

Code of Federal Regulations

Title 26. Internal Revenue

Chapter I. Internal Revenue Service, Department of the Treasury

Subchapter A. Income Tax

Part 1. Income Taxes (Refs & Annos)

Normal Taxes and Surtaxes

Exempt Organizations

Private Foundations

26 C.F.R. § 1.509(a)-4, Treas. Reg. § 1.509(a)-4

§ 1.509(a)-4 Supporting organizations.

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Currentness

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(a) In general. (1) Section 509(a)(3) excludes from the definition of private foundation those organizations which meet the requirements of subparagraphs (A), (B), and (C) thereof.

(2) Section 509(a)(3)(A) provides that a section 509(a)(3) organization must be organized, and at all times thereafter 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 section 509(a)(1) or (2). Section 509(a)(3)(A) describes the nature of the support or benefit which a section 509(a)(3) organization must provide to one or more section 509(a)(1) or (2) organizations. For purposes of section 509(a)(3)(A), paragraph (b) of this section generally describes the organizational and operational tests; paragraph (c) of this section describes permissible purposes under the organizational test; paragraph (d) of this section describes the requirement of supporting or benefiting one or more specified publicly supported organizations; and paragraph (e) of this section describes permissible beneficiaries and activities under the operational test.

(3) Section 509(a)(3)(B) provides that a section 509(a)(3) organization must be operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a)(1) or (2). Section 509(a)(3)(B) and paragraph (f) of this section describe the nature of the relationship which must exist between the section 509(a)(3) and section 509(a)(1) or (2) organizations. For purposes of section 509(a)(3)(B), paragraph (g) of this section defines operated, supervised, or controlled by; paragraph (h) of this section defines supervised or controlled in connection with; and paragraph (i) of this section defines operated in connection with.

(4) Section 509(a)(3)(C) provides that a section 509(a)(3) organization must not be controlled directly or indirectly by disqualified persons (other than foundation managers or organizations described in section 509(a)(1) or (2)). Section 509(a)(3)(C) and paragraph (j) of this section prescribe a limitation on the control over the section 509(a)(3) organization.

(5) For purposes of this section, the term supporting organization means either an organization described in section 509(a)(3) or an organization seeking section 509(a)(3) status, depending upon its context. For purposes of this section, the term publicly supported organization means an organization described in section 509(a)(1) or (2).

(6) For purposes of paragraph (i) of this section, the term “supported organization” means a specified publicly supported organization described in paragraphs (d)(2)(iv) or (d)(4) of this section.

(b) Organizational and operational tests. (1) Under subparagraph (A) of section 509(a)(3), in order to qualify as a supporting organization, an organization must be both organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of (hereinafter referred to in this section as being organized and operated to support or benefit) one or more specified publicly supported organizations. If an organization fails to meet either the organizational or the operational test, it cannot qualify as a supporting organization.

(2) In the case of supporting organizations created prior to January 1, 1970, the organizational and operational tests shall apply as of January 1, 1970. Therefore, even though the original articles of organization did not limit its purposes to those required under section 509(a)(3)(A) and even though it operated before January 1, 1970, for some purpose other than those required under section 509(a)(3)(A), an organization will satisfy the organizational and operational tests if, on January 1, 1970, and at all times thereafter, it is so constituted as to comply with these tests. For the special rules pertaining to the application of the organizational and operational tests to organizations terminating their private foundation status under the 12-month or 60-month termination period provided under section 507(b)(1)(B) by becoming public under section 509(a)(3), see the regulations under section 507(b).

(c) Organizational test—(1) In general. An organization is organized exclusively for one or more of the purposes specified in section 509(a)(3)(A) only if its articles of organization (as defined in § 1.501(c)(3)-1(b)(2)):

(i) Limit the purposes of such organization to one or more of the purposes set forth in section 509(a)(3)(A);

(ii) Do not expressly empower the organization to engage in activities which are not in furtherance of the purposes referred to in subdivision (i) of this subparagraph;

(iii) State the specified publicly supported organizations on whose behalf such organization is to be operated (within the meaning of paragraph (d) of this section); and

(iv) Do not expressly empower the organization to operate to support or benefit any organization other than the specified publicly supported organizations referred to in subdivision (iii) of this subparagraph.

(2) Purposes. 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 set forth in section 509(a)(3)(A). Therefore, an organization which, by the terms of its articles, is formed for the benefit of one or more specified publicly supported organizations shall, if it otherwise meets the other requirements of this paragraph, be considered to have met the organizational test. Similarly, articles which state that an organization is formed to perform the publishing functions of a specified university are sufficient to comply with the organizational test. An organization which is operated, supervised, or controlled by (within the meaning of paragraph (g) of this section) or supervised or controlled in connection with (within the meaning of paragraph (h) of this section) one or more sections 509(a)(1) or (2) organizations to carry out the purposes of such organizations, will be considered as meeting the requirements of this paragraph if the purposes set forth in its articles are similar to, but no broader than, the purposes set forth in the articles of its controlling section 509(a)(1) or (2) organizations. If, however, the organization by which it

is operated, supervised, or controlled is a publicly supported section 501(c)(4), (5), or (6) organization (deemed to be a section 509(a)(2) organization for purposes of section 509(a)(3) under the provisions of section 509(a)), the supporting organization will be considered as meeting the requirements of this paragraph if its articles require it to carry on charitable, etc., activities within the meaning of section 170(c)(2).

(3) Limitations. An organization is not organized exclusively for the purposes set forth in section 509(a)(3)(A) if its articles expressly permit it to operate to support or benefit any organization other than those specified publicly supported organizations referred to in subparagraph (1)(iii) of this paragraph. Thus, for example, an organization will not meet the organizational test under section 509(a)(3)(A) if its articles expressly empower it to pay over any part of its income to, or perform any service for, any organization other than those publicly supported organizations specified in its articles (within the meaning of paragraph (d) of this section). The fact that the actual operations of such organization have been exclusively for the benefit of the specified publicly supported organizations shall not be sufficient to permit it to meet the organizational test.

(d) Specified organizations—(1) In general. In order to meet the requirements of section 509(a)(3)(A), an organization must be organized and operated exclusively to support or benefit one or more specified publicly supported organizations. The manner in which the publicly supported organizations must be specified in the articles for purposes of section 509(a)(3)(A) will depend upon whether the supporting organization is operated, supervised, or controlled by or supervised or controlled in connection with (within the meaning of paragraphs (g) and (h) of this section) such organizations or whether it is operated in connection with (within the meaning of paragraph (i) of this section) such organizations.

(2) Nondesignated publicly supported organizations; requirements. **(i)** Except as provided in subdivision (iv) of this subparagraph, in order to meet the requirements of subparagraph (1) of this paragraph, the articles of the supporting organization must designate each of the specified organizations by name unless:

(a) The supporting organization is operated, supervised, or controlled by (within the meaning of paragraph (g) of this section), or is supervised or controlled in connection with (within the meaning of paragraph (h) of this section) one or more publicly supported organizations; and

(b) The articles of organization of the supporting organization require that it be operated to support or benefit one or more beneficiary organizations which are designated by class or purpose and which include:

(1) The publicly supported organizations referred to in (a) of this subdivision (without designating such organizations by name); or

(2) Publicly supported organizations which are closely related in purpose or function to those publicly supported organizations referred to in subdivision (i)(a) or this subparagraph (without designating such organization by name).

(ii) If a supporting organization is described in subdivision (i)(a) of this subparagraph, it will not be considered as failing to meet the requirements of subparagraph (1) of this paragraph that the publicly supported organizations be specified merely because its articles of organization permit the conditions described in subparagraphs (3)(i), (ii), and (iii) and (4)(i)(a) and (b) of this paragraph.

(iii) This subparagraph may be illustrated by the following examples:

Example 1. X is an organization described in section 501(c)(3) which operates for the benefit of institutions of higher learning in the State of Y. X is controlled by these institutions (within the meaning of paragraph (g) of this section) and such institutions are all section 509(a)(1) organizations. X's articles will meet the organizational test if they require X to operate for the benefit of institutions of higher learning or educational organizations in the State of Y (without naming each institution). X's articles would also meet the organizational test if they provided for the giving of scholarships to enable students to attend institutions of higher learning but only in the State of Y.

Example 2. M is an organization described in section 501(c)(3) which was organized and operated by representatives of N church to run a home for the aged. M is controlled (within the meaning of paragraph (g) of this section) by N church, a section 509(a)(1) organization. The care of the sick and the aged are longstanding temporal functions and purposes of organized religion. By operating a home for the aged, M is operating to support or benefit N church in carrying out one of its temporal purposes. Thus M's articles will meet the organizational test if they require M to care for the aged since M is operating to support one of N church's purposes (without designating N church by name).

(iv) A supporting organization will meet the requirements of subparagraph (1) of this paragraph even though its articles do not designate each of the specified organizations by name if:

(a) There has been an historic and continuing relationship between the supporting organization and the section 509(a)(1) or (2) organizations, and

(b) By reason of such relationship, there has developed a substantial identity of interests between such organizations.

(3) Nondesignated publicly supported organizations; scope of rule. If the requirements of subparagraph (2)(i)(a) of this paragraph are met, a supporting organization will not be considered as failing the test of being organized for the benefit of specified organizations solely because its articles:

(i) Permit the substitution of one publicly supported organization within a designated class for another publicly supported organization either in the same or a different class designated in the articles;

(ii) Permit the supporting organization to operate for the benefit of new or additional publicly supported organizations of the same or a different class designated in the articles; or

(iii) Permit the supporting organization to vary the amount of its support among different publicly supported organizations within the class or classes of organizations designated by the articles.

For example, X is an organization which operates for the benefit of private colleges in the State of Y. If X is controlled by these colleges (within the meaning of paragraph (g) of this section) and such colleges are all section 509(a)(1) organizations, X's articles will meet the organization test even if they permit X to operate for the benefit of any new colleges created in State Y in addition to the existing colleges or in lieu of one which has ceased to operate, or if they permit X to vary its support by paying more to one college than to another in a particular year.

(4) Designated publicly supported organizations. **(i)** If an organization is organized and operated to support one or more publicly supported organizations and it is operated in connection with such organization or organizations, then, except as provided in subparagraph (2)(iv) of this paragraph, its articles of organization must, for purposes of satisfying the organizational test under section 509(a)(3)(A), designate the specified organizations by name. Under the circumstances described in this subparagraph, a supporting organization which has one or more specified organizations designated by name in its articles, will not be considered as failing the test of being organized for the benefit of specified organizations solely because its articles:

- (a) Permit a publicly supported organization which is designated by class or purpose, rather than by name, to be substituted for the publicly supported organization or organizations designated by name in the articles, but only if such substitution is conditioned upon the occurrence of an event which is beyond the control of the supporting organization, such as loss of exemption, substantial failure or abandonment of operations, or dissolution of the publicly supported organization or organizations designated in the articles;
- (b) Permit the supporting organization to operate for the benefit of a beneficiary organization which is not a publicly supported organization, but only if such supporting organization is currently operating for the benefit of a publicly supported organization and the possibility of its operating for the benefit of other than a publicly supported organization is a remote contingency; or
- (c) Permit the supporting organization to vary the amount of its support between different designated organizations, so long as it meets the requirements of the integral part test set forth in paragraph (i)(3) of this section with respect to at least one beneficiary organization.

(ii) If the beneficiary organization referred to in subdivision (i)(b) of this subparagraph is not a publicly supported organization, the supporting organization will not then meet the operational test of paragraph (e)(1) of this section. Therefore, if a supporting organization substituted in accordance with such subdivision (i)(b) a beneficiary other than a publicly supported organization and operated in support of such beneficiary organization, the supporting organization would not be described in section 509(a)(3).

(iii) This subparagraph may be illustrated by the following example:

Example. X is a charitable trust described in section 4947(a)(1) organized in 1968. Under the terms of its trust instrument, X's trustees are required to pay over all of X's annual income to M University Medical School for urological research. If M University Medical School is unable or unwilling to devote these funds to urological research, the trustees are required to pay all of such income to N University Medical School. However if N University Medical School is also unable or unwilling to devote these funds to urological research, X's trustees are directed to choose a similar organization willing to apply X's funds for urological research. From 1968 to 1973, X pays all of its net income to M University Medical School pursuant to the terms of the trust. M and N are publicly supported organizations. Although the contingent remainderman may not be a publicly supported organization, the possibility that X may operate for the benefit of other than a publicly supported organization is, in 1973, a remote possibility, and X will be considered as operating for the benefit of a specified publicly supported organization under subdivision (i)(b) of this subparagraph. However, if, at some future date, X actually substituted a nonpublicly supported organization as beneficiary, X would fail the requirements of the operational test set forth in paragraph (e)(1) of this section.

(e) Operational test—(1) Permissible beneficiaries. A supporting organization will be regarded as operated exclusively to support one or more specified publicly supported organizations (hereinafter referred to as the operational test) only if it engages solely in activities which support or benefit the specified publicly supported organizations. Such activities may include making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefited by the specified publicly supported organization. A supporting organization may also, for example, make a payment indirectly through another unrelated organization to a member of a charitable class benefited by the specified publicly supported organization, but only if such a payment constitutes a grant to an individual rather than a grant to an organization. In determining whether a grant is indirectly to an individual rather than to an organization the same standard shall be applied as in § 53.4945-4(a)(4) of this chapter. Similarly, an organization will be regarded as operated exclusively to support or benefit one or more specified publicly supported organizations even if it supports or benefits an organization, other than a private foundation, which is described in section 501(c)(3) and is operated, supervised, or controlled directly by or in connection with such publicly supported organizations, or which is described in section 511(a)(2)(B). However, an organization will not be regarded as operated exclusively if any part of its activities is in furtherance of a purpose other than supporting or benefiting one or more specified publicly supported organizations.

(2) Permissible activities. A supporting organization is not required to pay over its income to the publicly supported organizations in order to meet the operational test. It may satisfy the test by using its income to carry on an independent activity or program which supports or benefits the specified publicly supported organizations. All such support must, however, be limited to permissible beneficiaries in accordance with subparagraph (1) of this paragraph. The supporting organization may also engage in fund raising activities, such as solicitations, fund raising dinners, and unrelated trade or business to raise funds for the publicly supported organizations, or for the permissible beneficiaries.

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

Example 1. M is a separately incorporated alumni association of X University and is an organization described in section 501(c)(3). X University is designated in M's articles as the sole beneficiary of its support. M uses all of its dues and income to support its own program of educational activities for alumni, faculty, and students of X University and to encourage alumni to maintain a close relationship with the university and to make contributions to it. M does not distribute any of its income directly to X for the latter's general purposes. M pays no part of its funds to, or for the benefit of, any organization other than X. Under these circumstances, M is considered as operated exclusively to perform the functions and carry out the purpose of X. Although it does not pay over any of its funds to X, it carries on a program which both supports and benefits X.

Example 2. N is a separately incorporated religious and educational organization described in section 501(c)(3). It was formed and is operated by Y Church to provide religious training for the members of the church. While it does not maintain a regular faculty, N conducts a Sunday school, weekly adult education lectures on religious subjects, and other similar activities for the benefit of the church members. All of its funds are disbursed in furtherance of such activities and no part of its funds is paid to, or for the benefit of, any organization other than Y Church. N is considered as operated exclusively to perform the educational functions of Y Church and to carry out its religious purposes by providing various forms of religious instruction.

Example 3. P is an organization described in section 501(c)(3). Its primary activity is providing financial assistance to S, a publicly supported organization which aids underdeveloped nations in Central America. P's articles of organization designate S as the principal recipient of P's assistance. However, P also makes a small annual general purpose grant to T, a private foundation engaged in work similar to that carried on by S. T performs a particular function that assists in the overall aid program carried on by S. Even though P is operating primarily for the benefit of S, a specified publicly supported organization, it is not considered as operated exclusively for the purposes set forth in section 509(a)(3)(A). The grant to T, a private foundation, prevents it from complying with the operational test under section 509(a)(3)(A).

Example 4. Assume the same facts as example 3, except that T is a section 501(c)(3) organization other than a private foundation and is operated in connection with S. Under these circumstances, P will be considered as operated exclusively to support S within the meaning of section 509(a)(3)(A).

Example 5. Assume the same facts as example 3 except that instead of the annual general purpose grant made to T, each grant made by P to T is specifically earmarked for the training of social workers and teachers, designated by name, from Central America. Under these circumstances, P's grants to T would be treated as grants to the individual social workers and teachers under section 4945(d)(3) and § 53.4945-4(a)(4), rather than as grants to T under section 4945(d)(4). These social workers and teachers are part of the charitable class benefitted by S. P would thus be considered as operating exclusively to support S within the meaning of section 509(a)(3)(A).

(f) Nature of relationship required between organizations—(1) In general. Section 509(a)(3)(B) describes the nature of the relationship required between a section 501(c)(3) organization and one or more publicly supported organizations in order for such section 501(c)(3) organization to qualify under the provisions of section 509(a)(3). To meet the requirements of section 509(a)(3), an organization must be operated, supervised, or controlled by or in connection with one or more publicly supported organizations. If an organization does not stand in one of such relationships (as provided in this paragraph) to one or more publicly supported organizations, it is not an organization described in section 509(a)(3).

(2) Types of relationships. Section 509(a)(3)(B) sets forth three different types of relationships, one of which must be met in order to meet the requirements of subparagraph (1) of this paragraph. Thus, a supporting organization may be:

(i) Operated, supervised, or controlled by,

(ii) Supervised or controlled in connection with, or

(iii) Operated in connection with, one or more publicly supported organizations.

(3) Requirements of relationships. Although more than one type of relationship may exist in any one case, any relationship described in section 509(a)(3)(B) must insure that:

(i) The supporting organization will be responsive to the needs of demands of one or more publicly supported organizations; and

(ii) The supporting organization will constitute an integral part of, or maintain a significant involvement in, the operations of one or more publicly supported organizations.

(4) General description of relationships. In the case of supporting organizations which are operated, supervised, or controlled by one or more publicly supported organizations, the distinguishing feature of this type of relationship is the presence of a substantial degree of direction by the publicly supported organizations over the conduct of the supporting organization, as described in paragraph (g) of this section. In the case of supporting organizations which are supervised or controlled in connection with one or more publicly supported organizations, the distinguishing feature is the presence of common supervision or control among the governing bodies of all organizations involved, such as the presence of common directors, as described in paragraph (h) of this section. In the case of a supporting organization which is operated in

connection with one or more publicly supported organizations, the distinguishing feature is that the supporting organization is responsive to, and significantly involved in the operations of, the publicly supported organization, as described in paragraph (i) of this section.

(5) Contributions from controlling donors—(i) In general. For any taxable year, a supporting organization shall not be considered to be operated, supervised, or controlled by, or operated in connection with, one or more publicly supported organizations, if the supporting organization accepts any gift or contribution from any person who is—

- (A) A person (other than an organization described in section 509(a)(1), (2), or (4)) who directly or indirectly controls, either alone or together with persons described in paragraphs (f)(5)(i)(B) or (f)(5)(i)(C) of this section, the governing body of a specified publicly supported organization supported by such supporting organization;
- (B) A member of the family (determined under section 4958(f)(4)) of an individual described in paragraph (f)(5)(i)(A) of this section; or
- (C) A 35-percent controlled entity (as defined in section 4958(f)(3) by substituting “clause (i) or (ii) of section 509(f)(2)(B)” for “subparagraph (A) or (B) of paragraph (1)” in paragraph (f)(3)(A)(i) thereof).

(ii) Meaning of control. [Reserved]

(g) Meaning of operated, supervised, or controlled by. **(1)(i)** Each of the items operated by, supervised by, and controlled by, as used in section 509(a)(3)(B), presupposes a substantial degree of direction over the policies, programs, and activities of a supporting organization by one or more publicly supported organizations. The relationship required under any one of these terms is comparable to that of a parent and subsidiary, where the subsidiary is under the direction of, and accountable or responsible to, the parent organization. This relationship is established by the fact that a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations.

(ii) A supporting organization may be operated, supervised, or controlled by one or more publicly supported organizations within the meaning of section 509(a)(3)(B) even though its governing body is not comprised of representatives of the specified publicly supported organizations for whose benefit it is operated within the meaning of section 509(a)(3)(A). A supporting organization may be operated, supervised, or controlled by one or more publicly supported organizations (within the meaning of section 509(a)(3)(B)) and be operated for the benefit of one or more different publicly supported organizations (within the meaning of section 509(a)(3)(A)) only if it can be demonstrated that the purposes of the former organizations are carried out by benefitting the latter organizations.

(2) The provisions of this paragraph may be illustrated by the following examples:

Example 1. X is a university press which is organized and operated as a nonstock educational corporation to perform the publishing and printing for M University, a publicly supported organization. Control of X is vested in a Board of Governors appointed by the Board of Trustees of M University upon the recommendation of the president of the university. X is considered to be operated, supervised, or controlled by M University within the meaning of section 509(a)(3)(B).

Example 2. Y Council was organized under the joint sponsorship of seven independent publicly supported organizations, each of which is dedicated to the advancement of knowledge in a particular field of social science. The sponsoring organizations organized Y Council as a means of pooling their ideas and resources for the attainment of common objectives, including the conducting of scholarly studies and formal discussions in various fields of social science. Under Y Council's by-laws, each of the seven sponsoring organizations elects three members to Y's board of trustees for 3-year terms. Y's board also includes the president of Y Council and eight other individuals elected at large by the board. Pursuant to policies established or approved by the board, Y Council engages in research, planning, and evaluation in the social sciences and sponsors or arranges conferences, seminars, and similar programs for scholars and social scientists. It carries out these activities through its own full-time professional staff, through a part-time committee of scholars, and through grant recipients. Under the above circumstances, Y Council is subject to a substantial degree of direction by the sponsoring publicly supported organizations. It is therefore considered to be operated, supervised, or controlled by such sponsoring organizations within the meaning of section 509(a)(3)(B).

Example 3. Z is a charitable trust created by A in 1972. It has three trustees, all of whom are appointed by M University, a publicly supported organization. The trust was organized and is operated to pay over all of its net income for medical research to N, O, and P, each of which is specified in the trust, is a hospital described in section 509(a)(1), and is located in the same city as M. Members of M's biology department are permitted to use the research facilities of N, O, and P. Under subparagraph (1)(ii) of this paragraph, Z is considered to be operated, supervised, or controlled by M within the meaning of section 509(a)(3)(B), even though it is operated for the benefit of N, O, and P within the meaning of section 509(a)(3)(A).

(h) Meaning of supervised or controlled in connection with. (1) In order for a supporting organization to be supervised or controlled in connection with one or more publicly supported organizations, there must be common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organizations to insure that the supporting organization will be responsive to the needs and requirements of the publicly supported organizations. Therefore, in order to meet such requirement, the control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organizations.

(2) A supporting organization will not be considered to be supervised or controlled in connection with one or more publicly supported organizations if such organization merely makes payments (mandatory or discretionary) to one or more named publicly supported organizations, even if the obligation to make payments to the named beneficiaries is enforceable under State law by such beneficiaries and the supporting organization's governing instrument contains provisions whose effect is described in section 508(e)(1)(A) and (B). Such arrangements do not provide a sufficient connection between the payor organization and the needs and requirements of the publicly supported organizations to constitute supervision or control in connection with such organizations.

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

Example 1. A, a philanthropist, founded X school for orphan boys (a publicly supported organization). At the same time A founded X school, he also established Y trust into which he transferred all of the operating assets of the school, together with a substantial endowment for it. Under the provisions of the trust instrument, the same persons who control and manage the school also control and manage the trust. The sole function of Y trust is to hold legal title to X school's operating and endowment assets, to invest the endowment assets and to apply the income from the endowment to the benefit of the school in accordance with direction from the school's governing body. Under these circumstances, Y trust is organized and operated for the benefit of X school and is supervised or controlled in connection with such organization within the meaning of section 509(a)(3). The fact that the same persons control both X and Y insures Y's responsiveness to X's needs.

Example 2. In 1972, B, a philanthropist, created P, a charitable trust for the benefit of Z, a symphony orchestra described in section 509(a)(2). B transferred 100 shares of common stock to P. Under the terms of the trust instrument, the trustees (none of whom is under the control of B) were required to pay over all of the income produced by the trust assets to Z. The governing instrument of P contains certain provisions whose effect is described in section 508(e)(1)(A) and (B). Under applicable State law, Z can enforce the provisions of the trust instrument and compel payment to Z in a court of equity. There is no relationship between the trustees of P and the governing body of Z. Under these circumstances P is not supervised or controlled in connection with a publicly supported organization. Because of the lack of any common supervision or control by the trustees of P and the governing body of Z, P is not supervised or controlled in connection with Z within the meaning of section 509(a)(3)(B).

Example 3. T is a charitable trust described in section 501(c)(3) and created under the will of D. Prior to his death, D was a leader and very active in C church, a publicly supported organization. D created T to perpetuate his interest in, and assistance to, C. The sole purpose of T was to provide financial support for C and its related institutions. All of the original named trustees of T are members of C, are leaders in C, and hold important offices in one or more of C's related institutions. Successor trustees of T are by the terms of the charitable trust instrument to be chosen by the remaining trustees and are also to be members of C. All of the original trustees have represented that any successor trustee will be a leader in C and will hold an important office in one or more of C's related institutions. By reason of the foregoing relationship T and its trustees are responsive to the needs and requirements of C and its related institutions. Under these circumstances, T trust is organized and operated for the benefit of C and is supervised or controlled in connection with C and its related institutions within the meaning of section 509(a)(3)(B).

(i) Meaning of operated in connection with—(1) General rule. For each taxable year, a supporting organization is operated in connection with one or more supported organizations (that is, is a “Type III supporting organization”) only if it is not disqualified by reason of paragraph (f)(5) (relating to acceptance of contributions from controlling donors) or paragraph (i)(10) (relating to foreign supported organizations) of this section, and it satisfies—

(i) The notification requirement, which is set forth in paragraph (i)(2) of this section;

(ii) The responsiveness test, which is set forth in paragraph (i)(3) of this section; and

(iii) The integral part test, which is satisfied by maintaining significant involvement in the operations of one or more supported organizations and providing support on which the supported organization(s) are dependent; in order to satisfy this test, the supporting organization must meet the requirements either for—

(A) Functionally integrated Type III supporting organizations set forth in paragraph (i)(4) of this section; or

(B) Non-functionally integrated Type III supporting organizations set forth in paragraph (i)(5) of this section.

(2) Notification requirement—(i) Annual notification. For each taxable year, a Type III supporting organization must provide the following documents to each of its supported organizations:

(A) A written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support the supporting organization provided to the supported organization during the supporting organization's taxable year immediately preceding the taxable year in which the written notice is provided (and during any other

taxable year of the supporting organization ending after December 28, 2012, for which such support information has not previously been provided);

(B) A copy of the supporting organization's Form 990, "Return of Organization Exempt from Income Tax," or other annual information return required to be filed under section 6033 (although the supporting organization may redact from the return the name and address of any contributor to the organization) that was most recently filed as of the date the notification is provided (and any such return for any other taxable year of the supporting organization ending after December 28, 2012, that has not previously been provided to the supported organization); and

(C) A copy of the supporting organization's governing documents as in effect on the date the notification is provided, including its articles of organization and bylaws (if any) and any amendments to such documents, unless such documents have been previously provided and not subsequently amended.

(ii) Electronic media. The notification documents required by this paragraph (i)(2) may be provided by electronic media.

(iii) Due date. The notification documents required by this paragraph (i)(2) for any taxable year shall be postmarked or electronically transmitted by the last day of the fifth calendar month following the close of that taxable year.

(iv) Principal officer. For purposes of paragraph (i)(2)(i)(A) of this section, a principal officer includes, but is not limited to, a person who, regardless of title, has ultimate responsibility for—

(A) Implementing the decisions of the governing body of a supported organization;

(B) Supervising the management, administration, or operation of the supported organization; or

(C) Managing the finances of the supported organization.

(3) Responsiveness test—(i) General rule. A supporting organization meets the responsiveness test if it is responsive to the needs or demands of a supported organization. Except as provided in paragraph (i)(3)(v) of this section, in order to meet this test, a supporting organization must satisfy the requirements of paragraphs (i)(3)(ii) and (i)(3)(iii) of this section.

(ii) Relationship of officers, directors, or trustees. A supporting organization satisfies the requirements of this paragraph (i)(3)(ii) with respect to a supported organization only if—

(A) One or more officers, directors, or trustees of the supporting organization are elected or appointed by the officers, directors, trustees, or membership of the supported organization;

(B) One or more members of the governing body of the supported organization are also officers, directors, or trustees of, or hold other important offices in, the supporting organization; or

(C) The officers, directors, or trustees of the supporting organization maintain a close and continuous working relationship with the officers, directors, or trustees of the supported organization.

(iii) Significant voice. A supporting organization satisfies the requirements of this paragraph (i)(3)(iii) only if, by reason of paragraphs (i)(3)(ii)(A), (i)(3)(ii)(B), or (i)(3)(ii)(C) of this section, the officers, directors, or trustees of the supported organization have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making grants, and the selection of grant recipients by such supporting organization, and in otherwise directing the use of the income or assets of the supporting organization.

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

Example 1. X, an organization described in section 501(c)(3), is a trust created under the last will and testament of Decedent. The trustee of X (Trustee) is a bank. Under the trust instrument, X supports M, a private university described in section 509(a)(1). The trust instrument provides that Trustee has discretion regarding the timing and amount of distributions consistent with the Trustee's fiduciary duties. Representatives of Trustee and an officer of M have quarterly face-to-face or telephonic meetings during which they discuss M's projected needs and ways in which M would like X to use its income and invest its assets. Additionally, Trustee communicates regularly with that officer of M regarding X's investments and plans for distributions from X. Trustee provides the officer of M with quarterly investment statements, the information required under paragraph (i)(2) of this section, and an annual accounting statement. Based on these facts, X meets the responsiveness test of this paragraph (i)(3) with respect to M.

Example 2. Y is an organization described in section 501(c)(3) and is a trust under State law. The trustee of Y (Trustee) is a bank. Y supports charities P, Q, and R, each an organization described in section 509(a)(1). Y makes annual cash payments to P, Q, and R. Once a year, Trustee sends to P, Q, and R the cash payment, the information required under paragraph (i)(2) of this section, and an accounting statement. Trustee has no other communication with P, Q, or R. Y does not meet the responsiveness test of this paragraph (i)(3).

(v) Exception for pre–November 20, 1970 organizations. In the case of a supporting organization that was supporting or benefiting a supported organization before November 20, 1970, additional facts and circumstances, such as a historic and continuing relationship between the organizations, may be taken into account, in addition to the factors described in paragraphs (i)(3)(ii) and (i)(3)(iii) of this section, to establish compliance with the responsiveness test.

(4) Integral part test—functionally integrated Type III supporting organization—(i) General rule. A supporting organization meets the integral part test and will be considered functionally integrated within the meaning of section 4943(f)(5)(B), if it—

(A) Engages in activities substantially all of which directly further the exempt purposes of one or more supported organizations and otherwise meets the requirements described in paragraph (i)(4)(ii) of this section;

(B) Is the parent of each of its supported organizations, as described in paragraph (i)(4)(iii) of this section; or

(C) Supports a governmental supported organization and otherwise meets the requirements of paragraph (i)(4)(iv) of this section.

(ii) Substantially all activities directly further exempt purposes—(A) In general. A supporting organization meets the requirements of this paragraph (i)(4)(ii) if it engages in activities substantially all of which—

(1) Directly further the exempt purposes of one or more supported organizations to which the supporting organization is responsive by performing the functions of, or carrying out the purposes of, such supported organization(s); and

(2) But for the involvement of the supporting organization, would normally be engaged in by such supported organization(s).

(B) Meaning of substantially all. For purposes of paragraph (i)(4)(ii)(A) of this section, in determining whether substantially all of a supporting organization's activities directly further the exempt purposes of one or more supported organization(s) to which the supporting organization is responsive, all pertinent facts and circumstances will be taken into consideration.

(C) Meaning of directly further. Activities “directly further” the exempt purposes of one or more supported organizations for purposes of this paragraph (i)(4) only if they are conducted by the supporting organization itself, rather than by a supported organization. Holding title to and managing exempt-use assets described in paragraph (i)(8)(ii) of this section are activities that directly further the exempt purposes of the supported organization within the meaning of this paragraph (i)(4). Conversely, except as provided in paragraph (i)(4)(ii)(D) of this section, fundraising, making grants (whether to the supported organization or to third parties), and investing and managing non-exempt-use assets are not activities that directly further the exempt purposes of the supported organization within the meaning of this paragraph (i)(4).

(D) Payments to individual beneficiaries. The making or awarding of grants, scholarships, or other payments to individual beneficiaries who are members of the charitable class benefited by a supported organization will be treated as an activity that directly furthers the exempt purposes of that supported organization for purposes of this paragraph (i)(4) only if—

(1) The individual beneficiaries are selected on an objective and nondiscriminatory basis (as described in § 53.4945-4(b));

(2) The officers, directors, or trustees of the supported organization have a significant voice in the timing of the payments, the manner of making them, and the selection of recipients; and

(3) The making or awarding of such payments is part of an active program of the supporting organization that directly furthers the exempt purposes of the supported organization and in which the supporting organization maintains significant involvement, as defined in § 53.4942(b)-1(b)(2)(ii) (except that “supporting organization” shall be substituted for “foundation”).

(iii) Parent of supported organization(s). For purposes of paragraph (i)(4)(i)(B) of this section, a supporting organization is the parent of a supported organization if the supporting organization exercises a substantial degree of direction over the policies, programs, and activities of the supported organization and a majority of the officers, directors, or trustees of the supported organization is appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers (acting in their official capacity) of the supporting organization.

(iv) Supporting a governmental entity. [Reserved]

(v) Examples. The provisions of this paragraph (i)(4) may be illustrated by the following examples:

Example 1. N, an organization described in section 501(c)(3), is the parent organization of a healthcare system consisting of two hospitals (Q and R) and an outpatient clinic (S), each of which is described in section 509(a)(1), and a taxable subsidiary (T). N is the sole member of each of Q, R, and S. Under the charter and bylaws of each of Q, R, and S, N appoints all members of the board of directors of each corporation. N engages in the overall coordination and supervision of the healthcare system's exempt subsidiary corporations Q, R, and S in approval of their budgets, strategic planning, marketing, resource allocation, securing tax-exempt bond financing, and community education. N also manages and invests assets that serve as endowments of Q, R, and S. Based on these facts, N qualifies as a functionally integrated Type III supporting organization under paragraph (i)(4)(i)(B) of this section.

Example 2. V, an organization described in section 501(c)(3), is organized and operated as a supporting organization to L, a church described in section 509(a)(1). V meets the responsiveness test described in paragraph (i)(3) of this section with respect to L. L transferred to V title to the buildings in which L conducts religious services, Bible study, and community enrichment programs. Substantially all of V's activities consist of holding and maintaining these buildings, which L continues to use, free of charge, to further its exempt purposes. But for the activities of V, L would hold and maintain the buildings. Based on these facts, V satisfies the requirements of paragraph (i)(4)(ii) of this section.

Example 3. O is a local nonprofit food pantry described in section 501(c)(3). O collects donated food from local growers, grocery stores, and individuals and distributes this food free of charge to poor and needy people in O's community. O is organized and operated as a supporting organization to eight churches of a particular denomination located in O's community, each of which is described in section 509(a)(1). Control of O is vested in a five-member Board of Directors, which includes an official from one of the churches as well as four lay members of the churches' congregations. The officers of O maintain a close and continuing working relationship with each of the eight churches and as a result of such relationship, each of the eight churches has a significant voice in directing the use of the income and assets of O. As a result, O is responsive to its supported organizations. All of O's activities directly further the exempt purposes of the eight supported organizations to which it is responsive. Additionally, but for the activities of O, the churches would normally operate food pantries themselves. Based on these facts, O satisfies the requirements of paragraph (i)(4)(ii) of this section.

Example 4. M, an organization described in section 501(c)(3), was created by B, an individual, to provide scholarships for students of U, a private secondary school and an organization described in section 509(a)(1). U establishes the scholarship criteria, publicizes the scholarship program, solicits and reviews applications, and selects the scholarship recipients. M invests its assets and disburses the funds for scholarships to the recipients selected by U. M does not provide the scholarships as part of an active program in which it maintains significant involvement, as defined in § 53.4942(b)-1(b)(2)(ii). Based on these facts, M does not satisfy the requirements of paragraph (i)(4)(ii) of this section.

Example 5. J, an organization described in section 501(c)(3), is organized as a supporting organization to community foundation G, an organization described in section 509(a)(1). J meets the responsiveness test described in paragraph (i)(3) of this section with respect to G. In addition to maintaining field-of-interest funds, sponsoring donor advised funds, and conducting general

grantmaking activities, G also engages in activities to beautify and maintain local parks. Substantially all of J's activities consist of maintaining all of the local parks in the area of community foundation G by performing activities such as establishing and maintaining trails, planting trees, and removing trash. But for the activities of J, G would normally engage in these efforts to beautify and maintain the local parks. Based on these facts, J satisfies the requirements of paragraph (i)(4)(ii) of this section.

(5) Integral part test—non-functionally integrated Type III supporting organization—(i) General rule. A supporting organization meets the integral part test and will be considered non-functionally integrated if it satisfies either—

(A) The distribution requirement of paragraph (i)(5)(ii) of this section and the attentiveness requirement of paragraph (i)(5)(iii) of this section; or

(B) The pre–November 20, 1970 trust requirements of paragraph (i)(9) of this section.

(ii) Distribution requirement—(A) Annual distribution. With respect to each taxable year, a supporting organization must distribute to or for the use of one or more supported organizations an amount equaling or exceeding the supporting organization's distributable amount for the taxable year, as defined in paragraph (i)(5)(ii)(B) of this section, on or before the last day of the taxable year.

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

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

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

(2) Amounts received or accrued during the immediately preceding taxable year from the sale or other disposition of property to the extent that the acquisition of such property was taken into account by the organization to meet the distribution requirement imposed in this paragraph (i)(5)(ii) for any taxable year; and

(3) Any amount set aside under paragraph (i)(6)(v) of this section to the extent it is determined during the immediately preceding taxable year that such amount is not necessary for the purposes for which it was set aside

and such amount was taken into account by the organization to meet the distribution requirement imposed in this paragraph (i)(5)(ii) for any taxable year.

(D) First taxable year. The distributable amount for the first taxable year an organization is treated as a non-functionally integrated Type III supporting organization is zero. Notwithstanding the foregoing, for purposes of determining whether an excess amount is created under paragraph (i)(7)(ii) of this section, the distributable amount for the first taxable year an organization is treated as a non-functionally integrated Type III supporting organization is the distributable amount that would apply under paragraph (i)(5)(ii)(B) of this section in the absence of this paragraph (i)(5)(ii)(D).

(E) Emergency temporary reduction. The Secretary may provide by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) for a temporary reduction in the distributable amount in the case of a disaster or emergency.

(F) Reasonable cause exception. A non-functionally integrated Type III supporting organization that fails to meet the distribution requirement of this paragraph (i)(5)(ii) will not be classified as a private foundation for the taxable year in which it fails to meet the distribution requirement if the organization establishes to the satisfaction of the Secretary that—

(1) The failure was due solely to unforeseen events or circumstances that are beyond the organization's control, a clerical error, or an incorrect valuation of assets;

(2) The failure was due to reasonable cause and not to willful neglect; and

(3) The distribution requirement is met within 180 days after the organization is first able to distribute its distributable amount notwithstanding the unforeseen events or circumstances, or 180 days after the date the incorrect valuation or clerical error was or should have been discovered; however, no amounts paid to meet a distribution requirement for a prior taxable year under this paragraph (i)(5)(ii)(F)(3) may be counted toward the distribution requirement for the taxable year in which such amounts are paid.

(iii) Attentiveness requirement—(A) General rule. With respect to each taxable year, a non-functionally integrated Type III supporting organization must distribute one-third or more of its distributable amount to one or more supported organizations that are attentive to the operations of the supporting organization (within the meaning of paragraph (i)(5)(iii)(B) of this section) and to which the supporting organization is responsive (within the meaning of paragraph (i)(3) of this section).

(B) Attentiveness. A supported organization is attentive to the operations of the supporting organization during a taxable year if, in the taxable year, at least one of the following requirements is satisfied:

(1) The supporting organization distributes to the supported organization amounts equaling or exceeding 10 percent of the supported organization's total support (or, in the case of a particular department or school of a university, hospital, or church, the total support of the department or school) received during the supported organization's last taxable year ending before the beginning of the supporting organization's taxable year.

(2) The amount of support received from the supporting organization is necessary to avoid the interruption of the carrying on of a particular function or activity of the supported organization. The support is necessary if the supporting organization or the supported organization earmarks the support for a particular program or activity of the supported organization, even if such program or activity is not the supported organization's primary program or activity, as long as such program or activity is a substantial one.

(3) Based on the consideration of all pertinent factors, including the number of supported organizations, the length and nature of the relationship between the supported organization and supporting organization, and the purpose to which the funds are put, the amount of support received from the supporting organization is a sufficient part of a supported organization's total support (or, in the case of a particular department or school of a university, hospital, or church, the total support of the department or school) to ensure attentiveness. Normally the attentiveness of a supported organization is influenced by the amounts received from the supporting organization. Thus, the more substantial the amount involved in terms of a percentage of the supported organization's total support, the greater the likelihood that the required degree of attentiveness will be present. However, in determining whether the amount received from the supporting organization is sufficient to ensure the attentiveness of the supported organization to the operations of the supporting organization (including attentiveness to the nature and yield of the supporting organization's investments), evidence of actual attentiveness by the supported organization is of almost equal importance. A supported organization is not considered to be attentive solely because it has enforceable rights against the supporting organization under state law.

(C) Distribution to donor advised fund disregarded. Notwithstanding paragraph (i)(5)(iii)(B) of this section, in determining whether a supported organization will be considered attentive to the operations of a supporting organization, any amount received from the supporting organization that is held by the supported organization in a donor advised fund described in section 4966(d)(2) will be disregarded.

(D) Examples. This paragraph (i)(5)(iii) is illustrated by the following examples:

Example 1. K, an organization described in section 501(c)(3), annually pays an aggregate amount equaling or exceeding its distributable amount described in paragraph (i)(5)(ii)(B) of this section to L, a museum described in section 509(a)(2). K meets the responsiveness test described in paragraph (i)(3) of this section with respect to L. In recent years, L has earmarked the income received from K to underwrite the cost of carrying on a chamber music series consisting of 12 performances a year that are performed for the general public free of charge at its premises. The chamber music series is not L's primary activity but it is a substantial activity. L could not continue the performances without K's support. Based on these facts, K meets the requirements of paragraph (i)(5)(iii)(B)(2) of this section.

Example 2. M, an organization described in section 501(c)(3), annually pays an aggregate amount equaling or exceeding its distributable amount described in paragraph (i)(5)(ii)(B) of this section to the Law School of N University, an organization described in section 509(a)(1). M meets the responsiveness test described in paragraph (i)(3) of this section with respect to N. M has earmarked the income paid over to N's Law School to endow a chair in International Law. Without M's continued support, N could not continue to maintain this chair. The chair is not N's primary activity but it is a substantial activity. Based on these facts, M meets the requirements of paragraph (i)(5)(iii)(B)(2) of this section.

Example 3. R is a charitable trust created under the will of B, who died in 1969. R's purpose is to hold assets as an endowment for S (a hospital), T (a university), and U (a national medical research organization), all organizations described in section

509(a)(1) and specifically named in the trust instrument, and to distribute all of the income each year in equal shares among the three named beneficiaries. Each year, R pays to S, T, and U an aggregate amount equaling or exceeding its distributable amount described in paragraph (i)(5)(ii)(B) of this section. Such payments equal less than one percent of the total support that each supported organization received in its most recently completed taxable year. Based on these facts, R does not meet the requirements of paragraph (i)(5)(iii)(B)(1) of this section. However, because B died prior to November 20, 1970, R could meet the requirements of paragraph (i)(5)(i)(B) of this section upon meeting all of the requirements of paragraph (i)(9) of this section.

Example 4. O is an organization described in section 501(c)(3). O is organized to support five private universities, V, W, X, Y, and Z, each of which is described in section 509(a)(1). O meets the responsiveness test under paragraph (i)(3) of this section only as to V. Each year, O distributes an aggregate amount that equals its distributable amount described in paragraph (i)(5)(ii)(B) of this section and distributes an equal amount to each of the five universities. Accordingly, O distributes only one-fifth of its distributable amount to a supported organization to which O is also responsive (V). Because O does not distribute at least one-third of its distributable amount to supported organizations that are both attentive to the operations of O and to which the O is responsive, O does not meet the attentiveness requirements of this paragraph (i)(5)(iii).

(6) Distributions that count toward distribution requirement. For purposes of this paragraph (i)(6), the amount of a distribution made to a supported organization is the amount of cash distributed or the fair-market value of the property distributed as of the date the distribution is made. The amount of a distribution will be determined solely on the cash receipts and disbursements method of accounting described in section 446(c)(1). Distributions by the supporting organization that count toward the distribution requirement imposed in paragraph (i)(5)(ii) of this section shall include, but not be limited to—

- (i) Any amount paid to a supported organization to accomplish the supported organization's exempt purposes;
- (ii) Any amount paid by the supporting organization to perform an activity that satisfies the requirements of paragraph (i)(4)(ii) of this section, but only to the extent such amount exceeds any income derived by the supporting organization from the activity;
- (iii) Any reasonable and necessary administrative expenses paid to accomplish the exempt purposes of the supported organization(s), which do not include expenses incurred in the production of investment income;
- (iv) Any amount paid to acquire an exempt-use asset described in paragraph (i)(8)(ii) of this section; and
- (v) Any amount set aside for a specific project that accomplishes the exempt purposes of a supported organization to which the supporting organization is responsive, with such set aside counting toward the distribution requirement for the taxable year in which the amount is set aside but not in the year in which it is actually paid, if at the time of the set-aside, the supporting organization—
 - (A) Obtains a written statement from each supported organization whose exempt purposes the specific project accomplishes, signed under penalty of perjury by one of the supported organization's principal officers, as defined in paragraph (i)(2)(iv) of this section, stating that the supported organization approves the project as one that accomplishes one or more of the supported organization's exempt purposes and also approves the supporting organization's determination that the project is one that can be better accomplished by such a set-aside than by the immediate payment of funds;

(B) Establishes to the satisfaction of the Commissioner, by meeting the approval and information requirements described in § 53.4942(a)-3(b)(7)(i) of this chapter and by providing the written statement described in paragraph (i)(6)(v)(A) of this section, that the amount set aside will be paid for the specific project within 60 months after it is set aside and that the project is one that can better be accomplished by the set-aside than by the immediate payment of funds; and

(C) Evidences the set-aside by the entry of a dollar amount on the books and records of the supporting organization as a pledge or obligation to be paid at a future date or dates within 60 months of the set aside.

(7) Carryover of excess amounts—(i) In general. If with respect to any taxable year, an excess amount, as defined in paragraph (i)(7)(ii) of this section, is created, such excess amount may be used to reduce the distributable amount in any of the five taxable years immediately following the taxable year in which the excess amount is created. An excess amount created in a taxable year can only be carried over for five taxable years.

(ii) Excess amount. An excess amount is created for any taxable year beginning after December 28, 2012, if the total distributions made in that taxable year that count toward the distribution requirement exceed the supporting organization's distributable amount for the taxable year, as determined under paragraph (i)(5)(ii)(B) of this section. With respect to any taxable year to which an excess amount is carried over, in determining whether an excess amount is created in that taxable year, the distributable amount is first reduced by any excess amounts carried over (with the oldest excess amounts applied first) and then by any distributions made in that taxable year.

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

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

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

(A) The supporting organization; or

(B) One or more supported organizations, but only if the supporting organization makes the asset available to the supported organization(s) at no cost (or nominal rent) to the supported organization(s).

(9) Alternate integral part test for certain trusts. A trust (whether or not exempt from taxation under section 501(a)) that on November 20, 1970, met and continues to meet the requirements of paragraphs (i)(9)(i) through (i)(9)(v) of this section, shall be treated as meeting the requirements of paragraph (i)(5) of this section if for taxable years beginning after October 16, 1972, the trustee of such trust makes annual written reports to all of the trust's supported organizations, setting forth a description of the trust's assets, including a detailed list of the assets and the income produced by such assets. A trust that meets the requirements of this paragraph (i)(9) may request a ruling that it is described in section 509(a)(3) in such manner as the Commissioner may prescribe. The requirements of this paragraph (i)(9) are as follows:

(i) All the unexpired interests in the trust are devoted to one or more purposes described in section 170(c)(1) or (c)(2)(B) and a deduction was allowed with respect to such interests under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), 2522, or corresponding provisions of prior law (or would have been allowed such a deduction if the trust had not been created before 1913).

(ii) The trust was created prior to November 20, 1970, and did not receive any grant, contribution, bequest or other transfer on or after such date. For purposes of this paragraph (i)(9)(ii), a split-interest trust described in section 4947(a)(2) that was created prior to November 20, 1970, was irrevocable on such date, and that becomes a charitable trust described in section 4947(a)(1) after such date shall be treated as having been created prior to such date.

(iii) The trust is required by its governing instrument to distribute all of its net income currently to a designated beneficiary supported organization. If more than one beneficiary supported organization is designated in the governing instrument of a trust, all of the net income must be distributable and must be distributed currently to each of such supported organizations in fixed shares pursuant to such governing instrument. For purposes of this paragraph (i)(9)(iii), the governing instrument of a charitable trust shall be treated as requiring distribution to a designated supported organization when the trust instrument describes the charitable purpose of the trust so completely that such description can apply to only one existing supported organization and is of sufficient particularity as to vest in such organization rights against the trust enforceable in a court possessing equitable powers.

(iv) The trustee of the trust does not have discretion to vary either the beneficiary supported organizations or the amounts payable to the supported organizations. For purposes of this paragraph (i)(9)(iv), a trustee shall not be treated as having such discretion if the trustee has discretion to make payments of principal to the single supported organization that is currently entitled to receive all of the trust's income or if the trust instrument provides that the trustee may cease making income payments to a particular supported organization in the event of certain specific occurrences, such as the loss of exemption under section 501(c)(3) or classification under section 509(a)(1) or (a)(2) by the supported organization or the failure of the supported organization to carry out its charitable purpose properly.

(v) None of the trustees would be disqualified persons within the meaning of section 4946(a) (other than foundation managers under section 4946(a)(1)(B)) with respect to the trust if such trust were treated as a private foundation.

(10) Foreign supported organizations. A supporting organization is not operated in connection with one or more supported organizations if it supports any supported organization organized outside of the United States.

(11) Transition rules—(i) Notification requirement. A Type III supporting organization will be treated as having satisfied the notification requirement described in paragraph (i)(2) of this section for its taxable year that includes December 28, 2012, if the required notification is postmarked or electronically transmitted by the later of the last day of the fifth calendar month following the close of that taxable year or the due date (including extensions) of the supporting organization's annual information return described in section 6033 for that taxable year.

(ii) Integral part test—(A) Qualification as a functionally integrated Type III supporting organization. A Type III supporting organization in existence on December 28, 2012, that met and continues to meet the requirements of Treas. Reg. § 1.509(a)-4(i)(3)(ii), as in effect prior to December 28, 2012, will be treated as meeting the requirements of paragraph (i)(4) of this section until the first day of the organization's second taxable year beginning after December 28, 2012.

(B) Qualification as a non-functionally integrated Type III supporting organization. A Type III supporting organization in existence on December 28, 2012, that met and continues to meet the requirements of Treas. Reg. § 1.509(a)-4(i)(3)(iii), as in effect prior to December 28, 2012, will be treated as meeting the requirements of paragraph (i)(5)(i)(A) of this section until the first day of its second taxable year beginning after December 28, 2012. Notwithstanding the foregoing, in determining whether an excess amount is created under paragraph (i)(7)(ii) of this section in the first taxable year beginning after December 28, 2012, the distributable amount for that taxable year of a Type III supporting organization treated as meeting the requirements of paragraph (i)(5)(i)(A) of this section under this paragraph (i)(11)(ii)(B) is the amount described in § 1.509(a)-4T(i)(5)(ii)(B).

(C) Transitioning to a non-functionally integrated Type III supporting organization in the first taxable year after effective date. A Type III supporting organization in existence on December 28, 2012, that meets the requirements of Treas. Reg. § 1.509(a)-4(i)(3)(ii), as in effect prior to December 28, 2012, in its taxable year including December 28, 2012, but not in its first taxable year beginning after December 28, 2012, is a non-functionally integrated Type III supporting organization and will be treated as having a distributable amount of zero for purposes of meeting the requirements of paragraph (i)(5)(i)(A) of this section during the organization's first taxable year beginning after December 28, 2012. Notwithstanding the foregoing, in determining whether an excess amount is created under paragraph (i)(7)(ii) of this section in the first taxable year beginning after December 28, 2012, the distributable amount for that taxable year of a Type III supporting organization described in this paragraph (i)(11)(ii)(C) is the amount described in § 1.509(a)-4T(i)(5)(ii)(B), determined without regard to paragraph (i)(5)(ii)(D) of this section.

(D) Second taxable year after effective date. Beginning in the second taxable year beginning after December 28, 2012, and in all succeeding taxable years, all Type III supporting organizations described in this paragraph (i)(11)(ii) must meet either the requirements of paragraph (i)(4) or (i)(5) of this section. If a Type III supporting organization described in paragraph (i)(11)(ii)(A) of this section does not meet the requirements of paragraph (i)(4) of this section during its second taxable year beginning after December 28, 2012, its distributable amount for that second taxable year will be determined under § 1.509(a)-4T(i)(5)(ii)(B), without regard to paragraph (i)(5)(ii)(D) of this section. Any Type III supporting organization intending to meet the requirements of paragraph (i)(5) of this section in its second taxable year beginning after December 28, 2012, must value its assets in accordance with § 1.509(a)-4T(i)(8) beginning in its first taxable year beginning after December 28, 2012.

(E) Judicial proceedings to reform instruments. During any taxable years in which there is pending a judicial proceeding that meets the requirements of this paragraph (i)(11)(ii)(E), a non-functionally integrated Type III supporting organization organized before September 24, 2009, will not have to comply with the distribution requirement under paragraph (i)(5)(ii) of this section to the extent such compliance would be inconsistent with

mandatory provisions of a governing instrument or other instrument executed before September 24, 2009, that prohibits distributing capital or corpus. Beginning with the first taxable year following the taxable year in which such judicial proceeding is terminated, such a non-functionally integrated Type III supporting organization must satisfy the distribution requirement under paragraph (i)(5)(ii) of this section, regardless of the outcome of the judicial proceeding. Thus, if, during a taxable year after such a judicial proceeding, an organization fails to comply with paragraph (i)(5)(ii) of this section, the organization will not qualify as a non-functionally integrated Type III supporting organization, regardless of whether such failure to comply was a result of the organization operating in accordance with its governing instrument or other instrument. To meet the requirements of this paragraph (i)(11)(ii)(E), a judicial proceeding must be—

- (1) Necessary to reform, or to excuse the supporting organization from compliance with, a governing instrument or other instrument (as in effect on September 24, 2009, and all times thereafter) in order to permit the organization to satisfy paragraph (i)(5)(ii) of this section;
- (2) Commenced before June 26, 2013; and
- (3) Not subject to any unreasonable delay for which the supporting organization is responsible.

(j) Control by disqualified persons—(1) In general. Under the provisions of section 509(a)(3)(C) a supporting organization may not be controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more publicly supported organizations. If a person who is a disqualified person with respect to a supporting organization, such as a substantial contributor to the supporting organization, is appointed or designated as a foundation manager of the supporting organization by a publicly supported beneficiary organization to serve as the representative of such publicly supported organization, then for purposes of this paragraph such person will be regarded as a disqualified person, rather than as a representative of the publicly supported organization. An organization will be considered controlled, for purposes of section 509(a)(3)(C), if the disqualified persons, by aggregating their votes or positions of authority, may require such organization to perform any act which significantly affects its operation or may prevent such organization from performing such act. This includes, but is not limited to, the right of any substantial contributor or his spouse to designate annually the recipients, from among the publicly supported organizations of the income attributable to his contribution to the supporting organization. Except as provided in subparagraph (2) of this paragraph, a supporting organization will be considered to be controlled directly or indirectly by one or more disqualified persons if the voting power of such persons is 50 percent or more of the total voting power of the organization's governing body or if one or more of such persons have the right to exercise veto power over the actions of the organization. Thus, if the governing body of a foundation is composed of five trustees, none of whom has a veto power over the actions of the foundation, and no more than two trustees are at any time disqualified persons, such foundation will not be considered to be controlled directly or indirectly by one or more disqualified persons by reason of this fact alone. However, all pertinent facts and circumstances including the nature, diversity, and income yield of an organization's holdings, the length of time particular stocks, securities, or other assets are retained, and its manner of exercising its voting rights with respect to stocks in which members of its governing body also have some interest, will be taken into consideration in determining whether a disqualified person does in fact indirectly control an organization.

(2) Proof of independent control. Notwithstanding subparagraph (1) of this paragraph, an organization shall be permitted to establish to the satisfaction of the Commissioner that disqualified persons do not directly or indirectly control it. For example, in the case of a religious organization operated in connection with a church, the fact that the majority of the organization's governing body is composed of lay persons who are substantial contributors to the organization will not disqualify the organization under section 509(a)(3)(C) if a representative of the church, such as a bishop or other official, has control over the policies and decisions of the organization.

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

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

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

(l) Effective/applicability dates. Paragraphs (a)(6), (f)(5), (i)(1) through (i)(4)(ii)(B), (i)(4)(ii)(D) through (i)(5)(i), (i)(5)(ii)(E) through (i)(5)(iii)(C), (i)(6)(i) through (iii), (i)(6)(v) through (i)(7)(i), and (i)(9) through (11) of this section are applicable on December 28, 2012. Paragraphs (i)(4)(ii)(C), (i)(5)(ii)(A) through (i)(5)(ii)(D), (i)(5)(iii)(D), (i)(6)(iv), (i)(7)(ii) and (i)(8) of this section are applicable on December 21, 2015. See paragraphs (i)(5)(ii)(B), (i)(5)(ii)(C), and (i)(8) of § 1.509(a)–4T contained in 26 CFR part 1, revised as of April 1, 2015, for certain rules regarding non-functionally integrated Type III supporting organizations effective before December 21, 2015.

Credits

[T.D. 7212, 37 FR 21916, Oct. 17, 1972, as amended by T.D. 7784, 46 FR 37890, July 23, 1981; T.D. 9605, 77 FR 76394, Dec. 28, 2012; T.D. 9746, 80 FR 79686, Dec. 23, 2015]

SOURCE: T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, unless otherwise noted.

AUTHORITY: Sections 1.909–1 through 1.906–6 also issued under 26 U.S.C. 909(e).

Notes of Decisions (15)

Current through Feb. 4, 2016; 81 FR 5942.