

COMMITTEE ON NON-PROFIT ORGANIZATIONS

July 23, 2015

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Internal Revenue Service ATTN: C:PA:LPD:PR (Notice 2105-27) Room 5203 P.O. Box 7604 Ben Franklin Station Washington, DC 20024

Re: Effect on Tax-Exempt Status of Change of State of Domicile of Tax-Exempt Entity

Dear Internal Revenue Service:

As suggested in the enclosed July 9, 2015 letter from Mr. Jeffrey I. Cooper, Directory, EO Rulings & Agreements, we are sending to you for consideration a letter prepared by the Non-Profit Organizations Committee of the Association of the Bar of the City of New York requesting issuance of a Revenue Ruling that (1) confirms the holdings in Private Letter Ruling 201446025 and Private Letter Ruling 201426028 that a change in an entity's domicile or from a public nonprofit corporation to a nonprofit corporation under "conversion" and/or "domestication" state statutes does not necessitate a new exemption letter pursuant to section 508 of the Internal Revenue Code of 1986, as amended, and (2) holds that a mere change of the state of incorporation (or certain other intrastate changes in corporate status) of an exempt organization that requires the formation of a new entity does not necessitate the filing of a new Form 1023 and a new exemption letter, thereby superseding the Internal Revenue Service's position as enunciated in Revenue Ruling 67-390, 1967-2 C.B. 179.

We note that in response to Notice 2014-18, the American Bar Association has requested guidance regarding how to obtain a revised determination letter without the need for filing a new exemption application on Form 1023 or 1024, where there is a mere change in the form or state of incorporation. Our letter also requests guidance in this area and recommends issuance of a new Revenue Ruling.

Please feel free to contact me or Committee member Nina Krauthamer, Esq. at (212) 755-3333 or via email at krauthamer@ruchelaw.com with any questions you may have regarding the enclosed letter. Your consideration of this submission is greatly appreciated.

Very truly yours,

James Robert Pigott, Jr.

Chair, Non-Profit Organizations Committee



DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE

July 09, 2015

James Robert Pigott, Jr. Chair, Committee on Non-Profit Organizations New York City Bar 902 Broadway, 13th Floor New York, NY 10010-6033

Dear Mr. Pigott:

I am responding to your letter dated June 22, 2015, to John A. Koskinen, Commissioner of Internal Revenue. You requested that we issue a Revenue Ruling that confirms the holdings in two Private Letter Rulings. You also suggest that the new Revenue Ruling specify that a change of the state of incorporation of an exempt organization that requires the formation of a new entity does not necessitate the filing of a new Form 1023 and a new exemption letter.

While we appreciate your thoughtful analysis, the type of written guidance that you are requesting is the type of work that should be placed on the Priority Guidance Plan. The Treasury Department's Office of Tax Policy and the Internal Revenue Service use the Priority Guidance Plan each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance.

Treasury and the IRS welcome suggestions by practitioners and professional organizations for items to be included on the Priority Guidance Plan. We ask that you direct your submission to the following address:

Internal Revenue Service ATTN: CC:PA:LPD:PR (Notice 2015-27) Room 5203 P.O. Box 7604 Ben Franklin Station Washington, D.C. 20044

Alternatively, you may submit your suggestions and comments electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2015-0008 in the search field on the regulations.gov homepage to find this notice and submit comments.)

For additional information on the Priority Guidance Plan, please see Notice 2015-27. You have missed the deadline of May 1, 2015 for inclusion in the 2015-2016 Priority Guidance Plan but suggestions and comments are welcomed throughout the year.

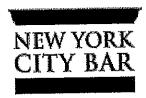
I hope this information is helpful. If you have any questions, please contact me at (202) 317-8989 or Elizabeth D. Goff at (202) 317-8534.

Sincerely,

Jeffrey I. Cooper

Director,

EO Rulings & Agreements



COMMITTEE ON NON-PROFIT ORGANIZATIONS

June 22, 2015

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BY FEDERAL EXPRESS

The Honorable John A. Koskinen Commissioner Internal Revenue Service 1111 Constitution Avenue, N.W. Washington, DC 20224

Re: Effect on Tax-Exempt Status of Change of State of Domicile of Tax-Exempt Entities

Dear Commissioner Koskinen:

The Non-Profit Organizations Committee of the Association of the Bar of the City of New York requests issuance of a Revenue Ruling that confirms the holdings in two recent Private Letter Rulings, Private Letter Ruling 201446025 issued 11/24/2014 ("PLR No. 1") and Private Letter Ruling 201426028 issued 6/27/2014 ("PLR No. 2"). PLR No.1 addressed a change in an exempt entity's domicile under "conversion" and/or "domestication" state statutes; PLR No. 2 addressed a change in status under state law from a public nonprofit corporation to a nonprofit corporation under the state's conversion statute. In both cases, the Internal Revenue Service held that the exempt entity was not required to obtain a new exemption letter. We further request that such a Revenue Ruling hold that a change of the state of incorporation (and certain other intrastate changes in corporate status) of an exempt organization that requires the formation of a new entity does not necessitate the filing of a new Form 1023 and a new exemption letter where the new entity is essentially the same as the old entity but for the change in state of incorporation (or corporate status). This Revenue Ruling would supersede the Internal Revenue Service's position as enunciated in Cases 3 and 4 of Revenue Ruling 67-390, 1967-2 C.B. 179.

PLR No. 1 and PLR No. 2 permit entities to effect changes in their organizational structure without the need for a new exemption letter in cases where there has been no change in charitable purpose or operations. PLR No. 1 involved a "conversion" of the organization, namely, a change in the state of incorporation by the filing of a certificate of conversion (or similar document) in the old state of incorporation and the filing of a "domestication" certificate in the new state of incorporation. PLR No. 2 involved the conversion of a "public nonprofit

corporation" to a "nonprofit corporation".

The Internal Revenue Service based its rulings on the conclusion that no new entity had been formed and distinguished these situations from Cases 3 and 4 of Revenue Ruling 67-390, 1967-2 C.B. 179, each of which appear to involve both an original and a new entity. We believe, for purposes of determining whether a new exemption letter must be obtained, that there is no policy reason to distinguish between (a) a change of domicile or from public nonprofit corporation to nonprofit corporation effected by a reorganization involving one entity (in the case of a "conversion" and/or "domestication") and an amendment of that entity's charter/certificate of incorporation, and (b) a reorganization involving a merger of an exempt organization into a newly-created entity (where under local law it is necessary to create a new entity) with a new charter/certificate of incorporation.

Section 508 of the Internal Revenue Code of 1986, as amended (the "Code"), which was enacted after Revenue Ruling 67-390), permits but does not require the Internal Revenue Service to require a new exemption letter for a "new" entity. Field Service Advice Memorandum (FSA) 200035003 summarizes the Internal Revenue Service's position as it relates to the need for a new exemption letter in the case of a change of state of incorporation:

Generally, when the exempt purpose of an organization remains the same after reorganization and no new legal entity is created, its tax-exempt status is not adversely affected. See Rev. Rul. 67-390 (1967-2 C.B. 179). However, the creation of a new legal entity can occur even though there are no material changes in the organization's purpose or method of operation when, for example, the organization changes its state of incorporation after the reorganization, or changes its classification from unincorporated to incorporated.

While arguably a change from unincorporated to corporate status may, under certain circumstances, be a sufficient change in the manner in which a charity is governed to warrant a new exemption letter, we question whether, under more modern state corporate statutes, a mere change in a charity's state of incorporation should be viewed as creating a "new" charitable entity. While both PLR No. 1 and PLR No.2 seem to distinguish between situations involving a single corporation (so-called "conversions" and/or "domestications") on the one hand, and "reincorporations" involving the creation of a new corporation on the other hand, we believe that there is no policy reason why a nonprofit corporation should be able to change its status or domicile by "conversion" and/or "domestication" without a new exemption ruling, while a nonprofit corporation that changes its domicile or status by "reincorporation" needs such a ruling.²

P.L. 91-172, §101(a), 83 Stat. 494, effective 10/9/1969.

The distinction between a domestication/conversion and reincorporation in PLR No. 1 and PLR No. 2 is not entirely clear. The letter rulings suggest that Internal Revenue Service views reincorporation as a change in status accomplished by means of merger of the old entity into a new entity, or an asset transfer by the old entity to the new entity. In any case, this should be clarified, as the distinction may not be readily apparent under the corporate law of a state.

PLR No. 1 held that since a change in the state of domicile of a nonprofit corporation was not a substantial change in the entity's character, purposes, or methods of operations (Treas. Reg. § 1.501(a)-(1)(a)(2)), the entity could rely on the previously-issued determination of tax-exempt status, and the entity would not be required to file a new application for exemption. PLR No. 1 involved a nonprofit corporation formed on Date 1 by a certificate of formation filed in State 1. On Date 2, the entity received recognition of exemption under I.R.C. § 501(c)(3) retroactive to its date of formation. The entity intended to file "Articles of Domestication" with State 2 and a Certificate of Conversion with State 1. The effect of these filings would be that the state of domicile would change from State 1 to State 2. The governing law of State 2 states that the filing of the Articles of Domestication will not affect the nonprofit's date of incorporation, which would remain Date 1. Further, the law of State 2 states that the entity is the same corporation as the one that existed under the laws of State 1. Similarly, the law of State 1 provides that following the filing of a Certificate of Conversion, the entity will continue to exist without interruption, and maintain the same liabilities and obligations. The ruling stated that the nonprofit made this change because the laws of State 2 offered more flexibility. The charitable purposes and operations of the nonprofit did not change.

PLR No. 1 distinguished its facts from those in American New Covenant Church v. Commissioner, 74 T.C. 293, 301 (T.C. 1980), which considered the question of whether a new organization was formed when an exempt unincorporated association changed its name and also presented articles of incorporation bearing this new name. The Internal Revenue Service determined that a new entity had been formed by the filing of these articles of incorporation. It concluded that (1) the newly-formed corporation was distinct from the unincorporated association that had previously filed an application for exemption and (2) the newly-formed corporation needed to file its own application. The Tax Court agreed, ruling "that the two organizations [should] be treated as separate, independent legal entities." The ruling stated that the Service, "was entirely justified in insisting that [the newly formed corporation] submit a new application in order to determine whether it met the regulation requirements for tax-exempt status." Rev. Rul. 77-469, 1977-2 C.B. 196, also cited in PLR No. 1, reached a similar conclusion, holding that that an organization that filed its application for exemption less than 15 months after its incorporation under state law was exempt as of the date of its incorporation even though it had operated as an unincorporated association for three years prior to its incorporation. The ruling highlighted that the corporation was a new legal entity, different from the unincorporated one. This position is understandable as the legal status and governance rules of corporations and unincorporated associations are significantly different.

PLR No. 1 also made reference to Revenue Ruling 67-390, 1967-2 C.B. 179, which considered four situations in which organizations previously ruled as exempt underwent structural changes:

Case 1. An exempt trust was reorganized and adopted a corporate form to carry out the same purposes for which the trust had been established. Its operations were not changed.

Case 2. An exempt unincorporated association was incorporated and continued the operations which had qualified it for exemption.

Case 3. An exempt organization incorporated under state law was reincorporated by an Act of Congress to carry out the same purposes contained in the state charter. Case 4. An exempt organization incorporated under the laws of one state was reincorporated under the laws of another state with no change in its purposes.

The ruling held that in all four situations a new legal entity had been created, and the new legal entity was required to apply for exemption.

The Internal Revenue Service held that the entity's State 2 domestication in PLR No. 1 was not comparable to the structural changes involved in Rev. Rul. 77-469, in American New Covenant Church v. Commissioner, 74 T.C. 293, 301 (T.C. 1980) or in Rev. Rul. 67-390 Cases 1 and 2. The organizations in those instances changed from an unincorporated association to a corporation or from a trust to a corporation, which was not the transaction under consideration in PLR No. 1. The domestication was held to be closer to, but distinguishable from, Cases 3 and 4 of Rev. Rul. 67-390, both of which involved a reincorporation of an existing corporate entity. Cases 3 and 4 involved a creation of a new legal entity, while under the conversion and domestication procedures in question, no new entity was created. The exempt organization simply filed an amendment to its formation document, rather than filing a new one, and therefore the Internal Revenue Service concluded that no new entity had been formed.³

PLR No. 2 held that a legislatively-mandated, intrastate conversion from "public nonprofit corporation" status to "nonprofit corporation" status did not require an organization to reapply for exemption. The entity was formed by an act of the state legislature to administer the Federal Family Education Loan Program. No articles of incorporation were required to be filed. The state enacted legislation changing the entity from a public nonprofit corporation to a nonprofit corporation. The legislation stated that the entity's existence remained uninterrupted from the date of its creation, but the entity was directed to effectuate the conversion by filing a certificate of formation or certificate of conversion. The ruling suggests that the entity filed the conversion certificate.

We applaud the Internal Revenue Service's sensible response to these two situations and believe it should be formalized in a Revenue Ruling. We further believe that there is ample Internal Revenue Service authority that would support a reconsideration of Cases 3 and 4 of Revenue Ruling 67-390. Cases 3 and 4 have not kept pace with the current state of the federal corporate tax law. The rule for when new tax-exempt status application should be required can appropriately be drawn from the federal corporate tax law involving corporate reorganizations

The ruling states that the situation would be different if a new corporation were created in State 2 and the entity merged into the new corporation or transferred its assets to the new corporation, as contemplated in cases 3 and 4, a position which we ask be reconsidered.

The Honorable John A. Koskinen June 22, 2015

(Code Section 368(a)). Specifically, a new tax exemption determination should not be required for those types of restructurings that would constitute an "F" reorganization under Code Section 368(a)(1)(F).

Generally, a "mere change in identity, form, or place of organization" constitutes a tax-free "F" reorganization. An "F" reorganization can be effected in a number of ways, *i.e.*, by merger, asset transfer or conversion. See Rev. Rul. 73-510, 1973-2 CB 386 (asset transfer); PLR 200528021 (conversion). The corporate reorganization rules do not distinguish among the different techniques used to make a mere change in identity, form or place of organization.

Under current tax law, the surviving entity is treated as the same entity as the transferor entity. In Revenue Ruling 73-526, 1973-2, a corporation chartered in one state reincorporated in another state by an asset transfer to a new corporate entity. The Internal Revenue Service held that the reincorporation constituted an "F" reorganization. The surviving corporation, treated as the same corporation as the transferor corporation, was not required to file a final tax return and its tax year did not close. Of equal importance is the holding that the surviving corporation was permitted to use the employer identification number (EIN) of its predecessor, because the surviving corporation is for federal income tax purposes treated as the same corporation as the transferor corporation.

An entity's EIN is akin to the unique fingerprints of an individual. If the Internal Revenue Service permits an entity to use the same EIN, the tax history of the entity follows. Along these lines, the Internal Revenue Service has held that a domestic corporation's election to be treated as a tax-favored possession corporation (doing business in Puerto Rico and the Virgin Islands) under Section 936 of the Internal Revenue Code was not terminated when the corporation changed its state of incorporation by merger in an "F" reorganization. Rev. Rul. 80-168, 1980-1 C.B. 178.

Consistent with current federal income tax law, it follows that once a charitable corporation has obtained a determination as to its tax-exempt status, the successor charitable entity in a transaction qualifying as an "F" reorganization should be entitled to rely on that determination letter, because the successor is the same entity, including when the entity is the successor by merger of a charity into a newly-created entity in a different state. As a policy matter, PLR No.1

The reorganization provisions of Section 368(a) apply to tax-exempt corporations. See PLR 9545014 (the transaction was considered an "E" reorganization under Section 368(a)(1)(E)) and PLR 9548034 (conversion of 501(c)(7) social club was an "F" reorganization).

Prior to 1982 when the law was amended to add "of one corporation" to the definition of an "F" reorganization, the law as to what constituted an "F" reorganization was less clear. The courts had permitted, under certain circumstances, the merger of active affiliated corporations to qualify as an "F" reorganization. After the 1982 amendment, this was no longer possible. Current law makes clear that only one corporation can undergo an "F" reorganization. The legislative history provides that more than one entity may be involved in an "F" reorganization if only one corporation is an operating company. HR Rep. No. 760, 97th Cong., 2d Sess. 541 (1982), 1982-2 CB 600, 634-635. The merger of the tax-exempt corporation into a corporation organized in the new state would qualify as an "F" reorganization even though there are two corporations as parties to the merger.

and PLR No. 2 hold that the change in domicile or status, itself, does not require a new exemption letter. We see no policy reason why a charitable corporation in an "F" reorganization involving a newly-created entity in the new state of incorporation should be required to obtain a new exemption letter, while a charitable corporation in an "F" reorganization that relies on a conversion or domestication statute would not (assuming no other change in purpose or activity). In both cases, the charity has simply changed its state of organization. A requirement of a new exemption letter, where there is no change of charitable purpose or activity, would unfairly penalize those charities organized in states that do not have a conversion or domestication statute, such as the State of New York. Moreover, such a requirement would appear to entail an unnecessary use of scarce Internal Revenue Service resources.

Accordingly, we respectfully request that the Internal Revenue Service issue a Revenue Ruling that that (1) confirms the holdings in PLR No. 1 and PLR No. 2, that a change in an entity's domicile or charitable type under "conversion" and/or "domestication" state statutes does not necessitate a new exemption letter pursuant to Code section 508 and (2) holds that a change of the state of incorporation (or certain other intrastate changes in corporate status as in PLR No. 2) of an exempt organization that requires the formation of a new entity does not necessitate the filing of a new Form 1023 and a new exemption letter, thereby superseding the Internal Revenue Service's position as enunciated in Revenue Ruling 67-390, 1967-2 C.B. 179.

Please contact me or Committee member Nina Krauthamer, Esq. at (212) 755-3333 or via email at krauthamer@ruchelaw.com with any questions you may have regarding this letter. Your consideration of this submission is greatly appreciated.

Respectfully,

James Robert Pigott, Jr

Chair, Non-Profit Organizations Committee

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