STATE BAR OF CALIFORNIA
TAXATION SECTION
TAX EXEMPT ORGANIZATIONS COMMITTEE

RELIEF FROM SECTION 508(a) and (b) NOTICE REQUIREMENT FOR CHARITIES WITH CHANGE IN FORM OR PLACE BUT NO CHANGE IN ACTIVITIES

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[1] The comments contained in this paper are the individual views of the author(s) who prepared them, and do not represent the position of the State Bar of California or of the Los Angeles County Bar Association.

[2] Although the participants on the project might have clients affected by the rules applicable to the subject matter of this paper and have advised such clients on applicable law, no such participant has been specifically engaged by a client to participate on this project.

EXECUTIVE SUMMARY

Internal Revenue Code Section 508(a)[3] and the Treasury Regulations thereunder require that a new organization must provide notice to the Commissioner that it is applying for recognition of Section 501(c)(3) status by filing Form 1023, *Application for Exemption under IRC Section 501(c)(3)*. Section 508(b) requires notice to the IRS if an organization is to be treated as other than a private foundation. Section 508(c) provides that certain organizations are excepted from these notice requirements and that the Secretary may by regulations exclude other classes of organizations from the filing requirements.

Under current IRS interpretation of the law, a Section 501(c)(3) organization that undergoes a mere change in form or place of incorporation is considered to be a new organization that must provide notice to the IRS by filing a new Form 1023 to re-apply for its tax-exempt status. There is no statutory or regulatory exclusion or exception to this requirement to re-apply for tax-exempt status under Section 501(c)(3).

This paper proposes that Treasury Regulation Sections 1.508-1(a)(3) and 1.508-1(b)(7) be revised to provide that Section 501(c)(3) organizations that undergo a mere change of form or place of incorporation would not be considered to be new organizations subject to the Section 508(a) and (b) notice requirements.

Guidance in this area would result in both benefits for the Internal Revenue Service and benefits for charities. First, it would reduce the burden on IRS personnel and resources that are already overburdened by the process of reviewing new exemption applications, by substantially reducing the task of re-reviewing already approved entities. Second, it would eliminate the considerable cost to charities of re-filing Form 1023, thereby preserving those funds for use in charitable purposes. Finally, it would provide consistency in the application of the tax law to reorganizations where the only change is one of corporate identity, as well as consistency in the notification process for changes on Form 990 or Form 990-PF for all organizational, governance, and program changes.

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[3] Unless otherwise provided herein, all statutory references are to the Internal Revenue Code of 1986, as amended.

DISCUSSION

I. BACKGROUND

This background discussion first provides an overview of the notification requirements under Section 508(a) and (b) and the Treasury Regulations thereunder. We then review the situations covered in Revenue Ruling 67-390, which held that a charitable organization must re-apply for tax-exempt status under Section 501(c)(3) in four scenarios where the organization merely changes its form or place of incorporation. Finally, we refer to Revenue Ruling 73-422 which holds that a newly incorporated public charity may use its prior operations as an unincorporated association to meet its public support test when the only change is incorporation of an unincorporated association that already has obtained Section 501(c)(3) status.

A. Section 508(a)(1) Notice Requirement

Section 508(a)(1) provides, with certain exceptions described in Section 508(c), that a new organization shall not be treated as an organization described in Section 501(c)(3) unless it has given notice to the Secretary or his delegate that it is applying for recognition of such status. Treasury Regulation Section 1.508-1(a)(2)(i) provides that the required notice is filed by the submission of a properly completed and executed Form 1023, *Application for Exemption under IRC Section 501(c)(3)*. If Form 1023 is filed within 27 months of formation, the subsequent IRS determination of exempt status will be effective as of the date of formation.[4]

B. Section 508(b) Notice Requirement

Section 508(b) provides, with similar exceptions, that an organization will be treated as a private foundation unless it has provided notice to the Commissioner that it is not a private foundation. The required notice is provided by submitting information showing that it is not a private foundation with its properly completed and executed Form 1023.

[4] Treas. Reg. Sec.1.508-1(a) (2) (i) and 301.9100-2.

C. Exceptions Under Section 508(c)

Section 508(c)(1) provides certain mandatory exceptions from the notice requirements under Section 508(a) and (b). These include churches, their integrated auxiliaries, and conventions or associations of churches, as well as any organization that is not a private foundation and has annual gross receipts normally not more than $5000. These organizations are not required to file a Form 1023 to obtain tax-exempt status under Section 501(c)(3) or to notify the Commissioner of non-private foundation status. Section 508(c) further provides that the Secretary may create by regulation additional classes of organizations that are exempt from the Section 508(a) and (b) notice requirements. Treasury Regulation Sections 1.508-1(a)(3)(e) and 1.508-1(b)(7)(v) provide exceptions for any other class of organization that the Commissioner from time to time excludes from the 508(a) and (b) notice requirements.

D. Revenue Ruling 67-390[5]

In Revenue Ruling 67-390, the IRS considered four situations in which an organization that had already obtained tax-exempt status under Section 501(c)(3) changed its form or place of incorporation. Revenue Ruling 67-390 provided guidance in the following four cases:

> Case 1. An exempt trust was reorganized and adopted a corporate form to carry out the same purposes for which the trust had been established. Its operations were not changed.
>
> Case 2. An exempt unincorporated association was incorporated and continued the operations which had qualified it for exemption.
>
> Case 3. An exempt organization that was incorporated under state law was reincorporated by an Act of Congress to carry out the same purposes contained in the state charter.
>
> Case 4. An exempt organization that was incorporated under the laws of one state was reincorporated under the laws of another state with no change in its purposes or operations.

[5] 1967-2 C.B. 179.

In each of these four situations, Revenue Ruling 67-390 holds that the new legal entity must file a new Form 1023 to re-establish that it qualifies for exemption under Section 501(c)(3), even though its purposes and operations are no different than before the incorporation or re-incorporation.

E. Revenue Ruling 73-422[6]

For purposes of Section 508(b), the IRS has held that an unincorporated public charity that merely incorporates may use its prior periods to meet its public support test. In Revenue Ruling 73-422 the IRS considered the situation in which "An organization described in Section 501(c)(3) of the Code incorporates under state law after having operated as an unincorporated association for a period of time." The IRS ruled that the organization may use its prior years' operations to determine its public charity status under Section 170(b)(1)(A)(vi) or Section 509(a)(2) where incorporation was the only significant change.

II. PROPOSED ACTION

The conclusion that an exempt charity that changes its legal structure must therefore be treated as a new organization for purposes of Sections 508(a) and (b) is not required by Section 508, the Treasury Regulations thereunder, or any other statute or regulation. Sections 508(a) and (b) require a filing for a new organization, but they do not address the incorporation or reincorporation of an existing charity already determined to be exempt under Section 501(c)(3).

We propose that Treasury revise Regulation Sections 1.508-1(a)(3) and 1.508-1(b)(7) to provide that a Section 501(c)(3) organization that undergoes a mere change in form or place of incorporation is not a new organization for purposes of the Section 508(a) and (b) notice requirements, as long as there are no substantial changes in the organization's exempt purposes, programs, or methods of operation and the original organization terminates as a separate entity for income tax purposes. Under this new provision, a charity that merely incorporates or reincorporates would not be required to file a new Form 1023, nor would the IRS be required to review

[6] 1973-2 C.B. 70.

and approve the new request for exemption under Section 501(c)(3). We further propose that IRS withdraw Revenue Ruling 67-390 and consider the continued applicability of Revenue Ruling 73-422.

We note that these charities would still be required, under general disclosure rules, to properly disclose the incorporation or reincorporation on their Forms 990, 990-EZ, or 990-PF for the year of the change, and to disclose any changes to governing documents.[7] Such disclosure on Form 990 would be consistent with IRS requirements that other types of changes in an organization's governance, operations, and programs be disclosed on Form 990.[8]

Treasury Regulations including our proposed revisions are attached as EXHIBIT I to this paper.

III. SUPPORT FOR PROPOSED ACTION

Treasury has authority to interpret Section 508 as requiring notice from new charitable organizations but not from existing Section 501(c)(3) organizations that go through a mere change in form or place of incorporation. Nothing in the statutes or regulations precludes such an interpretation.

Revenue Ruling 67-390 holds that upon the incorporation or reincorporation of a charity already determined to be exempt under Section 501(c)(3), the charity must file a new Form 1023 in order to retain its tax exempt status under Section 501(c)(3). Treasury Regulations under Section 501 suggest a different standard of when an organization may rely on its existing IRS ruling and when a new application for tax exemption is required. In particular, Treas. Reg. §1.501(a)-1(a)(2) states that:

> Subject only to the Commissioner's inherent power to revoke rulings because of a change in the law or regulations or for other good cause, an organization that has been determined by the Commissioner or the district director to be exempt under

[7] 2008 Instructions for Form 990 Return of Organization Exempt From Income Tax, Part VI, Line 4; 2008 Form 990-EZ, Part V, Line 35; 2008 Form 990-PF Part VII-A, Line 3.

[8] *See e.g.* 2008 Instructions for Form 990 Return of Organization Exempt From Income Tax, Part VI "Governance, Management, and Disclosure."

> section 501(a) or the corresponding provision of prior law *may rely upon such determination so long as there are no substantial changes in the organization's character, purposes, or methods of operation*. (emphasis added*)*

The question here is whether a mere incorporation, or reincorporation in another state, rises to the level of a "substantial [change] in an organization's character, purposes, or methods of operation" for purposes of this test. If the answer is no, these Regulations indicate that the organization may continue to rely on its prior determination of exempt status. Revenue Ruling 67-390 seems to imply either that a mere incorporation or reincorporation is a substantial change, without any statutory or regulatory support for that position, or it appears to provide an interpretation of the law that is in conflict with other specific regulatory authority. With respect to reincorporation in another state, Revenue Ruling 67-390 also appears inconsistent with treatment under Section 368(a)(1)(F), which treats a corporation's reincorporation in another state as a continuation of the old corporation for tax purposes.

In addition to the question of interpretation raised above, there is the question of whether following Revenue Ruling 67-390 furthers the efficient administration of the tax system. Senior representatives of the IRS Exempt Organization Division[9] have recently been advising practitioners that: 1) there is an increased backlog of exemption applications that have been submitted to the IRS but have not been reviewed, creating a significant delay in processing exemption applications through the system; and 2) they prefer that charities provide information regarding governance and program changes, even significant changes, on Form 990, 990-EZ or 990-PF.[10]

Following Revenue Ruling 67-390 is also inefficient and, in some cases, may be harmful for the charitable organization that has to file a new Form 1023 and therefore has a period in which it has to tell major donors

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[9] In an IRS update at the ABA Exempt Organizations Committee meeting on January 9, 2009, Exempt Organizations Division Director Lois Lerner was quoted as describing an increased backlog of Applications for Exemption that have not yet been reviewed. The IRS website currently advises that processing time for exemption applications has increased due to various factors.

[10] *E.g.*, Steven Miller has said, "We have pushed to educate and pushed to require reporting on how organizations are managed. The crown jewel of this effort is the governance section of the revised Form 990, effective for 2008." Nonprofit Governance, Speech by Steven T. Miller at Western Conference on Tax Exempt Organizations, Loyola University November 20, 2008 available at http://www.irs.gov/pub/irs-tege/stm_loyolagovernance_112008.pdf .

"Well, we hope we are a 501(c)(3) organization" or "We are waiting for IRS approval of our 501(c)(3) status and our classification as a public charity." Either of these statements may result in loss of funding for the organization, which will likely need to keep the old entity active while it obtains its exemption for the new entity. Both entities would be required to file tax returns for the overlap period, increasing further the burden for the IRS and the organizations.

Following is a discussion of support for the proposed action in each of the cases mentioned in Rev. Rul. 67-390. For these purposes, cases 3 and 4 are considered together; however, this paper focuses on Case 4, which is the most common type of reincorporation.

A. Reincorporation in a Different State or by Act of Congress

In Cases 3 and 4 of Revenue Ruling 67-390, an existing corporation is reincorporated under federal law or under the laws of a different state. The typical situation is described in case 4, wherein an organization incorporated in one state and complied with Section 508(a) and (b) by filing Form 1023 soon after incorporation, and obtained its federal tax-exemption. At some later date, for any number of reasons, the board of directors deems it to be in the best interests of the corporation to reincorporate in another state. Even though there is no other change in purposes or operations, control, sources of support, or accounting methods, Revenue Ruling 67-390 requires the corporation to meet the 508(a) requirements by filing a new Form 1023.

Guidance is needed to provide that in this situation, the corporation is not a new organization for Section 508 purposes and that its compliance requirement is met by the existing determination letter and disclosure of the change on its Form 990 or 990-PF. Support for this treatment as "not a new organization" is found in other areas of corporate tax law. Revenue Ruling 73-526[11] states that following a reorganization under Section 368(a)(1)(F) (a "Type F Reorganization"), the surviving corporation is the same corporation as the old corporation. Specifically, Situation 3 in Rev. Rul. 73-526 includes the following language:

[11] 1973-2 C.B. 404.

> Except for the technical difference of forming a new corporate entity chartered in state Y, the surviving corporation, S, is the same corporation as the transferor corporation, R. The same business with the same assets and stockholders is continued in the newly chartered entity. Consequently, the reincorporation constitutes a reorganization within the meaning of section 368(a)(1)(F) of the Internal Revenue Code of 1954. Under Section 1.381(b)-1(a)(2) of the Income Tax Regulations, the acquiring corporation is treated just as the transferor corporation would have been treated in the absence of a reorganization, and the taxable year of the transferor does not close on the date of transfer.

Whether Section 368(a)(1)(F) is applied directly or by analogy to the reincorporation of a Section 501(c)(3) corporation, the treatment under the Type F reorganization rules provides support for treating the reincorporated entity as the same entity as the old corporation for tax-exemption purposes.

Internal Revenue Manual ("IRM") 7.20.2.4.6 further supports this position by providing that an organization that is merely reincorporating in another state is not required to secure a new employer identification number ("EIN"). This IRM provision has been applied to exempt organizations as well as for-profit corporations and further supports the fact that the new corporation is not a new organization.[12]

B. Incorporation of Unincorporated Association

It should be noted that, for purposes of state law entity conversions, the effect of such conversions is generally a continuity of existence for the underlying organization. For example, the Texas Business Organizations Code, provides that, "A domestic entity may convert into a different type of domestic entity or a non-code organization"[13] and that:

> When conversion takes effect the converting entity continues to exist without interruption in the organizational form of the

[12] Although use of the same EIN is supportive, it should not be seen as the determining factor for deciding whether notice is required under Section 508.

[13] Texas Business Organization Code Sec 10.101(a).

> converted entity rather than in the organizational form of the converting entity.[14]

Furthermore, the Revised Model Nonprofit Corporation Act provides:

> Except as otherwise provided…when a conversion under this [subchapter] becomes effective the surviving entity is deemed to be the same nonprofit corporation or unincorporated entity without interruption as the converting entity.[15]

Finally, Section 406 of the Model Entity Transactions Act (META)[16] states that:

> When a conversion becomes effective the converted entity is organized under and subject to the organic law of the converted entity, and the same entity without interruption as the converting entity.

Comment 1 to Section 406 of META notes, "A converted entity is the same entity as it was before the conversion; it just has a different legal form."

These conversion statutes contrast with the holding of Revenue Ruling 67-390, insofar as they provide that a mere change in legal form under state law provisions is not the same as the creation of a new organization.

This treatment is also consistent with IRS treatment of unincorporated associations that incorporate in other situations. For example, in Revenue Ruling 54-134[17], it was noted that the incorporation of an organization, "merely had the effect of changing the form of organization from that of an unincorporated organization to a corporation." In addition, Revenue Ruling 73-422[18] held that:

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[14] Texas Business Organization Code Sec. 10.106.

[15] Section 9.54(a)(7)(ii), Revised Model Nonprofit Corporation Act, ABA 2008.

[16] Section 406(a)(1), *Model Entity Transactions Act*, National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Bar Association, 2007.

[17] 1954-1 C.B. 88.

[18] 1973-2 C.B. 70.

> Where the only change has been one of incorporation, the period of time that the predecessor organization has operated will be taken into consideration in determining whether an organization is entitled to a ruling that it is an organization described in §509(a)(2) of the Code…

While the assumption in this ruling, based on Revenue Ruling 67-390, is that the organization must file a new Form 1023, it also recognizes that the new corporation is a continuation of the same organization that was formed as an unincorporated association, and that therefore, the period prior to incorporation can be used for purposes of determining whether the organization qualifies under the public support test.

Furthermore, looking at the tax treatment of various entity forms, it should be noted that under federal tax law there are three main categories of organizations: corporations, partnerships, and trusts.[19] Each of these entities is normally subject to a different tax regime - corporations are taxed under Subchapter C (or S), partnerships under Subchapter K, and trusts under Subchapter J. Under Section 7701(a)(3), "The term 'corporation' includes associations, joint-stock companies, and insurance companies." Under the "check-the-box" rules of the regulations accompanying Section 7701, an exempt unincorporated association is automatically deemed to have elected to be treated as a corporation for federal tax purposes.[20] Thus, an exempt unincorporated association that incorporates under state law simply continues to be treated as a corporation under Section 7701. An analogous treatment can be seen in PLR 200528021,[21] which held that an S Corporation that converts to an LLC under state law provisions will retain the S Corporation election and the EIN of the predecessor corporation.

C. Incorporation of a Trust

To be recognized as exempt under Section 501(c)(3), a charitable trust must file Form 1023 to provide notice to the IRS under Sections 508(a) and (b). A tax-exempt charitable trust, like a charitable

[19] Treas. Reg. Sec. 301.7701-1(b).

[20] Treas. Reg. Sec. 301.7701-3(c)(1)(v)(A).

[21] Priv. Ltr. Rul. 200528021 (July 7, 2005).

corporation, must be organized and operated for purposes described in Section 501(c)(3).[22] In order to meet the organizational test the trust document must contain limitations on the activity of the trust to the specific purposes listed in Section 501(c)(3).[23]

The operation of a charitable trust is usually very similar to that of a corporation formed for the same purposes. Charitable trusts generally have advisory boards that deal with the operations of the trust. While there are distinctions between the fiduciary duties of trustees and directors of a corporation, in practice, they are both held to high standards of care and loyalty.

Charitable trusts are generally recognized under state law as having the power to convert to charitable corporations, either by express powers granted to the trustees under the terms of the trust agreement or impliedly, if there are no express provisions or statutes to the contrary.[24] It should also be noted that if the trust does incorporate, the provisions of the articles of incorporation must generally conform to the provisions of the trust by dedicating the corporation to the same charitable purposes as the trust.[25] This suggests that the incorporation of a charitable trust is not in itself a substantial change for purposes of the exempt status of the entity, since the corporation must remain organized and operated for the same purposes as the trust.

This treatment under state law regarding the incorporation of trusts, where the exempt purposes and activities may not change, provides support for treating the corporation as a continuation of the same underlying entity for tax exemption purposes, rather than requiring a new Form 1023.

IV. THE BENEFITS OF GUIDANCE

The Service processed 79,236 Forms 1023 in Fiscal Year 2008 for organizations that applied under Section 501(c)(3).[26] As of February 2009,

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[22] Treas. Reg. § 1.501(c)(3)-1(a).

[23] Treas. Reg. § 1.501(c)(3)-1(b).

[24] *Nelson v. Cushing*, 52 Mass (2 Cush) 519 (1848). See also *Restatement Third of Trusts*, §86, comment e.

[25] *Appeal of Vaux*, 109 Pa. 497 (1885); *Curran Foundation Charter*, 146 A. 908 (Pa. 1929).

[26] "Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2008," Table 24, *Internal Revenue Service Data Book, 2008.*

the IRS indicated that it was reviewing Forms 1023 submitted in June of 2008, which is roughly a 7 month delay from the time an application is submitted until a determination letter is issued. In addition, the Service also stated that recent processing problems may delay applications an additional 90 days.[27]

In each of the four cases presented in Revenue Ruling 67-390, the organization has already notified the IRS by applying for exemption using Form 1023 and has received a favorable ruling from the IRS. The proposed guidance would promote a more efficient use of IRS personnel and resources by reducing the number of re-filed Forms 1023 by organizations that already qualified for exemption. Reducing the number of re-filed Forms 1023 would help reduce the increased backlog of applications that have not yet been reviewed. The regulatory guidance requested in this paper would eliminate the added costs to the Internal Revenue Service of re-reviewing documents that are substantially the same as documents that have already been reviewed and approved.

In addition, the cost to an organization for legal and accounting advice in order to prepare and file Form 1023 can be quite substantial. Instead of spending the time, energy, and fees to resubmit Form 1023, charities would be allowed to concentrate on their exempt purposes. This is especially important in the current climate of economic uncertainty, in which many charities are struggling to maintain their desired levels of charitable activities and grant-making without having to worry about additional costs for professional advice and compliance fees.

Finally, the proposed guidance will resolve the perceived inconsistency in the tax treatment of nonprofit versus for-profit corporations that undergo a reincorporation described in Section 368(a)(1)(F).

V. POTENTIAL FOR ABUSE IS LOW

The potential for abuse is low primarily because of the depth and breadth of information disclosure that is required on the new Form 990 and on the Form 990-PF, as well as the increased accountability and transparency that is provided by posting returns on GuideStar[28] and on

[27] "Where'sMy Exemption Application", http://www.irs.gov/charities

[28] http://www.guidestar.org .

various States' Attorney General websites.[29] Organizations that go through a change in form or place of incorporation are typically working closely with counsel to effect the change. Therefore, counsel is in a position to know whether there is also a change in activities that might be of interest to the IRS and that is not something that is easily described on Form 990 or Form 990-PF.

In reference to the filing requirement when a corporation reincorporates in another state, the Advisory Committee on Tax Exempt and Government Entities has commented that, "Without a new application, it would be difficult to ensure that no other material changes in purposes, activities, or sources of support had, in fact, been made."[30] As discussed above, material changes in purposes, activities or sources of support must already be reported on Form 990 or 990-PF. Thus the IRS is already receiving notification of the changes.

The Advisory Committee on Tax Exempt and Government Entities also commented that, "the new Form 1023 provides IRS an additional opportunity to ensure that the organization continues to meet the requirements of section 501(c)(3) and public charity status."[31] The extensive questions on the new Form 990 and current Form 990-PF already provide that opportunity to the IRS.

VI. CONCLUSION

Making this change will eliminate unnecessary costs for both IRS and exempt organizations. It will promote fairness and equity by applying Sections 508(a) and (b) only to corporations that are actually new organizations or significantly change their exempt purposes or operations, and not to the mere incorporation or reincorporation of entities that have not materially changed their purposes or operation. It will relieve the IRS from the burden of reviewing exemption applications for organizations it has already approved. It will allow charities to spend more of their scarce time and resources on their exempt purposes.

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[29] See, e.g., California's *Office of the Attorney General - Edmund G. Brown Jr., Attorney General*, Charities page at http://ag.ca.gov/charities.php .

[30] Concept F, Advisory Committee on Tax Exempt and Government Entities Report, 2003.

[31] Id.

When not bound to take a particular position, Treasury and the IRS can adopt a pragmatic approach. Both the "bright line" test in Revenue Ruling 67-390 and the proposal can be viewed as pragmatic. In balancing between the two approaches, the risk of abuse, administrative convenience and overall efficiencies should be considered. These balance in favor of the proposal.

EXHIBIT I

Proposed Amendment to Treasury Regulation Section 1.508-1(a)(3)(i). (Proposed addition is in italics and underlined.)

(3) Exceptions from notice.

(i) Paragraphs (a)(1) and (2) of this section are inapplicable to the following organizations:

(a) Churches, interchurch organizations of local units of a church, conventions or associations of churches, or integrated auxiliaries of a church. See section 1.6033-2(h) regarding the definition of integrated auxiliary of a church;

(b) Any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000 (as described in subdivision (ii) of this subparagraph);

(c) Subordinate organizations (other than private foundations) covered by a group exemption letter;

(d) Solely for purposes of sections 507, 508(d)(1), 508(d)(2)(A) and 508(d)(3), 508(e), 509 and chapter 42, a trust described in section 4947(a)(1). (However, a trust described in section 501(c)(3) which was organized after October 9, 1969, shall be exempt under section 501(a) by reason of being described in section 501(c)(3) only if it files such notice);

(e) A Section 501(c)(3) organization that undergoes a mere change in identity, form, or place of incorporation, which shall not be considered to be a new organization for purposes of this section, including but not limited to 1) the incorporation of a unincorporated association, 2) the reincorporation of an organization in a different state or under federal law, or 3) the incorporation of a trust, provided in all cases that there are no significant changes in the organization's exempt purposes, operations, or programs and the original organization terminates as a separate entity for income tax purposes; and

(f) Any other class of organization that the Commissioner from time to time excludes from the requirement of filing notice under section 508(a).

Proposed Amendment to Treasury Regulation Section Section 1.508-1(b)(7)(i). (Proposed addition is in italics and underlined.)

(7) Exceptions from notice.

(i) Subparagraphs (1) and (2) of this paragraph are inapplicable to the following organizations:

(i) Churches, interchurch organizations of local units of a church, conventions or associations of churches, or integrated auxiliaries of a church, such as a men's or women's organization, religious school, mission society, or youth group;

(ii) Any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000 (as determined under paragraph (a)(3)(ii) of this section);

(iii) Subordinate organizations (other than private foundations) covered by a group exemption letter, but only if the parent or supervisory organization submits a notice covering the subordinates;

(iv) Trusts described in section 4947(a)(1);

(v) A Section 501(c)(3) organization that undergoes a mere change in identity, form, or place of incorporation, which shall not be considered to be a new organization for purposes of this section, including but not limited to 1) the incorporation of a unincorporated association, 2) the reincorporation of an organization in a different state or under federal law, or 3) the incorporation of a trust, provided in all cases that there are no significant changes in the organization's exempt purposes, operations, or programs and the original organization terminates as a separate entity for income tax purposes; and

(vi) Any other class of organization that the Commissioner from time to time excludes from the notification requirements of section 508(b).