 19, 1978, or such later date as the Commissioner may provide for such community trust, and unless the community trust does not, once it so complies, thereafter solicit for funds that will not qualify under the requirements of paragraph (f)(11)(v)(B) of this section.

(D) *Inconsistent State law*—(1) For purposes of paragraphs (f)(11)(v)(B)(1), (2), or (3), (f)(11)(v)(C)(1)(i) or (ii) or (f)(11)(v)(E) of this section, if a power described in such a provision is inconsistent with State law even if such power were expressly granted to the governing body by the governing instrument and were accepted without limitation under an instrument of transfer, then the community trust will be treated as meeting the requirements of such a provision if it meets such requirements to the fullest extent possible consistent with State law (if such power is or had been so expressly granted).

(2) For example, if, under the conditions of paragraph (f)(11)(v)(D)(1) of this section, the power to modify is inconsistent with State law, but the power to institute proceedings to modify, if so expressly granted, would be consistent with State law, the community trust will be treated as meeting such requirements to the fullest extent possible if the governing body has the power (in the governing instrument or otherwise) to institute proceedings to modify a condition or restriction. On the other hand, if in such a case the community trust has only the power to cause proceedings to be instituted to modify a condition or

restriction, it will not be treated as meeting such requirements to the fullest extent possible.

(3) In addition, if, for example, under the conditions of paragraph (f)(11)(v)(D)(1) of this section, the power to modify and the power to institute proceedings to modify a condition or restriction is inconsistent with State law, but the power to cause such proceedings to be instituted would be consistent with State law, if it were expressly granted in the governing instrument and if the approval of the State Attorney General were obtained, then the community trust will be treated as meeting such requirements to the fullest extent possible if it has the power (in the governing instrument or otherwise) to cause such proceedings to be instituted, even if such proceedings can be instituted only with the approval of the State Attorney General.

(E) *Exercise of powers*. The governing body shall (by resolution or otherwise) commit itself to exercise the powers described in paragraphs (f)(11)(v)(B), (C) and (D) of this section in the best interests of the community trust. The governing body will be considered not to be so committed where it has grounds to exercise such a power and fails to exercise it by taking appropriate action. Such appropriate action may include, for example, consulting with the appropriate State authority prior to taking action to replace a participating trustee.

(F) *Reasonable return*. In addition to the requirements of paragraphs (f)(11)(v)(B), (C), (D) or (E) of this section, the governing body shall (by resolution or otherwise) commit itself to obtain information and take other appropriate steps with the view to seeing that each participating trustee, custodian, or agent, with respect to each restricted trust or fund that is, and with respect to the aggregate of the unrestricted trusts or funds that are, a component part of the community trust, administers such trust or fund in accordance with the terms of its governing instrument and accepted standards of fiduciary conduct to produce a reasonable return of net income (or appreciation where not inconsistent with the community trust's need for current income), with due regard to safety of principal, in furtherance of the exempt purposes of the community trust (except for assets held for the active conduct of the community trust's exempt activities). In the case of a low return of net income (and, where appropriate, appreciation), the Internal Revenue Service will examine carefully whether the governing body has, in fact, committed

itself to take the appropriate steps. For purposes of this paragraph (f)(11)(v)(F), any income that has been designated by the donor of the gift or bequest to which such income is attributable as being available only for the use or benefit of a broad charitable purpose, such as the encouragement of higher education or the promotion of better health care in the community, will be treated as unrestricted. However, any income that has been designated for the use or benefit of a named charitable organization or agency or for the use or benefit of a particular class of charitable organizations or agencies, the members of which are readily ascertainable and are less than five in number, will be treated as restricted.

(vi) *Common reports*. The organization must prepare periodic financial reports treating all of the funds which are held by the community trust, either directly or in component parts, as funds of the organization.

(12) *Community trusts; treatment of trusts and not-for-profit corporations and associations not included as components*. (i) For purposes of sections 170, 501, 507, 508, 509 and Chapter 42, any trust or not-for-profit corporation or association that is alleged to be a component part of a community trust, but that fails to meet the requirements of paragraph (f)(11)(ii) of this section, shall not be treated as a component part of a community trust and, if a trust, shall be treated as a separate trust and be subject to the provisions of section 501 or section 4947(a)(1) or (2), as the case may be. If such organization is a not-for-profit corporation or association, it will be treated as a separate entity, and, if it is described in section 501(c)(3), it will be treated as a private foundation unless it is described in section 509(a)(1), (2), (3), or (4). In the case of a fund that is ultimately treated as not being a component part of a community trust pursuant to this paragraph (f)(12), if the Forms 990 filed annually by the community trust included financial information with respect to such fund and treated such fund in the same manner as other component parts thereof, such returns filed by the community trust prior to the taxable year in which the Commissioner notifies such fund that it will not be treated as a component part will be treated as its separate return for purpose of Subchapter A of Chapter 61 of Subtitle F, and the first such return filed by the community trust will be treated as the notification required of the separate entity for purposes of section 508(a).

(ii) If a transfer is made in trust to a community trust to make income or

other payments for a period of a life or lives in being or a term of years to any individual or for any noncharitable purpose, followed by payments to or for the use of the community trust (such as in the case of a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 or a pooled income fund described in section 642(c)(5)), such trust will be treated as a component part of the community trust upon the termination of all intervening noncharitable interests and rights to the actual possession or enjoyment of the property if such trust satisfies the requirements of paragraph (f)(11) of this section at such time. Until such time, the trust will be treated as a separate trust. If a transfer is made in trust to a community trust to make income or other payments to or for the use of the community trust, followed by payments to any individual or for any noncharitable purpose, such trust will be treated as a separate trust rather than as a component part of the community trust. See section 4947(a)(2) and the regulations relating to section 4947(a)(2) for the treatment of such split-interest trusts. The provisions of this paragraph (f)(12)(ii) provide rules only for determining when a charitable remainder trust or pooled income fund may be treated as a component part of a community trust and are not intended to preclude a community trust from maintaining a charitable remainder trust or pooled income fund. For purposes of grantors and contributors, a pooled income fund of a publicly supported community trust shall be treated no differently than a pooled income fund of any other publicly supported organization.

(iii) An organization described in section 170(b)(1)(F)(iii) will not ordinarily satisfy the requirements of paragraph (f)(11)(ii) of this section because of the unqualified right of the donor to designate the recipients of the income and principal of the trust. Such organization will therefore ordinarily be treated as other than a component part of a community trust under paragraph (f)(12)(i) of this section. However, see section 170(b)(1)(F)(iii) and the regulations relating to section 170(b)(1)(F)(iii) with respect to the treatment of contributions to such organizations.

(13) *Method of accounting.* For purposes of section 170(b)(1)(A)(vi), an organization's support will be determined under the method of accounting on the basis of which the organization regularly computes its income in keeping its books under section 446. For example, if a grantor makes a grant to an organization payable

over a term of years, such grant will be includible in the support fraction of the grantee organization under the method of accounting on the basis of which the grantee organization regularly computes its income in keeping its books under section 446.

(14) *Transition rules.* (i) An organization that received an advance ruling, that expires on or after June 9, 2008, that it will be treated as an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2) will be treated as meeting the requirements of paragraph (f)(4)(v) of this section for the first five taxable years of its existence as a section 501(c)(3) organization unless the Internal Revenue Service issued the organization a proposed determination prior to September 9, 2008, that the organization is not described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(ii) Paragraph (f)(4)(v) of this section shall not apply to an organization that received an advance ruling that expired prior to June 9, 2008, and that did not timely file with the Internal Revenue Service the required information to establish that it is an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(iii) An organization that fails to meet a public support test for its first taxable year beginning on or after January 1, 2008, under the regulations in this section may use the prior test set forth in § 1.170A-9(e)(4)(i) and (ii) or § 1.509(a)-3(c)(1) as in effect before September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) to determine whether the organization may be publicly supported for its 2008 taxable year based on its satisfaction of a public support test for taxable year 2007, computed over the period 2003 through 2006.

(iv) *Examples.* The application of this paragraph (f)(14) may be illustrated by the following examples:

Example 1. (i) Organization X was formed in January 2004 and uses a June 30 taxable year. Organization X received an advance ruling letter that it is recognized as an organization described in section 501(c)(3) effective as of the date of its formation and that it is treated as a public charity under sections 170(b)(1)(A)(vi) and 509(a)(1) during the five-year advance ruling period that will end on June 30, 2008. This date is within 90 days before September 9, 2008.

(ii) Under the transition rule, Organization X is a public charity described in sections 170(b)(1)(A)(vi) and 509(a)(1) for the taxable years ending June 30, 2004, through June 30, 2008. Organization X does not need to establish within 90 days after June 30, 2008, that it met a public support test under § 1.170A-9(e) or § 1.509(a)-3, as in effect

prior September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008), for its advance ruling period.

(iii) Organization X can qualify as a public charity beginning with the taxable year ending June 30, 2009, if Organization X can meet the requirements of paragraphs (f)(4)(i) or (ii) of this section or § 1.509(a)-3T(c)(1) for the taxable years ending June 30, 2005, through June 30, 2009, or for the taxable years ending June 30, 2004, through June 30, 2008. In addition, for its taxable year ending June 30, 2009, Organization X may qualify as a public charity by availing itself of the transition rule contained in paragraph (f)(14)(iii) of this section, which looks to support received by X in the taxable years ending June 30, 2004, through June 30, 2007.

Example 2. (i) Organization Y was formed in January 2000, and uses a December 31 taxable year. Organization Y received a final determination that it was recognized as tax-exempt under section 501(c)(3) and as a public charity prior to September 9, 2008.

(ii) For taxable year 2008, Organization Y will qualify as publicly supported if it meets the requirements under either paragraphs (f)(4)(i) or (ii) of this section or § 1.509(a)-3T(c)(1) for the five-year period January 1, 2004, through December 31, 2008.

Organization Y will also qualify as publicly supported for taxable year 2008 if it meets the requirements under either § 1.170A-9(e)(4)(i) or (ii) or § 1.509(a)-3(c)(1) as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) for taxable year 2007, using the four-year period from January 1, 2003, through December 31, 2006.

(g) through (j) [Reserved]. For further guidance, see § 1.170A-9(g) through (j).

(k) *Effective/applicability date*—(1) *Effective date.* These regulations are effective on September 9, 2008.

(2) *Applicability date.* The regulations in paragraph (f) of this section shall apply to tax years beginning on or after January 1, 2008.

(3) *Expiration date.* The applicability of this section expires on September 8, 2011.

■ **Par. 4.** Section 1.507-2 is amended by adding new paragraph (h) to read as follows:

§ 1.507-2 Special rules; transfer to, or operation as, public charity.

* * * * *

(h) *Effective/applicability date.* This section shall apply to tax years beginning before January 1, 2008.

■ **Par. 5.** Section 1.507-2T is added to read as follows:

§ 1.507-2T Special rules; transfer to, or operation as, public charity (temporary).

(a) *Transfer to public charities*—(1) *General rule.* Under section 507(b)(1)(A) a private foundation, 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, may terminate its private foundation status by distributing 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. Because section 507(a) does not apply to such a termination, a private foundation which makes such a termination is not required to give the notification described in section 507(a)(1). A private foundation that terminates its private foundation status under section 507(b)(1)(A) does not incur tax under section 507(c) and, therefore, no abatement of such tax under section 507(g) is required.

(2) *Effect of current ruling.* A private foundation seeking to terminate its private foundation status pursuant to section 507(b)(1)(A) may rely on a ruling or determination letter issued to a potential distributee organization that such distributee organization is an organization described in section 170(b)(1)(A)(i), (ii), (iii), (iv), (v) or (vi) in accordance with the provisions of § 1.509(a)-7.

(3) *Organizations described in more than one clause of section 170(b)(1)(A).* For purposes of this paragraph and section 507(b)(1)(A), the parenthetical term “other than in clauses (vii) and (viii)” shall refer only to an organization that is described only in section 170(b)(1)(A)(vii) or (viii). Thus, an organization described in section 170(b)(1)(A)(i), (ii), (iii), (iv), (v), or (vi) will not be precluded from being a distributee described in section 507(b)(1)(A) merely because it also appears to meet the description of an organization described in section 170(b)(1)(A) (vii) or (viii).

(4) *Applicability of chapter 42 to foundations terminating under section 507(b)(1)(A).* An organization that terminates its private foundation status pursuant to section 507(b)(1)(A) will remain subject to the provisions of chapter 42 until the distribution of all of its net assets to distributee organizations described in section 507(b)(1)(A) has been completed.

(5) *Return required from organizations terminating private foundation status under section 507(b)(1)(A).*

(i) An organization that terminates its private foundation status under section 507(b)(1)(A) is required to file a return under the provisions of section 6043(b), rather than under the provisions of section 6050.

(ii) An organization that terminates its private foundation status under section 507(b)(1)(A) is not required to comply with section 6104(d) for the taxable year in which such termination occurs.

(6) *Distribution of net assets.* A private foundation will meet the requirement that it “distribute all of its net assets” within the meaning of section 507(b)(1)(A) only if it transfers all of its right, title, and interest in and to all of its net assets to one or more organizations referred to in section 507(b)(1)(A).

(7) *Effect of restrictions and conditions upon distributions of net assets—(i) In general.* In order to effectuate a transfer of “all of its right, title, and interest in and to all of its net assets” within the meaning of paragraph (a)(6) of this section, a transferor private foundation may not impose any material restriction or condition that prevents the transferee organization referred to in section 507(b)(1)(A) (herein sometimes referred to as the “public charity”) from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes. Whether or not a particular condition or restriction imposed upon a transfer of assets is material (within the meaning of this paragraph (a)(7)) must be determined from all of the facts and circumstances of the transfer. Some of the more significant facts and circumstances to be considered in making such a determination are—

(A) Whether the public charity (including a participating trustee, custodian, or agent in the case of a community trust) is the owner in fee of the assets it receives from the private foundation;

(B) Whether such assets are to be held and administered by the public charity in a manner consistent with one or more of its exempt purposes;

(C) Whether the governing body of the public charity has the ultimate authority and control over such assets, and the income derived therefrom; and

(D) Whether, and to what extent, the governing body of the public charity is organized and operated so as to be independent from the transferor.

(ii) *Independent governing body.* As provided in paragraph (a)(7)(i)(D) of this section, one of the more significant facts and circumstances to be considered in making the determination whether a particular condition or restriction imposed upon a transfer of assets is material within the meaning of this paragraph (a)(7) is whether, and the extent to which, the governing body is organized and operated so as to be independent from the transferor. In turn, the determination as to such factor

must be determined from all of the facts and circumstances. Some of the more significant facts and circumstances to be considered in making such a determination are—

(A) Whether, and to what extent, members of the governing body are comprised of persons selected by the transferor private foundation or disqualified persons with respect thereto, or are themselves such disqualified persons;

(B) Whether, and to what extent, members of the governing body are selected by public officials acting in their capacities as such; and

(C) How long a period of time each member of the governing body may serve as such. In the case of a transfer that is to a community trust, the community trust shall meet this paragraph (a)(7)(ii)(C) if, with respect to terms of office beginning after the date of transfer:

(1) its governing body is comprised of members who may serve a period of not more than ten consecutive years; and

(2) Upon completion of a period of service (beginning before or after the date of transfer), no member may serve again within a period consisting of the lesser of 5 years or the number of consecutive years the member has immediately completed serving.

(iii) *Factors not adversely affecting determination.* The presence of some or all of the following factors will not be considered as preventing the transferee “from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes” (within the meaning of paragraph (a)(7)(i) of this section):

(A) *Name.* The fund is given a name or other designation which is the same as or similar to that of the transferor private foundation or otherwise memorializes the creator of the foundation or his family.

(B) *Purpose.* The income and assets of the fund are to be used for a designated purpose or for one or more particular section 509(a)(1), (2), or (3) organizations, and such use is consistent with the charitable, educational, or other basis for the exempt status of the public charity under section 501(c)(3).

(C) *Administration.* The transferred assets are administered in an identifiable or separate fund, some or all of the principal of which is not to be distributed for a specified period, if the public charity (including a participating trustee, custodian, or agent in the case of a community trust) is the legal and equitable owner of the fund and the governing body exercises ultimate and direct authority and control over such

fund, as, for example, a fund to endow a chair at a university or a medical research fund at a hospital. In the case of a community trust, the transferred assets must be administered in or as a component part of the community trust within the meaning of § 1.170A-9T(f)(11).

(D) *Restrictions on disposition.* The transferor private foundation transfers property the continued retention of which by the transferee is required by the transferor if such retention is important to the achievement of charitable or other similar purposes in the community because of the peculiar features of such property, as, for example, where a private foundation transfers a woodland preserve which is to be maintained by the public charity as an arboretum for the benefit of the community. Such a restriction does not include a restriction on the disposition of an investment asset or the distribution of income.

(iv) *Adverse factors.* The presence of any of the following factors will be considered as preventing the transferee "from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes" (within the meaning of paragraph (a)(7)(i) of this section):

(A) *Distributions.* (1) With respect to distributions made after April 19, 1977, the transferor private foundation, a disqualified person with respect thereto, or any person or committee designated by, or pursuant to the terms of an agreement with, such a person (hereinafter referred to as donor), reserves the right, directly or indirectly, to name (other than by designation in the instrument of transfer of particular

organizations) the persons to which the transferee public charity must distribute, or to direct the timing of such distributions (other than by direction in the instrument of transfer that some or all of the principal, as opposed to specific assets, not be distributed for a specified period) as, for example, by a power of appointment. The Internal Revenue Service will examine carefully whether the seeking of advice by the transferee from, or the giving of advice by, any donor after the assets have been transferred to the transferee constitutes an indirect reservation of a right to direct such distributions. In any such case, the reservation of such a right will be considered to exist where the only criterion considered by the public charity in making a distribution of income or principal from a donor's fund is advice offered by the donor. Whether there is a reservation of such a right will be determined from all of the facts and

circumstances, including, but not limited to, the factors contained in paragraphs (a)(7)(iv)(A)(2) and (3) of this section.

(2) The presence of some or all of the following factors will indicate that the reservation of such a right does not exist:

(i) There has been an independent investigation by the staff of the public charity evaluating whether the donor's advice is consistent with specific charitable needs most deserving of support by the public charity (as determined by the public charity).

(ii) The public charity has promulgated guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity and the donor's advice is consistent with such guidelines.

(iii) The public charity has instituted an educational program publicizing to donors and other persons the guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity.

(iv) The public charity distributes funds in excess of amounts distributed from the donor's fund to the same or similar types of organizations or charitable needs as those recommended by the donor.

(v) The public charity's solicitations (written or oral) for funds specifically state that such public charity will not be bound by advice offered by the donor.

(3) The presence of some or all of the following factors will indicate the reservation of such a right does exist:

(i) The solicitations (written or oral) of funds by the public charity state or imply, or a pattern of conduct on the part of the public charity creates an expectation, that the donor's advice will be followed.

(ii) The advice of a donor (whether or not restricted to a distribution of income or principal from the donor's trust or fund) is limited to distributions of amounts from the donor's fund, and the factors described in paragraph (a)(7)(iv)(A)(2)(i) or (ii) of this section are not present.

(iii) Only the advice of the donor as to distributions of such donor's fund is solicited by the public charity and no procedure is provided for considering advice from persons other than the donor with respect to such fund.

(iv) For the taxable year and all prior taxable years the public charity follows the advice of all donors with respect to their funds substantially all of the time.

(B) Other action or withholding of action. The terms of the transfer agreement, or any expressed or implied understanding, required the public charity to take or withhold action with

respect to the transferred assets which is not designed to further one or more of the exempt purposes of the public charity, and such action or withholding of action would, if performed by the transferor private foundation with respect to such assets, have subjected the transferor to tax under chapter 42 (other than with respect to the minimum investment return requirement of section 4942(e)).

(C) *Assumption of leases, contractual obligations, or liabilities.* The public charity assumes leases, contractual obligations, or liabilities of the transferor private foundation, or takes the assets thereof subject to such liabilities (including obligations under commitments or pledges to donees of the transferor private foundation), for purposes inconsistent with the purposes or best interests of the public charity, other than the payment of the transferor's chapter 42 taxes incurred prior to the transfer to the public charity to the extent of the value of the assets transferred.

(D) *Retention of investment assets.* The transferee public charity is required by any restriction or agreement (other than a restriction or agreement imposed or required by law or regulatory authority), express or implied, to retain any securities or other investment assets transferred to it by the private foundation. In a case where such transferred assets consistently produce a low annual return of income, the Internal Revenue Service will examine carefully whether the transferee is required by any such restriction or agreement to retain such assets.

(E) *Right of first refusal.* An agreement is entered into in connection with the transfer of securities or other property which grants directly or indirectly to the transferor private foundation or any disqualified person with respect thereto a right of first refusal with respect to the transferred securities or other property when and if disposed of by the public charity, unless such securities or other property was acquired by the transferor private foundation subject to such right of first refusal prior to October 9, 1969.

(F) *Relationships.* An agreement is entered into between the transferor private foundation and the transferee public charity which establishes irrevocable relationships with respect to the maintenance or management of assets transferred to the public charity, such as continuing relationships with banks, brokerage firms, investment counselors, or other advisors with regard to the investments or other property transferred to the public charity (other than a relationship with a trustee, custodian, or agent for a

community trust acting as such). The transfer of property to a public charity subject to contractual obligations which were established prior to November 11, 1976, between the transferor private foundation and persons other than disqualified persons with respect to such foundation will not be treated as prohibited under the preceding sentence, but only if such contractual obligations were not entered into pursuant to a plan to terminate the private foundation status of the transferor under section 507(b)(1)(A) and if the continuation of such contractual obligations is in the best interests of the public charity.

(G) *Other conditions.* Any other condition is imposed on action by the public charity which prevents it from exercising ultimate control over the assets received from the transferor private foundation for purposes consistent with its exempt purposes.

(v) *Examples.* The provisions of this paragraph (a)(7) may be illustrated by the following examples:

Example 1. The M Private Foundation transferred all of its net assets to the V Cancer Institute, a public charity described in section 170(b)(1)(A)(iii). Prior to the transfer, M's activities consisted of making grants to hospitals and universities to further research into the causes of cancer. Under the terms of the transfer, V is required to keep M's assets in a separate fund and use the income and principal to further cancer research. Although the assets may be used only for a limited purpose, this purpose is consistent with and in furtherance of V's exempt purposes, and does not prevent the transfer from being a distribution for purposes of section 507(b)(1)(A).

Example 2. The N Private Foundation transferred all of its net assets to W University, a public charity described in section 170(b)(1)(A)(ii). Under the terms of the transfer, W is required to use the income and principal to endow a chair at the university to be known as the "John J. Doe Memorial Professorship", named after N's creator. Although the transferred assets are to be used for a specified purpose by W, this purpose is in furtherance of W's exempt educational purposes, and there are no conditions on investment or reinvestment of the principal or income. The use of the name of the foundation's creator for the chair is not a restriction which would prevent the transfer from being a distribution for purposes of section 507(b)(1)(A).

Example 3. The O Private Foundation transferred all of its net assets to X Bank as trustee for the Q Community Trust, a community trust that is a public charity described in section 170(b)(1)(A)(vi). Under the terms of the transfer, X is to hold the assets in trust for Q and is directed to distribute the income annually to the Y Church, a public charity described in section 170(b)(1)(A)(i). The distribution of income to Y Church is consistent with Q's exempt purposes. If the trust created by this transfer

otherwise meets the requirements of § 1.170A-9T(f)(11) as a component part of the Q Community Trust, the assets transferred by O to X will be treated as distributed to one or more public charities within the meaning of section 507(b)(1)(A). The direction to distribute the income to Y Church meets the conditions of paragraph (a)(7)(iii)(B) of this section and will therefore not disqualify the transfer under section 507(b)(1)(A).

Example 4. (i) The P Private Foundation transferred all of its net assets to Z Bank as trustee for the R Community Trust, a community trust that is a public charity described in section 170(b)(1)(A)(vi). Under the terms of the transfer, Z is to hold the assets in trust for R and distribute the income to those public charities described in section 170(b)(1)(A)(i) through (vi) that are designated by B, the creator of P. R's governing body has no authority during B's lifetime to vary B's direction. Under the terms of the transfer, it is intended that Z retain the transferred assets in their present form for a period of 20 years, or until the date of B's death if it occurs before the expiration of such period. Upon the death of B, R will have the power to distribute the income to such public charities as it selects and may dispose of the corpus as it sees fit.

(ii) Under paragraph (a)(7)(iv)(A) or (D) of this section, as a result of the restrictions imposed with respect to the transferred assets, there has been no distribution of all P's net assets within the meaning of section 507(b)(1)(A) at the time of the transfer. In addition, P has not transferred its net assets to a component part of R Community Trust, but rather to a separate trust described in § 1.170A-9T(f)(12).

(b) *Operation as a public charity*—(1) *In general.* Under section 507(b)(1)(B), an organization can terminate its private foundation status if the organization—

(i) Meets the requirements of section 509(a)(1), (2) or (3) for a continuous period of 60 calendar months beginning with the first day of any taxable year that begins after December 31, 1969;

(ii) In compliance with section 507(b)(1)(B)(ii) and paragraph (b)(3) of this section, properly notifies the Internal Revenue Service, in such manner as may be provided by published guidance, publication, form or instructions, before the commencement of such 60-month period, that it is terminating its private foundation status; and

(iii) Properly establishes immediately after the expiration of such 60-month period that such organization has complied with the requirements of section 509(a)(1), (2) or (3) during the 60-month period, in the manner described in paragraph (b)(4) of this section.

(2) *Relationship of section 507(b)(1)(B) to section 507(a), (c), and (g).* Because section 507(a) does not apply to a termination described in section 507(b)(1)(B), a private

foundation's notification that it is commencing a termination pursuant to section 507(b)(1)(B) will not be treated as a notification described in section 507(a) even if the private foundation does not successfully terminate its private foundation status pursuant to section 507(b)(1)(B). A private foundation that terminates its private foundation status under section 507(b)(1)(B) does not incur tax under section 507(c) and, therefore, no abatement of such tax under section 507(g) is required.

(3) *Notification of termination.* In order to comply with the requirements under section 507(b)(1)(B)(ii), an organization shall before the commencement of the 60-month period under section 507(b)(1)(B)(i) notify the Internal Revenue Service, in such manner as may be provided by published guidance, publication, form or instructions, of its intention to terminate its private foundation status. Such notification shall contain the following information:

(i) The name and address of the private foundation.

(ii) Its intention to terminate its private foundation status.

(iii) The Code section under which it seeks classification (section 509(a)(1), (2) or (3)).

(iv) If section 509(a)(1) is applicable, the clause of section 170(b)(1)(A) involved.

(v) The date its regular taxable year begins.

(vi) The date of commencement of the 60-month period.

(4) *Establishment of termination.* In order to comply with the requirements under section 507(b)(1)(B)(iii), an organization shall within 90 days after the expiration of the 60-month period file such information with the Internal Revenue Service, in such manner as may be provided by published guidance, publication, form or instructions, as is necessary to make a determination as to the organization's status as an organization described under section 509(a)(1), (2) or (3) and the accompanying regulations. See paragraph (c) of this section as to the information required to be submitted under this paragraph (b)(4).

(5) *Incomplete information.* The failure to supply, within the required time, all of the information required by paragraph (b)(3) or (4) of this section is not alone sufficient to constitute a failure to satisfy the requirements of section 507(b)(1)(B). If the information that is submitted within the required time is incomplete and the organization supplies the necessary additional information at the request of the

Commissioner within the additional time period allowed by him, the original submission will be considered timely.

(6) *Application of special rules and filing requirements.* An organization that has terminated its private foundation status under section 507(b)(1)(B) is not required to comply with the special rules set forth in section 508(a) and (b). Such organization is also not required to file a return under the provisions of section 6043(b) or 6050 by reason of termination of its private foundation status under the provisions of section 507(b)(1)(B).

(7) *Extension of time to assess deficiencies.* If a private foundation files a notification (defined in paragraph (b)(3) of this section) that it intends to begin a 60-month termination pursuant to section 507(b)(1)(B) and does not file a request for an advance ruling pursuant to paragraph (d) of this section, such private foundation may file with the notification described in paragraph (b)(3) of this section a consent under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for any taxable year within the 60-month termination period shall not expire prior to one year after the date of expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the 60-month period. Such consents, if filed, will ordinarily be accepted by the Commissioner. See paragraph (e)(3) of this section for an illustration of the procedure required to obtain a refund of the tax imposed by section 4940 in a case where such a consent is not in effect.

(c) *Sixty-month terminations—(1) Method of determining normal sources of support.* (i) In order to meet the requirements of section 507(b)(1)(B) for the 60-month termination period as a section 509(a)(1) or (2) organization, an organization must meet the requirements of section 509(a)(1) or (2), as the case may be, for a continuous period of at least 60 calendar months. In determining whether an organization seeking status under section 509(a)(1) as an organization described in section 170(b)(1)(A)(iv) or (vi) or under section 509(a)(2) normally meets the requirements set forth under such sections, support received in taxable years prior to the commencement of the 60-month period shall not be taken into consideration, except as otherwise provided in this section.

(ii) For purposes of section 507(b)(1)(B), an organization will be considered to be a section 509(a)(1) organization described in section 170(b)(1)(A)(vi) for a continuous period of 60 calendar months only if the

organization satisfies the provisions of § 1.170A–9T(f), other than § 1.170A–9T(f)(4)(v), based upon aggregate data for such entire period. The calculation of public support shall be made over the period beginning with the date of the commencement of the 60-month period, and ending with the last day of the 60-month period.

(iii) For purposes of section 507(b)(1)(B), an organization will be considered to be a section 509(a)(2) organization only if such organization meets the support requirements set forth in section 509(a)(2)(A) and (B) and the accompanying regulations, other than § 1.509(a)–3T(d), for the continuous period of 60 calendar months prescribed under section 507(b)(1)(B). The calculation of public support shall be made over the period beginning with the date of the commencement of the 60-month period, and ending with the last day of the 60-month period.

(2) *Organizational and operational tests.* In order to meet the requirements of section 507(b)(1)(B) for the 60-month termination period as an organization described in section 170(b)(1)(A)(i), (ii), (iii), (iv), or (v) or section 509(a)(3), as the case may be, an organization must meet the requirements of the applicable provisions for a continuous period of at least 60 calendar months. For purposes of section 507(b)(1)(B), an organization will be considered to be such an organization only if it satisfies the requirements of the applicable provision (including with respect to section 509(a)(3), the organizational and operational test set forth in subparagraph (A) thereof) at the commencement of such 60-month period and continuously thereafter during such period.

(d) *Advance rulings for 60-month terminations—(1) In general.* An organization that files the notification required by section 507(b)(1)(B)(ii) that it is commencing a 60-month termination may obtain an advance ruling from the Commissioner that it can be expected to satisfy the requirements of section 507(b)(1)(B)(i) during the 60-month period. Such an advance ruling may be issued if the organization can reasonably be expected to meet the requirements of section 507(b)(1)(B)(i) during the 60-month period. The issuance of a ruling will be discretionary with the Commissioner.

(2) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of paragraph (d)(1) of this section) to meet the requirements of section 507(b)(1)(B)(i) for the 60-month period, the basic consideration is whether its organizational structure

(taking into account any revisions made prior to the beginning of the 60-month period), current or proposed programs or activities, actual or intended method of operation, and current or projected sources of support are such as to indicate that the organization is likely to satisfy the requirements of section 509(a)(1), (2), or (3) and paragraph (d) of this section during the 60-month period. In making such a determination, all pertinent facts and circumstances shall be considered.

(3) *Reliance by grantors and contributors.* For purposes of sections 170, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, grants or contributions to an organization which has obtained a ruling referred to in this paragraph will be treated as made to an organization described in section 509(a)(1), (2), or (3), as the case may be, until the Internal Revenue Service publishes notice that such advance ruling is being revoked (such as by publication in the Internal Revenue Bulletin). However, a grantor or contributor may not rely on such an advance ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's failure to meet the requirements of section 509(a)(1), (2), or (3), or acquired knowledge that the Internal Revenue Service had given notice to such organization that its advance ruling would be revoked. Prior to the making of any grant or contribution which allegedly will not result in the grantee's failure to meet the requirements of section 509(a)(1), (2), or (3), a potential grantee organization may request a ruling whether such grant or contribution may be made without such failure. A request for such ruling may be filed by the grantee organization with the Internal Revenue Service. The issuance of such ruling will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination on the factors referred to in paragraph (d)(2) of this section. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522.

(4) *Reliance by organization.* An organization obtaining an advance ruling pursuant to this paragraph cannot rely on such a ruling. Consequently, if the organization does not pay the tax imposed by section 4940 for any taxable year or years during the 60-month period, and it is subsequently determined that such tax is due for such

year or years (because the organization did not in fact complete a successful termination pursuant to section 507(b)(1)(B) and was not treated as an organization described in section 509(a)(1), (2), or (3) for such year or years), the organization is liable for interest in accordance with section 6601 if any amount of tax under section 4940 has not been paid on or before the last date prescribed for payment. However, because any failure to pay such tax during the 60-month period (or prior to the revocation of such ruling) is due to reasonable cause, the penalty under section 6651 with respect to the tax imposed by section 4940 shall not apply.

(5) *Extension of time to assess deficiencies.* The advance ruling described in paragraph (d)(1) of this section shall be issued only if such organization's request for an advance ruling is filed with a consent under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for any taxable year within the advance ruling period shall not expire prior to 1 year after the date of the expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the 60-month period.

(e) *Effect on grantors or contributors and on the organization itself—(1) Effect of satisfaction of requirements for termination; treatment during the termination period.* In the event that an organization satisfies the requirements of section 507(b)(1)(B) for termination of its private foundation status during the continuous 60-month period, such organization shall be treated for such entire 60-month period in the same manner as an organization described in section 509(a)(1), (2) or (3), as the case may be.

(2) *Failure to meet termination requirements—(i) In general.* Except as otherwise provided in paragraphs (e)(2)(ii) and (d) of this section, any organization that fails to satisfy the requirements of section 507(b)(1)(B) for termination of its private foundation status during the continuous 60-month period shall be treated as a private foundation for the entire 60-month period, for purposes of sections 507 through 509 and chapter 42, and grants or contributions to such an organization shall be treated as made to a private foundation for purposes of sections 170, 507(b)(1)(A), 4942, and 4945.

(ii) *Certain 60-month terminations.* Notwithstanding paragraph (e)(2)(i) of this section, if an organization fails to satisfy the requirements of section 509(a)(1), (2) or (3) for the continuous 60-month period but does satisfy the

requirements of section 509(a)(1), (2) or (3), as the case may be, for any taxable year or years during such 60-month period, the organization shall be treated as a section 509(a)(1), (2) or (3) organization for such taxable year or years and grants or contributions made during such taxable year or years shall be treated as made to an organization described in section 509(a)(1), (2) or (3). In addition, sections 507 through 509 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. For purposes of determining whether an organization satisfies the requirements of section 509(a)(1), (2) or (3) for any taxable year in the 60-month period, the calculation of public support shall be made over the period beginning with the date of the commencement of the 60-month period, and ending with the last day of the taxable year being tested. The organization shall not be treated as a section 509(a)(1) or (2) organization for any taxable year during the 60-month period solely by reason of having met a public support test for the preceding year. In addition, the transition rules in § 1.170-9T(f)(14)(iii) and § 1.509(a)-3T(n)(iii) shall not apply.

(iii) *Aggregate tax benefit.* For purposes of section 507(d), the organization's aggregate tax benefit resulting from the organization's section 501(c)(3) status shall continue to be computed from the date from which such computation would have been made, but for the notice filed under section 507(b)(1)(B)(ii), except that any taxable year within such 60-month period for which such organization meets the requirements of section 509(a)(1), (2), or (3) shall be excluded from such computations.

(iv) *Excess business holdings.* See section 4943 and the accompanying regulations for rules relating to decreases in a private foundation's holdings in a business enterprise which are caused by the foundation's failure to terminate its private foundation status after giving the notification for termination under section 507(b)(1)(B)(ii).

(3) *Example.* The provisions of this paragraph (e) may be illustrated by the following example:

Example. Y, a calendar year private foundation, notifies the Internal Revenue Service that it intends to terminate its private foundation status by converting into a publicly supported organization described in section 170(b)(1)(A)(vi) and that its 60-month termination period will commence on January 1, 2010. Y does not obtain a ruling described in paragraph (d) of this section. Based upon its support for 2010, Y does not

qualify as a publicly supported organization within the meaning of § 1.170A-9T(f) and this paragraph for 2010. Consequently, in order to avoid the risks of penalties and interest if Y fails to terminate within the 60-month period, Y files its 2010 return as a private foundation and pays the tax imposed by section 4940. Because a consent (described in paragraph (b)(7) of this section), which would prevent the period of limitations for all years in the 60-month period from expiring, is not in effect, in order to be able to file a claim for refund, Y and the Internal Revenue Service must agree to extend the period of limitation for all taxes imposed under chapter 42 for 2010. Based on the aggregate data for the entire 60-month period (2010 through 2014), Y does qualify as a publicly-supported organization for the entire 60-month period. Consequently, Y is treated as a publicly-supported organization for the entire 60-month period. Y files a claim for refund for the taxes paid under section 4940 for 2010, and such taxes are refunded.

(f) *Effective/applicability date—(1) Effective date.* These regulations are effective on September 9, 2008.

(2) *Applicability date.* The regulations in this section shall apply to taxable years beginning on or after January 1, 2008.

(3) *Expiration date.* The applicability of this section expires on September 8, 2011.

■ **Par. 6.** Section 1.509(a)-3 is amended by adding new paragraph (n) to read as follows:

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

* * * * *

(n) *Effective/applicability date.* This section shall apply to taxable years beginning after December 31, 1969. The applicability of paragraphs (a)(2), (a)(3)(i), (c), (d), (e) and (k) of this section shall be limited to taxable years beginning before January 1, 2008.

■ **Par. 7.** Section 1.509(a)-3T is added to read as follows:

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

(a)(1) [Reserved]. For further guidance see § 1.509(a)-3(a)(1).

(2) *One-third support test.* An organization will meet the one-third support test if it normally (within the meaning of paragraph (c) or (d) 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 that 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 paragraph (a)(2)(i) of this section and this paragraph (a)(2)(ii) (subject to the limitations referred to in this paragraph (a)(2)) will be referred to as the numerator of the one-third support fraction, and the 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), § 1.509(a)-3(f) distinguishes gifts and contributions from gross receipts; § 1.509(a)-3(g) distinguishes grants from gross receipts; § 1.509(a)-3(h) defines membership fees; § 1.509(a)-3(i) defines "any bureau or similar agency of a governmental unit"; § 1.509(a)-3(j) describes the treatment of certain indirect forms of support; paragraph (k) of this section describes the method of accounting for support; § 1.509(a)-3(l) describes the treatment of gross receipts from section 513(a)(1), (2), or (3) activities; and § 1.509(a)-3(m) 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) or (d) 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 that 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).

(a)(3)(ii) through (b) [Reserved]. For further guidance, see § 1.509(a)-3(a)(3)(ii) through (b).

(c) *Normally*—(1) *In general*—(i) *Definition.* The support tests set forth in section 509(a)(2) are to be computed on the basis of the nature of the organization's normal sources of support. An organization will be considered as normally receiving one third of its support from any combination of gifts, grants, contributions, membership fees, and gross receipts from permitted sources (subject to the limitations described in § 1.509(a)-3(b)) and not more than one third of its support from items described in section 509(a)(2)(B) for its current taxable year and the taxable year immediately succeeding its current year, if, for the current taxable year and the four taxable years immediately preceding the current taxable year, the aggregate amount of the support received during the applicable period from gifts, grants, contributions, membership fees, and gross receipts from permitted sources (subject to the limitations described in § 1.509(a)-3(b)) is more than one third, and the aggregate amount of the support received from items described in section 509(a)(2)(B) is not more than one third, of the total support of the organization for such 5-year period.

(ii) *First five years of an organization's existence.* See paragraph (d)(1) of this section for the definition of "normally" for organizations in the first five years of their existence.

(2) *Terminations under section 507(b)(1)(B).* For the special rules applicable to the term normally as applied to private foundations that elect to terminate their private foundation status pursuant to the 60-month procedure provided in section 507(b)(1)(B), see the regulations under such section.

(3) *Exclusion of unusual grants.* For purposes of applying the 5-year aggregation test for support set forth in paragraph (c)(1) of this section, one or more contributions may be excluded from the numerator of the one-third support fraction and from the denominator of both the one-third support and not-more-than-one-third support fractions only if such a contribution meets the requirements of this paragraph (c)(3). The exclusion provided by this paragraph (c)(3) is generally intended to apply to substantial contributions and bequests from disinterested parties, which contributions or bequests—

(i) Are attracted by reason of the publicly supported nature of the organization;

(ii) Are unusual or unexpected with respect to the amount thereof; and

(iii) Would by reason of their size, adversely affect the status of the organization as normally meeting the one-third support test for any of the applicable periods described in this paragraph (c) or paragraph (d) of this section. In the case of a grant (as defined in § 1.509(a)-3(g)) that meets the requirements of this paragraph (c)(3), if the terms of the granting instrument (whether executed before or after 1969) require that the funds be paid to the recipient organization over a period of years, the amount received by the organization each year pursuant to the terms of such grant may be excluded for such year. However, no item described in section 509(a)(2)(B) may be excluded under this paragraph (c)(3). The provisions of this paragraph (c)(3) shall apply to exclude unusual grants made during any of the applicable periods described in this paragraph (c) or paragraph (d) of this section. See paragraph (c)(5)(ii) of this section as to reliance by a grantee organization upon an unusual grant ruling under this paragraph (c)(3).

(4) *Determining factors.* In determining whether a particular contribution may be excluded under paragraph (c)(3) of this section, all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. Among the factors to be considered are—

(i) Whether the contribution was made by any person (or persons standing in a relationship to such person which is described in section 4946(a)(1)(C) through (G)) who created the organization, previously contributed a substantial part of its support or endowment, or stood in a position of authority, such as a foundation manager (within the meaning of section 4946(b)), with respect to the organization. A contribution made by a person other than those persons described in this paragraph (c)(4)(i) will ordinarily be given more favorable consideration than a contribution made by a person described in this paragraph (c)(4)(i);

(ii) Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer;

(iii) Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum;

(iv) Except in the case of a new organization, whether, prior to the receipt of the particular contribution,

the organization has carried on an actual program of public solicitation and exempt activities and has been able to attract a significant amount of public support;

(v) Whether the organization may reasonably be expected to attract a significant amount of public support subsequent to the particular contribution. In this connection, continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future support from the general public;

(vi) Whether, prior to the year in which the particular contribution was received, the organization met the one-third support test described in paragraph (c)(1) of this section without the benefit of any exclusions of unusual grants pursuant to paragraph (c)(3) of this section;

(vii) Whether neither the contributor nor any person standing in a relationship to such contributor which is described in section 4946(a)(1)(C) through (G) continues directly or indirectly to exercise control over the organization;

(viii) Whether the organization has a representative governing body as described in § 1.509(a)-3(d)(3)(i); and

(ix) Whether material restrictions or conditions (within the meaning of § 1.507-2T(a)(7)) have been imposed by the transferor upon the transferee in connection with such transfer.

(5) *Grantors and contributors.* Prior to the making of any grant or contribution expected to meet the requirements for exclusion under paragraph (c)(3) of this section, a potential grantee organization may request a ruling whether such grant or contribution may be so excluded. Requests for such ruling may be filed by the grantee organization. The issuance of such determination will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination of the applicability of paragraph (c)(3) of this section, including all information relating to the factors described in paragraph (c)(4) of this section. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522 and by the grantee organization for purposes of paragraph (c)(3) of this section.

(6) *Examples.* The application of the principles set forth in this paragraph are illustrated by the examples as follows.

For purposes of these examples, the term *general public* is defined as persons other than disqualified persons and other than persons from whom the foundation received gross receipts in excess of the greater of \$5,000 or 1 percent of its support in any taxable year, the term *gross investment income* is as defined in section 509(e), and the term *gross receipts* is limited to receipts from activities which are not unrelated trades or businesses (within the meaning of section 513).

Example 1. (i) For the years 2008 through 2012, X, an organization exempt under section 501(c)(3) that makes scholarship grants to needy students of a particular city, received support from the following sources:

2008:	
Gross receipts (general public)	\$35,000
Contributions (substantial contributors)	36,000
Gross investment income	29,000
Total support	100,000
2009:	
Gross receipts (general public)	34,000
Contributions (substantial contributors)	35,000
Gross investment income	31,000
Total support	100,000
2010:	
Gross receipts (general public)	35,000
Contributions (substantial contributors)	30,000
Gross investment income	35,000
Total support	100,000
2011:	
Gross receipts (general public)	33,000
Contributions (substantial contributors)	32,000
Gross investment income	35,000
Total support	100,000
2012:	
Gross receipts (general public)	31,000
Contributions (substantial contributors)	39,000
Gross investment income	30,000
Total support	\$100,000

(ii) In applying section 509(a)(2) to the taxable year 2012, on the basis of paragraph (c)(1)(i) of this section, the total amount of support from gross receipts from the general public (\$168,000) for the period 2008 through 2012, was more than one third, and the total amount of support from gross investment income (\$160,000) was less than one third, of X's total support for the same period (\$500,000). For the taxable years 2012 and 2013, X is therefore considered normally to receive more than one third of its support from the public sources described in section 509(a)(2)(A) and less than one third of its

support from items described in section 509(a)(2)(B). The fact that X received less than one third of its support from section 509(a)(2)(A) sources in 2012 and more than one third of its support from items described in section 509(a)(2)(B) in 2011 does not affect its status because it met the normally test over a 5-year period.

Example 2. Assume the same facts as in *Example 1* except that in 2012, X also received an unexpected bequest of \$50,000 from A, an elderly widow who was interested in encouraging the work of X, but had no other relationship to it. Solely by reason of the bequest, A became a disqualified person. X used the bequest to create 5 new scholarships. Its operations otherwise remained the same. Under these circumstances X could not meet the 5-year support test because the total amount received from gross receipts from the general public (\$168,000) would not be more than one-third of its total support for the 5-year period (\$550,000). Because A is a disqualified person, her bequest cannot be included in the numerator of the one-third support test under section 509(a)(2)(A). However, based on the factors set forth in paragraph (c)(4) of this section, A's bequest may be excluded as an unusual grant under paragraph (c)(3) of this section. Therefore, X will be considered to have met the support test for the taxable years 2012 and 2013.

Example 3. Y, an organization described in section 501(c)(3), was created by A, the holder of all the common stock in M corporation, B, A's wife, and C, A's business associate. The purpose of Y was to sponsor and equip athletic teams for underprivileged children in the community. Each of the three creators makes small cash contributions to Y. A, B, and C have been active participants in the affairs of Y since its creation. Y regularly raises small amounts of contributions through fundraising drives and selling admission to some of the sponsored sporting events. The operations of Y are carried out on a small scale, usually being restricted to the sponsorship of two to four baseball teams of underprivileged children. In 2009, M recapitalizes and creates a first and second class of 6 percent nonvoting preferred stock, most of which is held by A and B. In 2010, A contributes 49 percent of his common stock in M to Y. A's contribution of M's common stock was substantial and constitutes 90 percent of Y's total support for 2010. A combination of the facts and circumstances described in paragraph (c)(4) of this section preclude A's contribution of M's common stock in 2010 from being excluded as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether Y meets the one-third support test under section 509(a)(2).

Example 4. (i) M is organized in 2009 to promote the appreciation of ballet in a particular region of the United States. Its principal activities consist of erecting a theater for the performance of ballet and the organization and operation of a ballet company. M receives a determination letter that it is an organization described in section 501(c)(3) and that it is a public charity described in section 509(a)(2). The governing body of M consists of 9 prominent unrelated

citizens residing in the region who have either an expertise in ballet or a strong interest in encouraging appreciation of the art form.

(ii) In 2010, Z, a private foundation, proposes to make a grant of \$500,000 in cash to M to provide sufficient capital for M to commence its activities. Although A, the creator of Z, is one of the nine members of M's governing body, was one of M's original founders, and continues to lend his prestige to M's activities and fund raising efforts, A does not, directly or indirectly, exercise any control over M. M also receives a significant amount of support from a number of smaller contributions and pledges from other members of the general public. M charges admission to the ballet performances to the general public.

(iii) Although the support received in 2010 will not impact M's status as a public charity for its first 5 taxable years, it will be relevant to the determination of whether M meets the one-third support test under section 509(a)(2) for the 2014 taxable year, using the computation period 2010 through 2014. Within the appropriate timeframe, M may submit a request for a private letter ruling that the \$500,000 contribution from Z qualifies as an unusual grant.

(iv) Under the above circumstances, even though A was a founder and member of the governing body of M, M may exclude Z's contribution of \$500,000 in 2010 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether M meets the one-third support test under section 509(a)(2) for 2014.

Example 5. (i) Assume the same facts as *Example 4*. In 2013, B, a widow, passes away and bequeaths \$4 million to M. During 2009 through 2013, B made small contributions to M, none exceeding \$10,000 in any year. During 2009 through 2013, M received approximately \$550,000 from receipts for admissions and contributions from the general public. At the time of B's death, no person standing in a relationship to B described in section 4946(a)(1)(C) through (G) was a member of M's governing body. B's bequest was in the form of cash and readily marketable securities. The only condition placed upon the bequest was that it be used by M to advance the art of ballet.

(ii) Although the support received in 2013 will not impact M's status as a public charity for its first five taxable years, it will be relevant to the determination of whether M meets the one-third support test under section 509(a)(2) for future years. Within the appropriate timeframe, M may submit a request for a private letter ruling that the \$4 million bequest from B qualifies as an unusual grant.

(iii) Under the above circumstances, M may exclude B's bequest of \$4 million in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether M meets the one-third support test under section 509(a)(2) for 2014 and subsequent years.

Example 6. (i) N is a research organization that was created by A in 2009 for the purpose of carrying on economic studies primarily through persons receiving grants from N and engaging in the sale of economic

publications. N received a determination letter that it is described in section 501(c)(3) and that it is a public charity described in 509(a)(2). N's five-member governing body consists of A, A's sons, B and C, and two unrelated economists. In 2009, A made a contribution to N of \$100,000 to help establish the organization. During 2009 through 2013, A made annual contributions to N averaging \$20,000 a year. During the same period, N received annual contributions from members of the general public averaging \$15,000 per year and receipts from the sale of its publications averaging \$50,000 per year. In 2013, B made an *inter vivos* contribution to N of \$600,000 in cash and readily marketable securities.

(ii) Although the support received in 2013 will not impact N's status as a public charity for its first 5 taxable years, it will be relevant to the determination of whether N meets the one-third support test under section 509(a)(2) for future years. In determining whether B's contribution of \$600,000 in 2013 may be excluded as an unusual grant, the support N received in 2009 through 2013 is relevant in considering the factor described in paragraph (c)(4)(vi) of this section, notwithstanding that N received a determination letter that it is described in section 509(a)(2).

(iii) Based on the application of the factors in paragraphs (c)(4)(i) through (ix) of this section to N's circumstances, in particular the facts that B is a disqualified person described in section 4946(a)(1)(D) and N does not have a representative governing body as described in paragraphs (c)(4)(viii) and (d)(3)(i) of this section, N cannot exclude B's contribution of \$600,000 in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether N meets the one-third support test under section 509(a)(2) for 2014 and future years.

Example 7. (i) O is an educational organization created in 2009. O received a determination letter that it is described in section 501(c)(3) and that it is a public charity described in section 509(a)(2). The governing body of O has 9 members, consisting of A, a prominent civic leader and 8 other unrelated civic leaders and educators in the community, all of whom participated in the creation of O. During 2009 through 2013, the principal source of income for O has been receipts from the sale of its educational periodicals. These sales have amounted to \$200,000 for this period. Small contributions amounting to \$50,000 have also been received during the same period from members of the governing body, including A, as well as other members of the general public.

(ii) In 2013, A contributed \$750,000 of the nonvoting stock of S, a closely held corporation, to O. A retained a substantial portion of the voting stock of S. By a majority vote, the governing body of O decided to retain the S stock for a period of at least 5 years.

(iii) Although the support received in 2013 will not impact O's status as a public charity for its first 5 taxable years, it will be relevant to the determination of whether O meets the one-third support test under section 509(a)(2) for future years. In determining whether A's contribution of the S stock in 2013 may be

excluded as an unusual grant, the support O received in 2009 through 2013 is relevant in considering the factor described in paragraph (c)(4)(vi) of this section, notwithstanding that O received a determination letter that it is described in section 509(a)(2).

(iv) Based on the application of the factors in paragraphs (c)(4)(i) through (ix) of this section to O's circumstances, in particular the facts that A is a foundation manager within the meaning of section 4946(b) and A's contribution is in the form of closely held stock, O cannot exclude A's contribution of the S stock in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether O meets the one-third support test under section 509(a)(2) for 2014 and future years.

(d) *Definition of normally—first five years of an organization's existence—(1) In general.* An organization meets the one-third support test and the not-more-than-one-third support test during its first five taxable years as a section 501(c)(3) organization if the organization can reasonably be expected to meet the requirements of the one-third support test and the not-more-than-one-third support test during that period. With respect to such organization's sixth taxable year, the organization shall be described in section 509(a)(2) if it meets the one-third support test and the not-more-than-one-third support test under the definition of normally set forth in paragraph (c)(1)(i) of this section for its sixth taxable year (based on support received in its second through sixth taxable years), or for its fifth taxable year (based on support received in its first through fifth taxable years).

(2) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of paragraph (c)(1)(i) of this section) to meet 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) described in paragraph (c) of this section during its first 5 taxable years, the basic consideration is whether its organizational structure, current or proposed programs or activities, and actual or intended method of operation are such as to attract the type of broadly based support from the general public, public charities, and governmental units that is necessary to meet such tests. The factors that are relevant to this determination, and the weight accorded to each of them, may differ from case to case, depending on the nature and functions of the organization. An organization cannot reasonably be expected to meet the one-third support test and the not-more-than-one-third support test where the facts indicate that an organization is likely during its

first five taxable years to receive less than one-third of its support from permitted sources (subject to the limitations of paragraph (b) of this section) or to receive more than one-third of its support from items described in section 509(a)(2)(B).

(3) *Factors taken into account.* All pertinent facts and circumstances shall be taken into account under paragraph (d)(2) of this section in determining whether the organizational structure, programs or activities, and method of operation of an organization are such as to enable it to meet the tests under section 509(a)(2) during its first five taxable years. Some of the pertinent factors are:

(i) Whether the organization has or will have a governing body which is comprised of public officials, or individuals chosen by public officials acting in their capacity as such, of persons having special knowledge in the particular field or discipline in which the organization is operating, of community leaders, such as elected officials, clergymen, and educators, or, in the case of a membership organization, of individuals elected pursuant to the organization's governing instrument or bylaws by a broadly based membership. This characteristic does not exist if the membership of the organization's governing body is such as to indicate that it represents the personal or private interests of disqualified persons, rather than the interests of the community or the general public.

(ii) Whether a substantial portion of the organization's initial funding is to be provided by the general public, by public charities, or by government grants, rather than by a limited number of grantors or contributors who are disqualified persons with respect to the organization. The fact that the organization plans to limit its activities to a particular community or region or to a special field which can be expected to appeal to a limited number of persons will be taken into consideration in determining whether those persons providing the initial support for the organization are representative of the general public. On the other hand, the subsequent sources of funding which the organization can reasonably expect to receive after it has become established and fully operational will also be taken into account.

(iii) Whether a substantial proportion of the organization's initial funds are placed, or will remain, in an endowment, and whether the investment of such funds is unlikely to result in more than one-third of its total

support being received from items described in section 509(a)(2)(B).

(iv) In the case of an organization that carries on fundraising activities, whether the organization has developed a concrete plan for solicitation of funds from the general public on a community or area-wide basis; whether any steps have been taken to implement such plan; whether any firm commitments of financial or other support have been made to the organization by civic, religious, charitable, or similar groups within the community; and whether the organization has made any commitments to, or established any working relationships with, those organizations or classes of persons intended as the future recipients of its funds.

(v) In the case of an organization that carries on community services, such as combating community deterioration in an economically depressed area that has suffered a major loss of population and jobs, whether the organization has a concrete program to carry out its work in the community; whether any steps have been taken to implement that program; whether it will receive any part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant or contribution; and whether it has enlisted the sponsorship or support of other civic or community leaders involved in community service programs similar to those of the organization.

(vi) In the case of an organization that carries on educational or other exempt activities for, or on behalf of, members, whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community, area, profession, or field of special interest (depending on the size of the area and the nature of the organization's activities); whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross-section of the public rather than to restrict membership to a limited number of persons; and whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations.

(vii) In the case of an organization that provides goods, services, or facilities, whether the organization is or will be required to make its services, facilities, performances, or products available

(regardless of whether a fee is charged) to the general public, public charities, or governmental units, rather than to a limited number of persons or organizations; whether the organization will avoid executing contracts to perform services for a limited number of firms or governmental agencies or bureaus; and whether the service to be provided is one which can be expected to meet a special or general need among a substantial portion of the general public.

(4) *Example.* The application of this paragraph (d) may be illustrated by the following example:

Example. (i) Organization X was formed in January 2008 and uses a December 31 taxable year. After September 9, 2008, and before December 31, 2008, Organization X filed Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3) and in section 509(a)(2). In its application, Organization X established that it can reasonably be expected to operate as a public charity under this paragraph (d). Subsequently, Organization X received a ruling or determination letter that it is an organization described in sections 501(c)(3) and 509(a)(2) effective as of the date of its formation.

(ii) Organization X is described in section 509(a)(2) for its first 5 taxable years (for the taxable years ending December 31, 2008, through December 31, 2012).

(iii) Organization X can qualify as a public charity beginning with the taxable year ending December 31, 2013, if Organization X can meet the requirements of § 1.170A-9T(f)(4)(i) through (iii) or paragraphs (a) through (b) of this section for the taxable years ending December 31, 2009, through December 31, 2013, or for the taxable years ending December 31, 2008, through December 31, 2012.

(e) *Determinations on foundation classification and reliance.* (1) A ruling or determination letter that an organization is described in section 509(a)(2) may be issued to an organization. Such determination may be made in conjunction with the recognition of the organization's tax-exempt status or at such other time as the organization believes it is described in section 509(a)(2). The ruling or determination letter that the organization is described in section 509(a)(2) may be revoked if, upon examination, the organization has not met the requirements of this section. The ruling or determination letter that the organization is described in section 509(a)(2) also may be revoked if the organization's application for a ruling or determination contained one or more material misstatements of fact or such application was part of a scheme or plan to avoid or evade any provision of the Internal Revenue Code. The revocation of the determination that an

organization is described in section 509(a)(2) does not preclude revocation of the determination that the organization is described in section 501(c)(3).

(2) *Status of grantors or contributors.* For purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, grantors and contributors may rely upon a determination letter or ruling that an organization is described in section 509(a)(2) until the Internal Revenue Service publishes notice of a change of status (for example, in the Internal Revenue Bulletin or Publication 78, "Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986," which can be searched at www.irs.gov). For this purpose, grantors or contributors may also rely on an advance ruling that expires on or after June 9, 2008. However, a grantor or contributor may not rely on such an advance ruling or any determination letter or ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification under section 509(a)(2) or acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from such classification.

(3) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example 1. Y, a calendar year organization described in section 501(c)(3), is created in February 2008 for the purpose of displaying African art. On its exemption application Y shows, under penalties of perjury, that it can reasonably, in accordance with the requirements of paragraph (d) of this section, expect to receive support from the public in 2008 through 2012 that will satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2) for its first 5 taxable years, 2008 through 2012. Y may therefore receive a determination that it meets the requirements of paragraph (a) of this section. Pursuant to such determination, Y will be a public charity for its first five taxable years (2008, 2009, 2010, 2011, and 2012), regardless of the public support Y in fact receives during this period.

Example 2. Z, a calendar year organization described in section 501(c)(3), is created in July 2008. On its exemption application Z shows, under penalties of perjury, that it can reasonably, in accordance with the requirements of paragraph (d) of this section, expect to receive support from the public in 2008 through 2012 that will satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2) for its first 5 taxable years, 2008 through 2012. Z receives a determination that it is described in section 509(a)(2). However, the support actually received from the public over Z's first 5 taxable years (2008 through

2012) does not satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2), nor does the support Z receives from 2009 through and including its sixth taxable year, 2013, meet the one-third support and not-more-than-one-third support tests described in section 509(a)(2). Z is described in section 509(a)(2) during its first five years for all purposes. But, because Z has not met the requirements of paragraph (a) of this section either for 2008 through 2012 or 2009 through 2013, Z is not described in section 509(a)(2) for its taxable year 2013. If Z is not described in section 509(a)(1), (3), or (4), then Z is a private foundation as of 2013, and Z will be treated as a private foundation for all purposes (except as provided in paragraph (e)(2) of this section with respect to grantors and contributors).

(f) through (j) [Reserved]. For further guidance, see § 1.509(a)-3(f) through (j).

(k) *Method of accounting.* For purposes of section 509(a)(2), an organization's support will be determined under the method of accounting on the basis of which the organization regularly computes its income in keeping its books under section 446. For example, if a grantor makes a grant to an organization payable over a term of years, such grant will be includible in the support fraction of the grantee organization under the method of accounting on the basis of which it regularly computes its income in keeping its books under section 446.

(l) and (m) [Reserved]. For further guidance, see § 1.509(a)-3(l) and (m).

(n) *Transition rules.* (i) An organization that received an advance ruling, that expires on or after June 9, 2008, that it will be treated as an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2) will be treated as meeting the requirements of paragraph (d)(1) of this section for the first five taxable years of its existence as a section 501(c)(3) organization unless the Internal Revenue Service issued to the organization a proposed determination prior to September 9, 2008, that the organization is not described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(ii) Paragraph (d)(1) of this section shall not apply to an organization that received an advance ruling that expired prior to June 9, 2008, and that did not timely file with the Internal Revenue Service the required information to establish that it is an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(iii) An organization that fails to meet a public support test for its first taxable year beginning on or after January 1, 2008, under the regulations in this section may use the prior test set forth

in § 1.509(a)-3(c)(1) or § 1.170A-9(e)(4)(i) or (ii) as in effect before September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) to determine whether the organization may be publicly supported for its 2008 taxable year based on its satisfaction of a public support test for taxable year 2007, computed over the period 2003 through 2006.

(iv) *Examples.* The application of this paragraph (n) may be illustrated by the following examples:

Example 1. (i) Organization M was formed in January 2004, and uses a June 30 taxable year. Organization M received an advance ruling letter that it is recognized as an organization described in section 501(c)(3) effective as of the date of its formation and that it is treated as a public charity under section 509(a)(2) during the five-year advance ruling period that will end on June 30, 2008. This date is within 90 days before September 9, 2008.

(ii) Under the transition rule, Organization M is a public charity described in section 509(a)(2) for the taxable years ending June 30, 2004, through June 30, 2008. Organization M does not need to establish within 90 days after June 30, 2008, that it met a public support test under § 1.170A-9(e) or § 1.509(a)-3, as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) for its advance ruling period.

(iii) Organization M can qualify as a public charity beginning with the taxable year ending June 30, 2009, if Organization M can meet the requirements of § 1.170A-9T(f)(4)(i) or (ii) or paragraph (c)(1) of this section for the taxable years ending June 30, 2005, through June 30, 2009, or for the taxable years ending June 30, 2004, through June 30, 2008. In addition, for its taxable year ending June 30, 2009, Organization M may qualify as a public charity by availing itself of the transition rule contained in paragraph (n)(iii) of this section, which looks to support received by M in the taxable years ending June 30, 2004, through June 30, 2007.

Example 2. (i) Organization N was formed in January 2000 and uses a December 31 taxable year. Organization N received a final determination that it was recognized as tax-exempt under section 501(c)(3) and as a public charity prior to September 9, 2008.

(ii) For taxable year 2008, Organization N will qualify as publicly supported if it meets the requirements under either § 1.170A-9T(f)(4)(i) or (ii) or paragraph (c)(1) of this section for the five-year period January 1, 2004, through December 31, 2008.

Organization N will also qualify as publicly supported for taxable year 2008 if it meets the requirements under either § 1.170A-9(e)(4)(i) or (ii) or § 1.509(a)-3(c)(1) as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) for taxable year 2007, using the four-year period from January 1, 2003, through December 31, 2006.

(o) *Effective/applicability date*—(1) *Effective date.* These regulations are effective on September 9, 2008.

(2) *Applicability date.* The regulations in paragraphs (a)(2), (a)(3)(i), (c), (d), (e) and (k) of this section shall apply to taxable years beginning on or after January 1, 2008.

(3) *Expiration date.* The applicability of this section expires on September 8, 2011.

■ **Par. 8.** Section 1.6033-2 is amended by revising paragraph (k) to read as follows:

§ 1.6033-2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

(k) *Effective/applicability date.* The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1969. The applicability of paragraphs (a)(2)(ii)(g) and (a)(2)(ii)(h) of this section shall be limited to taxable years beginning before January 1, 2008.

■ **Par. 9.** Section 1.6033-2T is added to read as follows:

§ 1.6033-2T Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980) (temporary).

(a)(1) through (a)(2)(ii)(f) [Reserved]. For further guidance, see § 1.6033-2(a)(1) through (a)(2)(ii)(f).

(g) The names and addresses of all officers, directors, or trustees (or any person having responsibilities or powers similar to those of officers, directors or trustees) of the organization, and, in the case of a private foundation, all persons who are foundation managers, within the meaning of section 4946(b)(1). Organizations must also attach a schedule showing the names and addresses and/or total numbers of key employees, highly compensated employees and independent contractors as prescribed by publication, form or instructions.

(h) A schedule showing the compensation and other payments made to each person whose name is required to be listed in paragraph (a)(2)(ii)(g) of this section during the calendar year ending within the organization's annual accounting period, or during such other period as prescribed by publication, form or instructions

(a)(2)(ii)(f) through (j) [Reserved]. For further guidance, see § 1.6033-2(a)(2)(ii)(i) through (j).

(k) *Effective/applicability date*—(1) *Effective date.* These regulations are effective on September 9, 2008.

(2) *Applicability date.* The regulations in paragraphs (a)(2)(ii)(g) and (a)(2)(ii)(h) of this section shall apply to taxable years beginning on or after January 1, 2008.

(3) *Expiration date.* The applicability of this section expires September 8, 2011.

■ **Par. 10.** Section 1.6043-3 is amended as follows:

■ 1. The undesignated text following paragraph (b)(8) is designated as paragraph (b)(9).

■ 2. Paragraph (d)(3) is revised.

■ 3. New paragraph (e) is added.

The addition and revision read as follows:

§ 1.6043-3 Returns regarding liquidation, dissolution, termination, or substantial contraction of organizations exempt from taxation under section 501(a).

(d)(3) For the definition of the term "integrated auxiliaries" as used in paragraph (b)(1) of this section, see § 1.6033-2(h).

(e) *Effective/applicability date.* The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1969. The applicability of paragraphs (b)(8) and (d) of this section shall be limited to returns filed for taxable years beginning before January 1, 2008.

■ **Par. 11.** Section 1.6043-3T is added to read as follows:

§ 1.6043-3T Returns regarding liquidation, dissolution, termination, or substantial contraction of organizations exempt from taxation under section 501(a) (temporary).

(a) through (b)(7) [Reserved]. For further guidance, see § 1.6043-3(a) through (b)(7).

(b)(8) Any organization no longer exempt from taxation under section 501(a) and that during the period of its exemption under such section was not an organization described in section 501(c)(3), a corporation described in section 501(c)(2) that held title to property for an organization described in section 501(c)(3), or an organization described in such other section as

prescribed by publication, form or instructions.

(b)(9) and (c) [Reserved]. For further guidance, see § 1.6043-3(b)(9) and (c).

(d) *Definitions.* (1) For the definition of the term "normally" as used in paragraph (b)(2) of this section, see § 1.6033-2(g)(3).

(2) For the definition of the term "integrated auxiliaries" as used in paragraph (b)(1) of this section, see § 1.6033-2(h).

(e) *Effective/applicability date*—(1) *Effective date.* The regulations in this section are effective on September 9, 2008.

(2) *Applicability date.* Paragraphs (b)(8) and (d) of this section shall apply to returns filed for taxable years beginning on or after January 1, 2008.

(3) *Expiration date.* The applicability of this section expires on September 8, 2011.

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 12.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 13.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *
(b) * * *

CFR part or section where identified and described	Current OMB control No.
1.6033-2T	1545-2117
* * * * *	* * * * *

Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

Approved: August 21, 2008.

Eric Solomon,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8-20560 Filed 9-8-08; 8:45 am]

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