

Rev. Proc. 75-13, 1975-1 C.B. 662, modified, Rev. Proc. 92-59

SECTION 1. PURPOSE

The purpose of this Revenue Procedure is to amplify Rev. Proc. 71-39, 1971-2 C.B. 575, by setting forth procedures under which a public interest law firm may accept fees for its services.

SEC. 2. GENERAL.

.01. Rev. Proc. 71-39 provides guidelines under which the Service will issue advance rulings of exemption to public interest law firms and test the charitable character of such organizations already holding favorable rulings. Section 3.02 of Rev. Proc. 71-39 provides that the public interest law firm does not accept fees for its services except in accordance with procedures approved by the Service.

.02. Section 3 below sets forth approved procedures for the acceptance of attorneys' fees. These procedures are not applicable to out-of-pocket costs incurred in litigation. Courts have traditionally distinguished out-of-pocket costs such as filing fees, travel expenses, and expert witness fees from attorneys' fees. With respect to such out-of-pocket expenses, which are usually nominal in comparison to the amount of attorney's fees, a public interest law firm may accept reimbursement from its clients or from opposing parties.

SEC. 3. ACCEPTANCE OF ATTORNEYS' FEES.

.01. The organization does not seek or accept attorneys' fees from its clients as compensation for the provision of legal services.

.02. The organization may accept attorneys' fees in public interest cases if such fees are paid by opposing parties and are awarded by a court or administrative agency or approved by such a body in a settlement agreement.

.03. The organization does not use the likelihood or probability of a fee award as a consideration in its selection of cases.

.04. The organization uses awarded fees exclusively for the purpose of defraying its normal operating expenses. No more than 50 percent of the total cost of its legal functions is defrayed from awarded fees. This percentage is to be calculated over a five year period, including the taxable year in which any awarded fee is received and the four preceding taxable years (or any lesser period of existence). Costs of legal functions include: attorneys' salaries, nonprofessional salaries, overhead, and other costs directly attributable to the performance of the organization's legal functions. An organization may submit a ruling request where an exception to the above 50 percent limitation appears warranted.

.05. Attorneys' fees are paid to the organization rather than to individual staff attorneys. The organization compensates its attorneys and employees on a straight salary basis, not exceeding reasonable salary levels and not established in reference to any fees recovered. For example, the attorneys' salaries may conform to those of comparable government attorneys.

.06. The organization does not accept awarded fees or seek such fees in any circumstances that would result in any conflict with state statutes or professional canons of ethics.

.07. In addition to the information required by section 3.04 of Rev. Proc. 71-39, the organization files with its annual information return a report of all fees sought and recovered.

SEC. 4. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 71-39 amplified.

SEC. 5. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to its number and be addressed to Assistant Commissioner (Employee Plans and Exempt Organizations), Attention: E:EO Washington, D.C. 20224.