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**We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.**

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**Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.**

**For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.**

## EXEMPT ORGANIZATIONS • PRIVATE FOUNDATIONS • UNRELATED INCOME

### [ § 3001 ] EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

Sec. 501 [1986 Code]. (a) **EXEMPTION FROM TAXATION**—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) **TAX ON UNRELATED BUSINESS INCOME AND CERTAIN OTHER ACTIVITIES**—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III and VI of this subchapter, but (notwithstanding parts II, III and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) **LIST OF EXEMPT ORGANIZATIONS**—The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (1).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other non-profitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(EX) For purposes of this title—

(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

(ii) For purposes of this subparagraph, the term "qualified subsidiary" means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock.

(F) For purposes of subparagraph (A), the term "real property" includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

(d) RELIGIOUS AND APOSTOLIC ORGANIZATIONS.—The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) COOPERATIVE HOSPITAL SERVICE ORGANIZATIONS.—For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the purchasing of insurance on a group basis), warehousing, billing and collection, food, clinical industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or agency or instrumentality of any of the foregoing.

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8½ months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them, and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(f) **COOPERATIVE SERVICE ORGANIZATIONS OF OPERATING EDUCATIONAL ORGANIZATIONS**— For purposes of this title, if an organization is—

(1) organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for and supervising the performance by independent contractors of investment services related thereto) in stocks and securities, the moneys contributed thereto by each of the members of such organization, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members,

(2) organized and controlled by one or more such members, and

(3) comprised solely of members that are organizations described in clause (ii) or (iv) of section 170(b)(1)(A)—

(A) which are exempt from taxation under subsection (a), or

(B) the income of which is excluded from taxation under section 115(a),

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

(g) **DEFINITION OF AGRICULTURAL**—For purposes of subsection (c)(5), the term "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(h) **EXPENDITURES BY PUBLIC CHARITIES TO INFLUENCE LEGISLATION**—

(1) **GENERAL RULE**—In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally—

(A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or

(B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

(2) **DEFINITIONS**—For purposes of this subsection—

(A) **LOBBYING EXPENDITURES**—The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

(B) **LOBBYING CEILING AMOUNT**—The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

(C) **GRASS ROOTS EXPENDITURES**—The term "grass roots expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d)) without regard to paragraph (1)(B) thereof.

(D) **GRASS ROOTS CEILING AMOUNT**—The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

(3) **ORGANIZATIONS TO WHICH THIS SUBSECTION APPLIES**—This subsection shall apply to any organization which has elected (in such manner and at such time as the Secretary may prescribe) to have the provisions of this subsection apply to such organization and which, for the taxable year which includes the date the election is made, is described in subsection (c)(3) and—

(A) is described in paragraph (4), and

(B) is not a disqualified organization under paragraph (5).

(4) **ORGANIZATIONS PERMITTED TO ELECT TO HAVE THIS SUBSECTION APPLY**—An organization is described in this paragraph if it is described in—

(B) such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.

(2) QUALIFIED AMATEUR SPORTS ORGANIZATION DEFINED.—For purposes of this subsection, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(k) TREATMENT OF CERTAIN ORGANIZATIONS PROVIDING CHILD CARE.—For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and 2522(a)(2), the term "educational purposes" includes the providing of care of children away from their homes if—

(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

(2) the services provided by the organization are available to the general public.

→ *Caution: Code Sec. 501(l), below, prior to amendment by P.L. 101-73, applies before August 9, 1989.* ←

(l) GOVERNMENT CORPORATIONS EXEMPT UNDER SUBSECTION (c)(1).—The organization described in this subsection is the Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

→ *Caution: Code Sec. 501(l), below, as amended by P.L. 101-73, takes effect on August 9, 1989.* ←

(l) GOVERNMENT CORPORATIONS EXEMPT UNDER SUBSECTION (c)(1).—For purposes of subsection (c)(1), the following organizations are described in this subsection:

(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

(2) The Resolution Trust Corporation established under section 21A of the Federal Home Loan Bank Act.

(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act.

(m) CERTAIN ORGANIZATIONS PROVIDING COMMERCIAL-TYPE INSURANCE NOT EXEMPT FROM TAX.—

(1) DENIAL OF TAX EXEMPTION WHERE PROVIDING COMMERCIAL-TYPE INSURANCE IS SUBSTANTIAL PART OF ACTIVITIES.—An organization described in paragraph (3) or (4) of subsection (c) shall be exempt from tax under subsection (a) only if no substantial part of its activities consists of providing commercial-type insurance.

(2) OTHER ORGANIZATIONS TAXED AS INSURANCE COMPANIES ON INSURANCE BUSINESS.—In the case of an organization described in paragraph (3) or (4) of subsection (c) which is exempt from tax under subsection (a) after the application of paragraph (1) of this subsection—

(A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and

(B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

(3) COMMERCIAL-TYPE INSURANCE.—For purposes of this subsection, the term "commercial-type insurance" shall not include—

(A) insurance provided at substantially below cost to a class of charitable recipients,

(B) incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations,

(C) property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii)) by a church or convention or association of churches for such church or convention or association of churches,

(D) providing retirement or welfare benefits (or both) by a church or a convention or association of churches (directly or through an organization described in section 414(e)(3)(A) or 414(e)(3)(B)(ii)) for the employees (including employees

This amendment would make it clear that cooperative arrangements for investment of the type represented by The Common Fund will be exempt from taxation. The new provision is limited to organizations formed and controlled by the investing educational institutions themselves, and is not to apply to any organization formed to promote the furnishing of investment services by private interests even though those services might be made available only to educational organizations. In other words, if the schools that were involved formed their own cooperative investing organization, then it would be exempt under this provision. However, if a private brokerage company or investment advisory company were to initiate the formation of a cooperative investing organization, in order to obtain customers for its business, such an organization would not be exempt under this provision even though it were limited to schools.

The new provision provides that the term "charitable" as used in section 501(c)(3) is to include a common investment fund of educational organizations, including government educational organizations and certain organizations organized for the benefit of these organizations. This means that such an organization would qualify under section 501(c)(3) only if the other relevant requirements of that provision are also met. In other words, the organizations would still have to comply with the rules prohibiting electioneering, limiting lobbying, and prohibiting inurements of benefits to private shareholders. It is intended that school investment funds qualifying under section 501(c)(3), but organized separately from the particular college in connection with and for the benefit of which it operates, could participate (on the same basis as the school itself) in the cooperative investment organization, unless they represent private foundations. This type of fund is principally illustrated by a foundation that operates as an arm of a State college or university, and is already recognized as a "public charity" under the Internal Revenue Code (sec. 170(b)(1)(A)(iv)).

This amendment is to apply with respect to taxable years ending on or after January 1, 1974. However, it is not intended to imply that such a cooperative investing organization would not be exempt for prior years. Also,

in adding this provision relating specifically to cooperative investment funds, it is not intended that any interference be drawn as to the exempt status of other organizations formed by educational institutions or by other charities on their behalf to carry out their normal functions in a cooperative manner. *Senate Finance Committee Report.*

The House bill makes these changes effective for taxable years ending after the date of enactment. The committee's bill, however, makes the changes effective for taxable years beginning after December 31, 1969, the effective date of the extension of the unrelated business income tax by the Tax Reform Act of 1969—*Senate Finance Committee Report.*

.0228 The Committee Report on P.L. 92-418 is at 1972-2 CB 713.

.0229 The Committee Report on P.L. 91-618 is at 805 CCH ¶ 3001.012.

.023 Committee Report on P.L. 91-172 is at 1969-3 CB 199, 423, 644.

.024 Committee Report on P.L. 90-364 appeared at 714 CCH ¶ 3001.014.

.026 Committee Report on P.L. 89-800 appeared at 714 CCH ¶ 3001.015.

.028 Committee Report on P.L. 89-352 appeared at 714 CCH ¶ 3001.02.

.03 Committee Report on P.L. 87-834 was reproduced at 633 CCH ¶ 3005.015.

.04 Committee Reports on P.L. 86-667 are at 1960-2 CB 753.

.05 Committee Report on P.L. 86-428 is at 1960-1 CB 809.

.07 Committee Reports on P.L. 429 are at 1950-1 CB 954, 967.

.20 Committee Reports on 1934 Code Sec. 501 as originally enacted were reproduced at 543 CCH ¶ 3005.20 and 3005.25.

→ **Caution: Reg. § 1.501(a)-1 does not reflect P.L. 91-618, P.L. 92-418, P.L. 96-601, P.L. 96-605, P.L. 99-514, P.L. 100-203, or P.L. 100-647. See ¶ 3001.0015 et seq.** ←

### ● Regulations

**¶ 3024** § 1.501(a)-1. Exemption from taxation.—(a) *In general: proof of exemption.*—(1) Section 501(a) provides an exemption from income taxes for organizations which are described in section 501(c) or (d) and section 401(a), unless such organization is a "feeder organization" (see section 502), or unless it engages in a transaction described in section 503. However, the exemption does not extend to "unrelated business taxable income" of such an organization (see part III (Section 511 and following), subchapter F, chapter 1 of the Code).

(2) An organization, other than an employees' trust described in section 401(a), is not exempt from tax merely because it is not organized and operated for profit. In order to establish its exemption, it is necessary that every such organization claiming exemption file an application form as set forth below with the district director for the internal revenue district in which is located the principal place of business or principal office of the organization. Subject only to the Commissioner's inherent power to revoke rulings because of a change in the law or regulations or for other good cause, an organization that has been determined by the Commissioner or the district director to be exempt under section 501(a) or the corresponding provision of prior law may rely

**¶ 3024 Reg. § 1.501(a)-1(a)(1)**

→ *Caution: Reg. § 1.501(a)-1 does not reflect P.L. 91-618, P.L. 92-418, P.L. 96-601, P.L. 96-605, P.L. 99-514, P.L. 100-203, or P.L. 100-647. See ¶ 3001.0015 et seq.* ←

upon such determination so long as there are no substantial changes in the organization's character, purposes, or methods of operation. An organization which has been determined to be exempt under the provisions of the Internal Revenue Code of 1939 or prior law is not required to secure a new determination of exemption merely because of the enactment of the Internal Revenue Code of 1954 unless affected by substantive changes in law made by such Code.

(3) An organization claiming exemption under section 501(a) and described in any paragraph of section 501(c) (other than section 501(c)(1)) shall file the form of application prescribed by the Commissioner and shall include thereon such information as required by such form and the instructions issued with respect thereto. For rules relating to the obtaining of a determination of exempt status by an employees' trust described in section 401(a), see the regulations under section 401.

(b) *Additional proof by particular classes of organizations.* (1) Organizations mentioned below shall submit with and as a part of their applications the following information:

(i) Mutual insurance companies shall submit copies of the policies or certificates of membership issued by them.

(ii) In the case of title holding companies described in section 501(c)(2), if the organization for which title is held has not been specifically notified in writing by the Internal Revenue Service that it is held to be exempt under section 501(a), the title holding company shall submit the information indicated herein as necessary for a determination of the status of the organization for which title is held.

(iii) An organization described in section 501(c)(3) shall submit with, and as a part of, an application filed after July 26, 1959, a detailed statement of its proposed activities.

(2) In addition to the information specifically called for by this section, the Commissioner may require any additional information deemed necessary for a proper determination of whether a particular organization is exempt under section 501(a), and when deemed advisable in the interest of an efficient administration of the internal revenue laws, he may in the cases of particular types of organizations prescribe the form in which the proof of exemption shall be furnished.

(3) An organization claiming to be specifically exempted by section 6033(a) from filing annual returns shall submit with and as a part of its application a statement of all the facts on which it bases its claim.

(c) *"Private shareholder or individual" defined.* The words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

(d) *Requirement of annual returns.* For the annual return requirements of organizations exempt under section 501(a), see section 6033 and § 1.6033-1.

(e) *Certain Puerto Rican pension, etc., trusts.* Effective for taxable years beginning after December 31, 1973, section 1022(i)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 942) provides that trusts under certain Puerto Rican pension, etc., plans (as defined under P.R. Laws Ann. tit. 13, § 3165, and the articles thereunder), all of the participants of which are residents of the Commonwealth of Puerto Rico, are to be treated only for purposes of section 501(a) as trusts described in section 401(a). The practical effect of section 1022(i)(1) is to exempt these trusts from U.S. income tax on income from their U.S. investments. For purposes of section 1022(i)(1), the term "residents of the Commonwealth of Puerto Rico" means

months at the time of distribution had they not been consolidated.

Rev. Rul. 75-289, 1975-2 CB 215

**10 Exempt status after termination.**—A corporation that remains in existence after terminating its private foundation status under Code Sec. 507(b)(1)(A) must, unless specifically excepted by Code Sec. 508(c), file an Application for Recognition of Exemption if it wishes to be treated as an organization described in Code Sec. 501(c)(3).

Rev. Rul. 74-490, 1974-2 CB 171

A private foundation that gave notice that it was terminating its private foundation status by operating as a public charity for a 60-month period beginning with the first day of its next taxable year and that it was changing its annual

accounting period from a calendar to a fiscal year pursuant to section 1442-1(c)(2) or the regulations may begin the 60-month period on the earlier fiscal year date.

Rev. Rul. 77-113, 1977-1 CB 132

**50 Substantial contributor.**—An organization that is a nonexempt charitable trust described in Code Sec. 4947(a)(1) that has made contributions to a private foundation in excess of the limitation in Code Sec. 507(d)(2) is not a "substantial contributor" within the meaning of that section for purposes of the tax on self-dealing under Code Sec. 4941. The exception provided in Reg. § 1.507-5(a)(2) for Code Sec. 501(c)(3) organizations also applies to nonexempt charitable trusts described in Code Sec. 4947(a)(1).

Rev. Rul. 73-455, 1973-2 CB 187

### [¶ 3111] SPECIAL RULES WITH RESPECT TO SECTION 501(c)(3) ORGANIZATIONS

Sec. 508 [1986 Code] (a) NEW ORGANIZATIONS MUST NOTIFY SECRETARY THAT THEY ARE APPLYING FOR RECOGNITION OF SECTION 501(c)(3) STATUS.—Except as provided in subsection (c), an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3)—

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

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

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

(c) EXCEPTIONS.—

(1) MANDATORY EXCEPTIONS.—Subsections (a) and (b) shall not apply to—

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

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

(2) EXCEPTIONS BY REGULATIONS.—The Secretary may by regulations exempt (to the extent and subject to such conditions as may be prescribed in such regulations) from the provisions of subsection (a) or (b) or both—

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

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

(d) DISALLOWANCE OF CERTAIN CHARITABLE, ETC., DEDUCTIONS.—

(1) GIFT OR BEQUEST TO ORGANIZATIONS SUBJECT TO SECTION 507(c) TAX.—No gift or bequest made to an organization upon which the tax provided by section 507(c) has been imposed shall be allowed as a deduction under section 170, 345(b)(2), 566(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made—

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

(B) by a substantial contributor (as defined in section 507(d)(2)) in his taxable year which includes the first day on which action is taken by such organization



which culminates in the imposition of tax under section 507(c) and any subsequent taxable year.

(2) GIFT OR BEQUEST TO TAXABLE PRIVATE FOUNDATION SECTION 4947 TRUST, ETC.—No gift or bequest made to an organization shall be allowed as a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made—

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

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

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

(e) GOVERNING INSTRUMENTS.—

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

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

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

(2) SPECIAL RULES FOR EXISTING PRIVATE FOUNDATIONS.—In the case of any organization organized before January 1, 1970, paragraph (1) shall not apply—

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

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

.01 Added by P.L. 91-172. Amended by P.L. 94-453 (Deadwood Act). For details, see the Code Volumes.

.05 Committee Reports on P.L. 91-172 were reproduced at 737 CCH ¶ 3100.022.

### ● Regulations

[¶ 3112] § 1.508-1 Notices.—(a) *New organizations must notify the Commissioner that they are applying for recognition of section 501(c)(3) status—*(1) *In general.* Except as provided in subparagraph (3) of this paragraph, an organization that is organized after October 9, 1969, will not be treated as described in section 501(c)(3)—

(i) Unless such organization has given the Commissioner notice in the manner prescribed in subparagraph (2) of this paragraph; or

(ii) For any period before the giving of such notice, unless such notice is given in the manner and within the time prescribed in subparagraph (2) of this paragraph.

No organization shall be exempt from taxation under section 501(a) by reason of being described in section 501(c)(3) whenever such organization is not treated as described in section 501(c)(3) by reason of section 508(a) and this paragraph. See section 508(d)(2)(B) and § 1.508-2(b) regarding the deductibility of charitable contributions to an organization during the period such organization is not exempt under section 501(a) as an organization described in section 501(c)(3) by reason of failing to file a notice

¶ 3112 Reg. § 1.508-1(a)(1)(i)

under section 508(a) and this subparagraph. See also § 1.508-2(b)(1)(viii) regarding the deductibility of charitable contributions to trusts described in section 4947(a)(1).

(2) *Filing of notice.* (i) For purposes of subparagraph (1) of this paragraph except as provided in subparagraph (3) of this paragraph, an organization seeking exemption under section 501(c)(3) must file the notice described in section 508(a) within 15 months from the end of the month in which the organization was organized or before March 22, 1973, whichever comes later. Such notice is filed by submitting a properly completed and executed Form 1023, Exemption Application. Notice should be filed with the district director. A request for extension of time for the filing of such notice should be submitted to such district director. Such request may be granted if it demonstrates that additional time is required.

(ii) Although the information required by Form 1023 must be submitted to satisfy the notice required by this section, the failure to supply, within the required time, all of the information required to complete such form is not alone sufficient to deny exemption from the date of organization to the date such complete information is submitted by the organization. If the information which 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 notice will be considered timely.

(iii) For purposes of subdivision (i) of this subparagraph and paragraph (b)(2)(i) of this section, an organization shall be considered "organized" on the date it becomes an organization described in section 501(c)(3) (determined without regard to section 508(a)).

(iv) Since a trust described in section 4947(a)(2) is not an organization described in section 501(c)(3), it is not required to file a notice described in section 508(a).

(v) For the treatment of community trusts, and the trusts or funds comprising them, under section 508, see the special rules under § 1.170A-9(e).

(vi) A foreign organization shall, for purposes of section 508, be treated in the same manner as a domestic organization, except that section 508 shall not apply to a foreign organization which is described in section 4948(b).

(3) *Exceptions from notice.* (i) Subparagraphs (1) and (2) of this paragraph are inapplicable to the following organizations:

(a) Churches, interchurch organizations of local units of a church, conventions or associations of churches, or integrated auxiliaries of a church, such as men's or women's organization, religious school, mission society, or youth group;

(b) Any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally no more than \$5,000 (as described in subdivision (ii) of this subparagraph);

(c) Subordinate organizations (other than private foundations) covered by a group exemption letter;

(d) Solely for purposes of sections 507, 508(d)(1), 508(d)(2), 508(d)(3), 508(e), 509 and chapter 42, a trust described in section 4947(a)(1). (However, a trust described in section 501(c)(3) which was organized after October 9, 1969 shall be exempt under section 501(a) by reason of being described in section 501(c)(3) only if it files such notice); and

(e) Any other class of organization that the Commissioner from time to time excludes from the requirement of filing notice under section 508(a).

(ii) For purposes of subdivision (i)(b) of this subparagraph and paragraph (b)(7)(ii) of this section, the gross receipts (as defined in subdivision (iii) of this subparagraph) of an organization are normally not more than \$5,000 if—

(a) During the first taxable year of the organization the organization has received gross receipts of \$7,500 or less;

(b) During its first two taxable years the aggregate gross receipts received by the organization are \$12,000 or less; and

(c) In the case of an organization which has been in existence for at least three taxable years, the aggregate gross receipts received by the organization during the immediately preceding two taxable years, plus the current year are \$15,000 or less.

If an organization fails to meet the requirements of (a), (b), or (c) of this subdivision, then with respect to the organization, such organization shall be required to file the notices described in section 508(a) and (b) within 90 days after the end of the period described in (a), (b), or (c) of this subdivision or before March 22, 1973, whichever is later, in lieu of the period prescribed in subparagraph (2)(i) of this paragraph. Thus, for example, if an organization meets the \$7,500 requirement of (a) of this subdivision for its first taxable year, but fails to meet the \$12,000 requirement of (b) of this subdivision for the period ending with its second taxable year, then such organization shall meet the notification requirements of section 508(a)(1) and 508(b) and subparagraph (2)(i) of this paragraph if it files such notification within 90 days after the close of its second taxable year. If an organization which has been in existence at least three taxable years meets the requirements of (a), (b), and (c) with respect to all prior taxable years, but fails to meet the requirements of (c) of this subdivision with respect to the current taxable year, then even if the organization fails to make such notification within 90 days after the close of the current taxable year, section 508(a)(1) and 508(b) shall not apply with respect to its prior years. In such a case, the organization shall not be treated as described in section 501(c)(3) for a period beginning with such current taxable year and ending when such notice is given under section 508(a)(2).

(iii) For a definition of "gross receipts" for purposes of subdivision of (i)(b) of this subparagraph and paragraph (b)(7)(ii) of this section, see § 1.6033-2(g)(4).

(4) *Voluntary filings by new organizations excepted from filing notice.* Any organization excepted from the requirement of filing notice under section 508(a) will be exempt from taxation under section 501(c)(3) if it meets the requirements of that section, whether or not it files such notice. However, in order to establish its exemption with the Internal Revenue Service and receive a ruling or determination letter recognizing its exempt status, an organization excepted from the notice requirement by reason of subparagraph (3) of this paragraph should file proof of its exemption in the manner prescribed in § 1.501(a)-1.

(b) *Presumption that old and new organizations are private foundations—(1) In general.* Except as provided in subparagraph (7) of this paragraph, any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3), and which does not notify the Commissioner within the time and in the manner prescribed in subparagraph (2) that it is not a private foundation, will be presumed to be a private foundation.

(2) *Filing of notice.* (i) Except as provided in subparagraph (7) of this paragraph, an organization must file the notice described in section 508(b) and subparagraph (1) of this paragraph within 15 months from the end of the month in which such organization was organized, or before March 22, 1973, whichever comes

later. See paragraph (a)(2)(iii) of this section, for rules pertaining to when an organization is "organized"

(ii) Any organization filing notice under this paragraph that has received a ruling or determination letter from the Internal Revenue Service dated on or before July 13, 1970, recognizing its exemption from taxation under section 501(c)(3) (or the corresponding provisions of prior law), shall file the notice described in section 508(b) by submitting a properly completed and executed Form 4653, Notification Concerning Foundation Status.

(iii) The financial schedule on Form 4653 need be completed only if the organization is, or thinks it might be, described in section 170(b)(1)(A)(iv) or (v) or section 509(a)(2).

(iv) Any organization filing notice under this paragraph that has not received a ruling or determination letter from the Internal Revenue Service dated on or before July 13, 1970, recognizing its exemption from taxation under section 501(c)(3) (or the corresponding provisions of prior law), shall file its notice by submitting a properly completed and executed Form 1023 and providing information that it is not a private foundation. The organization shall also submit all information required by the regulations under section 170 or 509 (whichever is applicable) necessary to establish recognition of its classification as an organization described in section 509(a)(1), (2), (3), or (4). A Form 1023 submitted prior to July 14, 1970, will satisfy this requirement if the organization submits an additional statement that it is not a private foundation together with all pertinent additional information required. Any statement filed under this subdivision shall be accompanied by a written declaration by the principal officer, manager or authorized trustee that there is a reasonable basis in law and in fact for the statement that the organization so filing is not a private foundation, and that to the best of the knowledge and belief of such officer, manager or trustee, the information submitted is complete and correct.

(v) The notice filed under subdivision (ii) of this subparagraph should be filed in accordance with the instructions applicable to Form 4653. The notice required by subdivision (iv) of this subparagraph should be filed with the district director. An extension of time for the filing of such notice may be granted by the director of the Internal Revenue Service Center or district director upon timely request by the organization to such person, if the organization demonstrates that additional time is required.

(3) *Effect of notice upon the filing organization.* (i) The notice filed under this paragraph may not be relied upon by the organization so filing unless and until the Internal Revenue Service notifies the organization that it is an organization described in paragraph (1), (2), (3) or (4) of section 509(a). For purposes of the preceding sentence, an organization that has filed notice under section 508(b), and has previously received a ruling that it is an organization described in section 170(b)(1)(A) (other than clauses (vii) and (viii) thereof), will be considered to have been notified by the Internal Revenue Service that it is an organization described in paragraph (1) of section 509(a) if (a) the facts and circumstances forming the basis for the issuance of such ruling have not substantially changed, and (b) the ruling issued under that section has not been revoked expressly or by a subsequent change of the law or regulations under which the ruling was issued.

(ii) If an organization has filed a notice under section 508(b) stating that it is not a private foundation and designating only one paragraph of section 509(a) under which it claims recognition of its classification (such as an organization described in section 509(a)(2)), and if it has received a ruling or determination letter which recognizes that it is not a private foundation but which fails to designate the paragraph under section 509(a) in which it is described, then such organization will be treated as described under the paragraph designated by it, until such ruling or determination

letter is modified or revoked. The rule in the preceding sentence shall not apply to an organization which indicated that it does not know its status under section 509(a) or which claimed recognition of its status under more than one paragraph of section 509(a).

(4) *Effect of notice upon grantors or contributors to the filing organization.* In the case of grants, contributions, or distributions made prior to—

(i) In the case of community trusts, 6 months after the date on which corrective and clarifying regulations designated as § 1.170A-9(e)(10) become final.

(ii) In the case of medical research organizations, 6 months after the date on which corrective and clarifying regulations designated as § 1.170A-9(b)(2) become final, and

(iii) In all other cases, January 1, 1976, any organization which has properly filed the notice described in section 508(b) prior to March 22, 1973 will not be treated as a private foundation for purposes of making any determination under the internal revenue laws with respect to a grantor, contributor or distributor (as for example, a private foundation distributing all of its net assets pursuant to a section 507(b)(1)(A) termination) thereto, unless the organization is controlled directly or indirectly by such grantor, contributor or distributor, if by the 30th day after the day on which such notice is filed, the organization has not been notified by the Commissioner that the notice filed by such organization has failed to establish that such organization is not a private foundation. See subparagraph (6) of this paragraph for the effect of an adverse notice by the Internal Revenue Service. For purposes of this subparagraph, an organization which has properly filed the notice described in section 508(b) prior to March 22, 1973, and which has claimed recognition of its status under only one paragraph of section 509(a) in such notice, will be treated only for purposes of grantors, contributors or distributors as having the classification claimed in the notice if the provisions of this subparagraph are otherwise satisfied.

(5) *Statement that old and new organizations are operating foundations.* (i) Any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3) may submit a statement, in the form and manner provided for notice in subparagraph (2) of this paragraph, that it is an operating foundation (as defined in section 4942(j)(3)) and include in such statement:

(a) Necessary supporting information as required by the regulations under section 4942(j)(3) to confirm such determination (including a statement identifying the clause of section 4942(j)(3)(B) that is applicable); and

(b) A written declaration by the principal officer, manager or authorized trustee that there is a reasonable basis in law and in fact that the organization so filing is an operating foundation, and that to the best of the knowledge and belief of such officer, manager or trustee, the information submitted is complete and correct.

(ii) The statement filed under this subparagraph may not be relied upon by the organization so filing unless and until the Internal Revenue Service notifies the organization that it is an operating foundation described in section 4942(j)(3).

(iii) In the case of grants, contributions or distributions made prior to March 22, 1973, any organization which has properly filed the statement described in this subparagraph prior to such date will be treated as an operating foundation for purposes of making any determination under the internal revenue laws with respect to a grantor, contributor or distributor thereto, unless the organization is controlled directly or indirectly by such grantor, contributor or distributor, if by the 30th day after the day on which such statement is filed, the organization has not been notified by the Commissioner or his delegate that its statement has failed to establish that such

¶ 3112 Reg. § 1.508-1(b)(4)(i)

visions to the contrary or which have filed a proper election not to be subject to such law.

**WASHINGTON**—except for such private foundations which expressly provide in their governing instruments that the applicable sections of Washington law do not apply to them.

**WEST VIRGINIA**—with respect to trusts that are private foundations except for such trusts which provide in their governing instruments that the applicable sections of West Virginia law do not apply to them.

**WISCONSIN**—except as may otherwise be provided by decree of a court of competent jurisdiction.

**WYOMING**—except where otherwise provided by a court of competent jurisdiction.

Rev. Rul. 73-38, 1973-1 CB 161, superseding Rev. Rul. 73-286, 1973-2 CB 188, superseding Rev. Rul. 72-103, 1972-1 CB 152, superseding Rev. Rul. 71-347, 1971-2 CB 239.

**.85 Successor organization.**—An organization that filed an application for recognition of exemption under section 501(c)(3) of the Code in May

1976, following its incorporation in November 1975 to succeed an unincorporated association that had operated for three years without filing an application, will be recognized as exempt from the date of incorporation. An advance ruling concerning the organization's private foundation status may be requested on the basis of support received since incorporation.

Rev. Rul. 77-469, 1977-2 CB 196.

**.90 Prior law.—**

Announcement 73-24, I.R.B. 1973-9-32.

Announcement 73-60, I.R.B. 1973-22-45.

Ann. 70-36, I.R.B. 1970-29-33.

Ann. 70-67, I.R.B. 1970-35-27.

Ann. 70-80, I.R.B. 1970-43-24.

IRS News Ref. No. 1050, July 14, 1970, 707 CCH ¶ 6793.

IRS News Ref. No. 1058, Aug. 12, 1970, 707 CCH ¶ 6859.

IRS News Ref. No. 1082, Nov. 23, 1970, 707 CCH ¶ 6945K.

Rev. Rul. 73-304, 1973-2 CB 190.

[¶ 3125]

**PRIVATE FOUNDATION DEFINED**

**Sec. 509 (1986 Code).** (a) **GENERAL RULE.**—For purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than—

(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)),

(2) an organization which—

(A) normally receives more than one-third of its support in each taxable year from any combination of—

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

(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of \$5,000 or 1 percent of the organization's support in such taxable year,

from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

(B) normally receives not more than one-third of its support in each taxable year from the sum of—

(i) gross investment income (as defined in subsection (e)) and

(ii) the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511.

(3) an organization which—

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

(B) is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (1) or (2), and

¶ 3123.85 Code § 509

→ *Caution: Reg. § 1.501(c)(3)-1 does not reflect P.L. 94-455, P.L. 98-369, P.L. 99-514, P.L. 100-203, P.L. 100-647, or P.L. 101-73. See ¶ 3001.0014 et seq. ←*

(ii) In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3). Therefore, an organization which, by the terms of its articles, is formed "for literary and scientific purposes within the meaning of section 501(c)(3) of the Code shall, if it otherwise meets the requirements in this paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely "to receive contributions and pay them over to organizations which are described in section 501(c)(3) and exempt from taxation under section 501(a)" are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for "charitable purposes", such articles ordinarily shall be sufficient for purposes of the organizational test (see subparagraph (5) of this paragraph for rules relating to construction of terms).

(iii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles "to engage in a manufacturing business"; or "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes within the meaning of section 501(c)(3) of the Code."

(iv) In no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

(v) An organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption (see paragraph (b) of § 1.501(a)-1).

(2) *Articles of organization.* For purposes of this section, the term "articles of organization" or "articles" includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

(3) *Authorization of legislative or political activities.* An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it—

(i) To devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or

(ii) Directly or indirectly to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; or

(iii) To have objectives and to engage in activities which characterize it as an "action" organization as defined in paragraph (c)(3) of this section.

¶ 3032 Reg. § 1.501(c)(3)-1(b)(1)(ii)

→ *Caution: Reg. § 1.501(c)(3)-1 does not reflect P.L. 94-455, P.L. 98-369, P.L. 99-514, P.L. 100-203, P.L. 100-647, or P.L. 101-73. See ¶ 3001.0014 et seq.* ←

it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

(iii) Since each of the purposes specified in subdivision (i) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "educational", exemption will not be denied if, in fact, it is "charitable".

(2) *Charitable defined.* The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such terms include: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an "action" organization of any one of the types described in paragraph (c)(3) of this section.

(3) *Educational defined*—(i) *In general.* The term "educational", as used in section 501(c)(3), relates to—

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(ii) *Examples of educational organizations.* The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

*Example (1).* An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.



→ *Caution: Reg. § 1.501(c)(3)-1 does not reflect P.L. 94-455, P.L. 98-369, P.L. 99-514, P.L. 100-203, P.L. 100-647, or P.L. 101-73. See ¶ 3001.0014 et seq.* ←

*Example (2).* An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

*Example (3).* An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

*Example (4).* Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

(4) *Testing for public safety defined.* The term "testing for public safety", as used in section 501(c)(3), includes the testing of consumer products, such as electrical products, to determine whether they are safe for use by the general public.

(5) *Scientific defined.* (i) Since an organization may meet the requirements of section 501(c)(3) only if it serves a public rather than a private interest, a "scientific" organization must be organized and operated in the public interest (see subparagraph (1)(ii) of this paragraph). Therefore, the term "scientific", as used in section 501(c)(3), includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with "scientific"; and the nature of particular research depends upon the purpose which it serves. For research to be "scientific", within the meaning of section 501(c)(3), it must be carried on in furtherance of a "scientific" purpose. The determination as to whether research is "scientific" does not depend on whether such research is classified as "fundamental" or "basic" as contrasted with "applied" or "practical". On the other hand, for purposes of the exclusion from unrelated business taxable income provided by section 512(b)(9), it is necessary to determine whether the organization is operated primarily for purposes of carrying on "fundamental", as contrasted with "applied", research.

(ii) Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

(iii) Scientific research will be regarded as carried on in the public interest—

(a) If the results of such research (including any patents, copyrights, processes, or formulae resulting from such research) are made available to the public on a nondiscriminatory basis;

(b) If such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or

(c) If such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:

(1) Scientific research carried on for the purpose of aiding in the scientific education of college or university students;

(2) scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public;

(3) scientific research carried on for the purpose of discovering a cure for a disease; or

(4) scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area

¶ 3032 Reg. § 1.501(c)(3)-1(d)(4)

(4) *Confidential compensation information.* If an application for a determination letter, supporting document, or related letter or document referred to in section 6104(a)(1)(B) and §§ 301.6104(a)-2 and 301.6104(a)-3 contains information (including aggregate figures) from which an individual's compensation (including deferred compensation) may be ascertained, that information is not open to public inspection (including inspection by a plan participant or authorized representative). Confidential compensation information includes the amount of benefit a specific plan participant may expect to receive at normal or early retirement age and the amount of the employer's contributions under the plan that may be allocated to a specific plan participant. However, so long as a plan has more than one participant, the amount of benefit provided under the plan to plan participants, in general, at normal or early retirement age, or the amount of the employer's contributions under the plan that are allocable to plan participants, in general, does not constitute confidential compensation information. Further, a description of the numbers of individuals covered and not covered by a plan, listed by compensation range, does not constitute confidential compensation information. [Reg. § 301.6104(a)-5.]

.10 *Historical Comment:* Proposed 1/2/81. Adopted 11/5/82 by T D. 7845.

### ● *Regulations*

[§ 5215H] § 301.6104(a)-6. *Procedural rules for inspection.*—(a) *Place of inspection; tax exempt organizations and pension and other plans.* Material relating either to tax exempt organizations or to pension and other plans that is open to public inspection under section 6104(a)(1) and § 301.6104(a)-1 through § 301.6104(a)-3 will be made available for inspection at the Freedom of Information Reading Room, National Office, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, and in the office of any district director of internal revenue.

(b) *Request for inspection.*—(1) *Tax exempt organizations and pension and other plans; public inspection.* Material relating to either tax exempt organizations or pension and other plans that is open to public inspection under section 6104(a)(1) and §§ 301.6104(a)-1 through 301.6104(a)-3 will be available for inspection only upon request. If inspection at the National Office is desired, a request should be made in writing to the Commissioner of Internal Revenue, Attention: Freedom of Information Reading Room, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Requests for inspection in the office of a district director should be made in writing to the district director's office. The request must describe the material to be inspected in reasonably sufficient detail so that Internal Revenue Service personnel can locate the material. If a tax exempt organization has more than one application for tax exemption open to public inspection, or if a pension or other plan has more than one application for a determination letter open to public inspection, only the most recent application and related material will be made available for inspection unless the request states otherwise. Further, in the case of a pension or other plan, only Internal Revenue Service documents issued or delivered after the date of the filing of the most recent application for a determination letter will be made available for inspection, unless the request states otherwise.

(2) *Pension and other plans; inspection by plan participant or authorized representative.* As described in § 301.6104(a)-4, material relating to plans having fewer than 26 participants is only open to inspection by a plan participant or authorized representative. In the case of such a plan, the rules described in subparagraph (1) of this paragraph apply. The request for inspection must include satisfactory evidence that the person requesting inspection is a plan participant (see § 301.6104(a)-4(c)) or an authorized representative of such a plan participant within the meaning of § 301.6104(a)-4(d).

(c) *Time and extent of inspection.* A person requesting inspection will be notified when the material will be made available for inspection. The material will be made

90(10) CCH—Standard Federal Tax Reports Reg. § 301.6104(a)-6(c) ¶ 5215H

Excise and miscellaneous taxes

Miscellaneous taxes

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imposes of paragraph of an affiliated group

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and "exempt purposes in the heading of the 1/76. de Sec. 4911, for tax.

ying expenditures of

section applies is not any taxable year by ured, there is hereby stances of such organ- to 5 percent of the tax imposed by this ction.

(b) On management. If tax is imposed under subsection (a) on the lobbying expenditures of any organization, there is hereby imposed on the agreement of any organization manager to the making of any such expenditures, knowing that such expenditures are likely to result in the organization not being described in section 501(c)(3), a tax equal to 5 percent of the amount of such expenditures, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this subsection shall be paid by any manager who agreed to the making of the expenditures.

(c) Organizations to which section applies. (1) In general. Except as provided in paragraph (2), this section shall apply to any organization which was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3). (2) Exceptions. This section shall not apply to any organization— (A) to which an election under section 501(h) applies, (B) which is a disqualified organization (within the meaning of section 508(b)(5)), or (C) which is a private foundation.

(d) Definitions. (1) Lobbying expenditures. The term "lobbying expenditure" means any amount paid or incurred by the organization in carrying on propaganda, or otherwise attempting to influence legislation. (2) Organization manager. The term "organization manager" has the meaning given to such term by section 4955(f)(2).

In '87, P.L. 100-203, Sec. 10714(a), added new Code Sec. 4912, effective for tax yrs. beginn. after 12/22/87

CHAPTER 42—PRIVATE FOUNDATIONS AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS

- Subchapter A. Private Foundations B. Black lung benefit trusts C. Political expenditures of section 501(c)(3) organizations D. Abatement of first and second-tier taxes in certain cases.

In '87, P.L. 100-203, Sec. 10712(c)(7), amended the heading of Chapter 42... In '86, P.L. 99-149, Sec. 3009(b)(7), amended the name for subchapter C. Prior to amendment the name for subchapter C read as follows: "C. Abatement of first and second tier taxes in certain cases."

Subchapter A—Private Foundations

- Sec. 4940. Excise tax based on investment income. 4941. Taxes on self-dealing. 4942. Taxes on failure to distribute income. 4943. Taxes on excess business holdings. 4944. Taxes on investments which jeopardize charitable purposes. 4945. Taxes on taxable expenditures. 4946. Definitions and special rules. 4947. Application of taxes to certain nonexempt trusts.

4948. Application of taxes and denial of exemption with respect to certain foreign organizations.

In '78, P.L. 95-127, Sec. 4(c)(2)(A), amended the heading of Chapter 42 and added the items for subchapters A and B. Prior to amendment, the heading of Chapter 42 read as follows: "Chapter 42—Private foundations." In '69, P.L. 91-172, Sec. 101(b), added Chapter 42.

Sec. 4940. Excise tax based on investment income.

(a) Tax-exempt foundations. There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

(b) Taxable foundations. There is hereby imposed on each private foundation which is not exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to—

- (1) the amount (if any) by which the sum of (A) the tax imposed under subsection (a) (computed as if such subsection applied to such private foundation for the taxable year), plus (B) the amount of the tax which would have been imposed under section 511 for the taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds (2) the tax imposed under subtitle A on such private foundation for the taxable year.

(c) Net investment income defined.

(1) In general. For purposes of subsection (a), the net investment income is the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the deductions allowed by paragraph (3). Except to the extent inconsistent with the provisions of this section, net investment income shall be determined under the principles of subtitle A.

(2) Gross investment income. For purposes of paragraph (1), the term "gross investment income" means the gross amount of income from interest, dividends, rents, payments with respect to securities loans (as defined in section 512(a)(3)), and royalties, but not including any such income to the extent included in computing the tax imposed by section 511.

(3) Deductions.

(A) In general. For purposes of paragraph (1), there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications set forth in subparagraph (B).

(B) Modifications. For purposes of subparagraph (A)—

- (i) The deduction provided by section 167 shall be allowed, but only on the basis of the straight line method of depreciation. (ii) The deduction for depletion provided by section 611 shall be allowed, but such deduction shall be determined without regard to section 613 (relating to percentage depletion).

(4) Capital gains and losses. For purposes of paragraph (1) in determining capital gain net income—

(A) There shall be taken into account only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties, and property used for the production of income included in computing the tax imposed by

section 511 (except to the extent gain or loss from the sale or other disposition of such property is taken into account for purposes of such tax).

(B) The basis for determining gain in the case of property held by the private foundation on December 31, 1969, and continuously thereafter to the date of its disposition shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(C) Losses from sales or other dispositions of property shall be allowed only to the extent of gains from such sales or other dispositions, and there shall be no capital loss carryovers.

(5) **Tax-exempt income.** For purposes of this section, net investment income shall be determined by applying section 103 (relating to State and local bonds) and section 265 (relating to expenses and interest relating to tax-exempt income).

**(d) Exemption for certain operating foundations.**

(1) **In general.** No tax shall be imposed by this section on any private foundation which is an exempt operating foundation for the taxable year.

(2) **Exempt operating foundation.** For purposes of this subsection, the term "exempt operating foundation" means, with respect to any taxable year, any private foundation if—

(A) such foundation is an operating foundation (as defined in section 4942(j)(3)),

(B) such foundation has been publicly supported for at least 10 taxable years,

(C) at all times during the taxable year, the governing body of such foundation—

(i) consists of individuals at least 75 percent of whom are not disqualified individuals, and

(ii) is broadly representative of the general public, and

(D) at no time during the taxable year does such foundation have an officer who is a disqualified individual.

**(3) Definitions.** For purposes of this subsection—

(A) **Publicly supported.** A private foundation is publicly supported for a taxable year if it meets the requirements of section 170(b)(1)(A)(vi) or 509(a)(2) for such taxable year.

(B) **Disqualified individual.** The term "disqualified individual" means, with respect to any private foundation, an individual who is—

(i) a substantial contributor to the foundation,

(ii) an owner of more than 20 percent of—

(I) the total combined voting power of a corporation,

(II) the profits interest of a partnership, or

(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation, or

(iii) a member of the family of any individual described in clause (i) or (ii).

(C) **Substantial contributor.** The term "substantial contributor" means a person who is described in section 507(d)(2).

(D) **Family.** The term "family" has the meaning given to such term by section 4946(d).

(E) **Constructive ownership.** The rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of subparagraph (b)(ii).

**(e) Reduction in tax where private foundation meets certain distribution requirements.**

(1) **In general.** In the case of any private foundation which meets the requirements of paragraph (2) for any

taxable year, subsection (a) shall be applied with respect to such taxable year by substituting "1 percent" for "2 percent".

(2) **Requirements.** A private foundation meets the requirements of this paragraph for any taxable year if—

(A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of—

(i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus

(ii) 1 percent of the net investment income of such foundation for such taxable year, and

(B) such private foundation was not liable for tax under section 4942 with respect to any year in the base period.

(3) **Average percentage payout for base period.** For purposes of this subsection—

(A) **In general.** The average percentage payout for the base period is the average of the percentage payouts for taxable years in the base period.

(B) **Percentage payout.** The term "percentage payout" means, with respect to any taxable year, the percentage determined by dividing—

(i) the amount of the qualifying distributions made by the private foundation during the taxable year, by

(ii) the assets of the private foundation for the taxable year.

(C) **Special rule where tax reduced under this subsection.** For purposes of this paragraph, if the amount of the tax imposed by this section for any taxable year in the base period is reduced by reason of this subsection, the amount of the qualifying distributions made by the private foundation during such year shall be reduced by the amount of such reduction in tax.

**(4) Base period.** For purposes of this subsection—

(A) **In general.** The term "base period" means, with respect to any taxable year, the 5 taxable years preceding such taxable year.

(B) **New private foundations, etc.** If an organization has not been a private foundation throughout the base period referred to in subparagraph (A), the base period shall consist of the taxable years during which such foundation has been in existence.

**(5) Other definitions.** For purposes of this subsection—

(A) **Qualifying distribution.** The term "qualifying distribution" has the meaning given such term by section 4942(g).

(B) **Assets.** The assets of a private foundation for any taxable year shall be treated as equal to the excess determined under section 4942(e)(1).

**(6) Treatment of successor organizations, etc.** In the case of—

(A) a private foundation which is a successor to another private foundation, this subsection shall be applied with respect to such successor by taking into account the experience of such other foundation, and

(B) a merger, reorganization, or division of a private foundation, this subsection shall be applied under regulations prescribed by the Secretary.

In '88, P. L. 100-447, Sec. 4204 provides

"SEC. 4204. DETERMINATION OF OPERATING FOUNDATION STATUS FOR CERTAIN PURPOSES.

For purposes of sections 502(c)(3) of the Deficit Reduction Act (Sec. 502(c)(3) of P.L. 98-368, renumbered below) of 1984, a private foundation which commenced an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1986) for its first taxable year ending before January 1, 1963, shall be treated as commencing an operating foundation on January 1, 1963."

In '88, P. L. 98-368 and local bond obligations. 13/84.

—P.L. 98-314, amended the material of the after 12/31/84 material at the

(B) the average or exceeds 5 percent

"In the case of 4942(j)(3), the percentage for '1' In '84, P. L. 98 began after 12/

(3) Certain operating funds Internal Revenue treated as exempt such Code (as a

—P.L. 98-349, after 12/31/84.

In '78, P. L. 95 —P. L. 95-345,

"payments with 512(a)(5)", after payments with 512(a)(5).

In '76, P. L. 94 was not "income" the" in part, (c) in determining"

In '68, P. L. 91, 7th, began after

Certain rules 502(b)(1) to the business foundation in a business equivalent to a paragraph (2)(B) 4941.

**Sec. 4941. Taxes**

**(a) Initial taxes.**

(1) **On self-dealing act of self-dealing private foundation.**

percent of the act of self-dealing for a period. The tax by any disqualified manager acting in self-dealing, as defined in section paragraph only if the act of self-dealing

(2) **On foundation imposed by paragraph.**

the participation self-dealing between foundation, know 2 1/2 percent of the act of self-dealing

taxable period, and is due to read paragraph

participated in

**(b) Additional taxes.**

(1) **On self-dealing imposed by subsection.**

a disqualified person is not correct hereby imposed a involved. The tax paid by any disqualified manager acting or of self-dealing.

(2) **On foundation**

(C) Certain organizations. The organizations referred to in subparagraph (A)(ii) are—

- (i) a religious organization described in section 501(c)(3);
- (ii) an educational organization described in section 170(b)(1)(A)(ii);
- (iii) a charitable organization, or an organization for the prevention of cruelty to children or animals, described in section 501(c)(3), if such organization is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or is primarily supported by contributions of the general public;
- (iv) an organization described in section 501(c)(3), if such organization is operated, supervised, or controlled by or in connection with a religious organization described in clause (i);
- (v) an organization described in section 501(c)(8); and
- (vi) an organization described in section 501(c)(1), if such organization is a corporation wholly-owned by the United States or any agency or instrumentality thereof, or a wholly-owned subsidiary of such a corporation.

(b) Certain organizations described in section 501(c)(3).

Every organization described in section 501(c)(3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary may by forms or regulations prescribe, setting forth—

- (1) its gross income for the year,
- (2) its expenses attributable to such income and incurred within the year,
- (3) its disbursements within the year for the purposes for which it is exempt,
- (4) a balance sheet showing its assets, liabilities, and net worth as of the beginning of such year,
- (5) the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors,
- (6) the names and addresses of its foundation managers (within the meaning of section 4946(b)(1)) and highly compensated employees,
- (7) the compensation and other payments made during the year to each individual described in paragraph (6),
- (8) in the case of an organization with respect to which an election under section 501(h) is effective for the taxable year, the following amounts for such organization for such taxable year:
  - (A) the lobbying expenditures (as defined in section 4911(c)(1)),
  - (B) the lobbying nontaxable amount (as defined in section 4911(c)(2)),
  - (C) the grass roots expenditures (as defined in section 4911(c)(3)), and
  - (D) the grass roots nontaxable amount (as defined in section 4911(c)(4)).

For purposes of paragraph (8), if section 4911(f) applies to the organization for the taxable year, such organization shall furnish the amounts with respect to the affiliated group as well as with respect to such organization.

(9) such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in section 501(c) (other than paragraph (3) thereof) or section 527 as the Secretary may require to prevent—

- (A) diversion of funds from the organization's exempt purpose, or
- (B) misallocation of revenues or expenses, and

(10) such other information for purposes of carrying out the internal revenue laws as the Secretary may require.

(c) Additional provisions relating to private foundations.

In the case of an organization which is a private foundation (within the meaning of section 509(a))—

- (1) the Secretary shall by regulations provide that the private foundation shall include in its annual return under this section such information (not required to be furnished by subsection (b) or the forms or regulations prescribed thereunder) as would have been required to be furnished under section 6056 (relating to annual reports by private foundations) as such section 6056 was in effect on January 1, 1979,
- (2) a copy of the notice required by section 6104(d) (relating to public inspection of private foundations' annual returns), together with proof of publication thereof, shall be filed by the foundation together with the annual return under this section, and
- (3) the foundation managers shall furnish copies of the annual return under this section to such State officials, at such times, and under such conditions, as the Secretary may by regulations prescribe.

Nothing in paragraph (1) shall require the inclusion of the name and address of any recipient (other than a disqualified person within the meaning of section 4946) of 1 or more charitable gifts or grants made by the foundation to such recipient as an indigent or needy person if the aggregate of such gifts or grants made by the foundation to such recipient during the year does not exceed \$1,000.

(d) Section to apply to nonexempt charitable trusts and nonexempt private foundations.

The following organizations shall comply with the requirements of this section in the same manner as organizations described in section 501(c)(3) which are exempt from tax under section 501(a):

- (1) Nonexempt charitable trusts. A trust described in section 4947(a)(1) (relating to nonexempt charitable trusts).
- (2) Nonexempt private foundations. A private foundation which is not exempt from tax under section 501(a).

(e) Cross reference.

For provisions relating to statements, etc., regarding exempt status of organizations, see section 6001.

For reporting requirements as to certain liquidations, dissolutions, terminations, and contractions, see section 6043(b). For provisions relating to penalties for failure to file a return required by this section, see section 6652(c).

For provisions relating to information required in connection with certain plans of deferred compensation, see section 6058.

In '87, P.L. 100-203, Sec. 10703(a), deleted "and" at the end of para. (b)(7), substituted a comma for the period at the end of para. (b)(8), and added new para. (b)(9) and (b)(10), effective for yrs. begin. after 12/31/87.

In '86, P.L. 99-514, Sec. 1301(d)(1)(C), substituted "section 6652(c)" for "section 6652(d)" in subsec. (e), effective for returns the due date for which (determined without regard to extensions) is after 12/31/86.

In '86, P.L. 99-463, Sec. 1(a), redesignated subsec. (c) as subsec. (a) and added new subsec. (c) and (d), for tax yrs. begin. after 12/31/86.

In '76, P.L. 94-452, Sec. 1307(a)(4), deleted "and" at the end of para. (b)(6), substituted "and" for the period at the end of para. (b)(7), and added new para. (b)(8), effective on or after 10/4/76.

P.L. 94-452, Sec. 1906(b)(1)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in subsec. (a) and (b), effective 2/1/77.

In '74, P.L. 93-404, Sec. 1031(e)(2) added a new paragraph at the end of subsec. (a), effective 9/2/74.

In '80, P.L. 96-472, Sec. 1014(d)(1) & (2), amended subsec. (c) & (d), for tax yrs. begin. after 12/31/80.

\*Prior to amendments subsec. (a) & (b) read as follows:

tion, relating to a determination under subparagraph (A) or (B) as are relevant to any determination under State law.

(2) **APPROPRIATE STATE OFFICER.**—For purposes of this subsection, the term “appropriate State officer” means the State attorney general, State tax officer, or any State official charged with overseeing organizations of the type described in section 501(c)(3).

(d) **PUBLIC INSPECTION OF PRIVATE FOUNDATIONS’ ANNUAL RETURNS.**—The annual return required to be filed under section 6033 (relating to returns by exempt organizations) by any organization which is a private foundation within the meaning of section 509(a) shall be made available by the foundation managers for inspection at the principal office of the foundation during regular business hours by any citizen on request made within 180 days after the date of the publication of notice of its availability. Such notice shall be published, not later than the day prescribed for filing such annual return (determined with regard to any extension of time for filing), in a newspaper having general circulation in the county in which the principal office of the private foundation is located. The notice shall state that the annual return of the private foundation is available at its principal office for inspection during regular business hours by any citizen who requests it within 180 days after the date of such publication, and shall state the address and the telephone number of the private foundation’s principal office and the name of its principal manager.

(e) **PUBLIC INSPECTION OF CERTAIN ANNUAL RETURNS AND APPLICATIONS FOR EXEMPTION.**—

(1) **ANNUAL RETURNS.**—

(A) **IN GENERAL.**—During the 3-year period beginning on the filing date, a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of the organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office.

(B) **ORGANIZATIONS TO WHICH PARAGRAPH APPLIES.**—This paragraph shall apply to any organization which—

(i) is described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a), and

(ii) is not a private foundation (within the meaning of section 509(a)).

(C) **NONDISCLOSURE OF CONTRIBUTORS.**—Subparagraph (A) shall not require the disclosure of the name or address of any contributor to the organization.

(D) **FILING DATE.**—For purposes of subparagraph (A), the term “filing date” means the last day prescribed for filing the return under section 6033 (determined with regard to any extension of time for filing).

(2) **APPLICATION FOR EXEMPTION.**—

(A) **IN GENERAL.**—If—

(i) an organization described in subsection (c) or (d) of section 501 is exempt from taxation under section 501(a), and

(ii) such organization filed an application for recognition of exemption under section 501, a copy of such application (together with a copy of any papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application) shall be made available by the organization for inspection during regular business hours by any individual at the principal office of the organization and, if the organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office.

(B) **NONDISCLOSURE OF CERTAIN INFORMATION.**—Subparagraph (A) shall not require the disclosure of any information if the Secretary withheld such information from public inspection under subsection (a)(1)(D).

01 Amended by P.L. 100-203, P.L. 98-369,  
P.L. 96-603, P.L. 95-600, P.L. 95-227, P.L.  
94-455, P.L. 93-406, P.L. 91-172 and P.L. 85-866.  
For details, see the Code Volumes.

Committee Reports on P.L. 100-203

628 \*\*\* Availability of annual information  
returns.—Under the bill, an organization that is

of the storage of grain, which may be intended by the taxpayer at the time of storage of grain produced by him by a partnership, produced by the

warehouse permanently equipped for unloading and loading of grain.

on, or erection of which was completed, and on or before December 31, 1952, and in clause (1) or (2) of the above, or remedied so as to increase its value, or if any structure is converted, changed, or into a structure so described, existing was completed after December 31, 1952, such alteration as the construction of a grain-storage facility shall include which is subject to the allowance for depreciation 167. The term "grain-storage facility" any part of which is the meaning of section 168 of this title.

of basis.  
purpose of subsection (a)(1)—adjusted basis of any grain-storage structure, or erection of which was completed, and on or before December 31, 1952, and in clause (1) or (2) of the above, or remedied so as to increase its value, or if any structure is converted, changed, or into a structure so described, existing was completed after December 31, 1952, such alteration as the construction of a grain-storage facility shall include which is subject to the allowance for depreciation 167. The term "grain-storage facility" any part of which is the meaning of section 168 of this title.

of such factory for purposes of this subsection, donor, or grantor, adjusted basis of the taxpayer had a substantial loss 1016(b), or net basis (for determining gain) of the taxpayer (as computed without regard to such property attributable to contributions after December 31, 1952.

of such factory for purposes of this subsection, donor, or grantor, adjusted basis of the taxpayer had a substantial loss 1016(b), or net basis (for determining gain) of the taxpayer (as computed without regard to such property attributable to contributions after December 31, 1952.

of such factory for purposes of this subsection, donor, or grantor, adjusted basis of the taxpayer had a substantial loss 1016(b), or net basis (for determining gain) of the taxpayer (as computed without regard to such property attributable to contributions after December 31, 1952.

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#### Contributions and gifts.

shall be allowed as a deduction in the taxable year. A contribution shall be allowable as a deduction in the taxable year if the contribution was made on or before the 15th day following the close of such taxable year.

shall be allowed as a deduction in the taxable year. A contribution shall be allowable as a deduction in the taxable year if the contribution was made on or before the 15th day following the close of such taxable year.

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only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property. For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

#### (b) Percentage limitations.

(1) Individuals. In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule. Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(c)(3) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(c)(3) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (E), or

(viii) an organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of

such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions. Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 30 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) Special limitation with respect to contributions described in subparagraph (A) of certain capital gain property.

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph, the term "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(D) Special limitation with respect to contributions of capital gain property to organizations not described in subparagraph (A).

(i) In general. In the case of charitable contributions

short. The term qualified... 15, 1980. (stock of which at all times July 1, 1981, were held by... the meaning of section

ness of which (other than... (2)(A)) were held by the... the meaning of section

Code Sec. 6429

repealed Code Sec. 6430, its purposes on or after 1/1/80 as follows:

WINDFALL PROFIT TAXES

Section 4984 (relating to... is paid by any trust with... allocable trust production... such tax by such qualified... all be credited against the... funded to such qualified

one. (out of the allocable trust... for any calendar year... royalty limit for such... as an overpayment under... qualified beneficiary shall be... same rate to the amount... so treated as--

allocable trust production. The amount exempt royalty... any calendar year is the

calendar year, multiplied by... the table contained in

oil (within the meaning of... qualified beneficiary is the... uses during such calendar

the rules of paragraphs (2),... apply to the amount deter-

trust production' means, any, the qualified royalty... during the calendar year.

beneficiary under paragraph

production of a trust for... the trust and as

at an amount of produc-... for depletion for the... 'qualifying production, and... also (i) shall be allocated... in accordance with... attributable net income for

purpose of this para-... The term 'adjusted... butable net income' (as... at year reduced by the

each year with respect to... tax for depletion to the... of royalty production.

of production. Allow-... ment as made pre this... section.

any. production of any qualified... trust attributable to an

interest in property which has been transferred after June 9, 1981, in a transfer which--

"(i) is described in section 613A(c)(9)(A), and

"(ii) is not described in section 613A(c)(9)(B). (B) Exceptions. Subparagraph (A) shall not apply in the case of any transfer so long as the transferee and the qualified beneficiary are required by subsection (b)(2) to share the amount determined under subsection (b)(2)(A). The preceding sentence shall apply to the transfer of any property only if the production attributable to the property was allocable trust production or qualified royalty production of the transferee.

"(d) Definitions. "For purposes of this section-- "(1) Qualified beneficiary. The term 'qualified beneficiary' means any individual or estate which is a beneficiary of any trust which is a producer.

"(2) Qualified royalty production. The term 'qualified royalty production' means, with respect to any person, taxable crude oil (within the meaning of section 4991(a)) which is attributable to an economic interest of such person other than an operating mineral interest (within the meaning of section 614(d)). Such term does not include taxable crude oil attributable to any overriding royalty interest, production payment, net profits interest, or similar interest of the person which--

"(A) is created after June 9, 1981, out of an operating mineral interest in property which is proven oil or gas property (within the meaning of section 613A(c)(9)(A)) on the date such interest is created, and

"(B) is not entered pursuant to a binding contract entered into before June 10, 1981.

"(3) Producer. The term 'producer' has the meaning given to such term by section 4994(s)(1).

"(e) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

PL. 97-448, Sec. 106(a)(4)(A), added Code Sec. 6430, effective for calendar years begun after 12/31/81.

CHAPTER 66.—LIMITATIONS

Subchapter

- A. Limitations on assessment and collection. B. Limitations on credit or refund. C. Mitigation of effect of period of limitations. D. Periods of limitation in judicial proceedings.

Subchapter A.—Limitations on Assessment and Collection

- Sec. 6501. Limitations on assessment and collection. 6502. Collection after assessment. 6503. Suspension of running of period of limitation. 6504. Cross references.

Sec. 6501. Limitations on assessment and collection.

(a) General rule.

Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(b) Time return deemed filed.

(1) Early return. For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 1, 21, or 24, filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) Return of certain employment taxes and tax imposed by chapter 3. For purposes of this section, if a return of tax imposed by chapter 3, 21, or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return

shall be considered filed on April 15 of such calendar year.

(3) Return executed by Secretary. Notwithstanding the provisions of paragraph (2) of section 6020(b), the execution of a return by the Secretary pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.

(4) Return of excise taxes. For purposes of this section, the filing of a return for a specified period on which an entry has been made with respect to a tax imposed under a provision of subtitle D (including a return on which an entry has been made showing no liability for such tax for such period) shall constitute the filing of a return of all amounts of such tax which, if properly paid, would be required to be reported on such return for such period.

(c) Exceptions.

(1) False return. In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax. In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No return. In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(4) Extension by agreement. Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(5) Tax resulting from changes in certain income tax or estate tax credits. For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905(c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, States, etc., claimed as credit against estate taxes).

(6) Termination of private foundation status. In the case of a tax on termination of private foundation status under section 507, such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(7) Special rule for certain amended returns. Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by subtitle A for any taxable year would otherwise expire, the Secretary receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Secretary receives such document.

(8) Failure to notify Secretary under section 6038B. In the case of any tax imposed on any exchange or distribution by reason of subsection (a), (d) or (e) of section 367, the time for assessment of such tax shall not expire before the date which is 3 years after the date on which the Secretary is notified of such exchange or distribution under section 6038B(a).

(d) Request for prompt assessment.

Except as otherwise provided in subsection (c), (e), or (f).



in the case of any tax (other than the tax imposed by chapter 11 of subtitle B, relating to estate taxes) for which return is required in the case of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request therefor (filed after the return is made and filed in such manner and such form as may be prescribed by regulations of the Secretary) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of 3 years after the return was filed. This subsection shall not apply in the case of a corporation unless—

- (1)(A) such written request notifies the Secretary that the corporation contemplates dissolution at or before the expiration of such 18-month period, (B) the dissolution is in good faith begun before the expiration of such 18-month period, and (C) the dissolution is completed;
- (2)(A) such written request notifies the Secretary that a dissolution has in good faith been begun, and (B) the dissolution is completed; or
- (3) a dissolution has been completed at the time such written request is made.

(e) Substantial omission of items.

Except as otherwise provided in subsection (c)—

(1) **Income taxes.** In the case of any tax imposed by subtitle A—

(A) **General rule.** If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. For purposes of this subparagraph—

(i) In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services; and

(ii) In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(B) **Constructive dividends.** If the taxpayer omits from gross income an amount properly includible therein under section 551(b) (relating to the inclusions in the gross income of United States shareholders of their distributive shares of the undistributed foreign personal holding company income), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(2) **Estate and gift taxes.** In the case of a return of estate tax under chapter 11 or a return of gift tax under chapter 12, if the taxpayer omits from the gross estate or from the total amount of the gifts made during the period for which the return was filed items includible in such gross estate or such total gifts, as the case may be, in excess in amount 25 percent of the gross estate stated in the return or the total amount of gifts stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. In determining the items omitted from the gross estate or the total gifts, there shall not be taken into account any item which is omitted from the gross

estate or from the total gifts stated in the return if such item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(3) **Excise taxes.** In the case of a return of a tax imposed under a provision of subtitle D, if the return omits an amount of such tax properly includible thereon which exceeds 25 percent of the amount of such tax reported thereon, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return is filed. In determining the amount of tax omitted on a return, there shall not be taken into account any amount of tax imposed by chapter 41, 42, 43, or 44 which is omitted from the return if the transaction giving rise to such tax is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the existence and nature of such item.

(f) **Personal holding company tax.**

If a corporation which is a personal holding company for any taxable year fails to file with its return under chapter 1 for such year a schedule setting forth—

- (1) the items of gross income and adjusted ordinary gross income, described in section 543, received by the corporation during such year, and
- (2) the names and addresses of the individuals who owned, within the meaning of section 544 (relating to rules for determining stock ownership), at any time during the last half of such year more than 50 percent in value of the outstanding capital stock of the corporation,

the personal holding company tax for such year may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return for such year was filed.

(g) **Certain income tax returns of corporations.**

(1) **Trusts or partnerships.** If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return is filed, such return shall be deemed the return of the corporation for purposes of this section.

(2) **Exempt organizations.** If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

(3) **DISC.** If a corporation determines in good faith that it is a DISC (as defined in section 992(a)) and files a return as such under section 6011(c)(2) and if such corporation is thereafter held to be a corporation which is not a DISC for the taxable year for which the return is filed, such return shall be deemed the return of a corporation which is not a DISC for purposes of this section.

(h) **Net operating loss carryback or capital loss carryback.**

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed.

(i) **Foreign tax carrybacks.**

In the case of a deficiency attributable to the application to the taxpayer of a carryback under section 904(c) (relating to carryback and carryover of excess foreign taxes) or

under section 907(f) (relating to disallowed oil and gas), the tax may be assessed at any time after the expiration of the period within which a deficiency may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(j) **Certain credit carrybacks.**

(1) **In general.** In the case of the application to the taxpayer of a credit (including deficiencies) under the provisions of section 1301, the tax may be assessed at any time after the expiration of the period within which a deficiency may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(2) **Credit carryback of excess taxes.** In the case of the application to the taxpayer of a credit (including deficiencies) under the provisions of section 1302, the tax may be assessed at any time after the expiration of the period within which a deficiency may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(k) **Testative carryback.**

In a case where an amount is refunded under section 6402(b) or 6402(c) (relating to refund adjustments), the period described in section 6402(b) or 6402(c) for assessing a deficiency may be extended to include the period described in section 6402(b) or 6402(c) whichever is applicable, if the amount which may be assessed shall not exceed the amount refunded under section 6402(b) or 6402(c) as the case may be.

(l) **Special rule for chapter 11.**

(1) **In general.** For purposes of section 6501, the period described in section 6402(b) or 6402(c) for assessing a deficiency may be extended to include the period described in section 6402(b) or 6402(c) whichever is applicable, if the amount which may be assessed shall not exceed the amount refunded under section 6402(b) or 6402(c) as the case may be.

(2) **Certain contributions.** In the case of a contribution to a foundation making a distribution under section 4942(c), the failure of a section 4940, such return is foundation for the tax imposed.

(3) **Certain set-aside amounts.** In the case of a set-aside amount set aside by project to be treated under the provisions of section 170(e)(2)(B), the tax may be assessed at any time after the expiration of the period within which a deficiency may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(4) **Certain set-aside amounts.** In the case of a set-aside amount set aside by project to be treated under the provisions of section 170(e)(2)(B), the tax may be assessed at any time after the expiration of the period within which a deficiency may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

total gifts stated in the return if such in the return, or in a statement attached in a manner adequate to apprise the nature and amount of such item.

In the case of a return of a tax imposed of subtitle D, if the return omits tax properly includible thereon which of the amount of such tax reported may be assessed, or a proceeding in election of such tax may be begun at any time within 6 years after the determining the amount of tax omitted shall not be taken into account any posed by chapter 41, 42, 43, or 44 in the return if the transaction giving is disclosed in the return, or in a s to the return, in a manner adequate of the existence and nature of

pany tax. b is a personal holding company for file with its return under chapter 1 setting forth— income and adjusted ordinary gross section 543, received by the corpor- r, and

addresses of the individuals who aning of section 544 (relating to stock ownership), at any time such year more than 50 percent in g capital stock of the corporation, pany tax for such year may be n court for the collection of such assessment, at any time within 6 uch year was filed.

ras of corporations. pa. If a taxpayer determines in trust or partnership and files a ntle A, and if such taxpayer is orporation for the taxable year ed, such return shall be deemed ion for purposes of this section. . If a taxpayer determines in mpt organization and files a on 6033, and if such taxpayer taxable organization for the e return is filed, such return of the organization for

determines in good faith that n section 992(a) and files a ion 6011(c)(2) and if such d to be a corporation which ic year for which the return e deemed the return of a DISC for purposes of this

of capital loss carrybacks. rbutable to the application ating loss carryback or a deficiencies which may be ons of section 6213(b)(3), f at any time before the hich a deficiency for the g loss or net capital loss ay be assessed.

turnable to the application der section 904(c) (rela- excess foreign taxes) or

under section 907(f) (relating to carryback and carryover of disallowed oil and gas extraction taxes), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year of the excess taxes described in section 904(c) or 907(f) which result in such carryback.

(j) Certain credit carrybacks.

(1) In general. In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

(2) Credit carryback defined. For purposes of this subsection, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

(k) Tentative carryback adjustment assessment period.

In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback and refund adjustments) by reason of a net operating loss carryback, a capital loss carryback, or a credit carryback (as defined in Section 6511(d)(4)(C)) to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in subsection (h) or (j) whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h) or (j) as the case may be.

(l) Special rule for chapter 42 and similar taxes.

(1) In General. For purposes of any tax imposed by section 4912, by chapter 42 (other than section 4940) or by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, trust, or other organization (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred. For purposes of section 4940, such return is the return filed by the private foundation for the taxable year for which the tax is imposed.

(2) Certain contributions to section 501(c)(3) organizations. In the case of a deficiency of tax of a private foundation making a contribution in the manner provided in section 4942(g)(3) (relating to certain contributions to section 501(c)(3) organizations) attributable to the failure of a section 501(c)(3) organization to make the distribution prescribed by section 4942(g)(3), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year with respect to which the contribution was made.

(3) Certain set-asides described in section 4942(g)(2). In the case of a deficiency attributable to the failure of an amount set aside by a private foundation for a specific project to be treated as a qualifying distribution under the provisions of section 4942(g)(2)(B)(ii), such deficiency may be assessed at any time before the expiration of 2 years after the expiration of the period within which a deficiency may be assessed for the taxable year to which the amount set aside relates. For purposes of any tax

imposed by chapter 42 (other than section 4940) or by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, or trust (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred.

(m) [Repealed.]

(n) Deficiencies attributable to election of certain credits.

The period for assessing a deficiency attributable to any election under section 40(f) or 51(j) (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

(o) Cross References.

- (1) For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4).
(2) For extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229.

In '99, P.L. 101-219, Sec. 7814(e)(2)(E), deleted "41(b)" following "section 40(f)" in subsec. (n), effective for tax yrs. beginn. after 12/31/98.

In '98, P.L. 100-647, Sec. 1008(j)(1) deleted para. (o)(3), effective for amounts received after 12/31/98, in tax yrs. end. after such date. Prior to deletion para. (o)(3) read as follows:

"(3) For extension of period in the case of certain contributions in aid of construction, see section 118(c)."

—P.L. 100-647, Sec. 4008(e)(2) substituted ", 41(b), or 51(j)" for "or 51(j)" in subsec. (n) effective for tax yrs. beginn. after 12/31/98.

—P.L. 100-618, Sec. 1941(b)(2)(H), repealed subsec. (m), effective for crude oil removed from the premises on or after 8/23/98. Prior to repeal, subsec. (m) read as follows:

"(m) Special rules for windfall profit tax.

"(1) Oil subject to withholding.

"(A) In general. In the case of any oil to which section 4992(a) applies and with respect to which no return is required, the return referred to in this section shall be the return (of the person liable for the tax imposed by section 4940) of the taxes imposed by subtitle A for the taxable year in which the removal year ends.

"(B) Removal year. For purposes of subparagraph (A), the term "removal year" means the calendar year in which the oil is removed from the premises.

"(2) Extension of liability attributable to DOE reclassification.

"(A) In general. In the case of the tax imposed by chapter 45, if a Department of Energy change between final the period for assessing any deficiency attributable to such change shall not expire before the date which is 1 year after the date on which such change becomes final.

"(B) Department of Energy Change. For purposes of subparagraph (A) and section 6511(b)(2), the term "Department of Energy change" means any change by the Department of Energy in the classification under the June 1979 energy regulations (as defined in section 4994(b)(5)(C)) of a property or of domestic crude oil from a property.

"(3) Cross references.

For extension of period for windfall profit tax rules of partnerships, see section 6229 as made applicable by section 6232."

In '97, P.L. 105-203, Sec. 10712(c)(2), substituted "plan, trust or other organization" for "plan, or trust" in para. (n)(1) . . . Sec. 10714(e), substituted "by section 4912, by chapter 42 (other than section 4940)," for "by chapter 42 (other than section 4940)" in para. (l)(1), effective for tax yrs. beginn. after 12/22/97.

In '98, P.L. 99-514, Sec. 1810(g)(3)(A), substituted "(a), (c), or (e)" for "(a) or (c)" in para. (o)(8) . . . Sec. 1810(g)(3)(B), substituted "exchange or distribution" for "exchange" with note it appeared in para. (c)(8) effective for transfers or exchanges after 12/31/98 in tax yrs. end. after 12/31/94.

—P.L. 99-514, Sec. 1847(b)(1), redesignated subsec. (n) as subsec. (o), and added new subsec. (n) . . . Sec. 1847(b)(1)(4), substituted "or a credit carryback (as defined in section 6511(d)(4)(C)) for "an unassessable credit carryback, a work incentive program carryback, or a new employee credit carryback" in subsec. (n), effective for tax yrs. beginn. after 12/31/93, and to carrybacks from tax yrs. beginn. after 12/31/98.

In '98, P.L. 99-349, Sec. 1311(d)(2), added para. (o)(8), for transfers or exchanges after 12/31/98 in tax yrs. end. after 12/31/98. For special rules, see Secs. 1311(d)(2) and (3) of the Act reauthorized to date following Code Sec. 367.

—P.L. 99-349, Sec. 161(b)(1), deleted subsec. (l) and (m), redesignated subsec. (m), (n) and (o) as subsec. (h), (i) and (n) and