

Reliance Criteria for Private Foundations and Sponsoring Organizations

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SECTION 1. PURPOSE

This Revenue Procedure provides reliance criteria for private foundations and sponsoring organizations that maintain donor advised funds in determining whether a potential grantee is an organization described in section 509(a)(1), (2) or (3) of the Internal Revenue Code (Code).

SECTION 2. BACKGROUND

The Pension Protection Act of 2006, Pub. L. No. 109-208, 120 Stat. 780 (2006) (PPA) enacted new rules regarding grants by private foundations to certain types of supporting organizations. Under section 4942(g)(4) of the Code, as added by the PPA, the term “qualifying distribution” does not include any amount paid by a private nonoperating foundation to either (1) a Type III supporting organization (as defined in § 4943(f)(5)(A)) that is not functionally integrated, or (2) a Type I, Type II, or functionally integrated Type III supporting organization if a disqualified person of the private foundation directly or indirectly controls such supporting organization or a supported organization of the supporting organization. In addition, under § 4945(d)(4)(A), as amended by the PPA, a private foundation grant to a supporting organization described in either (1) or (2) is a taxable expenditure under § 4945, unless the private foundation exercises expenditure responsibility with respect to the grant in accordance with § 4945(h).

The PPA also added § 4966 to the Code, which imposes an excise tax on a sponsoring organization (as defined in § 4966(d)(1)) for taxable distributions (as defined in § 4966(c)). Section 4966(c)(1) defines the term “taxable distribution” to include any distribution from a donor advised fund (as defined in § 4966(d)(2)) to a disqualified supporting organization, unless the sponsoring organization exercises expenditure responsibility with respect to the distribution in accordance with § 4945(h). Section 4966(d)(4) defines the term “disqualified supporting organization” as: (1) a Type III supporting organization that is not functionally integrated, and (2) a Type I, Type II, or functionally integrated Type III supporting organization if the donor, donor advisor, or related parties of the donor or donor advisor directly or indirectly controls a supported organization of the supporting organization.

On December 18, 2006 , the Treasury Department and the Internal Revenue Service (IRS) issued Notice 2006-109, 2006-2 C.B. 1121, to provide interim guidance regarding certain of the new rules enacted by the PPA that affect supporting organizations, donor advised funds, and private foundations that make grants to supporting organizations. In particular, section 3.01 of Notice 2006-109 provides reliance criteria for private foundations and sponsoring organizations that maintain donor advised funds in determining whether a grantee is a public charity under § 509(a)(1), (2) or (3) and whether a grantee is a Type I, Type II, or functionally integrated Type III supporting organization. With respect to the determination of whether a grantee is a public charity under § 509(a)(1), (2), or (3) for purposes of §§ 4942, 4945 and 4966, as applicable, section 3.01 of Notice 2006-109 provides that a private foundation or a sponsoring organization that maintains a donor advised fund, acting in good faith, may

rely on either (1) information from the IRS Business Master File (“BMF”), or (2) the grantee’s current IRS letter recognizing the grantee as exempt from federal income tax and indicating the grantee’s public charity classification.

The BMF is updated monthly and, due to its large size, is available as compressed ASCII Text or Excel spreadsheet files. The files must be downloaded and uncompressed before viewing. The BMF and its corresponding instructions are available for download directly from the IRS web site. Currently, the BMF does not provide information as to whether an organization described in § 509(a)(3) is a Type I, Type II, or Type III supporting organization, nor whether a Type III supporting organization is functionally integrated.

Subsequent to the issuance of Notice 2006-109, the IRS posted a document titled “Reliance on BMF Information – Certain Determinations of Public Charity Status” on its website at <http://www.irs.gov/charities/charitable/article/0,,id=168531,00.html>, clarifying how a grantor may access BMF data for purposes of satisfying the requirements of section 3.01 of Notice 2006-109 to determine whether a grantee is a public charity under section 509(a)(1), (2) or (3). The document provides that in lieu of downloading the BMF directly from the IRS website, a private foundation or a sponsoring organization that maintains a donor advised fund may use a third party to obtain the BMF information, so long as the third party provides the BMF information in a report that includes: (1) the grantee’s name, Employer Identification Number, and public charity classification under § 509(a)(1), (2), or (3); (2) a statement that the information is from the most-currently available IRS monthly update to the BMF, along

with the IRS BMF revision date; and (3) the date and time of the grantor's search. The report must also be in a form that the grantor can store in hard copy or electronically.

SECTION 3. SCOPE

This Revenue Procedure applies to grantor determinations of public charity status under of the Code 509(a)(1), (2) or (3) for purposes of the excise taxes imposed on grants to certain supporting organizations under sections 4942, 4945, and 4966.

SECTION 4. PROCEDURE

In determining whether a public charity is classified under 509(a)(1), (2), or (3) of the Code, a private foundation or a sponsoring organization that maintains a donor advised fund, acting in good faith, may rely on either:

(1) the grantee's current IRS letter recognizing the grantee as exempt from federal income tax and indicating the grantee's public charity classification under § 509(a)(1), (2), or (3); or

(2) information from the BMF. A grantor may download the BMF directly from the IRS website and store the relevant information in hard copy or electronically. A grantor may also obtain the BMF information from a third party, so long as the following requirements are met:

(i) The third party provides a report to the grantor that includes: (A) the grantee's name, Employer Identification Number, and public charity classification under § 509(a)(1), (2), or (3); (B) a statement that the information is from the

most current update of the BMF and the BMF revision date; and (C) the date and time the information was provided to the grantor; and

(ii) The report is in a form that the grantor can store in hard copy or electronically.

EFFECT ON OTHER DOCUMENTS

This Revenue Procedure supersedes the portions of section 3.01 of Notice 2006-109 that relate to reliance for purposes of determining whether a grantee is a public charity under section 509(a)(1), (2) or (3) of the Code. All other parts of Notice 2006-109 remain unchanged and in effect, including the separate requirements for grantors to determine whether a grantee is a Type I, Type II, or functionally integrated Type III supporting organization.

DRAFTING INFORMATION

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