

Private foundations; status; untimely notification. A corporation that states it is a private foundation when it files an application for recognition of exemption subsequent to the 15 month deadline provided by regulation is treated as an organization described in section 501(c)(3) of the Code and as a private foundation only from the date it files its application.

Advice has been requested as to the effective date of private foundation status of a charitable corporation described in section 501(c)(3) of the Internal Revenue Code of 1954.

The X Foundation, a charitable corporation, was incorporated on April 26, 1972. On September 17, 1973, it applied to the Internal Revenue Service for recognition of exempt status under section 501(c)(3) of the Code and was so recognized by the Service shortly thereafter. In its application for exemption, it stated that it is a private foundation described in section 509(a). It is not described in section 508(c).

Section 508(a) of the Code provides that an organization, other than one described in section 508(c), organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) unless it has given notice to the Secretary or his delegate in such a manner as may be prescribed by regulations.

Section 1.508-1(a) of the Income Tax Regulations provides (with exceptions not here relevant) that an organization seeking exemption under section 501(c)(3) of the Code must, within fifteen months from the end of the month in which it was organized, or March 22, 1973, whichever is later, give the Commissioner notice that it is applying for recognition of exemption. If it fails to give notice within this period, after establishing its qualifications, it will be treated as exempt only from the date it files its application.

Section 509(a) of the Code defines a private foundation as an organization described in section 501(c)(3) which is not described in section 509(a)(1) through (4).

Because X Foundation is a corporation, was organized after October 9, 1969, and did not apply for recognition of exemption before the expiration of the fifteen month deadline provided in section 1.508-1(a) of the regulations, for purposes of exemption under section 501(a) of the Code, it cannot be treated as an organization described in section 501(c)(3) prior to the date of its application on September 17, 1973. Because section 509 defines a private foundation as an organization described in section 501(c)(3), X Foundation cannot be a private foundation until September 17, 1973, the date it is first treated as described in section 501(c)(3). Since X Foundation states that it is not described in sections 509(a)(1) through (4), however, it is

classified as a private foundation from that date.