

foundation for all purposes. For example, if a private foundation transfers all of its net assets to a section 509(a)(2) organization in 1971 and receives a bequest in 1973, the bequest will be regarded as having been made to a private foundation and the foundation will be subject to the provisions of chapter 42 with respect to such funds. If a private foundation makes a transfer of all of its net assets to a section 509(a)(2) or (3) organization, for example, it must retain sufficient income or assets to pay the tax imposed under section 4940 for that portion of its taxable year prior to such transfer. For additional rules applicable to a transfer by a private foundation of all of its net assets to a section 509(a)(1) organization which has not been in existence and so described for a continuous period of 60 calendar months, see § 1.507-3(e).

(8) If a private foundation makes a transfer described in subparagraph (7) of this paragraph and prior to, or in connection with, such transfer, liability for any tax under chapter 42 is incurred by the transferor foundation, transferee liability may be applied against the transferee organization for payment of such taxes. For purposes of this subparagraph, liability for any tax imposed under chapter 42 for failure to correct any act or failure to act shall be deemed incurred on the date on which the act or failure to act giving rise to the initial tax liability occurred.

(9) A private foundation which transfers all of its net assets is required to file the annual information return required by section 6033, and the foundation managers are required to file the annual report of a private foundation required by section 6056, for the taxable year in which such transfer occurs. However, neither such foundation nor its foundation managers will be required to file such returns for any taxable year following the taxable year in which the last of any such transfers occurred, if at no time during the subsequent taxable years in question the foundation has either legal or equitable title to any assets or engages in any activity.

(c) *Involuntary termination under section 507(a)(2)*. (1) For purposes of sec-

tion 507(a)(2)(A), the term *willful repeated acts (or failures to act)* means at least two acts or failures to act both of which are voluntary, conscious, and intentional.

(2) For purposes of section 507(a)(2)(A), a *willful and flagrant act (or failure to act)* is one which is voluntarily, consciously, and knowingly committed in violation of any provision of chapter 42 (other than section 4940 or 4948(a)) and which appears to a reasonable man to be a gross violation of any such provision.

(3) An act (or failure to act) may be treated as an act (or failure to act) by the private foundation for purposes of section 507(a)(2) even though tax is imposed upon one or more foundation managers rather than upon the foundation itself.

(4) For purposes of section 507(a)(2), the failure to correct the act or acts (or failure or failures to act) which gave rise to liability for tax under any section of chapter 42 by the close of the correction period for such section may be a willful and flagrant act (or failure to act).

(5) No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make an act (or failure to act) willful. However, a foundation's act (or failure to act) is not willful if the foundation (or a foundation manager, if applicable) does not know that it is an act of self-dealing, a taxable expenditure, or other act (or failure to act) to which chapter 42 applies. Rules similar to the regulations under chapter 42 (see, for example, § 53.4945-1(a)(2)(iii) of this chapter) shall apply in determining whether a foundation or a foundation manager *knows* that an act (or failure to act) is an act of self-dealing a taxable expenditure or other such act (or failure to act).

[T.D. 7233, 37 FR 28157, Dec. 21, 1972, as amended by T.D. 7290, 38 FR 31833, Nov. 19, 1973]

§ 1.507-2 Special rules; transfer to, or operation as, public charity.

(a) *Transfer to public charities*—(1) *General rule*. Under section 507(b)(1)(A) a private foundation, with respect to which there have not been either willful repeated acts (or failures to act) or

a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42, may terminate its private foundation status by distributing all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution. Since section 507(a) does not apply to such a termination, a private foundation which makes such a termination is not required to give the notification described in section 507(a)(1). A private foundation which terminates its private foundation status under section 507(b)(1)(A) does not incur tax under section 507(c) and, therefore, no abatement of such tax under section 507(g) is required.

(2) *Effect of current ruling*—(i) *Distributions before final regulations.* With respect to distributions made before (insert day after the date these regulations are filed by the Office of the Federal Register), an organization to which a distribution of net assets is made will qualify as an organization described in section 170(b)(1)(A) (other than clauses (vii) and (viii)) for purposes of meeting the requirements of section 507(b)(1)(A) without a further showing if such distributee organization:

(A) Has been in existence for a continuous period of at least 60 calendar months preceding the distribution described in subparagraph (1) of this paragraph;

(B) Has received a ruling or determination letter that it is an organization described in clause (i), (ii), (iii), (iv), (v), or (vi) of section 170(b)(1)(A);

(C) The facts and circumstances forming the basis for the issuance of the ruling have not substantially changed during the 60-month period referred to in (A) of this subdivision; and

(D) The ruling or determination letter referred to in (B) of this subdivision has not been revoked expressly or by a subsequent change of the law or regulations under which the ruling was issued.

(ii) *Distributions after final regulations.* With respect to distributions made after December 29, 1972, a private foundation seeking to terminate its private

foundation status pursuant to section 507(b)(1)(A) may rely on a ruling or determination letter issued to a potential distributee organization that such distributee organization is an organization described in clause (i), (ii), (iii), (iv), (v), or (vi) of section 170(b)(1)(A) in accordance with the provisions of § 1.509(a)-7.

(3) *Organizations described in more than one clause of section 170(b)(1)(A).* For purposes of this paragraph and section 507(b)(1)(A), the parenthetical term *other than in clauses (vii) and (viii)* shall refer only to an organization which is described only in section 170(b)(1)(A) (vii) or (viii). Thus, an organization described in clause (i), (ii), (iii), (iv), (v), or (vi) of section 170(b)(1)(A) will not be precluded from being a distributee described in section 507(b)(1)(A) merely because it also appears to meet the description of an organization described in section 170(b)(1)(A) (vii) or (viii).

(4) *Applicability of chapter 42 to foundations terminating under section 507(b)(1)(A).* Except as provided in subparagraph (5) of this paragraph, an organization which terminates its private foundation status pursuant to section 507(b)(1)(A) will remain subject to the provisions of chapter 42 until the distribution of all of its net assets to distributee organizations described in section 507(b)(1)(A) has been completed.

(5) *Special transitional rule.* (i) Section 4940(a) imposes a tax upon private foundations with respect to the carrying on of activities for each taxable year. For purposes of section 4940, an organization which terminates its private foundation status under section 507(b)(1)(A) by the end of the period described in subdivision (ii) of this subparagraph will not be considered as carrying on activities within the meaning of section 4940 during such period. Such organization will therefore not be subject to the tax imposed under section 4940(a) for such period.

(ii) The period referred to in subdivision (i) of this subparagraph is the 12-month period beginning with the first day of the organization's first taxable year which begins after December 31, 1969, but such period shall not be treated as ending before February 20, 1973.

In the case of a private foundation distributing assets pursuant to section 507(b)(1)(A) to a medical research organization or a community trust (or in the case of a private foundation seeking to terminate into such an organization or trust pursuant to section 507(b)(1)(B)), the period described in this subdivision shall not be treated as ending before:

(A) In the case of a distribution to a medical research organization, March 29, 1976; or

(B) In the case of a community trust, May 11, 1977.

(iii) If the period described in subdivision (ii) of this subparagraph has not expired prior to the due date for the organization's annual return required to be filed by section 6033 or 6012 (determined with regard to any extension of time for filing the return) for its first taxable year which begins after December 31, 1969 (or for any other taxable year ending before the expiration of the period referred to in subdivision (ii) of this subparagraph), and if the organization has not terminated its private foundation status under section 507(b)(1)(A) by such date, then notwithstanding the provisions of subdivision (ii) of this subparagraph, the organization must take either of the following courses of action:

(A) Complete and file its annual return, including the line relating to excise taxes on investment income, by such date, and pay the tax on investment income imposed under section 4940 at the time it files its annual return. If such organization subsequently terminates its private foundation status under section 507(b)(1)(A) within the period specified in subdivision (ii) of this subparagraph, it may file a claim for refund of the tax paid under section 4940; or

(B) Complete and file its annual return, except for the line relating to excise taxes on investment income, by such date, and, in lieu of paying the tax on investment income imposed under section 4940, file a statement with its annual return which establishes that the organization has taken affirmative action by such date to terminate its private foundation status under section 507(b)(1)(A). Such statement must indicate the type of affirm-

ative action taken and explain how such action will result in the termination of its private foundation status under section 507(b)(1)(A). Such affirmative action may include making application to the appropriate State court for approval of the distribution of all net assets pursuant to section 507(b)(1)(A) in the case of a charitable trust, or the passage of a resolution by the organization's governing body directing the distribution of all net assets pursuant to section 507(b)(1)(A) in the case of a not-for-profit corporation. A written commitment or letter of agreement by the trustee or governing body to one or more section 509(a)(1) distributees indicating an intent to distribute all of the organization's net assets to such distributees will also constitute appropriate affirmative action for purposes of this subdivision. An organization may take such affirmative action and may terminate its private foundation status under section 507(b)(1)(A) in reliance upon 26 CFR 13.12 (rev. as of Jan. 1, 1972) and upon the provisions of the notices of proposed rule making under sections 170(b)(1)(A), 507(b)(1), and 509. Thus, if a distributee organization meets the requirements of the provisions of the notices of proposed rule-making under sections 170(b)(1)(A), 507, or 509 as a distributee under section 507(b)(1)(A), the distributor organization may terminate its private foundation status under section 507(b)(1)(A) in reliance upon such provisions prior to the expiration of the period described in subdivision (ii) of this subparagraph. If such organization, however, fails to terminate its private foundation status under section 507(b)(1)(A) within the period specified in subdivision (ii) of this subparagraph by failing to meet the requirements of either the notices of proposed rulemaking under section 170(b)(1)(A), 507(b)(1), or 509 or the final regulations published under these Code sections, the tax imposed under section 4940 shall be treated as if due from the due date for its annual return (determined without regard to any extension of time for filing its return).

(6) *Return required from organizations terminating private foundation status under section 507(b)(1)(A).* (i) An organization which terminates its private

foundation status under section 507(b)(1)(A) is required to file a return under the provisions of section 6043(b), rather than under the provisions of section 6050.

(ii) An organization which terminates its private foundation status under section 507(b)(1)(A) is not required to comply with section 6104(d) for the taxable year in which such termination occurs. For purposes of this subdivision, the term *taxable year* shall include the period described in subparagraph (5)(ii) of this paragraph.

(7) *Distribution of net assets.* A private foundation will meet the requirement that it *distribute all of its net assets* within the meaning of section 507(b)(1)(A) only if it transfers all of its right, title, and interest in and to all of its net assets to one or more organizations referred to in section 507(b)(1)(A).

(8) *Effect of restrictions and conditions upon distributions of net assets—* (i) *In general.* In order to effectuate a transfer of *all of its right title and interest in and to all of its net assets* within the meaning of paragraph (a)(7) of this section, a transferor private foundation may not impose any material restriction or condition that prevents the transferee organization referred to in section 507(b)(1)(A) (herein sometimes referred to as the *public charity*) from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes. Whether or not a particular condition or restriction imposed upon a transfer of assets is *material* (within the meaning of paragraph (a)(8) of this section) must be determined from all of the facts and circumstances of the transfer. Some of the more significant facts and circumstances to be considered in making such a determination are:

(A) Whether the public charity (including a participating trustee, custodian, or agent in the case of a community trust) is the owner in fee of the assets it receives from the private foundation;

(B) Whether such assets are to be held and administered by the public charity in a manner consistent with one or more of its exempt purposes;

(C) Whether the governing body of the public charity has the ultimate au-

thority and control over such assets, and the income derived therefrom; and

(D) Whether, and to what extent, the governing body of the public charity is organized and operated so as to be independent from the transferor.

(ii) *Independent governing body.* As provided in paragraph (a)(8)(i)(D) of this section, one of the more significant facts and circumstances to be considered in making the determination whether a particular condition or restriction imposed upon a transfer of assets is *material* within the meaning of paragraph (a)(8) of this section is whether, and the extent to which, the governing body is organized and operated so as to be independent from the transferor. In turn, the determination as to such factor must be determined from all of the facts and circumstances. Some of the more significant facts and circumstances to be considered in making such a determination are:

(A) Whether, and to what extent, members of the governing body are comprised of persons selected by the transferor private foundation or disqualified persons with respect thereto, or are themselves such disqualified persons;

(B) Whether, and to what extent, members of the governing body are selected by public officials acting in their capacities as such; and

(C) How long a period of time each member of the governing body may serve as such. In the case of a transfer that is a community trust, the community trust shall meet paragraph (a)(8)(ii)(C) of this section if it meets the requirements of §1.170A-9(e)(13)(iv) (other than §1.170A-9(e)(13)(iv) (C) or (D)), relating to rules for governing body.

(iii) *Factors not adversely affecting determination.* The presence of some or all of the following factors will not be considered as preventing the transferee from *freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes* (within the meaning of paragraph (a)(8)(i) of this section):

(A) *Name.* The fund is given a name or other designation which is the same as or similar to that of the transferor

private foundation or otherwise memorializes the creator of the foundation or his family.

(B) *Purpose.* The income and assets of the fund are to be used for a designated purpose or for one or more particular section 509(a) (1), (2), or (3) organizations, and such use is consistent with the charitable, educational, or other basis for the exempt status of the public charity under section 501(c)(3).

(C) *Administration.* The transferred assets are administered in an identifiable or separate fund, some or all of the principal of which is not to be distributed for a specified period, if the public charity (including a participating trustee, custodian, or agent in the case of a community trust) is the legal and equitable owner of the fund and the governing body exercises ultimate and direct authority and control over such fund, as, for example, a fund to endow a chair at a university or a medical research fund at a hospital. In the case of a community trust, the transferred assets must be administered in or as a component part of the community trust within the meaning of § 1.170A-9(e)(11).

(D) *Restrictions on disposition.* The transferor private foundation transfers property the continued retention of which by the transferee is required by the transferor if such retention is important to the achievement of charitable or other similar purposes in the community because of the peculiar features of such property, as, for example, where a private foundation transfers a woodland preserve which is to be maintained by the public charity as an arborum for the benefit of the community. Such a restriction does not include a restriction on the disposition of an investment asset or the distribution of income.

(iv) *Adverse factors.* The presence of any of the following factors will be considered as preventing the transferee from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes (within the meaning of paragraph (a)(8)(i) of this section):

(A) *Distributions.* (1) With respect to distributions made after April 19, 1977, the transferor private foundation, a disqualified person with respect there-

to, or any person or committee designated by, or pursuant to the terms of an agreement with, such a person (hereinafter referred to as *donor*), reserves the right, directly or indirectly, to name (other than by designation in the instrument of transfer of particular section 509(a) (1), (2), or (3) organizations) the persons to which the transferee public charity must distribute, or to direct the timing of such distributions (other than by direction in the instrument of transfer that some or all of the principal, as opposed to specific assets, not be distributed for a specified period) as, for example, by a power of appointment. The Internal Revenue Service will examine carefully whether the seeking of advice by the transferee from, or the giving of advice by, any donor after the assets have been transferred to the transferee constitutes an indirect reservation of a right to direct such distributions. In any such case, the reservation of such a right will be considered to exist where the only criterion considered by the public charity in making a distribution of income or principal from a donor's fund is advice offered by the donor. Whether there is a reservation of such a right will be determined from all of the facts and circumstances, including, but not limited to, the facts contained in paragraph (a)(8)(iv)(A) (2) and (3) of this section.

(2) The presence of some or all of the following factors will indicate that the reservation of such a right does not exist:

(i) There has been an independent investigation by the staff of the public charity evaluating whether the donor's advice is consistent with specific charitable needs most deserving of support by the public charity (as determined by the public charity);

(ii) The public charity has promulgated guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity and the donor's advice is consistent with such guidelines;

(iii) The public charity has instituted an educational program publicizing to donors and other persons the guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity;

(iv) The public charity distributes funds in excess of amounts distributed from the donor's fund to the same or similar types of organizations or charitable needs as those recommended by the donor; and

(v) The public charity's solicitations (written or oral) for funds specifically state that such public charity will not be bound by advice offered by the donor.

(3) The presence of some or all of the following factors will indicate the reservation of such a right does exist:

(i) The solicitations (written or oral) of funds by the public charity state or imply, or a pattern of conduct on the part of the public charity creates an expectation, that the donor's advice will be followed;

(ii) The advice of a donor (whether or not restricted to a distribution of income or principal from the donor's trust or fund) is limited to distributions of amounts from the donor's fund, and the factors described in paragraph (a)(8)(iv)(A)(2) or (i) or (ii) of this section are not present;

(iii) Only the advice of the donor as to distributions of such donor's fund is solicited by the public charity and no procedure is provided for considering advice from persons other than the donor with respect to such fund; and

(iv) For the taxable year and all prior taxable years the public charity follows the advice of all donors with respect to their funds substantially all of the time.

(B) *Other action or withholding of action.* The terms of the transfer agreement, or any expressed or implied understanding, required the public charity to take or withhold action with respect to the transferred assets which is not designed to further one or more of the exempt purposes of the public charity, and such action or withholding of action would, if performed by the transferor private foundation with respect to such assets, have subjected the transferor to tax under chapter 42 (other than with respect to the minimum investment return requirement of section 4942(e)).

(C) *Assumption of leases, etc.* The public charity assumes leases, contractual obligations, or liabilities of the transferor private foundation, or

takes the assets thereof subject to such liabilities (including obligations under commitments or pledges to donees of the transferor private foundation), for purposes inconsistent with the purposes or best interests of the public charity, other than the payment of the transferor's chapter 42 taxes incurred prior to the transfer to the public charity to the extent of the value of the assets transferred.

(D) *Retention of investment assets.* The transferee public charity is required by any restriction or agreement (other than a restriction or agreement imposed or required by law or regulatory authority), express or implied, to retain any securities or other investment assets transferred to it by the private foundation. In a case where such transferred assets consistently produce a low annual return of income, the Internal Revenue Service will examine carefully whether the transferee is required by any such restriction or agreement to retain such assets.

(E) *Right of first refusal.* An agreement is entered into in connection with the transfer of securities or other property which grants directly or indirectly to the transferor private foundation or any disqualified person with respect thereto a right of first refusal with respect to the transferred securities or other property when and if disposed of by the public charity, unless such securities or other property was acquired by the transferor private foundation subject to such right of first refusal prior to October 9, 1969.

(F) *Relationships.* An agreement is entered into between the transferor private foundation and the transferee public charity which establishes irrevocable relationships with respect to the maintenance or management of assets transferred to the public charity, such as continuing relationships with banks, brokerage firms, investment counselors, or other advisors with regard to the investments or other property transferred to the public charity (other than a relationship with a trustee, custodian, or agent for a community trust

acting as such). The transfer of property to a public charity subject to contractual obligations which were established prior to November 11, 1976 between the transferor private foundation and persons other than disqualified persons with respect to such foundation will not be treated as prohibited under the preceding sentence, but only if such contractual obligations were not entered into pursuant to a plan to terminate the private foundation status of the transferor under section 507(b)(1)(A) and if the continuation of such contractual obligations is in the best interests of the public charity.

(G) *Other conditions.* Any other condition is imposed on action by the public charity which prevents it from exercising ultimate control over the assets received from the transferor private foundation for purposes consistent with its exempt purposes.

(v) *Examples.* The provisions of paragraph (a)(8) of this section may be illustrated by the following examples:

Example 1. The M Private Foundation transferred all of its net assets to the V Cancer Institute, a public charity described in section 170(b)(1)(A)(iii). Prior to the transfer, M's activities consisted of making grants to hospitals and universities to further research into the causes of cancer. Under the terms of the transfer, V is required to keep M's assets in a separate fund and use the income and principal to further cancer research. Although the assets may be used only for a limited purpose, this purpose is consistent with and in furtherance of V's exempt purposes, and does not prevent the transfer from being a distribution for purposes of section 507(b)(1)(A).

Example 2. The N Private Foundation transferred all of its net assets to W University, a public charity described in section 170(b)(1)(A)(ii). Under the terms of the transfer, W is required to use the income and principal to endow a chair at the university to be known as the "John J. Doe Memorial Professorship", named after N's creator. Although the transferred assets are to be used for a specified purpose by W, this purpose is in furtherance of W's exempt educational purposes, and there are no conditions on investment or reinvestment of the principal or income. The use of the name of the foundation's creator for the chair is not a restriction which would prevent the transfer from being a distribution for purposes of section 507(b)(1)(A).

Example 3. The O Private Foundation transferred all of its net assets to X Bank as trustee for the P Community Trust, a com-

munity trust which is a public charity described in section 170(b)(1)(A)(vi). Under the terms of the transfer, X is to hold the assets in trust for P and is directed to distribute the income annually to the Y Church, a public charity described in Section 170(b)(1)(A)(i). The distribution of income to Y Church is consistent with P's exempt purposes. If the trust created by this transfer otherwise meets the requirements of § 1.170A-9(e)(11) as a component part of P Community Trust, and assets transferred by O to X will be treated as distributed to one or more public charities within the meaning of section 507(b)(1)(A). The direction to distribute the income to Y Church meets the conditions of paragraph (a)(8)(iii)(B) of this section and will therefore not disqualify the transfer under section 507(b)(1)(A).

Example 4. The U Private Foundation transferred all of its net assets to Z Bank as trustee for the R Community Trust, a community trust which is a public charity described in section 170(b)(1)(A)(vi). Under the terms of the transfer, Z is to hold the assets in trust for R and distribute the income to those public charities described in section 170(b)(1)(A)(i) through (vi) that are designated by B, the creator of U. R's governing body has no authority during B's lifetime to vary B's direction. Under the terms of the transfer, it is intended that Z retain the transferred assets in their present form for a period of 20 years, or until the date of B's death if it occurs before the expiration of such period. Upon the death of B, R will have the power to distribute the income to such public charities as it selects and may dispose of the corpus as it sees fit.

Under paragraph (a)(8)(iv)(A) or (D) of this section, as a result of the restrictions imposed with respect to the transferred assets, there has been no distribution of all U's net assets within the meaning of section 507(b)(1)(A) at the time of the transfer. In addition, U has not transferred its net assets to a component part of R Community Trust, but rather to a separate trust described in § 1.170A-9(e)(14).

(vi) *Transitional rule.* If the governing instrument of the public charity (or an instrument of transfer) lacks the factors described in paragraph (a)(8)(i)(D) or (ii) of this section, but with respect to gifts or bequests acquired before January 1, 1982, the public charity changes its governing instrument (or instrument of transfer) by the later of November 11, 1977, or one year after the gift or bequest is acquired, in order to conform such instrument to such provisions, then such an instrument shall be treated as consistent with such provisions for taxable years beginning

prior to the date of change. In addition, if prior to the later of such dates, the organization has instituted court proceedings in order to conform such an instrument, then it may apply (prior to the later of such dates) for an extension of the period to conform such instrument to such provisions. Such application shall be made to the Commissioner of Internal Revenue, Attention E:EO, Washington, DC 20224. The Commissioner, at the Commissioner's discretion, may grant such an extension, if in the Commissioner's opinion such a change will conform the instrument to such provisions, and the change will be made within a reasonable time.

(b) *Operation as a public charity*— (1) *In general.* Under section 507(b)(1)(B) an organization can terminate its private foundation status if the organization:

(i) Meets the requirements of section 509(a) (1), (2), or (3) by the end of the 12-month period (as extended by paragraph (c)(3)(i) of this section) beginning with its first taxable year which begins after December 31, 1969, or for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969;

(ii) In compliance with section 507(b)(1)(B)(ii) and subparagraph (3) of this paragraph, properly notifies the district director before the commencement of such 12-month or 60-month period or before March 29, 1973 that it is terminating its private foundation status; and

(iii) Properly establishes immediately after the expiration of such 12-month or 60-month period that such organization has complied with the requirements of section 509(a) (1), (2), or (3) by the end of the 12-month period or during the 60-month period, as the case may be, in the manner described in subparagraph (4) of this paragraph.

(2) *Relationship of section 507(b)(1)(B) to section 507 (a), (c), and (g).* Since section 507(a) does not apply to a termination described in section 507(b)(1)(B), a private foundation's notification that it is commencing a termination pursuant to section 507(b)(1)(B) will not be treated as a notification described in section 507(a) even if the private foundation does not successfully terminate its private foundation status pursuant

to section 507(b)(1)(B). A private foundation which terminates its private foundation status under section 507(b)(1)(B) does not incur tax under section 507(c) and, therefore, no abatement of such tax under section 507(g) is required.

(3) *Notification of termination.* In order to comply with the requirements under section 507(b)(1)(B)(ii), an organization shall before the commencement of the 12-month or 60-month period under section 507(b)(1)(B)(i) (or before March 29, 1973) or, in the case of the 12-month period for a community trust, before May 11, 1977, notify the district director of its intention to terminate its private foundation status.

Such notification shall contain the following information:

(i) The name and address of the private foundation;

(ii) Its intention to terminate its private foundation status;

(iii) Whether the 12-month or 60-month period shall apply;

(iv) The Code section under which it seeks classification (section 509(a) (1), (2), or (3));

(v) If section 509(a)(1) is applicable, the clause of section 170(b)(1)(A) involved;

(vi) The date its regular taxable year begins; and

(vii) The date of commencement of the 12-month or 60-month period.

(4) *Establishment of termination.* In order to comply with the requirements under section 507(b)(1)(B)(iii), an organization shall within 90 days after the expiration of the 12-month or 60-month period, file such information with the district director as is necessary to make a determination as to the organization's status as an organization described under section 509(a) (1), (2), or (3) and the regulations thereunder. See paragraphs (c) and (d) of this section as to the information required to be submitted under this subparagraph.

(5) *Incomplete information; 12- and 60-month terminations.* The failure to supply, within the required time, all of the information required by subparagraph (3) or (4) of this paragraph is not alone sufficient to constitute a failure to satisfy the requirements of section 507(b)(1)(B). If the information which is submitted within the required time is

incomplete and the organization supplies the necessary additional information at the request of the Commissioner within the additional time period allowed by him, the original submission will be considered timely.

(6) *Application of special rules and filing requirements.* An organization which has terminated its private foundation status under section 507(b)(1)(B) is not required to comply with the special rules set forth in section 508 (a) and (b). Such organization is also not required to file a return under the provisions of section 6043(b) or 6050 by reason of termination of its private foundation status under the provisions of section 507(b)(1)(B).

(7) *Extension of time to assess deficiencies.* If a private foundation files a notification (described in subparagraph (3) of this paragraph) that it intends to begin a 60-month termination pursuant to section 507(b)(1)(B) and does not file a request for an advance ruling pursuant to paragraph (e) of this section, such private foundation may file with the notification described in subparagraph (3) of this paragraph a consent under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for any taxable year within the 60-month termination period shall not expire prior to 1 year after the date of the expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the 60-month period. Such consents, if filed, will ordinarily be accepted by the Commissioner. See paragraph (f)(3) of this section for an illustration of the procedure required to obtain a refund of the tax imposed by section 4940 in a case where such a consent is not in effect.

c) *Twelve-month terminations—(1) Method of determining normal sources of support—(i) In general.* The 12-month termination provisions of section 507(b)(1)(B) permit a private foundation to terminate its private foundation status by changing its organizational structure, its operations, the sources of its support, or any combination thereof, in order to conform to the requirements of section 509(a) (1), (2), or (3) by the end of the 12-month period.

(ii) *Support requirements for 12-month termination under section 170(b)(1)*

(A)(vi). A private foundation attempting to meet the requirements of section 509(a)(1) as an organization described in section 170(b)(1)(A)(vi) will be considered *normally* to receive a substantial part of its support from governmental units or direct or indirect contributions from the general public if it can establish that it has changed the sources of its support before the close of the 12-month period to those of an organization described in section 170(b)(1)(A)(vi) and it can reasonably be expected to maintain its publicly supported status for subsequent years. In order to establish these facts, an organization shall submit all information sufficient to make a determination under §1.170A-9(e) as if such provisions applied, including a description of all organizational and operational changes which have occurred during the 12-month period. It shall also submit detailed information with respect to its sources of support for the 12-month period, as well as for the four taxable years immediately preceding the 12-month period. In applying the tests contained in §1.170A-9(e), however, data from periods preceding the 12-month period shall be disregarded except for purposes of determining whether the organization has effectively changed its sources of support and whether it can reasonably be expected to maintain such publicly supported status for subsequent years. Thus, for example, in applying the mathematical tests of §1.170A-9(e) only data for the 12-month period may enter into the computation.

(iii) *Support requirements for 12-month terminations under section 170(b)(1)(A)(iv).* Section 170(b)(1) (A)(iv) describes an organization which *normally* receives a substantial part of its support (exclusive of income from related activities) from the United States or any State or political subdivision thereof, or from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of certain colleges or universities. For purposes of the 12-month termination period, the rule set forth in subdivision (ii) of this subparagraph with respect to section 170(b)(1)(A)(vi) organizations

shall be applicable in determining whether an organization *normally* receives a substantial part of its support from the sources required under section 170(b)(1)(A)(iv).

(iv) *Support requirements for 12-month terminations under section 509(a)(2).* An organization attempting to terminate its private foundation status under section 507(b)(1)(B) by meeting the requirements of section 509(a)(2) by the end of the 12-month period will be considered as *normally* receiving its support in compliance with the one-third support requirements of section 509(a)(2) if:

(A) For the 12-month period under section 507(b)(1)(B), the organization receives more than one-third of its support from gifts, grants, contributions, membership fees, and gross receipts from related activities (as limited by section 509(a)(2)(A)(ii)) and not more than one-third of its support from items described in section 509(a)(2)(B), and

(B) The organization can establish that it can reasonably be expected to maintain its continued public support for subsequent years. In order to establish a reasonable expectation of continued public support, an organization shall submit a detailed statement describing its past and current operations, any organizational or operational changes and when such changes have occurred, and any changes in its foundation managers (as defined in section 4946(b)(1)). Duplicate copies of its governing instrument and bylaws, with an indication of any amendments made, and detailed information with respect to its sources of support for the 4 taxable years immediately preceding the 12-month period shall also be submitted as part of the evidence that the organization can reasonably be expected to maintain its publicly supported status.

(2) *Organizational and operational tests—(i) Section 509(a)(3) organizations—*(A) *In general.* An organization attempting to terminate its private foundation status under section 507(b)(1)(B) by meeting the requirements of section 509(a)(3) by the end of the 12-month period is required to meet the organizational and operational test of section 509(a)(3)(A), in addition to the require-

ments of section 509(a)(3)(B) and (C), by the end of the 12-month period beginning with its first taxable year which begins after December 31, 1969. An organization may qualify under section 509(a)(3)(A) even though its original governing instrument did not limit its purposes to those set forth in section 509(a)(3)(A) and even though it operated for some other purpose before the end of the 12-month period, if it has amended its governing instrument and changed its operations to conform to the requirements of section 509(a)(3) by the end of the 12-month period.

(B) *Proof of changed status.* In order to establish that an organization described in (A) of this subdivision will continue to be operated exclusively for the required purposes in years subsequent to the end of the 12-month period, such organization shall submit a detailed statement describing its past and current operations, any organizational or operational changes and when such changes have occurred, any changes in foundation managers (as defined in section 4946(b)(1)), and duplicate copies of its governing instrument and bylaws, with an indication of any amendments made. A detailed statement of the relationship between such organization and the specified organizations described in section 509(a)(1) or (2) (as required by section 509(a)(3)(A) and (B)) and all pertinent information to establish that the organization does not violate the control requirements of section 509(a)(3)(C) shall also be submitted.

(ii) *Section 509(a)(1) organizations other than those described in section 170(b)(1)(A)(vi)—*

(A) *In general.* An organization attempting to terminate its private foundation status under section 507(b)(1)(B) by meeting the requirements of section 170(b)(1)(A)(i), (ii), (iii), (iv), or (v) by the end of the 12-month period is required to be operated as an organization described in clauses (i), (ii), (iii), (iv), or (v) of section 170(b)(1)(A) by the end of the 12-month period beginning with its first taxable year which begins after December 31, 1969.

(B) *Proof of changed status.* In order to establish that it will continue to be operated as an organization described in section 509(a)(1) in years subsequent to

the end of the 12-month period, the organization shall submit a detailed statement describing its past and current operations, any organizational or operational changes and when such changes have occurred, and any changes in its foundation managers (as defined in section 4946(b)(1)). Duplicate copies of its governing instrument and bylaws, with an indication of any amendments made, and its financial statements for the 4-taxable years immediately preceding the 12-month period shall also be submitted as evidence that the organization can reasonably be expected to maintain its status as an organization described in section 170(b)(1)(A)(i), (ii), (iii), (iv), or (v).

(3) *Extensions of the 12-month period.*

(i) For purposes of this section, an organization may accomplish a 12-month termination if it meets the requirements of section 507(b)(1)(B) and this paragraph for such a termination with respect to any of the following periods:

(A) The 12-month period beginning with the organization's first taxable year which begins after December 31, 1969;

(B) The period described in paragraph (a)(5)(ii) of this section; or

(C) Any period consisting of two or more taxable years beginning with the organization's first taxable year beginning after December 31, 1969, and ending with any taxable year ending before the end of the period described in paragraph (a)(5)(ii) of this section.

(ii) An organization will be considered as "normally" meeting the requirements of section 170(b)(1)(A) (iv) or (vi) or 509(a)(2), as the case may be, if it meets the requirements of such provision with respect to any period described in subdivision (i) (A), (B), or (C) of this subparagraph. Thus, for example, an organization on a calendar year basis which seeks to convert to a section 509(a)(2) organization under section 507(b)(1)(B) may meet the one-third support requirement based on the aggregate support received during a period described in subdivision (i) (A), (B), or (C) of this subparagraph, for purposes of subparagraph (1)(iv) of this paragraph.

(4) *Status of organization subsequent to the 12-month period.* For purposes of sec-

tions 507 through 509, an organization, the status of which as a private foundation is terminated under section 507(b)(1), shall (except as provided in paragraph (b)(6) of this section) be treated as an organization created on the day after the date of such termination. However, termination of private foundation status under the provisions of section 507(b)(1)(B) is based upon an organization's submission of information establishing compliance by the end of the 12-month period with the requirements of subparagraph (1) or (2) of this paragraph. Therefore, if in the 4 taxable years immediately following the end of the 12-month period, the sources of support or the methods of operation of the organization are materially different from the facts and circumstances presented during the 12-month period upon which the determination under section 507(b)(1)(B)(iii) was made (and such material difference adversely affects such determination), the organization will be deemed not to have satisfied the requirements of section 507(b)(1)(B). Under such circumstances, section 509(c) will not apply and the organization will continue to remain subject to the provisions of section 507. However, the status of grants and contributions under sections 170, 4942, and 4945 will not be affected until the Internal Revenue Service makes notice to the public (such as by publication in the Internal Revenue Bulletin) that the organization has been deleted from classification as an organization described in section 509(a) (1), (2), or (3) unless the donor (1) was in part responsible for, or was aware of, the act or failure to act that resulted in the organization's inability to satisfy the requirements of section 507(b) (1)(B), or (2) had knowledge that such organization would be deleted from classification as an organization described in section 509(a) (1), (2), or (3). Prior to the making of any grant or contribution which allegedly will not result in the grantee's loss of classification under section 509(a) (1), (2), or (3), a potential grantee organization may request a ruling whether such grant or contribution may be made without such loss of classification. A request for such ruling may be filed by

the grantee organization with the district director. The issuance of such ruling will be at the sole discretion of the Commissioner.

(d) *Sixty-month terminations*—(1) *Method of determining normal sources of support.* (i) In order to meet the requirement of section 507(b)(1)(B) for the 60-month termination period as a section 509(a) (1) or (2) organization, an organization must meet the requirements of section 509(a) (1) or (2), as the case may be, for a continuous period of at least 60 calendar months. In determining whether an organization seeking status under section 509(a)(1) as an organization described in section 170(b)(1)(A) (iv) or (vi) or under section 509(a)(2) “normally” meets the requirements set forth under such sections, support received in taxable years prior to the commencement of the 60-month period shall not be taken into consideration, except as otherwise provided in this section. Therefore, in such cases rules similar to the rules applicable to new organizations would apply.

(ii) For purposes of section 507(b)(1)(B), an organization will be considered to be a section 509(a)(1) organization described in section 170(b)(1)(A)(vi) for a continuous period of 60 calendar months only if the organization satisfies the provisions of §1.170A-9(e) based upon aggregate data for such entire period, rather than for any shorter period set forth in §1.170A-9(e). Except for the substitution of such 60-month period for the periods described in §1.170A-9(e), all other provisions of such regulations pertinent to determining an organization’s normal sources of support shall remain applicable.

(iii) For purposes of section 507(b)(1)(B), an organization will be considered to be a section 509(a)(2) organization only if such organization meets the support requirements set forth in section 509(a)(2) (A) and (B) for the continuous period of 60 calendar months prescribed under section 507(b)(1)(B), rather than for any shorter period set forth in the regulations under section 509(a)(2). Except for the substitution of such 60-month period for the periods described in the regulations under section 509(a)(2), all other provisions of such regulations pertain

to determining an organization’s normal sources of support shall remain applicable.

(2) *Organizational and operational tests.* In order to meet the requirements of section 507(b)(1)(B) for the 60-month termination period as an organization described in section 170(b)(1)(A) (i), (ii), (iii), (iv), or (v) or section 509(a)(3), as the case may be, an organization must meet the requirements of the applicable provision for a continuous period of at least 60 calendar months. For purposes of section 507(b)(1)(B), an organization will be considered to be such an organization only if it satisfies the requirements of the applicable provision (including with respect to section 509(a)(3), the organizational and operational test set forth in subparagraph (A) thereof) at the commencement of such 60-month period and continuously thereafter during such period.

(e) *Advance rulings for 60-month terminations*—(1) *In general.* An organization which files the notification required by section 507(b)(1)(B)(ii) that it is commencing a 60-month termination may obtain an advance ruling from the Commissioner that it can be expected to satisfy the requirements of section 507(b)(1)(B)(i) during the 60-month period. Such an advance ruling may be issued if the organization can reasonably be expected to meet the requirements of section 507(b)(1)(B)(i) during the 60-month period. The issuance of a ruling will be discretionary with the Commissioner.

(2) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of subparagraph (1) of this paragraph) to meet the requirements of section 507(b)(1)(B)(i) for the 60-month period, the basic consideration is whether its organizational structure (taking into account any revisions made prior to the beginning of the 60-month period), proposed programs or activities, intended method of operation, and projected sources of support are such as to indicate that the organization is likely to satisfy the requirements of section 509(a) (1), (2), or (3) and paragraph (d) of this section during the 60-month period. In making such a determination, all pertinent facts and circumstances shall be considered.

(3) *Reliance by grantors and contributors.* For purposes of sections 170, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, grants or contributions to an organization which has obtained a ruling referred to in this paragraph will be treated as made to an organization described in section 509(a)(1), (2), or (3), as the case may be, until notice that such advance ruling is being revoked is made to the public (such as by publication in the Internal Revenue Bulletin). The preceding sentence shall not apply, however, if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's failure to meet the requirements of section 509(a)(1), (2), or (3), or acquired knowledge that the Internal Revenue Service had given notice to such organization that its advance ruling would be revoked. Prior to the making of any grant or contribution which allegedly will not result in the grantee's failure to meet the requirements of section 509(a)(1), (2), or (3), a potential grantee organization may request a ruling whether such grant or contribution may be made without such failure. A request for such ruling may be filed by the grantee organization with the district director. The issuance of such ruling will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination on the factors referred to in subparagraph (2) of this paragraph. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522.

(4) *Reliance by organization.* An organization obtaining an advance ruling pursuant to this paragraph cannot rely on such a ruling. Consequently, if the organization does not pay the tax imposed by section 4940 for any taxable year or years during the 60-month period, and it is subsequently determined that such tax is due for such year or years (because the organization did not in fact complete a successful termination pursuant to section 507(b)(1)(B) and was not treated as an organization described in section 509(a)(1), (2), or (3)

for such year or years), the organization is liable for interest in accordance with section 6601 if any amount of tax under section 4940 has not been paid on or before the last date prescribed for payment. However, since any failure to pay such tax during the 60-month period (or prior to the revocation of such ruling) is due to reasonable cause, the penalty under section 6651 with respect to the tax imposed by section 4940 shall not apply.

(5) *Extension of time to assess deficiencies.* The advance ruling described in subparagraph (1) of this paragraph shall be issued only if such organization's request for an advance ruling is filed with a consent under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for any taxable year within the advance ruling period shall not expire prior to 1 year after the date of the expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the 60-month period.

(f) *Effect on grantors or contributors and on the organization itself—(1) Effect of satisfaction of requirements for termination—(i) Treatment during the termination period.* In the event that an organization satisfies the requirements of section 507(b)(1)(B) for termination of its private foundation status by the end of the 12-month period or during the continuous 60-month period, such organization shall be treated for such entire 12-month or 60-month period in the same manner as an organization described in section 509(a)(1), (2), or (3).

(ii) *Twelve-month terminations by fiscal year organizations.* In the case of an organization which operates on a fiscal year basis and terminates its private foundation status by the end of the 12-month period beginning with its first taxable year which begins after December 31, 1969, such 12-month period shall, for purposes of this paragraph, be treated as including the period between January 1, 1970, and the last day of the taxable year immediately preceding its first taxable year which begins after December 31, 1969, so long as the requirements of section 507(b)(1)(B) and paragraph (c) of this section are met by the end of the 12-month period (including such additional period).

(2) *Failure to meet termination requirements*—(i) *In general.* Except as otherwise provided in subdivision (ii) of this subparagraph and paragraph (e) of this section, any organization which fails to satisfy the requirements of section 507(b)(1)(B) for termination of its private foundation status by the end of the 12-month period or during the continuous 60-month period shall be treated as a private foundation for the entire 12-month or 60-month period, for purposes of sections 507 through 509 and chapter 42, and grants or contributions to such an organization shall be treated as made to a private foundation for purposes of sections 170, 507(b)(1)(A), 4942, and 4945.

(ii) *Certain 60-month terminations.* Notwithstanding subdivision (i) of this subparagraph, if an organization fails to satisfy the requirements of section 509(a) (1), (2), or (3) for the continuous 60-month period but does satisfy the requirements of section 509(a) (1), (2), or (3), as the case may be, for any taxable year or years during such 60-month period, the organization shall be treated as a section 509(a) (1), (2), or (3) organization for such taxable year or years and grants or contributions made during such taxable year or years shall be treated as made to an organization described in section 509(a) (1), (2), or (3). In addition, sections 507 through 509 and chapter 42 shall not apply to such organization for any taxable year within such 60-month period for which it does meet such requirements. For purposes of determining whether an organization satisfies the requirements of section 509(a) (1), (2), or (3) for any taxable year in the 60-month period, the organization shall be treated as if it were a new organization with its first taxable year beginning on the date of the commencement of the 60-month period. Thus, for example, if an organization were attempting to terminate its private foundation status under section 507(b)(1)(B) by meeting the requirements of section 170(b)(1)(A)(vi), the rules under § 1.170A-9(e) relating to the initial determination of status of a new organization would apply.

(iii) *Aggregate tax benefit.* For purposes of section 507(d), the organization's aggregate tax benefit resulting from the organization's section

501(c)(3) status shall continue to be computed from the date from which such computation would have been made, but for the notice filed under section 507(b)(1)(B)(ii), except that any taxable year within such 60-month period for which such organization meets the requirements of section 509(a) (1), (2), or (3) shall be excluded from such computations.

(iv) *Excess business holdings.* See section 4943 and the regulations thereunder for rules relating to decreases in a private foundation's holdings in a business enterprise which are caused by the foundation's failure to terminate its private foundation status after giving the notification for termination under section 507(b)(1)(B)(ii).

(3) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. Y, a calendar year private foundation, notifies the district director that it intends to terminate its private foundation status by converting into a publicly supported organization described in section 170(b)(1)(A)(vi) and that its 60-month termination period will commence on January 1, 1974. Y does not obtain a ruling described in paragraph (e) of this section. Based upon its support for 1974 Y does not qualify as a publicly supported organization within the meaning of § 1.170A-9(e) and this paragraph. Consequently, in order to avoid the risks of penalties and interest if Y fails to terminate within the 60-month period, Y files its return as a private foundation and pays the tax imposed by section 4940. Similarly, based upon its support for the period 1974 through 1975, fails to qualify as such a publicly supported organization and files its return and pays the tax imposed by section 4940 for both 1975 and 1976. Since a consent (described in paragraph (b)(7) of this section) which would prevent the period of limitation from expiring is not in effect, in order to be able to file a claim for refund, Y and the district director agree to extend the period of limitation for all taxes imposed under chapter 42. However, based upon its support for the period 1974 through 1976 Y does qualify as a publicly supported organization, and therefore shall not be treated as a private foundation for either 1977 or 1978 even if it fails to terminate within the 60-month period. However, based upon the aggregate data for the entire 60-month period (1974 through 1978), Y does qualify as an organization described in section 170(b)(1)(A)(vi). Consequently, pursuant to this paragraph, Y is treated as if it had been a publicly supported organization for the entire 60-month period. Y files claim for refund

for the taxes paid under section 4940 for the years 1974, 1975, and 1976, and such taxes are refunded.

(g) *Special transitional rules for organizations operating as public charities.* Section 4940 imposes a tax upon private foundations with respect to the carrying on of activities for each taxable year. For purposes of section 4940, an organization which terminates its private foundation status under section 507(b)(1)(B) by the end of the period described in paragraph (a)(5)(ii) of this section will not be considered as carrying on activities within the meaning of section 4940 during such period. Such organization will therefore not be subject to the tax imposed under section 4940 for such period. Consequently, in the case of an organization seeking to terminate its private foundation status under section 507(b)(1)(B) if the period described in paragraph (a)(5)(ii) of this section has not expired prior to the due date for the organization's annual return required to be filed under section 6033 or 6012 (determined with regard to any extension of time for filing the return) for its first taxable year which begins after December 31, 1969 (or any other taxable year ending before the expiration of the period described in paragraph (a)(5)(ii) of this paragraph) and if the organization has not terminated its private foundation status under section 507(b)(1)(B) by such date, then notwithstanding the provisions of paragraph (f) of this section, the organization must take either of the following courses of action:

(1) Complete and file its annual return including the line relating to excise taxes on investment income, by such date, and pay the tax on investment income imposed under section 4940 at the time it files its annual return. If such organization subsequently terminates its private foundation status under section 507(b)(1)(B) within a period specified in paragraph (c)(3)(i) of this section, it may file a claim for refund of the tax paid under section 4940; or

(2) Complete and file its annual return, except for the line relating to excise taxes on investment income, by such date, and in lieu of paying the tax on investment income imposed under section 4940, file a statement with its

annual return which establishes that the organization has taken affirmative action by such date to terminate its private foundation status under section 507(b)(1)(B). Such statement must indicate the type of affirmative action taken and explain how such action will result in the termination of its private foundation status under section 507(b)(1)(B). Such affirmative action may include making application to the appropriate State court for approval to amend the provisions of the organization's trust instrument to limit payments to specified section 509(a) (1) or (2) beneficiaries pursuant to section 509(a)(3) in the case of a charitable trust; commencing a fund-raising drive among the general public in the case of an organization seeking to become a section 170(b)(1)(A)(vi) or 509(a)(2) organization; or the passage of a resolution by the organization's governing body or the filing of an amendment to the organization's articles of incorporation permitting a change in the operations of the organization to enable it to conform to the provisions of section 509(a) (1), (2), or (3) in the case of a not-for-profit corporation. An organization may take such affirmative action and may terminate its private foundation status under section 507(b)(1)(B) in reliance upon 26 CFR 13.12 (rev. as of Jan. 1, 1972) and upon the provisions of the notices of proposed rulemaking under sections 170(b)(1)(A), 507(b)(1), and 509. Thus, if an organization meets the requirement of the provisions of the notice of proposed rulemaking as a section 509(a)(3) organization, such organization may terminate its private foundation status under section 507(b)(1)(B) in reliance upon such provisions prior to the expiration of the period described in paragraph (a)(5)(ii) of this section. If such organization, however, fails to terminate its private foundation status under section 507(b)(1)(B) within the period specified in paragraph (a)(5)(ii) of this section by failing to meet the requirements of either the notices of proposed rulemaking under section 170(b)(1)(A), 507(b)(1), or 509 or the final regulations published under these Code sections, the tax imposed under section 4940 shall be treated as if due from the due date for its annual return (determined without regard to

any extension of time, for filing its return).

[T.D. 7248, 38 FR 861, Jan. 5, 1973; 38 FR 3598, Feb. 8, 1973; 38 FR 4259, Feb. 12, 1973, as amended by T.D. 7290, 38 FR 31833, Nov. 19, 1973; T.D. 7440, 41 FR 50654, Nov. 17, 1976; 41 FR 52454, Nov. 30, 1976; T.D. 7465, 42 FR 4437, Jan. 25, 1977; T.D. 7784, 46 FR 37889, July 23, 1981]

§ 1.507-3 Special rules; transferee foundations.

(a) *General rule.* (1) For purposes of part II, subchapter F, chapter 1 of the Code, in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee organization shall not be treated as a newly created organization. Thus, in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of this section, the transferee organization shall not be treated as a newly created organization. A transferee organization to which this paragraph applies shall be treated as possessing those attributes and characteristics of the transferor organization which are described in subparagraphs (2), (3), and (4) of this paragraph.

(2)(i) A transferee organization to which this paragraph applies shall succeed to the aggregate tax benefit of the transferor organization in an amount determined as follows: Such amount shall be an amount equal to the amount of such aggregate tax benefit multiplied by a fraction the numerator of which is the fair market value of the assets (less encumbrances) transferred to such transferee and the denominator of which is the fair market value of the assets of the transferor (less encumbrances) immediately before the transfer. Fair market value shall be determined as of the time of the transfer.

(ii) Notwithstanding subdivision (i) of this subparagraph, a transferee organization which is not effectively controlled (within the meaning of § 1.482-1(a)(3)), directly or indirectly, by the same person or persons who effectively control the transferor organization shall not succeed to an aggregate tax benefit in excess of the fair market

value of the assets transferred at the time of the transfer.

(iii) This subparagraph may be illustrated by the following examples:

Example 1. Pursuant to a transfer described in section 507(b)(2), F, a private foundation, transfers to G, a private foundation, all of its assets, which have a fair market value of \$400,000. Immediately before the transfer F's aggregate tax benefit was \$200,000, and G's aggregate tax benefit was \$300,000. After the transfer G's aggregate tax benefit is \$500,000 (\$200,000+\$300,000).

Example 2. Pursuant to a transfer described in section 507(b)(2), M, a private foundation, transfers all of its assets, which immediately prior to the transfer have a fair market value of \$100,000. The assets were transferred to the following organizations at the following fair market values (determined at the time of transfer) \$40,000 to N, a private foundation, \$30,000 to O, a private foundation, and \$30,000 to P, an organization described in section 170(b)(1)(A)(vi). Immediately before the transfer M's aggregate tax benefit was \$50,000. Therefore, N succeeds to M's aggregate tax benefit to the extent of \$20,000 ($\$50,000 \times \$40,000 / \$100,000$) and O succeeds to M's aggregate tax benefit to the extent of \$15,000 ($\$50,000 \times \$30,000 / \$100,000$). The remaining \$15,000 of M's aggregate tax benefit is retained by M as M has not terminated under section 507.

Example 3. Assume the same facts as in Example 2 except that the transfers were made as follows: M transferred \$30,000 to N on January 1, 1972, \$40,000 to P on July 1, 1972, and \$30,000 to O on December 31, 1972. Further, assume that the fair market value of the assets and the aggregate tax benefit do not change during 1972 and that O is not effectively controlled (directly or indirectly) by the same person or persons who effectively control M. N succeeds to M's aggregate tax benefit to the extent of \$15,000 ($\$50,000 \times \$30,000 / \$100,000$). However, since \$40,000 of the remaining \$70,000 ($\$100,000 - \$30,000$) of assets of M was transferred to P on July 1, 1972, immediately before the transfer to O, the fair market value of the assets held by M is \$30,000 ($\$70,000 - \$40,000$). On the other hand, because P is not a private foundation, M's aggregate tax benefit immediately before the transfer to O remains \$35,000 ($\$50,000 - \$15,000$). Therefore, before applying subdivision (ii) of this subparagraph, O would succeed to \$35,000 ($\$35,000 \times \$30,000 / \$30,000$) of M's aggregate tax benefit. However, applying subdivision (ii) of this subparagraph since M transferred only \$30,000 to O, O shall succeed to only \$30,000 of M's aggregate tax benefit. The remaining \$5,000 ($\$35,000 - \$30,000$) of M's aggregate tax benefit is retained by M as M has not terminated under section 507.