

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Stephen A. Martin
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from: Matthew Giuliano
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subject: State Laws Satisfying the Section 508(e) Private Foundation Governing Instrument Requirements

This memorandum responds to your request for updated guidance on State laws that satisfy the private foundation governing instrument requirements of section 508(e) of the Internal Revenue Code.¹ This document should not be used or cited as precedent.

Section 508(e) provides that a private foundation (as defined in section 509) will not be exempt from Federal income taxation under section 501(a) unless its governing instrument² includes certain provisions the effects of which are to require or prohibit, as the case may be, the private foundation to act or refrain from acting so that it will not be liable for the excise taxes imposed by sections 4941, 4942, 4943, 4944, and 4945. Treas. Reg. § 1.508-3(a) provides a general rule that is consistent with section 508(e).

Treas. Reg. § 1.508-3(d)(1) provides, however, that a private foundation's governing instrument will be deemed to satisfy the requirements of Treas. Reg. § 1.508-3(a) if valid provisions of State law have been enacted which:

¹ Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code of 1986, as amended.

² For purposes of section 508(e), the term "governing instrument" includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created. The bylaws of a private foundation do not constitute its governing instrument for purposes of section 508(e). See Treas. Reg. § 1.508-3(c).

- (1) Require it to act or refrain from acting so as not to subject the private foundation to the taxes imposed by sections 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to taxes on investments which jeopardize charitable purpose), and 4945 (relating to taxable expenditures); or
- (2) Treat the required provisions as contained in the private foundation's governing instrument.

Rev. Rul. 75-38, 1975-1 C.B. 161, identified 48 States and the District of Columbia as jurisdictions with statutory provisions in effect at the time of its publication that satisfied the requirements of section 508(e). The revenue ruling also noted exceptions included in those statutory provisions, such as cases in which a court determines that the provisions do not apply to a particular private foundation or in which a private foundation expressly opts out of the statutory provisions through a provision in its governing instrument. However, a number of the statutory provisions considered in Rev. Rul. 75-38 have since been amended, repealed, or replaced, and the revenue ruling cannot be relied upon to the extent State law has materially changed. See sec. 7.01(5), (6), Rev. Proc. 89-14, 1989-1 C.B. 814. This office is obsoleting Rev. Rul. 75-38 because it no longer provides an accurate list of the States with statutory provisions that satisfy the requirements of section 508(e) or of the exceptions to those statutory provisions.³

The following table identifies whether and under what circumstances each of the 50 States and the District of Columbia have enacted laws satisfying the requirements of section 508(e), including the types of organizations covered by those laws and exceptions. The information in the table is current as of April 23, 2024. However, subsequent changes to State law by statute or court decision may affect the accuracy of this information. This table may be updated by this office in subsequent memoranda or through other guidance.

Please call Christopher Hyde at (202) 317-5800 if you have any further questions.

³ In addition, Rev. Rul. 75-38 did not address potential differences in the State statutory provisions that apply depending on whether an organization is formed as a charitable trust or as a not-for-profit (or nonstock) corporation. While most States have enacted statutory provisions having the effects described in section 508(e) for both charitable trusts and not-for-profit corporations, a small number of States have enacted statutory provisions that satisfy the requirements of section 508(e) for charitable trusts or not-for-profit corporations but not both.

Table of States and Whether Section 508(e) Is Satisfied by State Law

State	Nonprofit Corporations	Trusts	Unincorporated Nonprofit Associations
Alabama	Yes except where otherwise provided by court order or by a provision in a governing instrument, which in either case has been entered or made after August 11, 1971	Yes except where otherwise provided by judgment of a court or by a provision of the governing instrument, which in either case has been entered or made after October 1, 1971	No
Alaska	Yes except where the articles of incorporation provide to the contrary	Yes except where the trust instrument provides to the contrary	No
Arizona	Yes except where otherwise determined by a court of competent jurisdiction	No	No
Arkansas	Yes except where the articles of incorporation expressly provide to the contrary	Yes except where otherwise determined by a court of competent jurisdiction, or to the extent the trust instrument is amended to expressly provide to the contrary and the appropriate filing is made with the state attorney general	No
California	Yes	Yes	No

State	Nonprofit Corporations	Trusts	Unincorporated Nonprofit Associations
Colorado	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise provided by a court decree entered on or after June 2, 1971	Yes except where otherwise expressly provided in the principal governing document, or where otherwise determined by a court of competent jurisdiction
Connecticut	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
Delaware	Yes except where the certificate of incorporation expressly provides to the contrary	Yes except where the trust instrument expressly provides to the contrary	No
District of Columbia	Yes except for nonprofit corporations incorporated before January 1, 1970, that have been relieved from the requirements of section 508(e)(1) by a timely judicial proceeding	Yes except where otherwise provided by a court of competent jurisdiction	No
Florida	Yes except where otherwise determined by a court of competent jurisdiction	Yes except to the extent the trust instrument contains powers inconsistent with the applicable provisions of Florida law and notice of such inconsistency is provided to the state attorney general	No

State	Nonprofit Corporations	Trusts	Unincorporated Nonprofit Associations
Georgia	Yes except where the articles of incorporation expressly provide to the contrary	Yes except where the trust instrument expressly provides to the contrary and the appropriate filing is made with the state attorney general	No
Hawaii	Yes except where otherwise determined by a court of competent jurisdiction	Yes	No
Idaho	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where the trust instrument includes a specific provision to the contrary	No
Illinois	Yes except where the articles of incorporation expressly provide to the contrary	Yes except where otherwise provided by a court order entered after June 8, 1971	No
Indiana	Yes except where the articles of incorporation provide to the contrary, or, for corporations organized before January 1, 1970, to the extent otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction with respect to trusts created before January 1, 1970	No
Iowa	Yes except where the articles of incorporation include a specific provision to the contrary	Yes except where the trust instrument includes a specific provision to the contrary	No

State	Nonprofit Corporations	Trusts	Unincorporated Nonprofit Associations
Kansas	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
Kentucky	Yes except to the extent that a corporation in existence on July 1, 1972, provides to the contrary by amendment to its articles of incorporation adopted after July 1, 1972	Yes except, with respect to trusts in existence on July 1, 1972, where action is properly commenced in a court of competent jurisdiction on or before December 31, 1972, to excuse the trust from compliance with the applicable sections of Kentucky law	No
Louisiana	Yes except where the articles of incorporation expressly provide to the contrary	Yes except where the trust instrument is properly amended to expressly provide to the contrary	No
Maine	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
Maryland	Yes except where otherwise determined by a court of competent jurisdiction in a proceeding instituted before January 1, 1972	Yes except where otherwise determined by a court of competent jurisdiction	No
Massachusetts	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No

State	Nonprofit Corporations	Trusts	Unincorporated Nonprofit Associations
Michigan	No	Yes except where notice is provided to the state attorney general that the trust instrument contains provisions inconsistent with the applicable sections of Michigan law	No
Minnesota	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
Mississippi	Yes except where the articles of incorporation expressly provide to the contrary, or to the extent determined otherwise by a court of competent jurisdiction	Yes except where the trust instrument is amended to expressly provide to the contrary and such amendment is properly filed with the secretary of state, or to the extent determined otherwise by a court of competent jurisdiction	No
Missouri	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
Montana	Yes except where otherwise determined by a court of competent jurisdiction	Yes	No
Nebraska	Yes except where otherwise determined by a court of competent jurisdiction	Yes except for such trusts which elect to be excluded from the applicable sections of Nebraska law and properly notify the state	No

State	Nonprofit Corporations	Trusts	Unincorporated Nonprofit Associations
		attorney general, or where otherwise provided by a court decree entered after April 30, 1971	
Nevada	Yes except where otherwise provided in the governing instrument	Yes	Yes except where otherwise provided in the governing instrument
New Hampshire	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
New Jersey	Yes except where the certificate of incorporation expressly provides to the contrary and the proper filing is made with the secretary of state	Yes except where the trustees execute an instrument stating that the applicable provisions of New Jersey law shall not apply to the trust and the proper filing is made with the secretary of state	No
New Mexico	No	No	No
New York	Yes except where such law conflicts with any mandatory direction in a gift instrument executed prior to June 1, 1971, and such conflicting direction has not been removed	Yes except, with respect to assets transferred in trust prior to June 1, 1971, to the extent such law conflicts with any mandatory direction in the trust instrument, and such conflicting direction has not been removed	No

State	Nonprofit Corporations	Trusts	Unincorporated Nonprofit Associations
North Carolina	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise decreed by a court of competent jurisdiction, or where the trust instrument is amended to expressly provide to the contrary and the proper filing is made with the state attorney general	No
North Dakota	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
Ohio	Yes except in the case of corporations in existence on September 17, 1971, that expressly adopt contrary provisions in their governing instruments after September 17, 1971	Yes except where otherwise provided by a court of competent jurisdiction in an action commenced on or before December 31, 1971	No
Oklahoma	Yes except where the certificate of incorporation expressly provides to the contrary	Yes except where the trust instrument is properly amended to expressly provide to the contrary and the proper filing is made with the secretary of state	No
Oregon	Yes except where otherwise determined by a court of competent jurisdiction	Yes	No

State	Nonprofit Corporations	Trusts	Unincorporated Nonprofit Associations
Pennsylvania	Yes except, in the case of corporations created before January 1, 1970, where otherwise determined by a court of competent jurisdiction in a proceeding instituted before January 1, 1972	Yes except, in the case of trusts created before January 1, 1970, where otherwise determined by a court of competent jurisdiction in a proceeding instituted before January 1, 1972	No
Rhode Island	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
South Carolina	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where the trust instrument provides to the contrary	No
South Dakota	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
Tennessee	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
Texas	Yes except where the corporation amends its certificate of incorporation to expressly provide to the contrary	Yes except where the trustee properly amends the trust instrument to expressly provide to the contrary and makes the proper filing with the state attorney general's office	No

State	Nonprofit Corporations	Trusts	Unincorporated Nonprofit Associations
Utah	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where notice of inconsistent trust provisions is provided to the state attorney general, or where determined otherwise by a court of competent jurisdiction	No
Vermont	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
Virginia	Yes except where the articles of incorporation expressly provide to the contrary, or, in the case of corporations organized before January 1, 1970, a proper election has been filed not to be subject to such law	Yes except where the governing instrument expressly provides to the contrary	No
Washington	Yes except in the case of nonprofit corporations incorporated before January 1, 1970, that have been relieved from the requirements of section 508(e)(1) by a timely judicial proceeding	Yes except where the trust instrument includes a specific provision to the contrary	No
West Virginia	No	Yes except where the governing instrument expressly provides to the contrary	No

State	Nonprofit Corporations	Trusts	Unincorporated Nonprofit Associations
Wisconsin	Yes except where otherwise determined by a court of competent jurisdiction	Yes except where otherwise determined by a court of competent jurisdiction	No
Wyoming	Yes except where otherwise determined by a court of competent jurisdiction	No	No