Bond Case Briefs

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IRS LTR: Organization Not Required to Submit New Exemption Application.

The IRS ruled that the conversion of a public nonprofit corporation into a nonprofit corporation under state law did not result in the creation of a new entity and, accordingly, the corporation is not required to submit a new application for tax-exempt status.

Citations: LTR 201426028

Contact Person: * * *
Identification Number: * * *
Telephone Number: * * *

UIL Number: 501.03-05
Release Date: 6/27/2014
Date: April 1, 2014

Employer Identification Number: * * *

LEGEND:

State = * * *

Dear * * *:

This is in response to your ruling request dated September 6, 2013, requesting a ruling that you are not required to submit a new Application foe Exemption under I.R.C. § 508(a).

FACTS

You have been recognized as an organization exempt under § 501(a) of the Code because you are described in § 501(c)(3) and are classified as a public charity within the meaning of §§ 509(a)(2). You were formed by act of the State Legislature. This act established your purpose, the processes of appointing and electing your directors and officers, and other specifics about your operations. Your purpose is to administer the Federal Family Education Loan Program. You review applications of students to determine eligibility for student loans, guarantee loans made to students, and perform various other administrative functions. Your enabling statute describes you as a "public nonprofit corporation . . . [with] all the powers and duties incident to a nonprofit corporation under the [State] Non-Profit Corporation Act."

You state that as a corporation created pursuant to an act of State Legislature you were not required to file articles of creation or incorporation with the state.

Your enabling statute was amended multiple times, but these amendments did not alter your purposes or corporate form. However, recently the State Legislature enacted legislation impacting

your corporate identity. This legislation states that you are “converted . . . from a public nonprofit corporation to a nonprofit corporation.” It directs you “to effectuate the conversion” by filing “a certificate of formation” or “certificate of conversion,” as deemed appropriate by the State Secretary of State. Also, the legislation states that, even with this conversion, you, “continue[ ] in existence uninterrupted from the date of [your] creation.” In addition, you state that your act of filing a Certificate of Conversion is a purely administrative act that does not impact your corporate structure or the continuous recognition of your nonprofit corporation status form your date of creation. Finally, under this legislation, your purpose and operations remain the same.

You abided by the requirements of this statute and filed documents determined to be appropriate by the State Secretary of State. You filed a certificate of conversion and attached to it a certificate of formation. Your certificate of conversion states that you are “a statutorily enabled [State] public nonprofit corporation” that is “converting to a nonprofit corporation formed under [State] Business Organizations Code.” The certificate of conversion adds that you are “continuing [your] uninterrupted existence.” The attached certificate of formation states that you were formed by the State Legislature pursuant to your original enabling statute.

RULING REQUEST

You requested the following ruling:
That a new entity was not created upon your filing a Certificate of Conversion with the Secretary of State of State and as such you are not required to submit a new Application for Exemption.

LAW

I.R.C. § 501(c)(3) exempts from taxation “Corporations, and any community chest, fund, or foundation” that fit certain criteria.
I.R.C. § 508(a) states that “New organizations must notify secretary that they are applying for recognition of section 501(c)(3) status.”

Treas. Reg. 1.501(a)-1(a)(3) provides that an organization claiming exemption under I.R.C. § 501(a) and described in any paragraph of I.R.C. § 501(c) shall file the form of application prescribed by the Commissioner.

Treas. Reg. § 1.508-1(a) states that “New organizations must notify the Commissioner that they are applying for recognition of section 501(c)(3) status.”

Treas. Reg. § 1.508-1(a)(1) provides that in general an organization organized after October 9, 1969, will not be treated as described in I.R.C. § 501(c)(3) unless such organization has given the Commissioner notice.

American New Covenant Church v. Commissioner, 74 T.C. 293, 301 (T.C. 1980) considered the question of whether a new organization was formed during the following course of actions. An unincorporated association filed an application for exemption. While its application was pending, the unincorporated association stated that it had changed its name and also it presented articles of incorporation bearing this new name. The Service determined that a new entity had been formed by the filing of these articles of incorporation. It concluded that 1) the newly formed corporation was distinctive from the unincorporated association that had previously filed an application for exemption and 2) the newly formed corporation needed to file its own application. The Tax Court agreed, ruling “that the two organizations [should] be treated as separate, independent legal entities.” It stated, that the Service, “was entirely justified in insisting that [the newly formed corporation] submit a new application in order to determine whether it met the regulation

requirements for tax-exempt status."

Rev. Rul. 67-390; 1967-2 C.B. 179, consider four situations in which organizations previously ruled as exempt underwent structural changes.

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 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 incorporated under the laws of one state was reincorporated under the laws of another state with no change in its purposes.

The ruling held that in all four situations, a new legal entity had been created and the new legal entity was required to apply for exemption. The old organization's exemption would not suffice. Rev. Rul. 77-469, 1977-2 C.B. 196, held that an organization that filed its application for exemption less than 15 months after its incorporation under state law was exempt as of the date of its incorporation even though it had operated as an unincorporated association for three years prior to its incorporation. The ruling highlighted that the corporation was a new legal entity from the unincorporated one.

ANALYSIS

You were formed by an act of the State legislature as a public nonprofit corporation under State law. Thereafter, the State legislature declared that you would no longer be a public nonprofit corporation, but instead you would be a nonprofit corporation under State law. You then took the appropriate steps to convert yourself from a public nonprofit corporation to a nonprofit corporation. Under I.R.C. § 508(a) and Treas. Reg. § 1.508-1(a), provides that an organization claiming exemption under I.R.C. § 501(a) and described in any paragraph of I.R.C. § 501(c) shall file the form of application prescribed by the Commissioner

Rev. Rul. 67-390 considered four cases in which organizations that were recognized as exempt underwent structural changes, and the Revenue Ruling concluded that by these structural changes new organizations were formed. American New Covenant Church v. Commissioner, 74 T.C. 293, 301 (T.C. 1980) and Rev. Rul. 77-469 found that new organizations were created when unincorporated associations filed documents to incorporate themselves. Your situation of converting from public nonprofit corporation to a nonprofit corporation is distinctive from every one of these cases. Thus, your conversion does not amount to the creation of a new organization for purposes of I.R.C. § 508(a) and Treas. Reg. § 1.508-1(a).

RULINGS

Based on your facts and representations, we rule as follows:
A new entity was not created upon your filing of a Certificate of Conversion and you are not required to submit a new Application for recognition of exemption.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public

inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Michael Seto
Manager
EO Technical
Enclosure
Notice 437

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