

IRS Announces Guidance Priorities for Exempt Organizations

11.22.16 | Linda J. Rosenthal, JD



Each year, the Internal Revenue Service issues a “[Priority Guidance Plan](#)” to announce the “tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance.”

The purpose of this document is to focus “resources on guidance items that are most important to taxpayers and tax administration. Published guidance plays an important role in increasing voluntary compliance by helping to clarify ambiguous areas of the tax law.”

New Priorities for Exempt Organizations Issued

On August 15, 2016, the [Treasury Department](#) issued the latest update of the [2016-2017 Priority Guidance Plan](#). It includes 281 projects across a broad spectrum of federal tax issues “that are priorities for allocation of the resources of our offices during the twelve-month period from July 2016 through June 2017.” Included are 15 issues of interest to exempt organizations and their advisors. Listed items are the “projects [the Treasury Department intends] to work on actively” during this time frame....” Development of this Plan followed Notice 2016-26 in which Treasury “solicited suggestions from all interested parties, including taxpayers, tax practitioners, and industry groups.” Tax officials “recognize the importance of public input to formulate a Priority Guidance Plan that focuses resources on guidance items that are most important to taxpayers and tax administration.” The items listed for exempt organizations are:

- Revenue procedures updating grantor and contributor reliance criteria under §§170 and 509.
- Revenue procedure to update Revenue Procedure 2011-33 for EO Select Check.
- Final regulations under §§501(a), 501(c)(3), and 508 relating to a streamlined application process for eligible organizations to apply for recognition of tax-exempt status under §501(c)(3). Final and temporary regulations were published on July 02, 2014.

- Update Revenue Ruling 67-390.
- Proposed regulations under §501(c) relating to political campaign intervention. Note: Project suspended in accordance with section 127 of the Department of the Treasury Appropriations Act, 2016 (Title I of Division E of the Consolidated Appropriations Act, 2016).
- Regulations and other guidance on §506 as added by the Protecting Americans from Tax Hikes Act of 2015. • PUBLISHED 07/12/16 in FR as TD 9775 (FINAL and TEMP). • PUBLISHED 07/25/16 in IRB 2016-30 as REV. PROC. 2016-41. (RELEASED 07/08/16).
- Final regulations on §509(a)(3) supporting organizations. Proposed regulations were published on February 19, 2016.
- Guidance under §512 regarding methods of allocating expenses relating to dual use facilities.
- Final regulations under §529A on Qualified ABLE Programs as added by §102 of the ABLE Act of 2014. Proposed regulations were published on June 22, 2015.
- Guidance under §4941 regarding a private foundation's investment in a partnership in which disqualified persons are also partners.
- Update to Revenue Procedure 92-94 on §§4942 and 4945.
- Guidance regarding the excise taxes on donor advised funds and fund management.
- Guidance under §6033 relating to the reporting of contributions.
- Final regulations under §6104(c). Proposed regulations were published on March 15, 2011.
- Final regulations under §7611 relating to church tax inquiries and examinations. Proposed regulations were published on August 5, 2009.

Example: No. 4, Update on Changing Domicile

The 4th item, indicating an intention to “[u]pdate Revenue Ruling 67-390,” appears to signal an official relaxation of the previously rigid position requiring an organization to “re-apply” for tax-exemption if it changes its corporate structure, including when an exempt organization reincorporates under the laws of another state – even if there is no change in charitable purposes. There was some unofficial, unpublished “evolution” on this issue in 2014 when the IRS issued Private Letter Ruling 201446025. (A private letter ruling is not officially published, but available online with redactions. It applies only to the party requesting help on a particular proposed transaction. Nevertheless, it can be helpful in understanding the thinking of IRS officials.)

In PLR 201446025, the IRS indicated that a 501(c)(3)'s move from one state to another without any change in its charitable mission or activities, is not considered the formation of a new legal entity or other change in structure that might otherwise require the filing of a new application for tax exemption. In this situation, the requesting organization had filed a certificate of conversion in its original state of domicile as well as articles of domestication in the new state. The result, therefore, was not the creation of a new entity but merely a continuation of the same entity with a new state of domicile.

It seems likely, then, that the “update to Revenue Ruling 67-390” will follow the reasoning of this recent private letter ruling. This new position will remove an important – but not the only – barrier to 501(c)(3)s which want, or need, to cross state lines. There may still be obstacles from state law.

Conclusion

While the items listed on the Priority Guidance Plan are ones that the Treasury Department intends to tackle during the upcoming year, there is an important caveat: "... issuance of the Plan does not place any deadline on completion of projects." The agency also issues updates during the year, and will, in several months, request input and advice from the public for the 2017-2018 priorities list.