

Safely Determining Public Charity Status

THURSDAY, SEPTEMBER 15, 2011

Grantors and contributors to charities often need to know if the charities qualify as "public" charities under Internal Revenue Code Section 170(b)(1)(A)(vi), so as to properly determine various tax consequences. Code Sections for which such status is relevant include Sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 4966, 2055, 2106(a)(2), and 2522.

Grantors and contributors can request a copy of the charity's exemption letter to determine if the IRS has recognized its status under Section 170(b)(1)(A)(vi). Alternatively, the status can be reviewed in IRS Publication 78, "Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986." This publication is available in paper, or online through <http://www.irs.gov>.

But what if the charity has had its Section 170(b)(1)(A)(vi) revoked, but the grantor or contributor is not informed of this? For example, the charity may provide the contributor with a copy of the original exemption letter, even though it has been revoked. Alternatively, the grantor or contributor may check the status online and see the charity has the proper status, but perhaps the IRS had not yet updated its database to show a revocation.

Under recently issued Regulations, the IRS will allow a contributor or grantor to rely upon an IRS determination letter or ruling (notwithstanding its revocation) until the IRS publishes notice of a change of status. Reg. Section 1.170A-9(f)(5)(ii). This is both a good and a bad thing. It is good, in that it provides a clear methodology to determine status, without risk that the status may have been changed. It is bad, since it imposes a clear burden on the taxpayer to review Publication 78, as updated, to confirm that there has been no revocation.

Previously, newly formed charities had only a five year advance ruling period for their “public charity” status – at the expiration of the period the charity had to go back to the IRS and seek a permanent ruling. While this process has been changed, there are organizations out there with ruling letters that have a fixed advance ruling period expiration date, but that are no longer obligated to seek a permanent ruling. The Regulation provides that a taxpayer may rely on advance rulings that expired on or after June 9, 2008.

A taxpayer cannot use these reliance rules if it was responsible for, or aware of, an act or failure to act that resulted in the organization's loss of classification under Section 170(b)(1)(A)(vi) or acquired knowledge that the IRS had given notice to such organization that it would be deleted from such classification. At first glance, this would appear to be a problem for large contributors, since if a contributor makes a large enough contribution to an organization, this may mathematically remove it from “public charity” status. However, the Regulations anticipate this and provide that an outsider to the charity (that is, is not a founder, creator, or foundation manager) will not be considered responsible for, or aware of, a loss of public status if it received and relied upon a written statement by the charity that the grantor contribution will not result in the loss of public status. Reg. Section 1.170A-9(f)(5)(iii). Such written statement must meet specific criteria, including the provision of five years of financial data to allow for a computation of public charity status.

Note that the online Publication 78 describes various types of exempt organizations. Various codes are used to assist readers to determine the status of the organization. The code needed to confirm public charity status is actually the absence of a code, or “none.” Below is a table of the various codes.

Deductibility Codes - Publication 78

| Code | Meaning |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| None | A public charity with a 50 percent deductibility limitation. |
| 1 | Generally, a central organization holding a group exemption letter, whose subordinate units covered by the group exemption are also included as having contributions deductible, even though they are not separately listed. |
| 2 | A fraternal organization contributions to which are deductible by an individual but only if they are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. |
| 3 | A private operating foundation with a 50 percent deductibility limitation. |
| 4 | A private foundation , generally with a 30 percent deductibility limitation. |
| 5 | A charitable organization whose status as a public charity (rather than a private foundation) has not been determined. Most of these organizations have not sought formal recognition as public charities, even though many of them, such as churches or P.T.A.'s, may qualify as public charities. This code also includes some organizations that have formally claimed public charity status but that status has not yet been determined to be correct by the Internal Revenue Service. |
| 6 | An organization described in section 170(c) of the Code other than a charity. |
| 7 | An organization to which contributions are deductible if made for the use of a governmental unit. These have a 50 percent deductibility limitation. |
| 8 | A foreign-addressed organization. |

[Publication 78 examples](#) provides examples, using fictitious names, illustrating this coding system.

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