

Part I

Section 508.—Special Rules with Respect to Section 501(c)(3) Organizations

26 CFR 1.508-3: Governing instruments.

Rev. Rul. 2024-10

This revenue ruling obsoletes Rev. Rul. 75-38, 1975-1 C.B. 161, which identified the State laws and circumstances that the Internal Revenue Service (IRS) previously concluded would permit an organization to satisfy the private foundation governing instrument requirements of § 508(e) of the Internal Revenue Code (Code).¹ A number of the State laws identified in Rev. Rul. 75-38 have materially changed, and a revenue ruling cannot be relied upon to the extent it is predicated on State law and that State law has materially changed. See Rev. Proc. 89-14, 1989-1 C.B. 814.

LAW AND ANALYSIS

Section 508(e) provides that a private foundation will not be exempt from Federal income taxation under § 501(a) unless its governing instrument includes provisions the

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

effects of which are to require its income for each taxable year to be distributed at such time and in such manner as not to subject the private foundation to tax under § 4942 and to prohibit the private foundation from engaging in any act of self-dealing (as defined in § 4941(d)), from retaining any excess business holdings (as defined in § 4943(c)), from making any investments in such manner as to subject the private foundation to tax under § 4944, and from making any taxable expenditures (as defined in § 4945(d)). Section 1.508-3(a) provides a general rule that is consistent with § 508(e).

Section 1.508-3(d)(1) provides, however, that a private foundation's governing instrument will be deemed to satisfy the requirements of § 1.508-3(a) if valid provisions of State law have been enacted that:

(1) Require it to act or refrain from acting so as not to subject the private foundation to the taxes imposed by §§ 4941, 4942, 4943, 4944, and 4945; or

(2) Treat the required provisions as contained in the private foundation's governing instrument.

Rev. Rul. 75-38 identified 48 States and the District of Columbia as jurisdictions with statutory provisions in effect at the time of its publication that satisfied the requirements of § 508(e). Rev. Rul. 75-38 also noted exceptions included in those statutory provisions, such as cases in which a court determines that the provisions do not apply to a particular private foundation or in which a private foundation expressly opts out of the statutory provisions through a provision in its governing instrument.

Section 7.01(5) of Rev. Proc. 89-14 cautions taxpayers, IRS personnel, and others

concerned to determine whether a revenue ruling on which they seek to rely has been revoked, modified, declared obsolete, distinguished, clarified, or otherwise affected by subsequent legislation, treaties, regulations, revenue rulings, revenue procedures, or court decisions. Section 7.01(6) of Rev. Proc. 89-14 provides that if the conclusion of a revenue ruling is predicated upon a certain provision or interpretation of law other than Federal tax law, taxpayers, IRS personnel, and others generally must determine whether such relevant non-Federal tax law has changed materially from that used in the revenue ruling on which they seek to rely. Therefore, under section 7.01(5) and (6) of Rev. Proc. 89-14, a revenue ruling cannot be relied upon to the extent it is predicated on State law and that State law has materially changed.

A number of the statutory provisions considered in Rev. Rul. 75-38 have since been amended, repealed, or replaced. Rev. Rul. 75-38 therefore no longer provides an accurate list of the jurisdictions with statutory provisions that satisfy the requirements of § 508(e) or of the exceptions to those statutory provisions.

In addition, Rev. Rul. 75-38 does not address potential differences in the State statutory provisions that apply depending on whether an organization is formed as a charitable trust or as a not-for-profit (or nonstock) corporation. While most States have enacted statutory provisions having the effects described in § 508(e) for both charitable trusts and not-for-profit corporations, there are a small number of States with statutory provisions that satisfy the requirements of § 508(e) for charitable trusts or not-for-profit corporations but not both.

For the foregoing reasons, this revenue ruling is being published to obsolete Rev.

Rul. 75-38.

A private foundation is responsible for verifying whether the requirements of § 508(e) are satisfied by applicable State law if its governing instrument does not include the provisions described in § 508(e). A private foundation can ensure that it satisfies the requirements of § 508(e) by including the provisions described in § 508(e) in its governing instrument. Publication 557, *Tax-Exempt Status for Your Organization* (currently available at: <https://www.irs.gov/pub/irs-pdf/p557.pdf>), provides samples of governing instrument provisions that a private foundation may include in its governing instrument to satisfy the requirements of § 508(e).

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 75-38, 1975-1 C.B. 161, is obsoleted as of May 24, 2024.

DRAFTING INFORMATION

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