

Private foundations; status; untimely notification. A corporation that states it is a publicly supported charity when it files its application for recognition of exemption subsequent to the 15 month deadline provided by regulation cannot be treated as an organization described in section 501(c)(3) of the Code before the date it files its application; financial support received prior to that date may not be used for purposes of determining whether the organization is publicly supported.

Advice has been requested as to the private foundation status of a charitable corporation described in section 501(c)(3) of the Internal Revenue Code of 1954 that, under the circumstances described below, does not file a timely notice under section 508(a).

The Y Foundation, a charitable corporation, was incorporated on April 26, 1974. On September 17, 1975, 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, Y Foundation stated that it is not a private foundation because it is a 'publicly supported charity' described in section 170(b)(1)(A)(vi). Y Foundation 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 sections 509(a)(1) through (4). Section 509(a)(1) includes organizations described in section 170(b)(1)(A)(vi).

Because Y 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, it cannot be treated as an organization described in section 501(c)(3) of the Code prior to

the date of its application on September 17, 1975. Thus, it was neither exempt under section 501(c)(3) nor a private foundation under section 509(a) prior to that date. See Rev. Rul. 77-207, page 152 of this Bulletin.

In its application for exemption, Y Foundation stated that it is a 'publicly supported charity' described in section 170(b)(1)(A)(vi) of the Code and not a private foundation. Consistent with the fact that Y Foundation is treated as described in section 501(c)(3) for purposes of both exemption and foundation status only as of the date of its application for exemption, it will be considered a new organization as of that date in determining whether it meets the requirements of section 170(b)(1)(A)(vi). If, pursuant to section 1.170A-9(e)(5) of the regulations, Y Foundation provides evidence that it can reasonably be expected to meet the support requirements of section 1.170A-9(e)(2) or (3), it may obtain an advance ruling that it will be treated as a section 170(b)(1)(A)(vi) organization. No financial support received prior to the date of its application may be used for purposes of determining whether it is publicly supported.