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Status after private foundation termination. A corporation that remains in existence after terminating its private foundation status under section 507(b)(1)(A) of the Code must, unless specifically excepted by section 508(c), file an Application for Recognition of Exemption if it wishes to be treated as an organization described in section 501(c)(3).

Advice has been requested as to the effect on the recognition of exemption of a corporation of a termination of its private foundation status under the provisions of section 507(b)(1)(A) of the Internal Revenue Code of 1954 and whether the terminating corporation is subject to compliance with the provisions of section 508(a) and (b) where it remains in existence after such termination.

Section 507(b)(1)(A) of the Code provides that the status as a private foundation of any organization shall be terminated if it distributes 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.

Section 509(c) of the Code and section 1.509(c)-1(a) of the Income Tax Regulations provide that for purposes of sections 507 through 509, an organization the status of which as a private foundation is terminated under section 507 shall be treated as an organization created on the day after the date of such termination.

Section 1.507-2(c)(4) of the regulations provides that for purposes of sections 507 through 509 of the Code, 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 the section) be treated as an organization created on the day after the date of such termination. The exception in section 1.507-2(b)(6) of the regulations, which is not applicable in this case because the termination is pursuant to section 507(b)(1)(A), provides that 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).

Section 508(a) of the Code provides, subject to the exceptions in section 508(c) for certain types of organizations, that an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) unless it notifies the Service as prescribed by the regulations that it is applying for recognition of exempt status. Section 1.508-1(a)(2)(i) of the regulations provides that the notice consists of the filing of a Form 1023, Application for Recognition of Exemption, with the appropriate District Director.

Under the above provisions a corporation which terminates its private foundation status under section 507(b)(1)(A) of the Code but remains in existence thereafter is to treated as a newly created organization for purposes of section 508. Therefore, it is subject to the requirements of section 508(a) and (b) and the regulations thereunder unless it is otherwise excepted by section 508(c).

Under the provisions of section 508(a) of the Code and the regulations thereunder, the corporation will not be treated as an organization described in section 501(c)(3) unless it files a Form 1023. The fact that a corporation subject to section 508(a) is required, following a section 507(b)(1)(A) termination, to file Form 1023 is the correlation of the conclusion that following such a termination, any prior rulings or determination letters recognizing the exemption of the corporation no longer have any effect.

Accordingly, unless specifically excepted by section 508(c) of the Code, a corporation which remains in existence after a termination of private foundation status under the provisions of section 507(b)(1)(A) will be required to comply with the provisions of section 508(a) and (b) if it wishes to be treated as described in section 501(c)(3) and prior rulings or determination letters recognizing its exemption will no longer have any effect.