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IRS Consolidates Guidance on Deductibility, Reliance Issues for Grantors and Contributors.

The US Internal Revenue Service recently consolidated its guidance on deductibility and reliance issues for grantors and contributors. Rev. Proc. 2018-32 combines the safe harbors previously provided in Rev. Procs. 81-6, 81-7, and 89-23 with the reliance guidance of Rev. Proc. 2011-33, updates the guidance to reflect the new IRS Tax Exempt Organization Search, and replaces the prior Rev. Procs. with one revenue procedure setting forth the extent to which grantors and contributors can rely on an IRS database that lists an organization as eligible to receive tax-deductible contributions under Section 170 of the Internal Revenue Code or as a public charity under Section 509.

Pursuant to Treasury Regulations promulgated under Section 170, a grantor or contributor may rely on the continued validity of an Internal Revenue Service (IRS) determination letter concluding that an organization can receive tax deductible donations under Section 170—even if the organization has lost its status—until the IRS makes a public announcement that the organization’s status has changed unless the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization’s loss of status. Similarly, pursuant to Treasury Regulations promulgated under Section 509, once an organization has received a determination letter classifying it as a public charity, the treatment of contributions and grants, and the status of grantors and contributors to such organization, will not be affected by a subsequent revocation of the organization’s public charity status until the IRS publicly announces that the organization has lost its status as a public charity, unless the grantor or contributor knew that the organization’s public charity status was revoked or was in part responsible for, or aware of, the act or failure to act which gave rise to the revocation of the organization’s status as a public charity.

Prior to [Rev. Proc. 2018-32](#), Rev. Proc. 2011-33 provided guidance for the extent to which grantors and contributors could rely on IRS publications for deducting contributions under Section 170 and making grants under Sections 4942, 4945, and 4966. Rev. Procs. 81-6, 81-7, and 89-23 provided safe harbors for determining when a grantor or contributor would be deemed not to have knowledge of, or be responsible for, an organization’s loss of status as a public charity, including when a grant or contribution would be considered an “unusual grant.” An “unusual grant” is excluded entirely from an organization’s public support calculation and will therefore not cause an organization to lose its public charity status.

Rev. Proc. 2018-32

In order to simplify compliance for grantors and contributors, Rev. Proc. 2018-32 combines the prior revenue procedures and replaces them with one revenue procedure on deductibility and reliance issues for grantors and contributors. Rev. Proc. 2018-32 also incorporates the recent modifications the IRS made to its [searchable online database](#), Select Check, which has been renamed “Tax Exempt Organization Search.”

Rev. Proc. 2018-32 provides that, for purposes of deducting contributions under Section 170 or

making grants under Sections 4942, 4945, and 4966, grantors and contributors can rely on the status of an organization reflected in two IRS databases searchable by the public on the IRS website—the Tax Exempt Organization Search and the EO BMF Extract—after the date the IRS has revoked the organization’s status until the IRS makes a public announcement that the organization’s status has changed. The public announcement may be made via the Internal Revenue Bulletin, on the portion of the IRS website (at www.irs.gov) that relates to exempt organizations, or by any means designed to put the public on notice of the change in the organization’s status.

This guidance applies to individual donors as well as to private foundations and sponsoring organizations of donor advised funds. Grantors and contributors may rely on the information provided in the [Tax Exempt Organization Search](#) and the [EO BMF Extract](#) for an organization’s qualification to receive tax deductible contributions, its classification as a public charity, and its qualification as a Type I, Type II, or Type III functionally or non-functionally integrated supporting organization.

If an organization’s tax-exempt status is automatically revoked for failing to file three consecutive annual returns or required notices, grants and contributions to the organization generally will be considered deductible under Section 170 if made on or before the date the organization’s name is posted on the Auto-Revocation List maintained by the IRS. The Auto-Revocation List is also searchable on the IRS website through the Tax Exempt Organization Search.

Under certain circumstances, the IRS may allow a donor to deduct a contribution to an organization that lost its ability to receive tax deductible contributions after the IRS’s public announcement. For example, the IRS may allow a deduction if the donor made a legally enforceable pledge before the public announcement but does not satisfy the pledge until after.

Rev. Proc. 2018-32 reiterates the exceptions to the general reliance rules for deductibility and for public charity status, consistent with the prior guidance, as well as the safe harbors. It also provides limitations on the extent to which the reliance provisions in the revenue procedure apply and requirements for relying on information from the EO BMF Extract from third parties. Finally, Rev. Proc. 2018-32 provides guidance on the validity of contributions to an organization during a proceeding under Section 7428 for a declaratory judgement involving the revocation of a determination that the organization is described in Section 170, which is also consistent with the prior guidance.

Although it doesn’t provide any substantive changes to the guidance on donor reliance, Rev. Proc. 2018-32 reminds grantors and contributors to check an organization’s status before making a grant or a donation.

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