

(1) If the case involves an exempt status issue on which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations generally must seek technical advice from EO Technical.

(2) EO Determinations does not have to seek technical advice if the prior ruling or technical advice has been revoked by subsequent contrary published precedent or if the proposed revocation involves a subordinate unit of an organization that holds a group exemption letter issued by EO Technical, the EO Technical ruling or technical advice was issued under the Internal Revenue Code of 1939 or prior revenue acts, or if the ruling was issued in response to Form 4653, *Notification Concerning Foundation Status*.

SECTION 13. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2010–9 is superseded.

SECTION 14. EFFECTIVE DATE

This revenue procedure is effective January 10, 2011.

SECTION 15. PAPERWORK REDUCTION ACT

The collection of information for a letter application under section 3.05 of this revenue procedure has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–2080. All other collections of information under this revenue procedure have been approved under separate OMB control numbers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of this information is required if an organization wants to be recognized as tax-exempt by the Service. We need the information to determine whether the organization meets the legal requirements for tax-exempt status. In addition, this information will be used to help the Service delete certain information from the text of an adverse determination letter or ruling before it is made available for public inspection, as required by § 6110.

The time needed to complete and file a letter application will vary depending on individual circumstances. The estimated average time is 10 hours.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. The rules governing the confidentiality of letter applications are covered in § 6104.

DRAFTING INFORMATION

The principal author of this revenue procedure is Matthew Giuliano of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the TE/GE Customer Service office at (877) 829–5500 (a toll-free call).

Rev. Proc. 2011–10

SECTION 1. PURPOSE AND SCOPE

.01 The purpose of this revenue procedure is to set forth updated procedures of the Internal Revenue Service with respect to issuing rulings and determination letters on private foundation status under § 509(a) of the Internal Revenue Code, operating foundation status under § 4942(j)(3), and exempt operating foundation status under § 4940(d)(2), of organizations exempt from Federal income tax under

§ 501(c)(3). This revenue procedure also applies to the issuance of determination letters on the foundation status under § 509(a)(3) of nonexempt charitable trusts described in § 4947(a)(1).

SECTION 2. BACKGROUND

.01 All § 501(c)(3) organizations are classified as private foundations under § 509(a) unless they qualify as a public charity under § 509(a)(1) (which cross-references § 170(b)(1)(A)(i)-(vi)), 509(a)(2), 509(a)(3), or 509(a)(4). See Treas. Reg. §§ 1.170A–9T, 1.509(a)–1

through 1.509(a)–7. The IRS determines an organization’s private foundation or public charity status when it files Form 1023. This status will be included in the organization’s determination letter.

.02 In its Form 990 information return, a public charity indicates the paragraph of § 509(a), and subparagraph of § 170(b)(1)(A), if applicable, under which it qualifies as a public charity. Because of changes in its activities or operations, this may differ from the public charity status listed in its original determination letter. While an organization is not required to obtain a determination letter to qualify for

the new public charity status, in order for IRS records to recognize any change in public charity status, an organization must obtain a new determination of foundation status pursuant to this revenue procedure.

.03 If a public charity no longer qualifies as a public charity under §§ 509(a)(1)-(4), then it becomes a private foundation and must file Form 990-PF annual information returns. It is not necessary for the organization to obtain a determination letter on its new private foundation status (although it is permitted to do so pursuant to this revenue procedure). The organization indicates this change in foundation status by filing its Form 990-PF return and following any procedures specified in the form, instructions or other published guidance. Thereafter, the organization may terminate its private foundation status, such as by giving notice and qualifying as a public charity again under §§ 509(a)(1)-(3) during a 60-month termination period in accordance with the procedures under § 507(b)(1)(B) and Treas. Reg. § 1.507-2T(b).

.04 This revenue procedure applies to organizations that may have erroneously determined that the organization was a private foundation and wish to correct the error. For example, an organization may have erroneously classified an item or items in its calculation of public support, causing the organization to classify itself as a private foundation and to file Forms 990-PF. Pursuant to this revenue procedure, the organization can request to be classified as a public charity by showing that it continuously met the public support tests during the relevant periods. See section 6.02(4) below.

.05 A private foundation may qualify as an operating foundation under § 4942(j)(3) without an IRS determination letter, but the IRS will not recognize such status in IRS records without an IRS determination letter. An organization claiming to be an exempt operating foundation under § 4940(d)(2) must obtain an IRS determination letter recognizing such status to be exempt from the § 4940 tax on net investment income.

SECTION 3. DETERMINATIONS OF FOUNDATION STATUS

.01 EO Determinations will issue determination letters on foundation status, including whether an organization is:

- (1) a private foundation;
- (2) a public charity described in §§ 509(a)(1) and 170(b)(1)(A) (other than clauses (v), (vii) and (viii));
- (3) a public charity described in § 509(a)(2) or (4);
- (4) a public charity described in § 509(a)(3), whether such organization is described in § 509(a)(3)(B)(i), (ii), or (iii) (“supporting organization type”), and whether or not a Type III supporting organization is functionally integrated;
- (5) a private operating foundation described in § 4942(j)(3); or
- (6) an exempt operating foundation described in § 4940(d)(2).

.02 EO Determinations will also issue determination letters on whether a nonexempt charitable trust described in § 4947(a)(1) is described in § 509(a)(3).

.03 EO Determinations will issue such determinations in response to applications for recognition of exempt status under § 501(c)(3), submitted by organizations pursuant to § 508(b). EO Determinations will also issue such determinations in response to separate requests for determination of foundation status.

SECTION 4. APPLICABILITY OF ANNUAL REVENUE PROCEDURES

.01 Rev. Proc. 2011-9 (updated annually) provides procedures of the IRS in processing applications for recognition of exemption from Federal income tax under § 501(c)(3). Rev. Proc. 2011-4 (updated annually) governs requests for rulings and determination letters. Rev. Proc. 2011-8 (updated annually) prescribes user fees for applications, rulings and other determinations. Except as specifically noted herein, those procedures and their annual successors also apply to requests for determinations of foundation status.

.02 The provisions of Rev. Proc. 2011-9 and any successor revenue procedure regarding § 7428, protest, conference, and appeal rights also apply to all determinations of foundation status described in section 3.01 (except 3.01(6) relating to exempt operating foundation status) and

3.02, whether or not the request for determination is made in connection with an application for recognition of tax-exempt status.

.03 Where the issue of exemption under § 501(c)(3) is referred to EO Technical for decision under the procedures of Rev. Proc. 2011-9, the foundation status issue will be referred along with it.

SECTION 5. GENERALLY NO NEW DETERMINATION LETTER IF SAME STATUS IS SOUGHT

The IRS will not generally issue a new determination letter to a taxpayer that seeks a determination of private foundation status that is identical to its current foundation status as determined by the IRS. For example, an organization that is already recognized as described in § 509(a)(1) and 170(b)(1)(A)(ii) as a school generally will not receive a new determination letter that it is still described in §§ 509(a)(1) and 170(b)(1)(A)(ii) under the currently extant facts. The organization in such case could request a letter ruling, pursuant to Rev. Proc. 2011-4, that a given change of facts and circumstances will not adversely affect its status under §§ 509(a)(1) and 170(b)(1)(A)(ii).

SECTION 6. FORMAT OF REQUEST

.01 Organizations that are seeking to change their foundation status from one public charity classification to another public charity classification, or seeking a determination as to supporting organization type or functionally integrated status, or seeking operating foundation or exempt operating foundation status, should submit a written request for a determination as to foundation status pursuant to Revenue Procedure 2011-4 or its successor revenue procedure.

.02 The request must include the following:

(1) A subject line or other indicator on the first page of the request in bold, underlined, or all-capitals font indicating “REQUEST FOR DETERMINATION AS TO FOUNDATION STATUS.”

(2) A statement requesting reclassification from one specific foundation classification to another specific foundation classification, for example, § 509(a)(3) to § 509(a)(2).

(3) A statement describing the adverse tax impact on the organization (if any) if the organization does not receive the requested status.

(4) For requests for reclassification as an organization described in § 509(a)(1), and § 170(b)(1)(A)(vi) or 509(a)(2), either:

a. A copy of the organization's signed Form 990, Parts I through XI, or Form 990-EZ, Parts I through VI, with the completed Schedule A, *Public Charity Status and Public Support*, as filed with the Internal Revenue Service for the taxable year immediately preceding the taxable year in which the request is made; or

b. The organization's support information for the past five completed tax years, using the organization's overall method of accounting used to complete the Form 990 or Form 990-EZ for such years.

This information may be provided to the Internal Revenue Service on a completed Schedule A, *Public Charity Status and Public Support*, to the Form 990 or Form 990-EZ (2008 or later year, as appropriate).

c. For requests for reclassification as an organization described in § 509(a)(1) and § 170(b)(1)(A)(vi), a list showing the name of and amount contributed by each person (other than a governmental unit or an organization described in § 170(b)(1)(A)(vi), including a public charity that actually qualifies under § 170(b)(1)(A)(vi) but claims or is recognized under a different public charity status, such as a church or a hospital) whose total gifts for the past five completed tax years exceeded 2% of the organization's total support for this period, as described in Treas. Reg. § 1.170A-9T(f)(6) and (7). A "person" includes an organization as well as an individual. Also state the sum of these excess amounts (this amount is reported on Form 990, Schedule A, Part II, Section A, line 6).

d. For requests for reclassification as an organization described in § 509(a)(2), both:

(i) A list showing the name of each disqualified person (as defined in § 4946) that provided any support described in § 509(a)(2)(A), and the total amount of such support (without regard to the \$5,000 and 1% limitations) received in each tax year from each such person. Also state the sum of such amounts for each tax year

(these amounts are reported on Form 990, Schedule A, Part III, Section A, line 7a).

(ii) A list showing the name of each person other than a disqualified person (and showing the name of each bureau or similar agency of a governmental unit) that provided support described in § 509(a)(2)(A)(ii) in any of the organization's last five completed tax years in excess of the greater of (1) 1% of the organization's support in such year or (2) \$5,000, and showing the amount of such excess for each tax year. Also state the sum of such excess amounts for each tax year (these amounts are reported on Form 990, Schedule A, Part III, Section A, line 7b).

(5) If the organization is a private foundation, evidence that it meets the governing instrument requirements of § 508(e). See Rev. Rul. 75-38, 1975-1 C.B. 161.

(6) Such other information as is necessary to support the reclassification request and as required by Rev. Proc. 2011-4 or its successor.

SECTION 7. REQUESTS BY NONEXEMPT CHARITABLE TRUSTS

.01 A nonexempt charitable trust described in § 4947(a)(1) seeking a determination that it is described in § 509(a)(3) should submit a written request for a determination pursuant to Revenue Procedure 2011-4 or its successor revenue procedure.

.02 The request for determination must include the following information items, from the date that the organization became described in § 4947(a)(1) (but not before October 9, 1969) to the present:

(1) A subject line or other indicator on the first page of the request in bold, underlined, or all capitals font indicating "NONEXEMPT CHARITABLE TRUST REQUEST FOR DETERMINATION THAT IT IS DESCRIBED IN § 509(a)(3)"

(2) The name, address, and Employer Identification Number of the beneficiary organizations, together with a statement whether each such beneficiary organization is described in § 509(a)(1) or (2);

(3) A list of all of the trustees that have served, together with a statement stating whether such trustees were disqualified persons within the meaning of § 4946(a) (other than as foundation managers);

(4) A copy of the original trust instrument and all amendments adopted thereafter; and

(5) Sufficient information to otherwise establish that the trust has met the requirements of § 509(a)(3) as provided for in Treas. Reg. § 1.509(a)-4 (other than § 1.509(a)-4(i)(4)). If the trust did not qualify under § 509(a)(3) in one or more prior years after October 9, 1969 in which it was described in § 4947(a)(1), then it cannot be issued a § 509(a)(3) determination letter except in accordance with the procedures for termination of private foundation status under § 507(b)(1)(B).

(6) Such other information as is required for a determination under Rev. Proc. 2011-4 or its successor revenue procedure.

SECTION 8. DETERMINATIONS OPEN TO PUBLIC INSPECTION

Determinations and rulings as to foundation status are open to public inspection pursuant to § 6104(a).

SECTION 9. NOT APPLICABLE TO PRIVATE FOUNDATION TERMINATIONS UNDER § 507 OR CHANGES OF STATUS PURSUANT TO EXAMINATION

These procedures do not apply to a private foundation seeking to terminate its status under § 507. These procedures also do not apply to the examination of an organization that results in changes to its foundation status.

SECTION 10. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 72-50, 1972-2 C.B. 830, and Rev. Proc. 76-34, 1976-2 C.B. 656, are hereby modified and superseded. Announcements 85-88 and 2009-62 are hereby obsoleted.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective January 10, 2011.

SECTION 12. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have

been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 6.02 and

7.02. This information is required to evaluate and process the request for a letter ruling or determination letter. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are tax-exempt organizations.

DRAFTING INFORMATION

The principal author of this revenue procedure is Ward Thomas of the Exempt

Organizations, Tax Exempt and Government Entities Division. For further information about this revenue procedure, contact Customer Account Services at 877–829–5500 (a toll-free number). Ward Thomas can be emailed at tege.eo.ra@irs.gov. Please put “Question about Rev. Proc. 2011–10” in the subject line.

26 CFR 601.602: Tax forms and instructions.
(Also: Part I, §§ 1, 24, 25A, 32, 63, 132, 151, 221.)

Rev. Proc. 2011–12

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SECTION 3. EFFECTIVE DATE

SECTION 4. DRAFTING INFORMATION

SECTION 1. PURPOSE

This revenue procedure sets forth inflation adjusted items for 2011. Other inflation adjusted items for 2011 are in Rev.

Proc. 2010–40, 2010–46 I.R.B. 663 (dated November 15, 2010).

SECTION 2. 2011 ADJUSTED ITEMS

.01 *Tax Rate Tables*. For taxable years beginning in 2011, the tax rate tables under § 1 are as follows:

TABLE 1 — Section 1(a) — Married Individuals Filing Joint Returns and Surviving Spouses

If Taxable Income Is:

Not over \$17,000

Over \$17,000 but not over \$69,000

Over \$69,000 but not over \$139,350

Over \$139,350 but not over \$212,300

Over \$212,300 but not over \$379,150

Over \$379,150

The Tax Is:

10% of the taxable income

\$1,700 plus 15% of the excess over \$17,000

\$9,500 plus 25% of the excess over \$69,000

\$27,087.50 plus 28% of the excess over \$139,350

\$47,513.50 plus 33% of the excess over \$212,300

\$102,574 plus 35% of the excess over \$379,150