

Rulings; timely notification of application for exemption. An organization that has no gross receipts in its first two taxable years, but receives more than \$15,000 in contributions from the general public in its third taxable year, meets the notice requirement of section 508(a) of the Code if it files for exemption under section 501(c)(3) within 90 days after the close of its third taxable year. It will be recognized as exempt as of the date of its organization. Rev. Rul. 80-113 modified.

#### ISSUE

Whether an organization that has no gross receipts for its first two taxable years, but receives total support of more than \$15,000 in contributions from the general public in its third taxable year, meets the requirements of section 508(a) of the Internal Revenue Code and therefore can be recognized as exemption from the date of its organization, by filing for exemption under section 501(c)(3) within 90 days after the close of its third taxable year.

#### FACTS

A nonprofit organization had no financial support for either its first taxable year consisting of less than eight months or its second taxable year. In its third year, it received total support of more than \$15,000 in contributions from the general public. The organization applied for recognition of exemption under section 501(c)(3) of the Code within 90 days after the close of the third taxable year.

#### LAW AND ANALYSIS

Section 508(a) of the Code provides that an organization, other than the 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, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status.

Section 1.508-1(a) of the Income Tax Regulations provides, in part, 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, give the Commissioner notice that it is applying for exemption. If it fails to give notice within this period, it will be treated as exempt, provided it otherwise qualifies, only from the date it files its application constituting such notice.

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

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 years 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 notice described in section 508(a) of the Code within 90 days after the close of the period described in (a), (b), or (c) in lieu of within the period described in section 1.508-1(a)(2)(i) of the regulations.

Section 509 of the Code provides that an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) is not a private foundation.

Section 1.170A-9(e)(5)(v)(C) of the regulations provides that if an organization's first taxable year consists of less than eight months, a computation period of three taxable years applies for the initial determination of the sources of support of the organization for purposes of determining whether it is an organization described in section 170(b)(1)(A)(vi).

Rev. Rul. 80-113, 1980-1 C.B. 58, holds that an organization with no financial support that seeks nonprivate foundation status under section 509(a)(1) and section 170(b)(1)(A)(vi) and that files the notice required by section 508(a) of the Code more than fifteen months after the end of the month in which it was organized, can only be recognized as exempt for the period beginning on the date that the notice is filed. Such an organization is not described in section 170(b)(1)(A) as other than a private foundation on the date of filing. Therefore, the section 508(c)(1)(B) exception to the notice requirement does not apply.

In the present case, the three year computation period of section 1.170A-9(e)(v)(C) of the regulations is applicable to the organization. In its first three taxable years it received total support of more than \$15,000 in contributions from the general public, removing it from the definition of a private foundation. The organization applied for recognition of its exempt status within 90 days after the close of the taxable year in which it

exceeded the \$15,000 gross receipts limit of section 1.508-1(a)(3)(ii) of the regulations, thereby fulfilling the requirements of section 508(a) of the Code. Therefore, it can be recognized as exempt from the date of its organization.

#### HOLDING

An organization that has no gross receipts in its first taxable year consisting of less than eight months, no gross receipts in its second taxable year, and total support of more than \$15,000 in contributions from the general public in its third taxable year, meets the requirements of section 508(a) of the Code if it files for exemption under section 501(c)(3) within 90 days after the close of its third taxable year. Therefore, it can be recognized as exempt as of the date of its organization.

#### EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 80-113, *supra*, is modified to indicate that should an organization described in that revenue ruling receive public support subsequent to its application date and prior to the expiration of the computation period provided in section 1.170A-9(e)(5) of the regulations, exemption would be recognized back to the date of organization.