



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

March 17, 2021

Control No: TEGE-07-0321-0005
Affected IRMs: 7.20.2, 7.20.4, 7.20.9
Expiration Date: March 17, 2023

MEMORANDUM FOR EXEMPT ORGANIZATIONS
RULINGS AND AGREEMENTS EMPLOYEES

FROM: Peggy Combs */s/ Peggy Combs*
Acting Director, Exempt Organizations Rulings and Agreements

SUBJECT: Interim Guidance on Treasury Regulation Section 301.9100-3 Relief for
Applications for Exemption

Effective January 4, 2021, Revenue Procedure (Rev. Proc.) 2021-5, Section 6.08 provides clarification on granting relief under Treasury Regulation (Treas. Reg.) Sections 301.9100-1 through 3.

Background/Source(s) of Authority

An organization described in Internal Revenue Code (IRC) Section 501(c)(3), (9), or (17) generally is required to apply for recognition of tax-exempt status within 27 months from the end of the month in which it was organized in order to be recognized and treated as tax-exempt effective as of the date of formation. See IRC 505 and 508, and Treas. Reg. 1.505(c)-1T, 1.508-1(a), and 301.9100-2(a)(2)(iii) and (iv). A similar rule applies to organizations described in IRC 501(c)(29). See IRC 501(c)(29), Treas. Reg. 1.501(c)(29)-1 and Rev. Proc. 2015-17.

In its application for recognition of exemption under IRC 501(c)(3), (9), (17), or (29), an organization that has not filed its application within the required time period may request relief under Treas. Reg. 301.9100-3 in order to be recognized and treated as tax-exempt effective as of a date earlier than the date of application. EO Determinations may grant such relief if the requirements for relief are met. For relief to be granted under Treas. Reg. 301.9100-3, an organization must provide evidence that it acted reasonably and in good faith and that the granting of relief will not prejudice the interests of the Government. Organizations applying for recognition under IRC 501(c)(3) and requesting relief must submit Form 1023 (rather than Form 1023-EZ).

Rev. Proc. 2021-5 (updated annually) provides that an organization will not be granted relief under Treas. Reg. 301.9100-3 if either (1) granting the request for relief would result in the organization's exempt status being automatically revoked under IRC 6033(j)(1) effective before the application date (without regard to the provisions of IRC 6033(j)(3) and guidance issued thereunder), or (2) the period of limitations on assessment under IRC 6501(a) for any taxable year for which the organization claims exemption has expired prior to the application date.

Rev. Proc. 2021-5 also provides that Treas. Reg. 301.9100-3 does not apply to an organization that is not required to apply for recognition of exempt status in order to be tax-exempt, and the Service will not consider a request for relief under Treas. Reg. 301.9100-3 from such an organization.

IRM 7.20.2.2.1(4) states that if an organization that qualifies for exemption doesn't apply for exemption within 27 months of formation or doesn't request and meet the requirements for relief, the Service recognizes it as exempt from the date it files its application. The IRM also provides if such an organization that is subject to the 27-month notice requirement requests relief but does not qualify for it, the case is processed as an approval with an adverse issue.

IRM 7.20.2.2.1(12) similarly states that in instances where the agent has to secure agreement to the effective date of exemption and the organization disagrees to the proposed effective date, the request should be processed as a proposed adverse determination or proposed approval with an adverse issue under IRM 7.20.2.4.

IRM 7.20.4.2.2(8) states that organization's application will be processed as a "no gap" reinstatement if it submits the appropriate application before the due date of its third required return (based on its formation date), isn't approved before the due date of the third return (based on its formation date), and has not filed appropriate returns to prevent automatic revocation.

Procedural Changes

Per Rev. Proc. 2021-5, for applications submitted on or after January 4, 2021, the following procedures apply.

Consider relief requests consistent with Rev. Proc. 2021-5 (updated annually)

- EO Determinations won't grant relief under Treas. Reg. 301.9100-3 if granting request for relief would result in the organization's exemption being automatically revoked effective before the date of application.
- EO Determinations won't grant relief under Treas. Reg. 301.9100-3 if the period of limitations on assessment under IRC 6501(a) for any taxable year for which the organization claims exemption has expired prior to the date of application.
- EO Determinations won't consider relief for an organization that is not required to apply for recognition of exempt status in order to be tax-exempt.
- In all instances where the request for exemption is being approved but relief under Treas. Reg. 301.9100-3 isn't being granted, prepare and send the correct determination letter along with Letter 6392, 9100 Effective Date.
- EO Determinations will no longer process cases where relief isn't granted under Treas. Reg. 301.9100-3 as proposed adverse determinations or proposed approvals with an adverse issue.

Case development

1. Request information, as necessary, to determine whether to grant relief to an organization that requests consideration under Treas. Reg. 301.9100-3 in its application.
2. Secure agreement from your manager on whether to grant relief and document managerial concurrence of approval or denial on the Case Chronology Record.

Determination preparation

1. If not granting relief to an organization that requests consideration under Treas. Reg. 301.9100-3 in its application, call the organization to explain why you're not granting relief. Document call in the Case Chronology Record. Prepare the determination letter along with Letter 6392, 9100 Effective Date, entering the date of application submission (or later date if appropriate under IRM 7.20.2.2.1) as the effective date of exemption.
2. Select the appropriate MEDS case category.
 - 9100 Relief – Approved (requires manager concurrence)
 - 9100 Relief – Not granted (relief would result in Auto Rev)
 - 9100 Relief – Not granted (period of limitation expired)
 - 9100 Relief – Not granted (not required to apply)
 - 9100 Relief – Not granted (other)
3. Prepare a Memo to File documenting whether relief was granted and why.
4. Input TC590 if appropriate to prevent organization from being erroneously revoked.
5. Continue to process cases using “no-gap” procedures and push to Status 97 if the taxpayer's exemption is automatically revoked under Section 6033(j) on or after the application date but before issuance of a favorable determination letter. If the taxpayer qualifies for relief under Treas. Reg. Section 301.9100-3 under the procedures discussed above, then its effective date of exemption is retroactive to formation. If the taxpayer does not qualify for relief, then its effective date is the application date.

Effect on Other Documents

This guidance will be incorporated into IRMs 7.20.2, 7.20.4, and 7.20.9 by March 17, 2023.

Effective Date

March 17, 2021

Contact

EO Determinations Area 2 Manager

Distribution

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