

Private foundations; governing instruments; State laws enacted. States that have adopted legislation satisfying the requirements of section 508(e) of the Code, relating to private foundation governing instruments, are listed; Rev. Rul. 73-286 superseded.

The purpose of this Revenue Ruling is to identify those States that have been held by the Internal Revenue Service to have adopted legislation satisfying the requirements of section 508(e) of the Internal Revenue Code of 1954, relating to private foundations.

Under section 508(e) of the Code, a private foundation (as defined in section 509) is not exempt from Federal income tax under section 501(a) unless its governing instrument contains certain provisions. These provisions, generally, must require or prohibit, as the case may be, the foundation to act or refrain from acting so that it will not be liable for the taxes imposed by sections 4941, 4942, 4943, 4944, and 4945.

Section 1.508-3(d) of the Income Tax Regulations provides that a private foundation's governing instrument is deemed to conform with the requirements of section 508(e) of the Code if valid provisions of State law have been enacted which:

- (1) Require it to act or refrain from acting so as not to subject the foundation to the taxes imposed by sections 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to taxes on investments which jeopardize charitable purpose), and 4945 (relating to taxable expenditures), or
- (2) Treat the required provisions as contained in the foundation's governing instrument.

The States listed below have enacted statutory provisions that satisfy the requirements of section 508(e) of the Code. Therefore, the governing instruments of private foundations under the jurisdiction of these States are generally considered to have been amended as required by section 508(e). However, provisions of these statutes vary widely. For this reason, the notations following the State listing are important.

ALABAMA-except where otherwise provided by a decree of a court of competent jurisdiction or by a provision in the private foundation's governing instrument which in either case has been entered or made after October 1, 1971, and expressly limits the applicability of State law.

ALASKA-except for such private foundations which expressly provide in their governing instruments that the applicable

sections of Alaska law do not apply to them.

ARKANSAS-except for such private foundations which expressly provide in their governing instruments that the applicable sections of Arkansas law do not apply to them and except in the case of trusts where otherwise provided by decree of a court of competent jurisdiction.

CALIFORNIA-except where otherwise provided by a court of competent jurisdiction.

COLORADO-with respect to trusts that are private foundations except where otherwise provided by a court of competent jurisdiction.

CONNECTICUT-except where otherwise provided by a court of competent jurisdiction.

DELAWARE-except for such private foundations which expressly provide in their governing instruments that the applicable sections of Delaware law do not apply to them.

DISTRICT OF COLUMBIA-except for such corporations which expressly provide in their governing instruments that the applicable sections of District of Columbia law do not apply to them and except in the case of trusts where otherwise provided by a court of competent jurisdiction. (For purposes of this statute, corporations include corporations organized under any Act of Congress applicable to the District of Columbia as well as corporations organized under the laws of the District of Columbia.)

FLORIDA-except for such trusts which file a proper election not to be subject to the applicable provisions of Florida law and for such corporations as to which a court of competent jurisdiction has otherwise determined.

GEORGIA-except for such private foundations which file a proper election not to be subject to such law.

HAWAII-no exceptions.

IDAHO-except for such private foundations which expressly provide in their governing instruments that the applicable sections of Idaho law do not apply to them.

ILLINOIS-except for such corporations which have express provisions to the contrary in their articles of incorporation and except for trusts where it is otherwise provided by a court of competent jurisdiction.

INDIANA-except where otherwise determined by a court of competent jurisdiction with respect to private foundations organized before January 1, 1970.

IOWA-except for such private foundations which expressly provide in their governing instruments that the applicable sections of Iowa law do not apply to them.

KANSAS-except where otherwise provided by a court of competent jurisdiction.

KENTUCKY-except, with respect to corporations in existence on July 1, 1972, to the extent that such a corporation provides to the contrary by amendment to its articles of incorporation adopted after July 1, 1972, and, with respect to trusts in existence on July 1, 1972, where action is properly commenced on or before December 31, 1972, in a court of competent jurisdiction to excuse the trust from compliance with the requirements of section 508(e) of the Code.

LOUISIANA-except for such private foundations which expressly provide in their governing instruments that the applicable sections of Louisiana law do not apply to them.

MAINE-except where otherwise provided by a court of competent jurisdiction.

MARYLAND-except where otherwise provided by a court of competent jurisdiction.

MASSACHUSETTS-except where otherwise provided by a court of competent jurisdiction.

MICHIGAN-with respect to trusts that are private foundations except for such private foundations which file a notice of inconsistency under Michigan law.

MINNESOTA-except for private foundations that have been held by a court of competent jurisdiction not to be affected by such State statute.

MISSISSIPPI-except where otherwise provided by a court of competent jurisdiction.

MISSOURI-except for private foundations that have been held by a court of competent jurisdiction not to be affected by such State statute.

MONTANA-except in the case of trusts where otherwise provided by court decree entered after March 28, 1974, and except in the case of a corporation which has an express provision to the contrary in its articles of incorporation.

NEBRASKA-except for such trusts which effectively elect to be excluded from the applicable sections of Nebraska law, for such corporations which have governing instruments expressly providing to the contrary, and except as a court of competent jurisdiction

has otherwise determined in any given case.

NEVADA-no exceptions.

NEW HAMPSHIRE-except where it is otherwise provided by a court of competent jurisdiction.

NEW JERSEY-except for such private foundations which expressly provide in their governing instruments that the applicable sections of New Jersey law do not apply to them.

NEW YORK-except where such law conflicts with any mandatory direction of an instrument by which assets were transferred prior to June 1, 1971, and such conflicting direction has not been removed legally.

NORTH CAROLINA-except for such private foundations which expressly provide in their governing instruments that the applicable sections of North Carolina law do not apply to them and except for trusts that have their governing instruments reformed by a decree of the Superior Court of North Carolina.

NORTH DAKOTA-with respect to trusts that are private foundations except where otherwise provided by a court of competent jurisdiction.

OHIO-except in the case of trusts where it is provided otherwise by a court of competent jurisdiction and except in the case of corporations in existence on September 17, 1971, which expressly adopt contrary provisions in their governing instruments after September 17, 1971.

OKLAHOMA-except for such private foundations which file a proper election not to be subject to such law.

OREGON-no exceptions.

PENNSYLVANIA-except where otherwise provided by a court of competent jurisdiction.

RHODE ISLAND-except where otherwise provided by a court of competent jurisdiction.

SOUTH CAROLINA-except for private foundations which expressly provide in their governing instruments that the applicable sections of South Carolina law do not apply to them.

SOUTH DAKOTA-except where otherwise provided by a court of competent jurisdiction.

TENNESSEE-except where otherwise provided by a court of competent jurisdiction.

TEXAS-except for such private foundations which file a proper

election not to be subject to such law.

UTAH-with respect to trusts that are private foundations except where otherwise provided by a court of competent jurisdiction.

VERMONT-except where otherwise provided by a court of competent jurisdiction.

VIRGINIA-except for private foundations whose governing instruments contain express provisions to the contrary or which have filed a proper election not to be subject to such law.

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

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

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

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

Rev. Rul. 73-286, 1973-2 C.B. 188 is hereby superseded.