

# New Guidance for Nonprofits Making Corporate Changes

04.18.18 | Linda J. Rosenthal, JD



Many nonprofit organizations thrive year after year in the same location with the same mission, structure, activities, and operations. For others, though, large or small changes may be necessary or desirable; they and their advisors need to know if – and how – they must report these new developments to the Internal Revenue Service.

For many decades, the Treasury Department and the IRS had issued confusing – and sometimes conflicting – guidance based on the applicable statutes and regulations that were, themselves, hard to reconcile.

Finally, in February 2018, the Internal Revenue announced welcome new rules: [Revenue Procedure \(Rev. Proc.\) 2018-15](#). They are clearer, internally consistent, and less burdensome. They also expressly sweep aside any and all prior rulings and publications on the topic – including an IRS Publication just released in early 2018!

Specifically, Rev. Proc. 2018-15 explains when an organization can make a particular change without having to reapply for tax exemption. In a nutshell, for U.S. organizations, a new application is generally *not* required after a change in form or place in a corporate restructuring. The new rules apply for years beginning January 1, 2018.

## *Prior Law: Organizational Changes*

In earlier guidance, the IRS has indicated that a new exemption application *is* required if an exempt organization changes its legal structure (from a trust to a corporation, for instance), or if it winds up in one state and incorporates in another jurisdiction. See, for example, Publication 557, Tax Exempt Status for Your Organization (Rev. Jan. 2017) and Instructions for Form 990 Return of Organization Exempt from Income Tax (2016).

In other official rulings, though – see, for instance, Revenue Ruling 73-526, 1973-2 CB 404 – the agency’s position is that a new employer identification number (EIN) is *not* required, even for significant changes like when one corporation merges into another corporation that survives under State law. And the same tax rule is applied when a corporation chartered under one state moves and reincorporates there.

Similarly, the IRS had required new exemption applications even when the agency generally doesn’t require a new EIN; when an exempt association becomes a corporation, when a group reincorporates under an Act of Congress, and when an organization reincorporates in another state. See Revenue Ruling 67-390, 1967-2 CB 179, and Revenue Ruling 77-469, 1977-2 CB 196.

In other situations in which the IRS had not required a new EIN, there was no published guidance at all about whether a new exemption application is required. These situations include the continuation of a surviving corporation after a statutory merger of exempt organizations and what is required when an organization formed in one state files “articles of domestication” in a different state.

## New Rule

New Revenue Procedure 2018-15 has a clear purpose:

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*This revenue procedure reduces compliance burdens on certain exempt organizations by providing the circumstances under which the Internal Revenue Service (IRS) generally will not require domestic business entities to file a new exemption application when they change their form or state of organization.*

Revenue Ruling 67-390 and Revenue Ruling 77-469 are expressly overruled. Now, in most circumstances, ***tax-exempt organizations don’t have to reapply for tax exemption if they change organizational form or the state of incorporation.*** For these rules to apply, certain conditions must be met.

First, the original organization (now restructured) must be a U.S. corporation, or an unincorporated association classified as a corporation, and must be in good standing in the original state.

Second, the surviving organization must:

- be a US corporation or an unincorporated association classified as a corporation;
- carry out the same purposes as the restructured organization;
- use the same tax identification number as the restructured organization; and
- have articles that meet the 501(c)(3) organizational test if the restructured organization was a Section 501(c)(3) organization.

Third, the transaction in question must be one of (a) incorporation; (b) reincorporation to a different state; (c) domestication to a different state; or (d) statutory merger.

Rev. Proc. 2018-15 does *not* apply to a corporate restructuring where (1) either a restructuring or a surviving organization is “a disregarded entity, limited liability company, partnership, or foreign

business entity; or (2) the surviving organization obtains a new EIN.

**Conclusion**

The surviving organization reports this change on any required Form 990 for the applicable tax year and – in the case of a domestication or reincorporation – informs the Commissioner of Internal Revenue of the change of address in a prescribed manner. See Form 8822-B; Form 990; <https://www.irs.gov/charities-non-profits/other-non-profits/change-of-address-exemptorganizations>

For surviving organizations that don't meet the conditions of Rev. Proc. 2018-15, that document sets out the procedures for applying for a new determination letter on exempt status. (Sec. 5.05)