

Revenue Procedure 2011-33

SECTION 1. PURPOSE

This revenue procedure modifies and supersedes Revenue Procedure 82-39, 1982-2 C.B. 759, and Revenue Procedure 2009-32, 2009-28 I.R.B. 142, and provides the extent to which grantors and contributors (including donors) may rely on the listing of an organization in Publication 78, Cumulative List of Organizations described in § 170(c) of the Internal Revenue Code, or on the IRS Business Master File (“BMF”) extract, for purposes of deducting contributions under § 170 and making grants under §§ 4942, 4945, and 4966. In addition, this revenue procedure clarifies that the Internal Revenue Service (“IRS”) may give notice of revocation, including revocations under §6033(j), through an appropriate public announcement, such as publication in the Internal Revenue Bulletin or on the IRS’s website at www.irs.gov.

SECTION 2. BACKGROUND

.01 Section 170, with certain limitations, allows deductions for federal income tax purposes of contributions or gifts made to or for the use of an organization that qualifies as an organization described in § 170(c). In order for contributions to be deductible, the organization must qualify at the time of the contribution. Thus, it is the responsibility of an organization receiving contributions to ensure that its character, purposes, activities, and method of operation satisfy the qualification requirements of § 170(c) in order for grantors and contributors to have the assurance that their contributions at the time made are deductible.

.02 Treas. Reg. § 1.509(a)-7(a) sets forth general rules regarding reliance by grantors and contributors to organizations described in §§ 509(a)(1), (2), and (3). This regulation provides that once an organization has received a ruling or determination letter classifying it as an organization described in § 509(a)(1), (2), or (3), the treatment of contributions and grants, and the status of grantors and contributors to such organization under §§ 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, will not be affected by reason of a subsequent revocation by the IRS of the organization’s classification as described in § 509(a)(1), (2), or (3) until the date on which notice of change of status is made to the public.

.03 Generally, Publication 78 lists organizations that have received a ruling or determination letter from the IRS stating that contributions by grantors or contributors to the listed organization (or to the listed central (or parent) organization and those local (or subordinate) units covered by the group exemption letter) are deductible as provided in § 170. (Note that Publication 78 does not include separate listings for local organizations included in a group ruling.) Each ruling or determination letter is based on a factual showing by the listed organization that its character, purposes, activities, and method of

operation satisfy the statutory requirements for qualification at the time the ruling or determination letter is issued. If there is a material change in the character, purposes, activities, or method of operation of an organization from those on which the ruling or determination letter was based and the change is such that the organization ceases, as a matter of law, to qualify under § 170(c), the ruling or determination letter also immediately ceases to be applicable (see also Sec. 11.02 of Rev. Proc. 2011-9, 2011-2 I.R.B. 283). Where this circumstance occurs, except for the validation provision of § 7428(c) (see Sec. 5.02), it is only by exercise of the authority under § 7805(b) that grantors or contributors to the organization may be allowed a deduction for grants or contributions made after the organization ceases to qualify under § 170(c).

.04 Through the use of a “deductibility code,” Publication 78 generally indicates the foundation classification under § 509(a) of the listed organizations. This classification determines the appropriate limitations for deductibility purposes and whether private foundations and sponsoring organizations of donor-advised funds making grants to particular organizations would be required to exercise expenditure responsibility. The coding system in Publication 78 does not indicate specifically whether an organization is described in § 509(a)(1), (2), or (3), or a particular subparagraph of § 170(b)(1)(A).

.05 The IRS no longer publishes a paper version of Publication 78. Grantors and contributors can no longer rely on the paper version of Publication 78 or any paper supplements for current information after the date of publication of this revenue procedure. Publication 78 now appears solely in electronic format on the IRS website at <http://www.irs.gov/app/pub-78>. Electronic Publication 78 and its electronic addenda are generally updated at least quarterly.

.06 The IRS also makes an extract of certain information on exempt organizations from the BMF available to the public through the Tax Statistics section of the IRS website. The extract of the BMF contains more information, in a slightly different format, than Publication 78. Among the data fields provided are an organization’s name and Employer Identification Number (“EIN”), address, subsection code (the paragraph under § 501(c) under which it is recognized as exempt), ruling date, affiliation code (status as an independent, central, or local organization), deductibility code, foundation code (indicating whether an organization is a private foundation, private operating foundation, or public charity described in § 509(a)(1), (2), or (3)), and, if applicable, the appropriate subparagraph of § 170(b)(1)(A), and other data fields. The IRS plans to modify the foundation codes in early 2011 to indicate whether a § 509(a)(3) organization is a Type I, Type II, Type III, or Type III functionally integrated supporting organization. Unlike Publication 78, the BMF extract contains information on all organizations that have been recognized by the IRS as tax-exempt, including organizations not eligible to receive tax deductible contributions. References to listing in or reliance on the BMF extract in this revenue procedure only pertain to organizations contributions to which have been determined to be deductible

under §170, as reflected in the deductibility code in Publication 78 or the BMF extract.

.07 Due to its large size, the BMF extract is available as compressed ASCII Text or Excel spreadsheet files. These files must be downloaded and uncompressed before viewing. The BMF extract and its corresponding instructions are available for download directly from the IRS website at <http://www.irs.gov/taxstats/charitablestats/article/0,,id=97186,00.html>. Generally, the BMF information is extracted and updated on a monthly basis.

.08 Temporary Regulations §§ 1.170A-9T(f)(5)(ii) and 1.509(a)-3T(e)(2), 73 Fed. Reg. 52,528 (Sept. 9, 2008), state generally that grantors and contributors may rely on an organization's ruling that the organization is described in §§ 170(b)(1)(A)(vi) and 509(a)(1) or in § 509(a)(2) until the IRS publishes notice of a change of status (for example, in the Internal Revenue Bulletin or Publication 78), unless the grantor or contributor was responsible for, or aware of, the act or failure to act that results in the organization's loss of public charity status.

.09 Section 6033(j) was added to the Internal Revenue Code as part of the Pension Protection Act of 2006, and is effective for returns and notices for tax years beginning after December 31, 2006. Section 6033(j) provides that an organization exempt from tax under § 501(a) that fails to file an annual return or submit an electronic notice for 3 consecutive years will lose its Federal tax exempt status. Section 6033(j) further provides that the IRS shall publish and maintain a list of any organization that is so revoked.

SECTION 3. RELIANCE ON PUBLICATION 78 AND THE BMF

.01 Revocations. Where an organization listed in or covered by Publication 78 or the BMF extract ceases to qualify as an organization contributions to which are deductible under § 170:

(1) and the IRS subsequently revokes a ruling or a determination letter previously issued to such organization, grants and contributions made to the organization by persons unaware of such change in status of the organization generally will be considered allowable if made on or before the date of an appropriate public announcement stating that the organization ceases to qualify as an organization contributions to which are deductible under § 170.

(2) as a result of loss of exempt status pursuant to § 6033(j), grants and contributions made to the organization by persons unaware of the change in the status of the organization generally will be considered allowable if made on or before the date of publication of the list of revoked organizations required by § 6033(j).

Publication in either case may be effected in the Internal Revenue Bulletin or on the IRS's website at <http://www.irs.gov> or by such other means designed to put the public on notice of the change in the organization's status.

Under certain circumstances, such as where a legally enforceable obligation under local law has been made to the organization prior to the date of publication, and the satisfaction of such obligation is on or after the date, the allowance period may be extended upon specific exercise of authority under § 7805(b). See, for example, Rev. Rul. 78-129, 1978-1 C.B. 67. However, the IRS is not precluded from disallowing a deduction for any contribution made after an organization ceases to qualify under § 170, where grantor or contributor (1) had knowledge of the revocation of the ruling or determination letter prior to publication of the revocation, (2) was aware that such revocation was imminent, or (3) was in part responsible for, or was aware of, the activities or deficiencies on the part of the organization that gave rise to the loss of qualification.

.02 Foundation status. With regard to an organization's public charity status under § 509(a)(1), (2), or (3), grantors and contributors may rely on the classification of an organization listed in or covered by Publication 78 or the BMF extract for such purpose to the same extent as provided for § 170 purposes in paragraph .01 above. To the extent included in Publication 78 or the BMF extract, this includes whether a § 509(a)(3) organization is a Type I, Type II, Type III, or Type III functionally integrated supporting organization. Private foundations and sponsoring organizations of donor-advised funds may rely on an organization's foundation status (or supporting organization type) set forth in Publication 78 or the BMF extract for grant making purposes under §§ 4942, 4945, and 4966, except where the grantor (1) had knowledge of the revocation of the ruling or determination letter classifying the organization as one described in § 509(a)(1), (2), or (3) (or specifying its supporting organization type) prior to the publication of the revocation; or (2) was in part responsible for, or was aware of, the act or the failure to act that gave rise to the revocation of the ruling or determination letter classifying the organization as one described in § 509(a)(1), (2), or (3) (or specifying its supporting organization type).

.03 The advance assurance of deductibility and foundation status provided by paragraphs .01 and .02 above, respectively, applies only to grants or contributions made to an organization listed in or covered by Publication 78 or the BMF extract in the organization's official name, its recognized popular name, or a contraction of either of these names that is reasonably identifiable or widely known. The advance assurance of deductibility and foundation status provided by paragraphs .01 and .02 does not apply to contributions or grants made nominally to an organization listed in or covered by Publication 78 or the BMF extract but with the understanding or on a condition that they be made available to or for the use of an organization not listed in or covered by Publication 78 or the BMF extract.

.04 The provisions of paragraphs .01 and .02 above do not apply to an organization that is not listed in or covered by Publication 78 or the BMF extract. In such a case the effect of a ruling or determination letter concerning the deductibility of contributions to the organization or its foundation status is determined in the manner described in Rev. Proc. 2011-4, 2011-1 I.R.B. 123.

.05 The advance assurance of deductibility and foundation status provided by paragraphs .01 and .02 above do not apply to local organizations included in a group ruling regardless of whether the local organization appears in the BMF extract. For further reliance information, follow the procedures listed in Publication 4573, Group Exemptions, and contact the tax-exempt central organization.

SECTION 4. RELIANCE ON BMF INFORMATION FROM OTHER SOURCES

A grantor or contributor may rely on information about an organization from the BMF extract that is obtained from a third party, so long as the following requirements are met:

- (1) The third party provides a report to the grantor or contributor that includes: (A) the organization's name, EIN, foundation status under § 509(a)(1), (2), or (3) (including supporting organization type, if applicable), and whether contributions to such organization are deductible ; (B) a statement that the information is from the most current update of the BMF extract and the BMF extract revision date; and (C) the date and time the information was provided to the grantor or contributor; and
- (2) The grantor or contributor retains a copy of the report in hard copy or electronically.

SECTION 5. RELATIONSHIP WITH § 7428

.01 Section 7428 creates a remedy under declaratory judgment procedures, in part, for cases involving a determination by the IRS with respect to the continuing qualification of an organization as one described in § 170(c)(2) or § 501(c)(3), or to the continuing classification of an organization under § 509(a). The remedy is available in these cases if the IRS determines that revocation of exemption under § 501(c)(3), deductibility status under §170(c)(2), or foundation status under § 509(a) is appropriate, the organization has exhausted its administrative remedies, and the IRS has issued a final adverse determination letter to the organization. Under § 7428(b)(4), no action may be brought under § 7428 with respect to any revocation of status described in § 6033(j)(1).

.02 However, § 7428(c) provides for the "validation of certain contributions" made during the pendency of a proceeding for declaratory judgment involving the

revocation of a determination that the organization is described in § 170(c)(2). Under this provision, the organization continues to be treated as an eligible organization described in § 170(c)(2) with respect to contributions from individuals (up to a maximum of \$1,000 in the aggregate during the pendency of the proceeding) and from other charitable organizations described in § 170(c)(2). Statutory protection for such contributions, if declaratory judgment is sought on the revocation action, would begin on the date of publication of the revocation and end on the date on which a decision in the Tax Court becomes final or a judgment of the District Court of the United States for the District of Columbia or the Court of Federal Claims is entered that the organization is not described in § 170(c)(2). This reliance, however, is not extended to any individual who was responsible, in whole or in part, for the activities (or failures to act) on the part of the organization that were the basis for the revocation.

SECTION 6. ERRORS OR OMISSIONS

Any errors or omissions in Publication 78 or the BMF extract should be reported by the tax-exempt organization to the toll-free IRS customer service line at 1-877-829-5500.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 82-39, 1982-1 C.B. 759, is modified and superseded. Rev. Proc. 2009-32, 2009-28 I.R.B. 142 is modified and superseded.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective immediately upon publication in the Internal Revenue Bulletin.

SECTION 9. DRAFTING INFORMATION

The principal author of this Revenue Procedure is Melinda Williams of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this notice, contact Ms. Williams at 202-283-9467 (not a toll-free call).