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IRS Updates Guidelines for Issuing Rulings and Determination Letters Affecting Some Foundations.

The IRS has updated (Rev. Proc. 2014-10, 2014-2 IRB 293) procedures for issuing rulings and determination letters on private foundation status under section 509(a), operating foundation status under section 4942(j)(3), and exempt operating foundation status under section 4940(d)(2), of organizations exempt from federal income tax under section 501(c)(3).

The updated procedures also apply to the issuance of determination letters on the foundation status under section 509(a)(3) of nonexempt charitable trusts. Rev. Proc. 2013-10 is superseded.

SECTION 1. PURPOSE AND SCOPE

The purpose of this revenue procedure is to set forth updated procedures of the Internal Revenue Service (the "Service") with respect to issuing rulings and determination letters on private foundation status under § 509(a) of the Internal Revenue Code, operating foundation status under § 4942(j)(3), and exempt operating foundation status under § 4940(d)(2), of organizations exempt from Federal income tax under § 501(c)(3). This revenue procedure also applies to the issuance of determination letters on the foundation status under § 509(a)(3) of nonexempt charitable trusts described in § 4947(a)(1).

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO REV. PROC. 2013-10?

.01 This revenue procedure is a general update of Rev. Proc. 2013-10, 2013-2 I.R.B. 267.

.02 Dates and cross references have been changed to reflect the appropriate annual Revenue Procedures.

SECTION 3. BACKGROUND

.01 All § 501(c)(3) organizations are classified as private foundations under § 509(a) unless they qualify as a public charity under § 509(a)(1) (which cross-references § 170(b)(1)(A)(i)-(vi)), (2), (3), or (4). See Treas. Reg. §§ 1.170A-9, 1.509(a)-1 through 1.509(a)-7. The Service determines an organization's private foundation or public charity status when the organization files its Form 1023. This status will be included in the organization's determination letter.

.02 In its Form 990, Return of Organization Exempt From Income Tax Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation), a public charity indicates the paragraph of § 509(a), and subparagraph of § 170(b)(1)(A), if applicable, under which it qualifies as a public charity. Because of changes in its activities or operations, this may differ from the public charity status listed in its original determination letter. Although an organization is not required to obtain a determination letter to qualify for the new public charity status, in order for Service records to recognize any change in public charity status, an organization must obtain a new determination of foundation status pursuant to this revenue procedure.

.03 If a public charity no longer qualifies as a public charity under § 509(a)(1)-(4), then it becomes a private foundation, and as such, it must file Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation. It is not necessary for the organization to obtain a determination letter on its new private foundation status (although it is permitted to do so pursuant to this revenue procedure). The organization indicates this change in foundation status by filing its Form 990-PF return and following any procedures specified in the form, instructions, or other published guidance. Thereafter, the organization may terminate its private foundation status, such as by giving notice and qualifying as a public charity again under § 509(a)(1)-(3) during a 60-month termination period in accordance with the procedures under § 507(b)(1)(B) and Treas. Reg. § 1.507-2(b).

.04 This revenue procedure applies to organizations that may have erroneously determined that the organization was a private foundation and wish to correct the error. For example, an organization may have erroneously classified an item or items in its calculation of public support, causing the organization to classify itself as a private foundation and to file Forms 990-PF. Pursuant to this revenue procedure, the organization can request to be classified as a public charity by showing that it continuously met the public support tests during the relevant periods. See section 7 below

.05 A private foundation may qualify as an operating foundation under § 4942(j)(3) without a determination letter from the Service, but the Service will not recognize such status in its records without a determination letter from the Service. An organization claiming to be an exempt operating foundation under § 4940(d)(2) must obtain a determination letter from the Service recognizing such status to be exempt from the § 4940 tax on net investment income.

SECTION 4. DETERMINATIONS OF FOUNDATION STATUS

.01 EO Determinations will issue determination letters on foundation status, including whether an organization is:

- (1) a private foundation;
- (2) a public charity described in §§ 509(a)(1) and 170(b)(1)(A) (other than clauses (v), (vii), and (viii));
- (3) a public charity described in § 509(a)(2) or (4);
- (4) a public charity described in § 509(a)(3), whether such organization is described in § 509(a)(3)(B)(i), (ii), or (iii) (“supporting organization type”), and whether or not a Type III supporting organization is functionally integrated;
- (5) a private operating foundation described in § 4942(j)(3); or
- (6) an exempt operating foundation described in § 4940(d)(2).

.02 EO Determinations will also issue determination letters on whether a nonexempt charitable trust described in § 4947(a)(1) is described in § 509(a)(3).

.03 EO Determinations will issue such determinations in response to applications for recognition of exempt status under § 501(c)(3), submitted by organizations pursuant to § 508(b). EO Determinations will also issue such determinations in response to separate requests for determination of foundation status submitted on Form 8940, Request for Miscellaneous Determination, pursuant to this revenue procedure or its successor revenue procedures.

SECTION 5. APPLICABILITY OF ANNUAL REVENUE PROCEDURES

.01 Rev. Proc. 2014-9 (updated annually) provides procedures of the Service in processing applications for recognition of exemption from Federal income tax under § 501(c)(3). Rev. Proc. 2014-4 (updated annually) governs requests for rulings and determination letters. Rev. Proc. 2014-8 (updated annually) prescribes user fees for applications, rulings, and other determinations. Except as specifically noted herein, those revenue procedures and their annual successors also apply to requests for determinations of foundation status.

.02 The provisions of Rev. Proc. 2014-9 and any successor revenue procedure regarding § 7428, protest, conference, and appeal rights also apply to all determinations of foundation status described in section 4.01 (except section 4.01(6) relating to exempt operating foundation status) and section 4.02, whether or not the request for determination is made in connection with an application for recognition of tax-exempt status.

.03 Where the issue of exemption under § 501(c)(3) is referred to EO Technical for decision under the procedures of Rev. Proc. 2014-9, the foundation status issue will be referred along with it.

SECTION 6. GENERALLY NO NEW DETERMINATION LETTER IF SAME STATUS IS SOUGHT

The Service generally will not issue a new determination letter to a taxpayer that seeks a determination of private foundation status that is identical to its current foundation status as determined by the Service. For example, an organization that is already recognized as described in §§ 509(a)(1) and 170(b)(1)(A)(ii) as a school generally will not receive a new determination letter that it is still described in §§ 509(a)(1) and 170(b)(1)(A)(ii) under the currently extant facts. However, the organization in such case could request a letter ruling, pursuant to Rev. Proc. 2014-4, that a given change of facts and circumstances will not adversely affect its status under §§ 509(a)(1) and 170(b)(1)(A)(ii).

SECTION 7. FORMAT OF REQUEST

.01 Organizations that are seeking to change their foundation status, including requests from public charities for private foundation status and requests from public charities to change from one public charity classification to another public charity classification, or seeking a determination or a change as to supporting organization type or functionally integrated status, or seeking operating foundation or exempt operating foundation status, or subordinate organizations included in a group exemption letter seeking a change in public charity status, must submit Form 8940, Request Miscellaneous Determination Under Section 507, 509(a), 4940, 4942, 4945, and 6033 of the Internal Revenue Code, along with all information, documentation, and other materials required by Form 8940 and the instructions thereto, as well as the appropriate user fee pursuant to Rev. Proc. 2014-8 or its successor revenue procedures.

.02 For complete information about filing requirements and the submission process, refer to Form 8940 and the Instructions for Form 8940.

SECTION 8. REQUESTS BY NONEXEMPT CHARITABLE TRUSTS

.01 A nonexempt charitable trust described in § 4947(a)(1) seeking a determination that it is described in § 509(a)(3) should submit a written request for a determination pursuant to Rev. Proc. 2014-4 or its successor revenue procedure.

.02 The request for determination must include the following information items, from the date that the organization became described in § 4947(a)(1) (but not before October 9, 1969) to the present:

(1) A subject line or other indicator on the first page of the request in bold, underlined, or all capitals font indicating "NONEXEMPT CHARITABLE TRUST REQUEST FOR DETERMINATION THAT IT IS DESCRIBED IN § 509(a)(3)";

(2) The name, address, and Employer Identification Number of the beneficiary organizations, together with a statement whether each such beneficiary organization is described in § 509(a)(1) or (2);

(3) A list of all of the trustees that have served, together with a statement stating whether such trustees were disqualified persons within the meaning of § 4946(a) (other than as foundation managers);

(4) A copy of the original trust instrument and all subsequently adopted amendments to that instrument;

(5) Sufficient information to otherwise establish that the trust has met the requirements of § 509(a)(3) as provided for in Treas. Reg. § 1.509(a)-4 (other than § 1.509(a)-4(i)(4)); If the trust did not qualify under § 509(a)(3) in one or more prior years (after October 9, 1969) in which it was described in § 4947(a)(1), then it cannot be issued a § 509(a)(3) determination letter except in accordance with the procedures for termination of private foundation status under § 507(b)(1)(B); and

(6) Such other information as is required for a determination under Rev. Proc. 2014-4 or any successor revenue procedure.

SECTION 9. DETERMINATIONS OPEN TO PUBLIC INSPECTION

Determinations and rulings as to foundation status are open to public inspection pursuant to § 6104(a).

Section 10. Not Applicable to Private Foundation Terminations Under § 507 or Changes of Status Pursuant to Examination

These procedures do not apply to a private foundation seeking to terminate its status under § 507. These procedures also do not apply to the examination of an organization which results in changes to its foundation status.

SECTION 11. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2013-10 is superseded.

SECTION 12. EFFECTIVE DATE

This revenue procedure is effective January 6, 2014.

SECTION 13. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 7.02 and 8.02. This information is required to evaluate and process the request for a letter ruling or determination letter. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are tax-exempt organizations.

DRAFTING INFORMATION

The principal author of this revenue procedure is Mr. Dave Rifkin of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information about this revenue procedure, contact Customer Account Services at 877-829-5500. Dave Rifkin can be reached by e-mail at tege.eo@irs.gov. Please include "Question about Rev. Proc. 2014-10" in the subject line.

26 CFR 601.201: Rulings and determination letters. (Also: Part I, sections 25, 103, 143, 1.25-4T, 1.103-1, 6A.103A-2)

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