

SECTION 1. PURPOSE

This revenue procedure sets forth revised procedures with regard to applications for recognition of exemption from federal income tax under sections 501 and 521 of the Internal Revenue Code and with respect to revocation or modification of exemption rulings and determination letters other than those subject to Rev. Proc. 80-30, 1980-1 C.B. 685 (relating to pension, annuity, profit-sharing, and stock bonus plans). This revenue procedure also supplements Rev. Proc. 76-34, 1976-2 C.B. 656, with respect to the effects of section 7428 on the classification of organizations under sections 509(a) and 4942(j)(3). See Rev. Proc. 80-27, 1980-1 C.B. 677, for procedures under which exemption may be recognized on a group basis for subordinate organizations affiliated with and under the general supervision and control of a central organization. Also, see Rev. Proc. 72-5, 1972-1 C.B. 709, for information on applications for recognition of exemption filed by certain religious and apostolic organizations. Requests for rulings or determination letters generally are governed by the procedures outlined in Rev. Proc. 90-4, 1990-2 I.R.B. 10. Rev. Proc. 90-17, 1990-12 I.R.B. 13, sets forth the procedures for the charging of user fees for the issuance of rulings and determination letters.

SEC. 2. NATURE OF CHANGES

This revenue procedure updates and restates the procedures previously set forth in Rev. Proc. 84-46, 1984-1 C.B. 541, and Rev. Proc. 85-32, 1985-2 C.B. 414, relating to processing requests for exemption. Since by-laws are not organizing or enabling documents, section 5.05 has been amended to remove the requirement that such documents must be signed when attached to an application. The list of exempt organization key Districts has been updated. Also, as appropriate, the term 'authorized individual' has been substituted for other terms previously used when referring to individuals who have the authority to act on the organization's behalf. Payment of the correct user fee is added as a requirement for a substantially completed Form 1023.

SEC. 3. GENERAL

01 When used in this revenue procedure, the term 'key District Director' means the District Director of one of the 7 key district offices for exempt organization matters.

02 The term 'determination letter' refers to a letter issued by a key District Director, or an Appeals Office in the case of an exemption application, in response to a written inquiry by an individual or an organization that applies to the particular facts involved, and to the principles and precedents previously announced by the National Office. This includes a letter issued on the basis of advice secured from the National Office pursuant to the procedures prescribed herein and in Rev. Proc. 90-5, 1990-2 I.R.B. 22. The term, 'ruling' refers to a letter issued by the National Office.

03 The declaratory judgment provisions of section 7428 of the Code, with regard to

this revenue procedure, apply to an actual controversy involving a determination by the Service or a failure of the Service to make a determination with respect to the initial or continuing qualification or classification of an organization under section 501(c)(3) (charitable, educational, etc.); 170(c)(2) (deductibility of contributions); 509(a) (private foundation status); or 4942(j)(3) (operating foundation status).

SEC. 4. FILING AND PROCESSING APPLICATIONS FOR RECOGNITION OF EXEMPTION

An organization seeking recognition of exempt status under section 501 or 521 of the Code is required to file an application with the key District Director for the Internal Revenue District in which its principal place of business is located. The 7 key district offices that process the applications, the Internal Revenue districts covered by each, and the regional office designations are as follows:

Key District(s)	IRS Districts Covered
CENTRAL REGION	
Cincinnati	Cincinnati, Cleveland, Detroit, Indianapolis, Louisville, and Parkersburg.
MID-ATLANTIC REGION	
Baltimore	Baltimore (includes District of Columbia), Newark, Philadelphia, Pittsburgh, Puerto Rico, Richmond, Wilmington, and matters relating to a foreign organization, or an organization located in a territory or possession of the United States.
MIDWEST REGION	
Chicago	Aberdeen, Chicago, Des Moines, Fargo, Helena, Milwaukee, Omaha, St. Louis, St. Paul, and Springfield.
NORTH-ATLANTIC REGION	
Brooklyn	Albany, Augusta, Boston, Brooklyn, Buffalo, Burlington, Hartford, Manhattan, Portsmouth, and Providence.
SOUTHEAST REGION	
Atlanta	Atlanta, Birmingham, Columbia, Fort Lauderdale, Greensboro, Jackson, Jacksonville, Little Rock, New Orleans, and Nashville.
SOUTHWEST REGION	
Dallas	Albuquerque, Austin, Cheyenne, Dallas, Denver, Houston, Oklahoma City, Phoenix, Salt Lake City, and Wichita.
WESTERN REGION	
Los Angeles	Anchorage, Boise, Honolulu, Laguna Niguel, Las Vegas, Los Angeles,

Portland, Sacramento, San Francisco, San Jose, and Seattle.

SEC. 5. STANDARDS FOR ISSUING RULINGS OR DETERMINATION LETTERS WITH RESPECT TO EXEMPT STATUS

01 A ruling or determination letter will be issued to an organization, provided its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Any oral representation of additional facts or modification of facts as represented or alleged in the application for a ruling or determination letter must be reduced to writing over the signature of an authorized individual.

02 Exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

03 Where an application for recognition of exemption does not contain the required information, the application may be returned to the applicant without being considered on its merits with an appropriate letter of explanation. In the case of an application under section 501(c)(3) of the Code that is returned, the applicant will also be informed of the time within which the completed application must be resubmitted in order for the application to be considered a timely notice within the meaning of section 508(a).

04 A ruling or determination letter recognizing exemption will not ordinarily be issued if an issue involving the organization's exempt status under section 501 or 521 of the Code is pending in litigation or is under consideration within the Service.

05 In the case of an application under section 501(c)(3) of the Code, the 270-day period referred to in section 7428(b)(2) will be considered by the Service to begin on the date a substantially completed Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, is filed with or mailed to the appropriate key District Director. A substantially completed Form 1023 is one that:

1 is signed by an authorized individual.

2 includes an Employer Identification Number (EIN) or a completed Form SS-4, Application for Employer Identification Number.

3 includes information regarding previously filed federal income tax and exempt organization information returns.

4 includes a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years (or the years the organization was in existence, if less than four years). If the organization has not yet commenced operations, or has not completed one accounting period, a proposed budget for two full accounting periods and a current statement of assets and liabilities will be acceptable.

5 includes a narrative statement of proposed activities and a narrative description of anticipated receipts and contemplated expenditures.

6 includes a copy of the organizing or enabling document that is signed by a principal officer or is accompanied by a written declaration signed by an authorized individual certifying that the document is a complete and accurate copy of the original or otherwise meets the requirements of a 'conformed copy' as outlined in Rev. Proc. 68-14, 1968-1 C.B. 768.

7 if the organizing or enabling document is in the form of articles of incorporation, includes evidence that it was filed with and approved by an appropriate state official (e.g., stamped 'Filed' and dated by the Secretary of State). Alternatively, a copy of the articles of incorporation may be submitted providing it is accompanied by a written declaration signed by an authorized individual that the copy is a complete and accurate copy of the original copy that was filed with and approved by the state. If a copy is submitted, the written declaration must include the date the articles were filed with the state.

8 if the organization has adopted by-laws, includes a current copy. The by-laws need not be signed if submitted as an attachment to the application for recognition of exemption. Otherwise, the by-laws must be verified as current by an authorized individual.

9 is accompanied by the correct user fee.

06 If a Form 1023 does not contain all of the items set out in section 5.05, it will not be further processed and may be returned to the applicant for completion. The 270-day period will not be considered as starting until the date the Form 1023 is refiled with or remailed to the Service with the requested information, or, if remailed and a postmark is not evident, on the date the Service actually receives a substantially completed Form 1023.

07 The standards of section 5.05 for a substantially completed application form apply also to applications for recognition of exemption under other paragraphs of section

501(c) of the Code. They also apply to the notice requirement of section 508. Even though an application is considered substantially complete, more information may be required before a ruling or determination letter can be issued.

08 If the application for recognition of exemption involves an issue where contrary authorities exist, failure to disclose and distinguish significant contrary authorities may result in requests for additional information, which will delay action on the application (see section 8.08 of Rev. Proc. 90-4).

SEC. 6. ISSUING RULINGS OR KEY DISTRICT DETERMINATION LETTERS WITH RESPECT TO EXEMPT STATUS

01 Under the general procedures outlined in Rev. Proc. 90-4, key District Directors are authorized to issue determination letters involving applications for recognition of exemption under sections 501 and 521 of the Code.

02 A key District Director will refer to the National Office those applications that present questions the answers to which are not specifically covered by statute or regulations, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. In addition, key District Directors will refer those applications that have been specifically reserved by revenue procedure and/or Internal Revenue Manual instructions for National Office handling for purposes of establishing uniformity or centralized control of designated categories of cases. The National Office will consider each such application, issue a ruling directly to the organization, and send a copy of the ruling to the key District Director.

03 If at any time during the course of consideration of an exemption application the organization believes that its case involves an issue on which there is no published precedent or there is nonuniformity between districts, the organization should ask the key District Director to request technical advice from the National Office. See Rev. Proc. 90-5.

04 If the key District Director proposes to recognize the exemption of an organization to which the National Office had issued a previous contrary ruling or technical advice, the key District Director must seek technical advice from the National Office before issuing a determination letter. See Rev. Proc. 90-5.

SEC. 7. WITHDRAWAL OF APPLICATIONS

01 An application for recognition of exemption under section 501 or 521 of the Code may be withdrawn, upon the written request of an authorized individual at any time prior to the issuance of the initial adverse ruling or determination letter. Even though the application is withdrawn, however, the application and all supporting documents will be retained by the Service and will not be returned to the organization. See Sec. 6.13 of Rev. Proc. 90-17 regarding refunds of user fees.

02 The Service will not consider the withdrawal of an application under section 501(c)(3) of the Code as either a failure to make a determination within the meaning of section 7428(a)(2) or as an exhaustion of administrative remedies within the meaning of section 7428(b)(2).

SEC. 8. NATIONAL OFFICE REVIEW OF DETERMINATION LETTERS

01 Some determination letters issued by the key districts will be reviewed by the Exempt Organizations Technical Division, or the Office of the Assistant Chief Counsel (Passthroughs and Special Industries) (for cases under section 521 of the Code), to assure uniform application of the statutes or regulations, or rulings, opinions, or court decisions published in the Internal Revenue Bulletin.

02 Where the National Office takes exception to a key district determination letter, the key District Director will be advised. If the organization disagrees with the exception taken, the file will be returned to the National Office. The referral will be treated as a request for technical advice and sections 9, 10, and 11 of Rev. Proc. 90-5 will be followed.

SEC. 9. PROTEST OF INITIAL ADVERSE RULING LETTERS

In the case of an initial adverse ruling letter from the National Office, the organization will be informed of the basis for the conclusion, and of its right to file a protest within 30 days and to a conference in the National Office. If a conference is requested, the conference procedures outlined in section 9 of Rev. Proc. 90-4 apply.

SEC. 10. APPEAL OF INITIAL ADVERSE DETERMINATION LETTERS

01 Upon the issuance of an initial adverse determination letter or a letter proposing revocation or modification of exempt status, the key District Director will advise the organization of its right to appeal the determination by requesting Appeals Office consideration. To do this, the organization must submit to the key District Director within 30 days from the date of the letter, a statement of the facts, law, and arguments in support of its position. The organization must also state whether it wishes an Appeals Office conference.

02 Any determination letter issued on the basis of National Office technical advice may not be appealed to the Appeals Office on issues that were the subject of the technical advice.

03 Upon receipt of an organization's request for Appeals Office consideration, the key district will, if it maintains its position, forward the request and the case file to the Chief of the appropriate Appeals Office.

SEC. 11. CONSIDERATION AT THE APPEALS OFFICE

01 The Appeals Office, after considering the organization's appeal and any additional information developed in conference, will advise the organization of its decision and issue the appropriate determination letter to the organization.

02 Organizations should make full presentation of the facts, circumstances, and arguments at the initial level of consideration by the Appeals Office, since submission of additional facts, circumstances, and arguments may result in suspension of appeal procedures and referral of the case back to the key district for additional consideration. Any oral representation of additional facts originally represented or alleged must be reduced to writing.

03 If the Appeals Office believes that an exemption or private foundation status issue is not covered by published precedent or that there is nonuniformity, the Appeals Office must request technical advice from the National Office. Unless the Appeals Office feels that the conclusions reached by the National Office should be reconsidered and promptly requests such consideration, the case will be disposed of by the Appeals Office on the basis of the decision in the technical advice memorandum. See Rev. Proc. 90-4.

04 If at any time during the course of Appeals Office consideration, the organization believes that its case involves an issue on which there is no public precedent or there is nonuniformity between the districts, the organization should ask the Appeals Office to request technical advice from the National Office. See Rev. Proc. 90-4.

05 If the proposed disposition by the Appeals Office is contrary to a prior National Office technical advice or ruling concerning this organization, the proposed disposition will be submitted through the Office of the Regional Director of Appeals to the Assistant Commissioner (Employee Plans and Exempt Organizations), or, in a case under section 521 of the Code, to the Associate Chief Counsel (Technical). Unless the Appeals Office feels that the conclusions reached by the National Office should be reconsidered and promptly requests such consideration, the decision of the National Office will be followed by the Appeals Office. In any event, the Assistant Commissioner or the Associate Chief Counsel will make the final decision.

SEC. 12. EXHAUSTION OF ADMINISTRATIVE REMEDIES FOR DECLARATORY JUDGMENT PURPOSES

01 Section 7428 of the Code, in part, requires that an organization seeking initial or continuing recognition of exemption under section 501(c)(3) must exhaust its administrative remedies by taking timely, reasonable steps to secure a determination prior to filing for declaratory judgment. Those steps and administrative remedies required to be exhausted within the Service are:

1 the filing of a substantially completed application Form 1023 pursuant to section 5.05 or the filing of a request for a determination of foundation status pursuant to Rev. Proc. 76-34;

2 in appropriate cases, requesting relief pursuant to section 1.9100 of the Income Tax Regulations regarding applications for extension of the time for making an election or application for relief from tax (see Rev. Proc. 79-63, 1979-2 C.B. 578);

3 the timely submission of all additional information requested by the Service to perfect an exemption application or request for determination of private foundation status; and

4 exhaustion of all administrative appeals available within the Service pursuant to sections 10 and 11 or protest of an initial adverse ruling pursuant to section 9 in National Office original jurisdiction exemption application cases.

02 An organization will in no event be deemed to have exhausted its administrative remedies prior to the earlier of:

1 the completion of the steps in section 12.01, and the sending by certified or registered mail of a notice of final determination; or

2 the expiration of the 270-day period described in section 7428(b)(2) of the Code in a case where the Service has not issued a notice of final determination and the organization has taken, in a timely manner, all reasonable steps to secure a ruling or a determination.

03 The steps described in section 12.01 will not be considered completed until the Service has had a reasonable time to act upon the appeal or protest as the case may be.

04 A notice of final determination to which section 7428 of the Code applies is a ruling or determination letter, sent by certified or registered mail, which holds that the organization is not described in section 501(c)(3) or 170(c)(2), is a private foundation as defined in section 4942(j)(3), or is a public charity described in a part of section 509 or section 170(b)(1)(A) other than the part under which the organization requested classification.

SEC. 13. EFFECT OF RULINGS OR DETERMINATION LETTERS RECOGNIZING EXEMPTION

01 A ruling or determination letter recognizing exemption is usually effective as of the date of formation of an organization if its purposes and activities during the period prior to the date of the ruling or determination letter were consistent with the requirements for exemption. However, for special rules regarding organizations formed after October 9, 1969, applying for exemption under section 501(c)(3) of the Code, see section 508(a) and Rev. Rul. 77-208, 1977-1 C.B. 153. If the organization is required to alter its activities or to make substantive amendments to its enabling instrument, the ruling or determination letter recognizing its exempt status will be effective as of the date specified therein. If a nonsubstantive amendment is made, exemption will ordinarily be recognized as of the date of formation. Examples of nonsubstantive amendments include correction of a

clerical error in the enabling instrument or the addition of a dissolution clause where the activities of the organization prior to the ruling or determination are consistent with the requirements for exemption.

02 A ruling or determination letter recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization.

SEC. 14. REVOCATION OR MODIFICATION OF RULINGS OR DETERMINATION LETTERS RECOGNIZING EXEMPTION

01 A ruling or determination letter recognizing exemption may be revoked or modified by (1) a notice to the taxpayer to whom the ruling or determination letter originally was issued, (2) enactment of legislation or ratification of a tax treaty, (3) a decision of the United States Supreme Court, (4) issuance of temporary or final regulations, or (5) issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which section 503 applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change. In cases where a ruling or determination letter was issued in error or is no longer in accord with the holding of the Service, when section 7805(b) relief is granted (see sections 15 and 18 of Rev. Proc. 90-4), retroactivity of the revocation or modification ordinarily will be limited to a date not earlier than that on which the original ruling or determination letter is modified or revoked.

02 In the case of a revocation or modification, the appeal and conference procedures are the same as set out in sections 10 and 11, including the right of the organization to request that the key District Director or the Chief, Appeals Office, seek technical advice from the National Office. If the case involves a status issue on which the National Office had issued a previous contrary ruling or technical advice, the key District Director generally must seek technical advice from the National Office. The key District Director does not have to seek technical advice if the prior ruling or technical advice has been revoked by subsequent contrary published precedent or if the proposed revocation involves a subordinate unit of an organization that holds a group exemption letter issued by the National Office, the National Office ruling or technical advice was issued under the Internal Revenue Code of 1939 or prior revenue acts, or if the ruling was issued in response to Form 4653, Notification Concerning Foundation Status.

03 The provisions of section 10 and 11 relating to appeal and conference rights before a final revocation notice is issued are not applicable to matters where delay would be prejudicial to the interests of the Internal Revenue Service (such as in cases involving

fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

SEC. 15. EFFECT ON OTHER DOCUMENTS

Rev. Procs. 84-46 and 85-32 are superseded.

SEC. 16. EFFECTIVE DATE

This revenue procedure is effective the date of its publication in the Internal Revenue Bulletin.