

CB-NOTICE, 2008FED ¶46,219 Exempt organizations: Charitable trusts: Type III supporting organizations: Private foundations: Filing procedures: Transitional relief. --, Notice 2008-6 I.R.B. 2008-3 (December 21, 2007)

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Notice 2008-6 , I.R.B. 2008-3, December 21, 2007.

[Code Sec. 509]

Exempt organizations: Charitable trusts: Type III supporting organizations: Private foundations: Filing procedures: Transitional relief. --

The IRS has provided transitional relief and filing procedures for certain charitable trusts that fail the responsiveness test for Type III supporting organizations because of the elimination of the charitable trust test for tax years beginning after August 16, 2007. A trust that becomes a private foundation during 2007 because of the elimination of the charitable trust test may continue to file Form 990, Return of Organization Exempt from Income Tax, for tax years beginning before January 1, 2008. For its first tax year beginning after 2007, such a trust must file a paper Form 990-PF, and write "Notice 2008-6 status change" across the top. Back reference: ¶22,812.65.

PURPOSE

This notice provides transitional relief and filing procedures for certain charitable trusts that fail the responsiveness test for Type III supporting organizations.

These procedures are intended for:

- charitable trusts that received a determination recognizing their tax-exempt status under section 501(c)(3) and that met the requirements of section 509(a)(3) until August 17, 2007, and
- non-exempt charitable trusts described in section 4947(a)(1), that are treated for certain purposes as organizations described in section 501(c)(3), and that met the requirements of section 509(a)(3) until August 17, 2007. See Rev. Proc. 72-50, 1972-2 C.B. 830.

BACKGROUND

Section 1.509(a)-4(i) of the Income Tax Regulations sets forth the requirements for organizations to qualify as section 509(a)(3) supporting organizations that are "operated in connection with" one or more publicly supported organizations (hereafter, "Type III" supporting organizations). Type III supporting organizations are required to meet a "responsiveness test" to show that they are responsive to the needs of the organizations they support. See section 1.509(a)-4(i)(1), (i)(2).

Prior to passage of the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 708 (2006) (PPA), there were two alternative ways for Type III supporting organizations to meet the responsiveness test.

- The significant voice test. Section 1.509(a)-4(i)(2)(ii) generally provides that an organization meets the responsiveness test if the officers, directors, or trustees of the publicly supported organization have a significant voice in the investment policies and grant-making of the supporting organization, and in otherwise directing the use of its income or assets.
- The charitable trust test. Section 1.509(a)-4(i)(2)(iii) provides that certain charitable trusts meet the

responsiveness test requirement of section 1.509(a)-4(i)(2) if they are charitable trusts under state law, each publicly supported organization is a named beneficiary under the trust's governing instrument, and each beneficiary organization has the power to enforce the trust and compel an accounting under state law.

Section 1241(c) of the PPA eliminated the charitable trust test, effective August 17, 2007. Consequently, as of August 17, 2007, trusts previously classified as Type III supporting organizations may be classified as private foundations as a result of the PPA. A trust will continue to qualify as a section 509(a)(3) supporting organization if it meets the significant voice test for Type III supporting organizations or if it is able to establish that it meets the requirements of a Type I or Type II supporting organization under section 1.509(a)-4(g) or (h).

DISCUSSION

Transitional Relief for Charitable Trusts

Because of the need for affected charitable trusts to adjust record-keeping systems to reflect private foundation status, and the administrative difficulties in processing returns reflecting a mid-year change of status, trusts that became private foundations during 2007 by virtue of section 1241(c) of the PPA may continue to file Form 990, Return of Organization Exempt from Income Tax, for taxable years beginning before January 1, 2008. An organization that is classified as a private foundation by virtue of section 1241(c) of the PPA will not be required to file an information return on Form 990-PF or pay excise taxes on investment income under section 4940 until its first taxable year beginning on or after January 1, 2008.

Filing Procedures for Charitable Trusts that Became Private Foundations

Taxable years beginning before January 1, 2008:

- Charitable trusts that became private foundations by virtue of section 1241(c) of the PPA should file Form 990 for taxable years beginning before January 1, 2008.
- Normal due dates and submission rules for filing Form 990 apply.

Taxable years beginning on or after January 1, 2008

- Charitable trusts that became private foundations by virtue of section 1241(c) of the PPA must file Form 990-PF, Return of Private Foundation, for taxable years beginning on or after January 1, 2008.
- For the first taxable year beginning on or after January 1, 2008, file paper Form 990-PF. Write "Notice 2008-6 status change" at the top of Form 990-PF.
- Normal due dates and submission rules for filing Form 990-PF otherwise apply.

Filing Procedures for Charitable Trusts that Did Not Become Private Foundations

A charitable trust that meets the significant voice test for Type III supporting organizations (section 1.509(a)-4(i)(2)(ii)), or that can establish that it meets the requirements of a Type I or Type II supporting organization under section 1.509(a)-4(g) or (h), should continue to file Form 990 under currently

applicable procedures for taxable years beginning on or after January 1, 2008. Such a trust should not file Form 990-PF.

DRAFTING INFORMATION

The principal author of this notice is Robert Fontenrose of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this notice, contact Mr. Ronald Shoemaker at (202) 283-9475 (not a toll-free call).

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