

Application for exemption; when exempt. An organization that is organized and operated exclusively for charitable purposes and is not a private foundation filed Form 1023 more than 90 days after the end of its second taxable year. The organization's gross receipts for the first taxable year were less than \$7,500 but its aggregate gross receipts for the first and second taxable years exceeded \$12,000. The organization did not satisfy the test under section 1.508-1(a)(3)(ii)(b) of the regulations and is not exempt under section 501(c)(3) of the Code from the date it was incorporated until the date it filed the required notice. Consideration will be given to applying the Commissioner's discretionary authority under section 1.9100-1 of the regulations to extend the time for satisfying the notice requirement.

#### ISSUE

In the situation described below, what effect does the application of section 508(a) of the Internal Revenue Code have on the effective date of the exempt status of an organization otherwise described in section 501(c)(3)?

#### FACTS

The organization is organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code, and is not a private foundation within the meaning of section 509(a). It was incorporated on January 1, 1977, and files returns on a calendar year basis. Its gross receipts were less than \$7,500 during the taxable year 1977, but its aggregate gross receipts for the taxable years 1977 and 1978 exceeded \$12,000.

The organization applied to the Internal Revenue Service for recognition of exempt status under section 501(c)(3) of the Code by mailing a properly completed and executed Form 1023, Application for Recognition of Exemption. The cover in which the exemption application was mailed was postmarked on April 1, 1979.

#### LAW

Section 508(a) of the Code provides, with certain exceptions, that 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 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

regulations for giving such notice.

Section 508(c)(1)(B) of the Code provides that the provisions of section 508(a) shall not apply to any organization that 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.

Section 1.508-1(a)(2)(i) of the Income Tax Regulations provides that the notice referred to in section 508(a) of the Code must be filed within 15 months from the end of the month in which an organization was organized. Such notice is filed by submitting a properly completed and executed Form 1023, Application for Recognition of Exemption under section 501(c)(3) of the Internal Revenue Code.

Section 1.508-1(a)(3)(ii) of the regulations provides that the gross receipts 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 2 taxable years the aggregate gross receipts received by the organization are \$12,000 or less; and

(a) In the case of an organization which has been in existence for at least 3 taxable years, the aggregate gross receipts received by the organization during the immediately preceding 2 taxable years plus the current year are \$15,000 or less.

The regulation further provides that if an organization fails to meet the requirements of (a), (b), or (c), then the organization shall be required to file the notice described in section 508(a), within 90 days after the end of the period described in (a), (b), or (c), in lieu of the period prescribed in section 1.508-1(a)(2)(i). Thus, for example, if an organization meets the \$7,500 requirement of (a) for its first taxable year, but fails to meet the \$12,000 requirement of (b) for the period ending with its second taxable year, then the organization shall meet the notification requirement of section 508(a)(1) if it files such notification within 90 days after the close of its second taxable year.

#### ANALYSIS

The exception provided in section 508(c)(1)(B) of the Code applies only to organizations whose annual gross receipts are normally not more than \$5,000. Section 1.508-1(a)(3)(ii) of the regulations provide a three-year averaging test for determining if an organization's gross receipts are \$5,000 or less. An

organization cannot satisfy the exception unless it meets the test over a full three-year period.

In this case, the organization's gross receipts during its first taxable year were less than \$7,500. However, during its first two taxable years, the aggregate gross receipts received by the organization exceeded \$12,000. Thus, the organization did not satisfy the test set forth in section 1.508-1(a)(3)(ii)(b) of the regulations for determining whether an organization's annual gross receipts are normally not more than \$5,000. Under these circumstances, the organization was required to file the notice described in section 508(a) of the Code within 90 days following the end of its second taxable year.

#### HOLDING

The organization is not exempt under section 501(c)(3) of the Code during the period beginning on January 2, 1977, and ending on March 31, 1979, because it did not satisfy the notification requirement of section 508(a). However, the organization is exempt under section 501(c)(3), effective as of April 1, 1979, the date on which the required notice was given.

In addition, the organization may qualify for exemption under section 501(c)(4) of the Code for the period prior to April 1, 1979. See Rev. Rul. 80-108, 1980-1 C.B. 119, which holds that an organization that otherwise qualifies for exemption under both sections 501(c)(3) and 501(c)(4), but that did not file for recognition of exemption under section 501(c)(3) within 15 months from the end of the month in which it was organized as required by section 1.508-1(a)(2)(i) of the regulations, may be exempt under section 501(c)(4) from the date of its inception.

#### APPLICATION FOR EXTENSIONS OF THE TIME FOR FILING NOTICE UNDER SECTION 508(a)

The Service will give consideration to applying the Commissioner's discretionary authority under section 1.9100-1 of the regulations to extend the time for satisfying the notice requirement of section 508(a) of the Code.

Under section 1.9100-1 of the regulations the Commissioner has discretion, upon a showing of good cause by a taxpayer, to grant a reasonable extension of the time fixed by the regulations for making an election or application for relief in respect of tax under subtitle A of the Internal Revenue Code, provided:

- (1) the time for making the election or application is not expressly prescribed by the statute;
- (2) the request for the extension is filed with the Commissioner within a period of time the Commissioner considers reasonable under the circumstances; and

(3) it is shown to the Commissioner's satisfaction that granting the extension will not jeopardize the Government's interests.

Rev. Proc. 79-63, 1979-2 C.B. 578, sets forth information and representations that must be furnished by the taxpayer and some factors that will be taken into consideration in determining whether such extensions will be granted.