



TAX EXEMPT AND
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DEPARTMENT OF THE TREASURY
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MEMORANDUM FOR MANAGER, EO DETERMINATIONS

FROM: Holly Paz /s/ *Holly Paz*
Director, EO Rulings and Agreements

SUBJECT: Type III Supporting Organizations

The Pension Protection Act of 2006, Pub. L. No. 109-208 (PPA) enacted certain requirements that affect all §509(a)(3) supporting organizations. It created a new category of Type III supporting organization, the functionally integrated Type III supporting organization, which is not subject to some of the more restrictive PPA requirements.

The IRS and Treasury issued proposed regulations regarding classification of Type III supporting organizations on September 24, 2009 (74 Fed. Reg. 48672). A memorandum from the Director, EO Rulings and Agreements, dated September 25, 2009, provided notice that EO Determinations could issue determination letters classifying organizations that met the criteria set forth in the 2009 proposed regulations as functionally integrated Type III supporting organizations, pending issuance of final or temporary regulations.

The IRS and Treasury issued final and temporary regulations on December 28, 2012, (77 Fed. Reg. 76382) regarding classification of Type III supporting organizations.

The purpose of this memorandum is to provide notice that EO Determinations should cease to issue determination letters based on the 2009 proposed regulations. Effective immediately, EO Determinations may issue determination letters classifying organizations as either functionally integrated or non-functionally integrated Type III supporting organizations if they satisfy the criteria set forth in the final and temporary regulations.

In addition to the general requirements that all Type III supporting organizations must satisfy, an organization seeking classification as a Type III supporting organization must satisfy either the integral part test for a functionally integrated Type III supporting organization (§1.509(a)-4(i)(4)) or the integral part test for a non-functionally integrated Type III supporting organization (§1.509(a)-4(i)(5)). The final regulations provide three alternative ways in which an organization may satisfy the integral part test for qualification as a functionally integrated Type III supporting organization.

The first way an organization may satisfy the integral part test for a functionally integrated Type III supporting organization is to engage in activities substantially all of which directly further the exempt purposes of one or more supported organizations to which the supporting organization is responsive and which, but for the involvement of the supporting organization, would normally be engaged in by the supported organization(s) (§1.509(a)-4(i)(4)(i)(A)). Although the final regulations provide further clarification as to how an organization may satisfy this test, the criteria in the final regulations for satisfying this test are substantially similar to those provided in the 2009 proposed regulations.

The second way an organization may satisfy the integral part test for a functionally integrated Type III supporting organization is to be the parent of each of its supported organizations (§1.509(a)-4(i)(4)(i)(B)). The definition of “parent” in the final regulations is identical to the definition of “parent” in the 2009 proposed regulations. The IRS and Treasury intend to provide additional clarification regarding this definition in new proposed regulations. Until further notice, EO Determinations should continue to apply the definition of “parent” currently in the final regulations.

The third way an organization may satisfy the integral part test for a functionally integrated Type III supporting organization is to support a governmental entity (§1.509(a)-4(i)(4)(i)(C)). The 2009 proposed regulations provided a “governmental entity exception.” However, that exception no longer applies, and the final regulations reserve guidance on how an organization may satisfy the integral part test by supporting a governmental entity. The IRS and Treasury intend to issue proposed regulations providing such guidance. Until further notice, EO Determinations should hold all new or pending applications or requests for determinations that an organization is a functionally integrated Type III supporting organization because it supports a governmental supported entity, unless the organization otherwise satisfies the integral part test under either §1.509(a)-4(i)(4)(i)(A) or §1.509(a)-4(i)(4)(i)(B).

The final and temporary regulations provide certain transition rules applicable to organizations that were in existence on December 28, 2012 (§1.509(a)-4(i)(11)). Revenue agents or tax law specialists with questions regarding the transition rules should contact Brad Bedingfield (202-283-9966) or Stephanie Robbins (202-283-9469).

Non-functionally integrated Type III supporting organizations, like private foundations, may request advance approval to have certain set-asides count toward their distribution requirements by filing Form 8940 (§1.509(a)-4(i)(6)(v)). The request must include a written statement, signed under penalty of perjury by a principal officer of each supported organization whose exempt purposes the specific project accomplishes, stating that the supported organization approves the project as one that accomplishes one or more of the supported organization's tax-exempt purposes and that the supported organization approves the supporting organization's determination that the project can be better accomplished by the set-aside than an immediate payment of funds.

This memorandum applies both to organizations that submit an exemption application (Form 1023) and to those with a determination letter that seek a determination of type of supporting organization or a change in foundation status (Form 8940). It is effective for applications and requests for determination received after the date of the memorandum as well as those currently in inventory.

The content of this memorandum will be incorporated in IRM 7.20.3.

cc: www.irs.gov