

ISSUE

In the situation described below, what effect does the application of section 508(a) of the Internal Revenue Code have on the effective dates of exempt status of an organization otherwise described in section 501(c)(3)?

FACTS

The organization is organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code, and is not a private foundation within the meaning of section 509(a). It was incorporated on January 1, 1973, and files returns on a calendar year basis. On March 1, 1979, it applied to the Internal Revenue Service for recognition of exempt status under section 501(c)(3). Its gross receipts during the years 1973 through 1979 were as follows:

Taxable Year Ending Gross Receipts	
1973	\$ 3,600
1974	2,900
1975	400
1976	12,600
1977	76,400
1978	96,200
1979	142,400

LAW

Section 508(a) of the Code provides, with certain exceptions, that an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) unless it gives notice to the Secretary that it is applying for recognition of such status within the time prescribed by the regulations for giving such notice.

Section 508(c)(1)(B) of the Code provides that the provisions of section 508(a) shall not apply to any organization that is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than \$5,000.

Section 1.508-1(a)(2)(i) of the Income Tax Regulations provides that the notice referred to in section 508(a) of the Code must be filed within 15 months from the end of the month in which an organization was organized. Such notice is filed by submitting a properly completed and executed Form 1023, Application for Recognition of Exemption.

Section 1.508-1(a)(3)(ii) of the regulations provides that the gross receipts of an organization are normally not more than \$5,000 if--

(a) During the first taxable year of the organization the organization has received gross receipts of \$7,500 or less;

(b) During its first two taxable years the aggregate gross receipts received by the organization are \$12,000 or less; and

(c) In the case of an organization which has been in existence for at least three taxable years, the aggregate gross receipts received by the organization during the immediately preceding two taxable years plus the current year are \$15,000 or less.

The regulations further provide that if an organization fails to meet the requirements of (a), (b), or (c), then the organization shall be required to file the required notice described in section 508(a) of the Code within 90 days after the end of the period described in (a), (b), or (c), in lieu of the period prescribed in section 1.508-1(a)(2)(i). Thus, for example, if an organization meets the \$7,500 requirement of (a) for its first taxable year, but fails to meet the \$12,000 requirement of (b) for the period ending with its second taxable year, then the organization shall meet the notification requirement if it files such notification within 90 days after the close of its second taxable year. If an organization that has been in existence at least three taxable years meets the requirements of (a), (b), and (c) with respect to all prior taxable years, but fails to meet the requirements of (c) with respect to the current taxable year, the notification requirements shall not apply with respect to its prior years. In such a case, the organization shall not be treated as described in section 501(c)(3) for a period beginning with such current taxable year and ending when such notice is given under section 508(a)(2).

ANALYSIS

The organization's aggregate gross receipts during the taxable years ending in 1973, 1974, and 1975 were \$6,900. Therefore, the organization was not required to file an application for recognition of exemption within 90 days after the end of its 1975 taxable year. Accordingly, the organization is exempt under section 501(c)(3) of the Code, effective for the period beginning on January 1, 1973, and ending on December 31, 1975.

The organization's aggregate gross receipts during the taxable years ending in 1974, 1975, and 1976 were \$15,900. Accordingly, the exception set forth in section 1.508-1(a)(3)(ii)(c) of the regulations does not apply, and the organization was required to file an application for recognition of exemption within 90 days after the end of its 1976 taxable year.

Due to the fact that the organization failed to file its application within the required time period, it is not exempt under section 501(c)(3) of the Code during the period beginning on January 1, 1976, and ending on February 28, 1979, because it did not satisfy the notification requirement of section 508(a). However, the organization is exempt under section 501(c)(3), effective as of March 1, 1979, the date on which the required notice was given.

HOLDING

The organization is not exempt under section 501(c)(3) of the Code during the period beginning on January 1, 1976, and ending on February 28, 1979, because it did not satisfy the notification requirement of section 508(a). However, the organization is exempt under section 501(c)(3) for the period beginning on January 1, 1973, and ending on December 31, 1975, and is also exempt effective as of March 1, 1979, the date on which the required notice was given.

In addition, the organization may qualify for exemption under section 501(c)(4) of the Code for the period it is not exempt under section 501(c)(3). See Rev. Rul. 80-108, 1980-16 I.R.B. 8, which holds that an organization that otherwise qualifies for exemption under both sections 501(c)(3) and 501(c)(4), but that did not file for recognition of exemption under section 501(c)(3) within 15 months from the end of the month in which it was organized as required by section 1.508-1(a)(2)(i) of the regulations, may be exempt under section 501(c)(4) from the date of its inception.

APPLICATION FOR EXTENSIONS OF THE TIME FOR FILING NOTICE UNDER SECTION 508(a)

The Service will give consideration to applying the Commissioner's discretionary authority under section 1.9100-1 of the regulations to extend the time for satisfying the notice requirement of section 508(a) of the Code.

Under section 1.9100-1 of the regulations the Commissioner has discretion, upon a showing of good cause by a taxpayer, to grant a reasonable extension of time fixed by the regulations for making an election or application for relief in respect of tax under subtitle A of the Internal Revenue Code, provided:

- (1) the time for making the election or application is not expressly prescribed by the statute;
- (2) the request for the extension is filed with the Commissioner within a period of time the Commissioner considers reasonable under the circumstances; and
- (3) it is shown to the Commissioner's satisfaction

that granting the extension will not jeopardize the Government's interests.

Rev. Proc. 79-63, 1979-2 C.B. 578, sets forth information and representations that must be furnished by the taxpayer and some factors that will be taken into consideration in determining whether such extensions will be granted. Also, see section 3.02 of Rev. Proc. 80-24, 1980-26 I.R.B. 31, for the applicable procedures to be followed in making a request.