

Publicly supported organization; limitation; support received from churches. The two percent limitation prescribed by section 1.170A-9(e)(6)(i) of the regulations does not apply to the support received by an exempt organization described in section 170(c)(2) of the Code from individual churches described in section 170(b)(1)(A)(i) that are publicly supported and entitled to section 170(b)(1)(A)(vi) status.

Advice has been requested whether the 2 percent limitation prescribed by section 1.170A-9(e)(6)(i) of the Income Tax Regulations applies to support received from organizations described in section 170(b)(1)(A)(i) of the Internal Revenue Code of 1954. An organization is described in section 170(b)(1)(A)(i) if it is a church or a convention or association of churches.

An organization, exempt from Federal income tax under section 501(c)(3) of the Code and described in section 170(c)(2), is primarily supported by contributions from Individual churches. It has been promised a grant from a private foundation provided it can show that it is publicly supported within the meaning of section 170(b)(1)(A)(vi).

Section 170(b)(1)(A)(vi) of the Code refers to any organization described in section 170(c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance of its exempt purposes) from a governmental unit or form direct or indirect contributions from the general public.

Section 1.170A-9(e) of the regulations provides the requirements by which to determine whether an organization is normally publicly supported. An organization will be treated as publicly supported if it meets either a 33 1/3 percent-of-support test or a facts and circumstances test that includes a 10 percent-of-support limitation.

Section 1.170A-9(e)(6) of the regulations states that, in determining whether the 33 1/3 percent-of-support test or the 10 percent-of-support limitation is 'normally' met, contributions by an individual, trust, or corporation shall be taken into account as 'support' from direct or indirect contributions from the general public only to the extent that the total amount of the contributions by any such individual, trust, or corporation does not exceed 2 percent of the organization's total support during the appropriate period prescribed in the regulations for applying the tests. The 2 percent limitation shall not apply to support received from governmental units or to contributions from organizations described in section 170(b)(1)(A)(vi) of the Code, unless such contributions represent amounts which have been expressly or impliedly earmarked by a donor to such governmental unit or the section 170(b)(1)(A)(vi) organization as being for, or for the benefit of, the organization that is seeking to establish

it is publicly supported.

Rev. Rul. 76-416, 1976-2 C.B. 57, holds that a hospital described in section 170(b)(1)(A)(iii) of the Code is not prevented by section 1.170A-9(e)(1) of the regulations from also qualifying as an organization described in section 170(b)(1)(A)(vi) of the Code.

In this situation, the organization's support has been from churches described in section 170(b)(1)(A)(i) of the Code. In general, churches derive substantial amounts of their support from the general public within the requirements of section 1.170A-9(e) of the regulations. By analogy to Rev. Rul. 76-416, a church described in section 170(b)(1)(A)(i) of the Code is not prevented by the regulations from also being described in section 170(b)(1)(A)(vi) if it meets the requirements for being publicly supported.

Thus, when section 170(b)(1)(A)(i) organizations are publicly supported and entitled to section 170(b)(1)(A)(vi) status, the 2 percent limitation does not apply to the amount of contributions an organization receives from them. The full amount may be considered indirect public support.