

Publicly supported organization; business league contribution limitation. Contributions made by a section 501(c)(6) business league to a section 501(c)(3) organization seeking to be classified as other than a private foundation under section 509(a)(1) of the Code because it is publicly supported under section 170(b)(1)(A)(vi) are subject to the two percent limitation imposed by section 1.170A-9(e)(6) of the regulations.

Advice has been requested whether contributions given under the circumstances set out below are subject to the two percent limitation imposed by section 1.170A-9(e)(6) of the Income Tax Regulations.

An organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 that is not organized and operated for the purpose of testing for public safety has requested a determination that it is other than a private foundation by virtue of being described in sections 509(a)(1) and 170(b)(1)(A)(vi). A business league exempt from Federal income tax under section 501(c)(6) has made contributions to the section 501(c)(3) organization that total more than two percent of the section 501(c)(3) organization's support during the period in which its support is to be measured under section 170(b)(1)(A)(vi). The business league engages in some charitable and educational activities that benefit the community in which it is located, but it is not organized and operated exclusively for such purposes. It is not a governmental unit referred to in section 170(c)(1). None of the amounts contributed to the section 501(c)(3) organization by the business league has been earmarked by the donors to the business league for use as contributions to the section 501(c)(3) organization.

Section 509(a)(1) of the Code excludes from private foundation status, among other organizations, those organizations described in section 170(b)(1)(A)(vi).

Section 170(b)(1)(A)(vi) of the Code describes an organization that is referred to in section 170(c)(2) and that normally receives a substantial part of its support from a governmental unit referred to in section 170(c)(1) or from direct or indirect contributions from the general public.

Section 170(c)(2) of the Code, in part, describes a domestic corporation, trust, or community chest, fund or foundation, that is organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

In determining whether an organization receives the support required under section 170(b)(1)(A)(vi) of the Code, section 1.170A-9(e)(6) of the regulations provides that contributions by an individual, trust, or corporation shall be taken into account

as support from direct or indirect contributions from the general public only to the extent that the total amount of the contributions by any such individual, trust, or corporation during the period for which the support is being measured does not exceed two percent of the organization's total support for such period.

Section 1.170A-9(e)(6) of the regulations provides an exception to the two percent limitation, however, in that the limitation does not apply to support received from governmental units described in section 170(c)(1) of the Code or to contributions from organizations such as those described in section 170(b)(1)(A)(vi) unless those contributions represent amounts that have been expressly or impliedly earmarked by the donor to such governmental unit or section 170(b)(1)(A)(vi) organization as being for, or for the benefit of, the particular organization claiming section 170(b)(1)(A)(vi) status.

The business league is not an organization of the type described in section 170(b)(1)(A)(vi) of the Code because it is not organized and operated exclusively for the purpose set out in section 170(c)(2). Because it is neither a governmental unit described in section 170(c)(1) nor an organization of the type described in section 170(b)(1)(A)(vi), the contributions by the business league to the section 501(c)(3) organization do not fall within the exception to the two percent limitation.

Accordingly, the contributions by the business league are subject to the two percent limitation set out in section 1.170A-9(e)(6) of the regulations in determining the section 501(c)(3) organization's support from direct or indirect contributions from the general public.