



COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

March 23, 2012

The Honorable Charles Boustany, Jr., M.D.  
Chairman  
Subcommittee on Oversight  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your letter to Commissioner Shulman dated March 1, 2012, requesting additional information about the tax-exempt sector. This response supplements my previous responses dated November 18, 2011, and March 12, 2012, and addresses the additional questions raised in your recent letter.

**Question 1. How many new tax-exempt organizations has the IRS recognized each year since 2008?**

The following table provides the total number of determination approvals<sup>1</sup> for FY 2008 – 2011:

<b>FY</b>	<b>Number of Determination Approvals</b>
2008	69,957
2009	62,459
2010	53,693
2011	54,713

<sup>1</sup> SOI data from IRS Data Book, Table 24, Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2008 (and subsequent fiscal years 2009-2011) at <http://www.irs.gov/taxstats/index.html>. This data reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status.

**Question 2. How many new applications for 501(c)(3) and (c)(4) tax-exempt status have been received by the IRS since 2008? Provide a breakdown by year and type of organization.**

The following table provides the number of new applications for tax-exempt status under sections 501(c)(3) and (c)(4) of the Code that were received for FY 2008 – 2011:

<b>FY</b>	<b>501(c)(3)</b>	<b>501(c)(4)</b>
2008	51,073	1,410
2009	52,303	1,571
2010	50,266	1,591
2011	55,962	2,242

**Question 3. What is the IRS process for reviewing each tax-exempt status application? Is this process the same for entities applying for section 501(c)(3) and (c)(4) tax-exempt status? Please describe the process for both section 501(c)(3) and (c)(4) applications in detail.**

The EO Submission Processing Center in Cincinnati, Ohio receives all applications for tax-exempt status. The Submission Processing Center inputs the applications into the EP/EO Determination System and processes the attached user fees. The application is then sent for initial technical screening.

This technical screening is conducted by EO Determinations' most experienced revenue agents who review the applications and, based on that review, separate the applications into the following four categories:

- Applications that can be approved immediately based on the completeness of the application and the information submitted;
- Applications that need only minor additional required information in the file in order to approve the application;
- Applications that do not contain the information needed to be considered substantially complete; and
- Applications that require further development by an agent in order to determine whether the application meets the requirements for tax-exempt status.

Organizations whose applications fall into the fourth category are sent letters informing them that more development of their application is needed, and that they will be contacted once their application has been assigned to a revenue agent. The applications are sent to unassigned inventory. They are held in unassigned inventory until a revenue agent with the appropriate level of experience for the issues involved has an opening in his or her caseload, which permits the assignment of a new case.<sup>2</sup>

Once the case is assigned, the revenue agent notifies the organization and reviews the application. Based upon established precedent and the facts and circumstances of the application, the agent requests additional relevant information and documentation to complete the application record and make a determination. Where an application for exemption presents issues that require further development to complete the application record, the IRS engages in a back and forth dialogue with the organization in order to obtain the needed information. This back and forth dialogue helps applicants better understand the requirements for exemption and what is needed to meet them, and it helps the IRS obtain all the information relevant to the determination.

Tools are available to promote consistent handling of full development cases. For example, in situations where there are a number of cases involving similar issues (such as credit counseling organizations, down payment assistance organizations, organizations that were automatically revoked and are seeking retroactive reinstatement, and most recently, advocacy organizations), the IRS will assign cases to designated employees to promote consistency. Additionally, EO Technical works with Chief Counsel to develop educational materials to assist the employees in issue spotting and crafting questions to develop cases consistently.

A complete application record is important. If the application is approved, not only is the application record made publicly available, but organizations that act as described in the application record have reliance on the IRS determination. If the application is denied, the organization may seek review from the Appeals Office, which reviews the complete application record and makes its own independent determination of whether the organization meets the requirements for tax-exempt status. If the Appeals Office decides the organization meets the requirements for tax-exempt status, the application will be approved. If the Appeals Office agrees that the application should be denied, there are two avenues that the applicant may take for seeking relief. All denied applicants may pay the tax owed as a taxable entity and seek a refund in federal court. Additionally, applicants requesting recognition under section 501(c)(3) may seek immediate declaratory judgment relief pursuant to section 7428 of the Code.

In those cases where the application raises issues for which there is no established published precedent or for which non-uniformity may exist, EO Determinations refers the application to EO Technical. In EO Technical, the applications are reviewed by tax law specialists whose job is to interpret and provide guidance on the law and who work closely with IRS Chief Counsel attorneys on the issues.

---

<sup>2</sup> Enclosure A describes the criteria used to determine the appropriate level of experience.

Similar to the process in EO Determinations, EO Technical tax law specialists develop cases based on the facts and circumstances of the issues in the specific application. If upon review of all of the information submitted, it appears that an organization does not meet the requirements for tax-exempt status, a proposed denial explaining the reasons the organization does not meet the requirements is issued. The organization is then entitled to a conference of right where it may provide additional information. Following the conference of right, a final determination is issued. If the application is approved, the application record is made publicly available, and if the organization acts as described in the application record, it has reliance on the IRS determination. If the application is denied, there are two avenues that the applicant may take for seeking relief. All denied applicants may pay the tax owed as a taxable entity and seek a refund in federal court. Additionally, applicants requesting recognition under section 501(c)(3) may seek immediate declaratory judgment relief pursuant to section 7428 of the Code.

The above described process for EO Determinations and EO Technical is identical for organizations applying for tax-exempt status under both section 501(c)(3) and under section 501(c)(4), with a few minor differences. First, organizations seeking 501(c)(3) tax-exempt status use Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. Organizations seeking 501(c)(4) tax-exempt status use Form 1024, Application for Recognition Under Section 501(a). Second, organizations recognized under section 501(c)(3) must also be classified as a public charity or a private foundation, a classification that does not apply for 501(c)(4) organizations. Third, as noted above, a 501(c)(3) applicant may seek immediate declaratory judgment relief under section 7428 of the Code if the application for tax-exempt status is denied.

**Question 4. Your preliminary response to my October 6, 2011 letter stated that “if the application is substantially complete, the IRS may retain the application and request additional information as needed.” How does the IRS determine that an application for tax-exempt status is “substantially complete?” Please provide guidelines or any other materials used in this process.**

Preliminarily, when EO Determinations revenue agents initiate the technical screening process, they look to see whether the application is substantially complete. If it is, the agent then reviews the information in the application to determine whether the application can be approved immediately based on the information contained in the application or whether more development is needed. If the application is not substantially complete, the application is sent back to the organization with a letter explaining why it is being returned.

Revenue Procedure 2012-9, 2012-2 I.R.B 261 (updated annually) provides minimal requirements of what constitutes a substantially complete application. Enclosure B is a copy of this revenue procedure for your review. Revenue Procedure 2012-9 provides that an application is substantially complete when it contains the following information:

- It is signed by an authorized individual;
- It includes an Employee Identification Number (EIN);

- It includes, for organizations other than those described in section 501(c)(3), a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years (or the years the organization was in existence, if less than four years), and if the organization has not yet commenced operations or has not completed one accounting period, a proposed budget for two full accounting periods and a current statement of assets and liabilities (for organizations described in section 501(c)(3), see Form 1023 and Notice 1382)
- It includes a detailed narrative statement of proposed activities, including each of the fundraising activities of a section 501(c)(3) organization, and a narrative description of anticipated receipts and contemplated expenditures;
- It includes a copy of the organizing or enabling document that is signed by a principal officer or is accompanied by a written declaration signed by an authorized individual certifying that the document is a complete and accurate copy of the original or otherwise meets the requirements of a “conformed copy” as outlined in Rev. Proc. 68-14.
- If the organizing or enabling document is in the form of articles of incorporation, it includes evidence that the articles were filed with and approved by an appropriate state official (e.g., stamped “Filed” and dated by the Secretary of State); alternatively, a copy of the articles of incorporation may be submitted if accompanied by a written declaration signed by an authorized individual that the copy is a complete and accurate copy of the original copy that was filed and approved by the state; if a copy is submitted, the written declaration must include the date the articles were filed with the state;
- If the organization has adopted by-laws, it includes a current copy; the by-laws need not be signed if submitted as an attachment to the application for recognition of exemption; otherwise the by-laws must be verified as current by an authorized individual; and
- It is accompanied by the correct user fee and Form 8718, when applicable.

**Question 5. Does the IRS have standard procedures or forms it uses to “request additional information as needed” from applicants seeking tax-exempt status? Please provide any forms and related materials used.**

Yes, the general procedures for requesting additional information to develop an application are included in section 7.20.2 of the Internal Revenue Manual.<sup>3</sup> Although there is a template letter that describes the general information on the case development process, the letter does not specify the information to be requested from any particular organization. Enclosure C is a copy of the template letter.

The amount and type of development necessary to process an application to ensure that the legal requirements of tax-exemption are satisfied depends on several factors, which include the particular subsection under which the applicant seeks tax-exempt status, the comprehensiveness of the information provided in the application, and the issues raised by the application. Consequently, revenue agents prepare individualized questions and requests for

<sup>3</sup> IRM 7.20.2 is available at [http://www.irs.gov/irm/part7/irm\\_07-020-002.html](http://www.irs.gov/irm/part7/irm_07-020-002.html).

documents relevant to the application, which are attached to the above described general template letter. As noted in the response to question 3, with certain types of applications where the issues are similar or more complex, EO Technical, in coordination with Chief Counsel, develops educational materials to assist the revenue agents in issue spotting and crafting questions to develop those cases consistently.

**Question 6. Does the IRS select applicants for “follow-up” on an automated basis or is there an office or individual responsible for selecting incomplete applications? Please explain and provide details on any automated system used for these purposes. If decisions are made on an individual basis, please provide the guidelines and any related materials used.**

With regard to whether the decision to send an application for further development is an automated process, the answer is no. The range of organizations eligible for tax-exempt status under section 501(c), the requirements they must meet under the various subsections, and the diversity of the facts and circumstances presented by the applications, require individualized consideration. To ensure quality and consistency, only the most experienced EO Determinations revenue agents are assigned to technically screen applications. These agents use sound reasoning based on training and experience to determine whether the information in the application is sufficient to meet the organizational, operational, and other technical requirements of the Code and regulations for tax-exempt status, or whether the application needs further development.

**Question 7. How many tax-exempt applications since 2008 have been selected for “follow-up”? How many entities selected for follow-up were granted tax-exempt status?**

Preliminarily, please note that, with the exception of the number of applications received per year, all IRS statistics relating to applications for exempt status are based only on the application cases closed in any particular year. Additionally, applications are not always closed in the same year that they are received for a variety of reasons, including when during the year the applications were filed, whether a case can close through technical screening or requires full development, the back and forth dialogue between the revenue agent and the applicant to fully develop the application, and whether a case is transferred to EO Technical. Consequently, there often is no match between the year an application was filed and the year the application case is closed.

The below chart provides the total number of applications closed for FY 2008-2011, along with the percentage of applications closed each year through the technical screening process (i.e., cases in which further development was not required).

	Fiscal Year			
	2008	2009	2010	2011
Total number of applications closed <sup>4</sup>	84,220	77,305	65,590	61,004
Percentage of applications closed through technical screening	59%	57%	56%	60%

The below chart provides complete information regarding the nature of closures for all fully developed determination applications closed during FY 2008 – 2011.

EDS Closed Case Status Codes	Fiscal Year			
	2008	2009	2010	2011
Status 01 - Approved	20,252	18,778	17,237	17,850
Status 02 - Disapproved	1,242	480	517	217
Status 03 - Returned Incomplete	68	2,307	1,763	1,132
Status 04 - Withdrawn by Taxpayer	1,051	1,451	1,315	1,499
Status 08 - Refusal to Rule	*	0	0	5
Status 11 - Failure to Establish	7,572	7,877	6,402	2,554
Status 12 - Other	3,189	1,948	1,369	610
Status 30 - Correction Disposal	1,139	782	545	275
<b>Total</b>	<b>34,51X</b>	<b>33,623</b>	<b>29,148</b>	<b>24,142</b>

\* 3 or fewer

**Lastly, during the December 16, 2011 meeting with your staff, they requested examination results information on the listed transaction disclosures discussed in my November 18, 2011 response (under Question 5(b)(iv)). We are providing the results in this supplemental response.**

Pursuant to Treasury Regulations section 1.6011-4, a party that has participated in a listed or other reportable transaction must file a Form 8886 to meet its disclosure requirements. Failure to make such disclosure is subject to the penalty for failure to include reportable transaction information under section 6707A. Also, pursuant to Treas. Reg. section 1.6033-5, certain tax-exempt entities that are subject to section 4965 taxes are required to file Form 8886-T, Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction, to disclose information with respect to each prohibited tax shelter transaction to which the entity is a party.

<sup>4</sup> SOI data from IRS Data Book, Table 24, Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2008 (and subsequent fiscal years 2009-2011) at <http://www.irs.gov/taxstats/index.html>. This data reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status

We previously provided you with the number of filed Forms 8886 and Forms 8886-T related to TE/GE. Your staff requested examination results information on the listed transaction disclosures. The chart below provides collective examination results for the 110 Forms 8886 and Forms 8886-T Disclosures on listed transactions from 2006 – 2010.

When reviewing the chart, please note the following. First, taxpayers filing the disclosure forms often are uncertain whether they are subject to the disclosure filing requirements and, as a result, sometimes file protective disclosures to avoid potential penalties or to protect potential refund claims in the future. Therefore, some of these disclosed transactions may not warrant examination, as reflected by the 32 filed forms that resulted in no audit/ examination potential.

Second, Form 8886 and Form 8886-T disclosures are coded in the IRS data system based on the IRS Counsel office that has jurisdiction to address legal issues of the specific shelter type, not by which IRS office has compliance or examination jurisdiction over the taxpayer involved in the shelter. In other words, the IRS system codes the disclosures based on who has ownership over the legal issues, rather than who has jurisdiction over the taxpayer. So, even if the disclosure relates to a type of tax shelter transaction that falls under the legal oversight of TE/GE Counsel, the taxpayer who filed the disclosure may not be tax-exempt, but rather a for-profit, and therefore does not fall under TE/GE compliance jurisdiction, as shown by the 45 filed forms in the chart.

Third, in the 8 cases examined and closed as reflected in the chart, approximately \$234,000 in §6707A penalties were assessed for failure to timely disclose reportable, including listed, transactions. During examinations of TE/GE taxpayers engaged in certain listed transactions, the IRS discovered that non-TE/GE taxpayers had not timely filed Forms 8886 to disclose their participation in the same transactions. Although the taxpayers eventually filed the Forms 8886 that were shown in the IRS database, the lateness of those filings resulted in the assessment of the \$234,000 in section 6707A penalties.

<b>Examination Results</b>	<b># of Form 8886 &amp; Form 8886-T TE/GE Disclosures</b>
Currently reviewing for examination potential	25
No audit/ examination potential found	32
Not under TE/GE compliance jurisdiction	45
Examined and closed with Closing Agreement *	8
<b>Total</b>	<b>110</b>

\* When an examination concludes with a closing agreement, the agreement generally sets forth all adjustments, including penalties, to which the taxpayer has agreed.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Floyd L. Williams at (202) 622-4725.

Sincerely,



Joseph H. Grant  
Acting Commissioner

Enclosures

**EXEMPT ORGANIZATION DETERMINATIONS CASE ASSIGNMENT GUIDE  
CASE GRADING CRITERIA**

<b>CASE COMPLEXITY FACTORS</b>	<b>GRADE LEVEL DISTINCTIONS</b>	
	<b>GS-11</b>	<b>GS-12</b>
<b>Analysis of Application</b>	Application is basic; facts regarding nature and purpose are easily discernible. Private benefit/inurement issues unlikely but possible.	Application is complex and facts must be determined through analysis and questioning of applicant. Private benefit/inurement issues possible.
<b>Factual Complexity of Issues</b>	Issues are of average complexity and sensitivity. Established case development methods and procedures are usually adequate.	Issues may be sensitive or involve controversy. Case development methods and procedures must be adapted to case.
<b>Application of Tax Law</b>	Tax laws are in most cases applicable but occasionally involve unusual interpretation and application.	Tax laws are not always directly applicable. Research and analysis are required to establish proper interpretation and use of precedents.
<b>Interpersonal Skills</b>	Contacts are with representatives of applicants, organization members and contributors. Tact and diplomacy are required to resolve and elicit information and resolve questions and problems.	Contacts are with a variety of EO representatives and officers of considerable prominence in the community including accountants and legal representatives. Considerable tact and skillful negotiations are necessary since issues discussed are sometimes controversial and sensitive.
<b>Impact of Work</b>	Determination decision may impact other organizations; applicant's sole source of income may be from donations; and, the likelihood of media attention is limited.	Determination decision may impact other organizations nationwide; applicant has significant resources and determination decision may have significant social and economic implications with recurring effects in prior or subsequent tax years; and, widespread media attention is probable.

# Internal Revenue bulletin

Bulletin No. 2012-2  
January 9, 2012

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

## SPECIAL ANNOUNCEMENT

### T.D. 9559, page 252.

Final regulations amend the user fee regulations and establish a new user fee for individuals to take the registered tax return preparer competency examination.

## INCOME TAX

### Rev. Rul. 2012-1, page 255.

**Recurring item exception to the all events test.** This ruling clarifies the treatment of certain liabilities under the recurring item exception to the economic performance requirement under section 461(h)(3) of the Code. It also addresses the application of the "not material" and "better matching" requirement of the recurring item exception in the context of a lease and a service contract each having a term of one year. The ruling distinguishes contracts for the provision of services from insurance and warranty contracts and applies the recurring item exception differently. Rev. Proc. 2011-14 modified and amplified.

### T.D. 9559, page 252.

Final regulations amend the user fee regulations and establish a new user fee for individuals to take the registered tax return preparer competency examination.

### REG-149625-10, page 279.

Proposed regulations under section 382 of the Code provide exceptions to the segregation rules, under which certain transactions may create one or more additional public groups treated as 5-percent shareholders, for certain sales of loss corporation stock to small shareholders and for certain re-

demptions of small shareholders. The regulations also provide that in certain circumstances certain entities owning the loss corporation generally will be treated as having no more than one public group.

## EXEMPT ORGANIZATIONS

### Rev. Proc. 2012-9, page 261.

This procedure sets forth issuing determination letters and rulings on the exempt status of organizations under sections 501 and 521 of the Code. The procedures also apply to the revocation and modification of determination letters or rulings, and provide guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under section 7428 of the Code. Rev. Proc. 2011-9 superseded.

### Rev. Proc. 2012-10, page 273.

This procedure sets forth updated procedures with respect to issuing rulings and determination letters on private foundation status under § 509(a) of the 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 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). Rev. Proc. 2011-10 superseded.

(Continued on the next page)

Finding Lists begin on page ii.



Department of the Treasury  
Internal Revenue Service

## **ADMINISTRATIVE**

### **T.D. 9559, page 252.**

Final regulations amend the user fee regulations and establish a new user fee for individuals to take the registered tax return preparer competency examination.

### **Notice 2012-1, page 260.**

**Optional standard mileage rates for 2012.** This notice announces 55.5 cents as the optional standard mileage rate for substantiating the amount of the deduction for the business use of an automobile, 14 cents as the optional rate for use of an automobile as a charitable contribution, and 23 cents as the optional rate for use of an automobile as a medical or moving expense for 2012. The notice also provides the amount a taxpayer must use in calculating reductions to basis for depreciation taken under the business standard mileage rate and the maximum standard automobile cost for automobiles under a FAVR allowance. Notice 2010-88, as modified by Announcement 2011-40, is superseded.

### **Rev. Proc. 2012-12, page 275.**

This procedure describes the procedures and standards that organizations must follow to be identified by the Service as a qualifying organization that may accredit continuing education providers under section 10.9(a)(1)(iii) of Circular 230 and the procedures and standards that individuals and entities must follow to be approved as continuing education providers under section 10.9(a)(1) of Circular 230.

### **Announcement 2012-2, page 285.**

This announcement contains an update to Publication 1220, *Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935 and W-2G, Electronically*, revised 9-2011, concerning the filing of Form 1099-K.

**Rev. Proc. 2012-9**

**TABLE OF CONTENTS**

**SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?** ..... 262

.01 Description of terms used in this revenue procedure. .... 262

.02 Updated annually ..... 263

**SECTION 2. NATURE OF CHANGES AND RELATED REVENUE PROCEDURES.** ..... 263

.01 Rev. Proc. 2011-9 is superseded ..... 263

.02 Related revenue procedures ..... 263

.03 What changes have been made to Rev. Proc. 2011-9?..... 263

**SECTION 3. WHAT ARE THE PROCEDURES FOR REQUESTING RECOGNITION OF EXEMPT STATUS?** ..... 264

.01 In general. .... 264

.02 User fee ..... 264

.03 Form 1023 application ..... 264

.04 Form 1024 application ..... 264

.05 Letter application ..... 264

.06 Form 1028 application ..... 264

.07 Form 8871 notice for political organizations ..... 264

.08 Requirements for a substantially completed application ..... 264

.09 Terrorist organizations not eligible to apply for recognition of exemption. .... 265

**SECTION 4. WHAT ARE THE STANDARDS FOR ISSUING A DETERMINATION LETTER OR RULING ON EXEMPT STATUS?** ..... 265

.01 Exempt status must be established in application and supporting documents ..... 265

.02 Determination letter or ruling based solely on administrative record. .... 265

.03 Exempt status may be recognized in advance of actual operations ..... 265

.04 No letter if exempt status issue in litigation or under consideration within the Service. .... 266

.05 Incomplete application ..... 266

.06 Even if application is complete, additional information may be required. .... 266

.07 Expedited handling ..... 266

.08 May decline to issue group exemption ..... 266

**SECTION 5. WHAT OFFICES ISSUE AN EXEMPT STATUS DETERMINATION LETTER OR RULING?** ..... 267

.01 EO Determinations issues a determination letter in most cases ..... 267

.02 Certain applications referred to EO Technical ..... 267

.03 Technical advice may be requested in certain cases ..... 267

.04 Technical advice must be requested in certain cases ..... 267

**SECTION 6. WITHDRAWAL OF AN APPLICATION.** ..... 267

.01 Application may be withdrawn prior to issuance of a determination letter or ruling ..... 267

.02 § 7428 implications of withdrawal of application under § 501(c)(3)..... 267

**SECTION 7. WHAT ARE THE PROCEDURES WHEN EXEMPT STATUS IS DENIED?** ..... 267

.01 Proposed adverse determination letter or ruling. .... 267

.02 Appeal of a proposed adverse determination letter issued by EO Determinations ..... 268

.03 Protest of a proposed adverse ruling issued by EO Technical ..... 268

.04 Final adverse determination letter or ruling where no appeal or protest is submitted. .... 268

.05 How EO Determinations handles an appeal of a proposed adverse determination letter ..... 268

.06 Consideration by the Appeals Office ..... 268

.07 If a protest of a proposed adverse ruling is submitted to EO Technical. .... 268

.08 An appeal or protest may be withdrawn ..... 268

.09 Appeal or protest and conference rights not applicable in certain situations ..... 268

**SECTION 8. DISCLOSURE OF APPLICATIONS AND DETERMINATION LETTERS AND RULINGS** ..... 268

.01 Disclosure of applications, supporting documents, and favorable determination letters or rulings .....	269
.02 Disclosure of adverse determination letters or rulings .....	269
.03 Disclosure to State officials when the Service refuses to recognize exemption under § 501(c)(3).....	269
.04 Disclosure to State officials of information about § 501(c)(3) applicants.....	269
<b>SECTION 9. REVIEW OF DETERMINATION LETTERS BY EO TECHNICAL .....</b>	<b>269</b>
.01 Determination letters may be reviewed by EO Technical to assure uniformity .....	269
.02 Procedures for cases where EO Technical takes exception to a determination letter .....	269
<b>SECTION 10. DECLARATORY JUDGMENT PROVISIONS OF § 7428 .....</b>	<b>270</b>
.01 Actual controversy involving certain issues .....	270
.02 Exhaustion of administrative remedies .....	270
.03 Not earlier than 270 days after seeking determination .....	270
.04 Service must have reasonable time to act on an appeal or protest .....	270
.05 Final determination to which § 7428 applies .....	270
<b>SECTION 11. EFFECT OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION .....</b>	<b>270</b>
.01 Effective date of exemption .....	270
.02 Reliance on determination letter or ruling.....	271
<b>SECTION 12. REVOCATION OR MODIFICATION OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION .....</b>	<b>271</b>
.01 Revocation or modification of a determination letter or ruling may be retroactive.....	271
.02 Appeal and conference procedures in the case of revocation or modification of exempt status letter.....	271
<b>SECTION 13. EFFECT ON OTHER REVENUE PROCEDURES .....</b>	<b>272</b>
<b>SECTION 14. EFFECTIVE DATE .....</b>	<b>272</b>
<b>SECTION 15. PAPERWORK REDUCTION ACT.....</b>	<b>272</b>
<b>DRAFTING INFORMATION.....</b>	<b>272</b>

**SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?**

This revenue procedure sets forth procedures for issuing determination letters and rulings on the exempt status of organizations under §§ 501 and 521 of the Internal Revenue Code other than those subject to Rev. Proc. 2012-6, last bulletin (relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans). Generally, the Service issues these determination letters and rulings in response to applications for recognition of exemption from Federal income tax. These procedures also apply to revocation or modification of determination letters or rulings. This revenue procedure also provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under § 7428 of the Code.

**Description of terms used in this revenue procedure**

.01 For purposes of this revenue procedure —

(1) The term “Service” means the Internal Revenue Service.

(2) The term “application” means the appropriate form or letter that an organization must file or submit to the Service for recognition of exemption from Federal income tax under the applicable section of the Internal Revenue Code. *See* section 3 for information on specific forms.

(3) The term “EO Determinations” means the office of the Service that is primarily responsible for processing initial applications for tax-exempt status. It includes the main EO Determinations office located in Cincinnati, Ohio, and other field offices that are under the direction and control of the Manager, EO Determinations. Applications are generally processed in the centralized EO Determinations office in Cincinnati, Ohio. However, some applications may be processed in other EO Determinations offices or referred to EO Technical.

(4) The term “EO Technical” means the office of the Service that is primarily responsible for issuing letter rulings to taxpayers on exempt organization matters, and for providing technical

advice or technical assistance to other offices of the Service on exempt organization matters. The EO Technical office is located in Washington, DC.

(5) The term “Appeals Office” means any office under the direction and control of the Chief, Appeals. The purpose of the Appeals Office is to resolve tax controversies, without litigation, on a fair and impartial basis. The Appeals Office is independent of EO Determinations and EO Technical.

(6) The term “determination letter” means a written statement issued by EO Determinations or an Appeals Office in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521. This includes a written statement issued by EO Determinations or an Appeals Office on the basis of advice secured from EO Technical pursuant to the procedures prescribed herein and in Rev. Proc. 2012–5.

(7) The term “ruling” means a written statement issued by EO Technical in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521.

(8) The term “Code” means the Internal Revenue Code.

#### **Updated annually**

.02 This revenue procedure is updated annually, but may be modified or amplified during the year.

## **SECTION 2. NATURE OF CHANGES AND RELATED REVENUE PROCEDURES**

#### **Rev. Proc. 2011–9 is superseded**

.01 This revenue procedure is a general update of Rev. Proc. 2011–9, 2011–2 I.R.B. 283, which is hereby superseded.

#### **Related revenue procedures**

.02 This revenue procedure supplements Rev. Proc. 2012–10, this Bulletin, with respect to the effects of § 7428 of the Code on the classification of organizations under §§ 509(a) and 4942(j)(3). Rev. Proc. 80–27, 1980–1 C.B. 677, sets forth procedures under which exemption may be recognized on a group basis for subordinate organizations affiliated with and under the general supervision and control of a central organization. Rev. Proc. 72–5, 1972–1 C.B. 709, provides information for religious and apostolic organizations seeking recognition of exemption under § 501(d). General procedures for requests for a determination letter or ruling are provided in Rev. Proc. 2012–4. User fees for requests for a determination letter or ruling are set forth in Rev. Proc. 2012–8.

#### **What changes have been made to Rev. Proc. 2011–9?**

.03 Notable changes to Rev. Proc. 2011–9 that appear in this year’s update include —

(1) Section 3.01 clarifies that Form 8718, *User Fee for Exempt Organization Determination Letter Request*, is not a determination letter application.

(2) A reference to § 501(r) is added to section 3.03 to cover hospitals seeking exemption under § 501(c)(3).

(3) Section 4.08 is added to describe existing practice that the Service may decline to issue a group exemption letter when appropriate in the interest of sound tax administration. *See* Rev. Proc. 2012–4, section 8.01.

(4) A new item (6) is added to section 12 to reflect revocation of exemption automatically pursuant to § 6033(j) for failure to file a required annual return or notice for three consecutive years.

**SECTION 3. WHAT ARE THE PROCEDURES FOR REQUESTING RECOGNITION OF EXEMPT STATUS?**

**In general**

.01 An organization seeking recognition of exempt status under § 501 or § 521 is required to submit the appropriate application. In the case of a numbered application form, the current version of the form must be submitted. A central organization that has previously received recognition of its own exemption can request a group exemption letter by submitting a letter application along with Form 8718, *User Fee for Exempt Organization Determination Letter Request*. See Rev. Proc. 80-27. Form 8718 is not a determination letter application. Attach this form to the determination letter application.

**User fee**

.02 An application must be submitted with the correct user fee, as set forth in Rev. Proc. 2012-8.

**Form 1023 application**

.03 An organization seeking recognition of exemption under § 501(c)(3) and § 501(e), (f), (k), (n), (q), or (r) must submit a completed Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. In the case of an organization that provides credit counseling services, see § 501(q) of the Code. In the case of an organization that is a hospital and is seeking exemption under § 501(c)(3), see § 501(r) of the Code.

**Form 1024 application**

.04 An organization seeking recognition of exemption under § 501(c)(2), (4), (5), (6), (7), (8), (9), (10), (12), (13), (15), (17), (19), or (25) must submit a completed Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, along with Form 8718. In the case of an organization that provides credit counseling services and seeks recognition of exemption under § 501(c)(4), see § 501(q) of the Code.

**Letter application**

.05 An organization seeking recognition of exemption under § 501(c)(11), (14), (16), (18), (21), (22), (23), (26), (27), (28), or (29), or under § 501(d), must submit a letter application along with Form 8718.

**Form 1028 application**

.06 An organization seeking recognition of exemption under § 521 must submit a completed Form 1028, *Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code*, along with Form 8718.

**Form 8871 notice for political organizations**

.07 A political party, a campaign committee for a candidate for federal, state or local office, and a political action committee are all political organizations subject to tax under § 527. To be tax-exempt, a political organization may be required to notify the Service that it is to be treated as a § 527 organization by electronically filing Form 8871, *Political Organization Notice of Section 527 Status*. For details, go to the IRS website at [www.irs.gov/polorgs](http://www.irs.gov/polorgs).

**Requirements for a substantially completed application**

.08 A substantially completed application, including a letter application, is one that:

(1) is signed by an authorized individual;

(2) includes an Employer Identification Number (EIN);

(3) for organizations other than those described in § 501(c)(3), includes a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years (or the years the organization was in existence, if less than four years), and if the organization has not yet commenced operations or has not completed one accounting period, a proposed budget for two full accounting periods and a current statement of assets and liabilities; for organizations described in § 501(c)(3), see Form 1023 and Notice 1382;

(4) includes a detailed narrative statement of proposed activities, including each of the fundraising activities of a § 501(c)(3) organization, and a narrative description of anticipated receipts and contemplated expenditures;

(5) includes a copy of the organizing or enabling document that is signed by a principal officer or is accompanied by a written declaration signed by an authorized individual certifying that the document is a complete and accurate copy of the original or otherwise meets the requirements of a “conformed copy” as outlined in Rev. Proc. 68-14, 1968-1 C.B. 768;

(6) if the organizing or enabling document is in the form of articles of incorporation, includes evidence that it was filed with and approved by an appropriate state official (*e.g.*, stamped “Filed” and dated by the Secretary of State); alternatively, a copy of the articles of incorporation may be submitted if accompanied by a written declaration signed by an authorized individual that the copy is a complete and accurate copy of the original copy that was filed with and approved by the state; if a copy is submitted, the written declaration must include the date the articles were filed with the state;

(7) if the organization has adopted by-laws, includes a current copy; the by-laws need not be signed if submitted as an attachment to the application for recognition of exemption; otherwise, the by-laws must be verified as current by an authorized individual; and

(8) is accompanied by the correct user fee and Form 8718, when applicable.

**Terrorist organizations not eligible to apply for recognition of exemption**

.09 An organization that is identified or designated as a terrorist organization within the meaning of § 501(p)(2) of the Code is not eligible to apply for recognition of exemption.

**SECTION 4. WHAT ARE THE STANDARDS FOR ISSUING A DETERMINATION LETTER OR RULING ON EXEMPT STATUS?**

**Exempt status must be established in application and supporting documents**

.01 A favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from Federal income tax is claimed.

**Determination letter or ruling based solely on administrative record**

.02 A determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record.

(1) The applicant is responsible for the accuracy of any factual representations contained in the application.

(2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalties of perjury statement.

(3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

**Exempt status may be recognized in advance of actual operations**

.03 Exempt status may be recognized in advance of the organization’s operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed.

(1) A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

(2) The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

(3) Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the

Service will generally issue a proposed adverse determination letter or ruling. *See also* section 7 of this revenue procedure.

**No letter if exempt status issue in litigation or under consideration within the Service**

.04 A determination letter or ruling on exempt status ordinarily will not be issued if an issue involving the organization's exempt status under § 501 or § 521 is pending in litigation, is under consideration within the Service, or if issuance of a determination letter or ruling is not in the interest of sound tax administration. If the Service declines to issue a determination or ruling to an organization seeking exempt status under § 501(c)(3), the organization may be able to pursue a declaratory judgment under § 7428, provided that it has exhausted its administrative remedies.

**Incomplete application**

.05 If an application does not contain all of the items set out in section 3.08 of this revenue procedure, the Service may return it to the applicant for completion.

(1) In lieu of returning an incomplete application, the Service may retain the application and request additional information needed for a substantially completed application.

(2) In the case of an application under § 501(c)(3) that is returned incomplete, the 270-day period referred to in § 7428(b)(2) will not be considered as starting until the date a substantially completed Form 1023 is refiled with or remailed to the Service. If the application is mailed to the Service and a postmark is not evident, the 270-day period will start to run on the date the Service actually receives the substantially completed Form 1023. The same rules apply for purposes of the notice requirement of § 508.

(3) Generally, the user fee will not be refunded if an incomplete application is filed. *See* Rev. Proc. 2012-8, section 10.

**Even if application is complete, additional information may be required**

.06 Even though an application is substantially complete, the Service may request additional information before issuing a determination letter or ruling.

(1) If the application involves an issue where contrary authorities exist, an applicant's failure to disclose and distinguish contrary authorities may result in requests for additional information, which could delay final action on the application.

(2) In the case of an application under § 501(c)(3), the period of time beginning on the date the Service requests additional information until the date the information is submitted to the Service will not be counted for purposes of the 270-day period referred to in § 7428(b)(2).

**Expedited handling**

.07 Applications are normally processed in the order of receipt by the Service. However, expedited handling of an application may be approved where a request is made in writing and contains a compelling reason for processing the application ahead of others. Upon approval of a request for expedited handling, an application will be considered out of its normal order. This does not mean the application will be immediately approved or denied. Circumstances generally warranting expedited processing include:

(1) a grant to the applicant is pending and the failure to secure the grant may have an adverse impact on the organization's ability to continue to operate;

(2) the purpose of the newly created organization is to provide disaster relief to victims of emergencies such as flood and hurricane; and

(3) there have been undue delays in issuing a determination letter or ruling caused by a Service error.

**May decline to issue group exemption**

.08 The Service may decline to issue a group exemption letter when appropriate in the interest of sound tax administration.

**SECTION 5. WHAT OFFICES  
ISSUE AN EXEMPT STATUS  
DETERMINATION LETTER  
OR RULING?**

**EO Determinations issues a  
determination letter in most cases**

.01 Under the general procedures outlined in Rev. Proc. 2012-4, EO Determinations is authorized to issue determination letters on applications for exempt status under §§ 501 and 521.

**Certain applications referred to  
EO Technical**

.02 EO Determinations will refer to EO Technical those applications that present issues which are not specifically covered by statute or regulations, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. In addition, EO Determinations will refer those applications that have been specifically reserved by revenue procedure or by other official Service instructions for handling by EO Technical for purposes of establishing uniformity or centralized control of designated categories of cases. EO Technical will notify the applicant organization upon receipt of a referred application, and will consider each such application and issue a ruling directly to the organization.

**Technical advice may be requested  
in certain cases**

.03 If at any time during the course of consideration of an exemption application by EO Determinations the organization believes that its case involves an issue on which there is no published precedent, or there has been non-uniformity in the Service's handling of similar cases, the organization may request that EO Determinations either refer the application to EO Technical or seek technical advice from EO Technical. *See* Rev. Proc. 2012-5, sections 4.04 and 4.05.

**Technical advice must be  
requested in certain cases**

.04 If EO Determinations proposes to recognize the exemption of an organization to which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations must seek technical advice from EO Technical before issuing a determination letter. This does not apply where EO Technical issued an adverse ruling and the organization subsequently made changes to its purposes, activities, or operations to remove the basis for which exempt status was denied.

**SECTION 6. WITHDRAWAL OF  
AN APPLICATION**

**Application may be withdrawn  
prior to issuance of a  
determination letter or ruling**

.01 An application may be withdrawn upon the written request of an authorized individual at any time prior to the issuance of a determination letter or ruling. Therefore, an application may not be withdrawn after the issuance of a proposed adverse determination letter or ruling.

(1) When an application is withdrawn, the Service will retain the application and all supporting documents. The Service may consider the information submitted in connection with the withdrawn request in a subsequent examination of the organization.

(2) Generally, the user fee will not be refunded if an application is withdrawn. *See* Rev. Proc. 2012-8, section 10.

**§ 7428 implications of withdrawal  
of application under § 501(c)(3)**

.02 The Service will not consider the withdrawal of an application under § 501(c)(3) as either a failure to make a determination within the meaning of § 7428(a)(2) or as an exhaustion of administrative remedies within the meaning of § 7428(b)(2).

**SECTION 7. WHAT ARE  
THE PROCEDURES WHEN  
EXEMPT STATUS IS DENIED?**

**Proposed adverse determination  
letter or ruling**

.01 If EO Determinations or EO Technical reaches the conclusion that the organization does not satisfy the requirements for exempt status pursuant to the section of the Code under which exemption is claimed, the Service generally will issue a proposed adverse determination letter or ruling, which will:

(1) include a detailed discussion of the Service's rationale for the denial of tax-exempt status; and

(2) advise the organization of its opportunity to appeal or protest the decision and request a conference.

**Appeal of a proposed adverse determination letter issued by EO Determinations**

.02 A proposed adverse determination letter issued by EO Determinations will advise the organization of its opportunity to appeal the determination by requesting Appeals Office consideration. To do this, the organization must submit a statement of the facts, law and arguments in support of its position within 30 days from the date of the adverse determination letter. The organization must also state whether it wishes an Appeals Office conference. Any determination letter issued on the basis of technical advice from EO Technical may not be appealed to the Appeals Office on issues that were the subject of the technical advice.

**Protest of a proposed adverse ruling issued by EO Technical**

.03 A proposed adverse ruling issued by EO Technical will advise the organization of its opportunity to file a protest statement within 30 days and to request a conference. If a conference is requested, the conference procedures outlined in Rev. Proc. 2012-4, section 12, are applicable.

**Final adverse determination letter or ruling where no appeal or protest is submitted**

.04 If an organization does not submit a timely appeal of a proposed adverse determination letter issued by EO Determinations, or a timely protest of a proposed adverse ruling issued by EO Technical, a final adverse determination letter or ruling will be issued to the organization. The final adverse letter or ruling will provide information about the filing of tax returns and the disclosure of the proposed and final adverse letters or rulings.

**How EO Determinations handles an appeal of a proposed adverse determination letter**

.05 If an organization submits an appeal of the proposed adverse determination letter, EO Determinations will first review the appeal, and, if it determines that the organization qualifies for tax-exempt status, issue a favorable exempt status determination letter. If EO Determinations maintains its adverse position after reviewing the appeal, it will forward the appeal and the exemption application case file to the Appeals Office.

**Consideration by the Appeals Office**

.06 The Appeals Office will consider the organization's appeal. If the Appeals Office agrees with the proposed adverse determination, it will either issue a final adverse determination or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, the Appeals Office will either issue a final adverse determination letter or a favorable determination letter. If the Appeals Office believes that an exemption or private foundation status issue is not covered by published precedent or that there is non-uniformity, the Appeals Office must request technical advice from EO Technical in accordance with Rev. Proc. 2012-5, sections 4.04 and 4.05.

**If a protest of a proposed adverse ruling is submitted to EO Technical**

.07 If an organization submits a protest of a proposed adverse exempt status ruling, EO Technical will review the protest statement. If the protest convinces EO Technical that the organization qualifies for tax-exempt status, a favorable ruling will be issued. If EO Technical maintains its adverse position after reviewing the protest, it will either issue a final adverse ruling or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, EO Technical will either issue a final adverse ruling or a favorable exempt status ruling.

**An appeal or protest may be withdrawn**

.08 An organization may withdraw its appeal or protest before the Service issues a final adverse determination letter or ruling. Upon receipt of the withdrawal request, the Service will complete the processing of the case in the same manner as if no appeal or protest was received.

**Appeal or protest and conference rights not applicable in certain situations**

.09 The opportunity to appeal or protest a proposed adverse determination letter or ruling and the conference rights described above are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

**SECTION 8. DISCLOSURE OF APPLICATIONS AND DETERMINATION LETTERS AND RULINGS**

Sections 6104 and 6110 of the Code provide rules for the disclosure of applications, including supporting documents, and determination letters and rulings.

**Disclosure of applications, supporting documents, and favorable determination letters or rulings**

.01 The applications, any supporting documents, and the favorable determination letter or ruling issued, are available for public inspection under § 6104(a)(1) of the Code. However, there are certain limited disclosure exceptions for a trade secret, patent, process, style of work, or apparatus, if the Service determines that the disclosure of the information would adversely affect the organization.

(1) The Service is required to make the applications, supporting documents, and favorable determination letters or rulings available upon request. The public can request this information by submitting Form 4506-A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form*. Organizations should ensure that applications and supporting documents do not include unnecessary personal identifying information (such as bank account numbers or social security numbers) that could result in identity theft or other adverse consequences if publicly disclosed.

(2) The exempt organization is required to make its exemption application, supporting documents, and determination letter or ruling available for public inspection without charge. For more information about the exempt organization's disclosure obligations, see Publication 557, *Tax-Exempt Status for Your Organization*.

**Disclosure of adverse determination letters or rulings**

.02 The Service is required to make adverse determination letters and rulings available for public inspection under § 6110 of the Code. Upon issuance of the final adverse determination letter or ruling to an organization, both the proposed adverse determination letter or ruling and the final adverse determination letter or ruling will be released pursuant to § 6110.

(1) These documents are made available to the public after the deletion of names, addresses, and any other information that might identify the taxpayer. See § 6110(c) for other specific disclosure exemptions.

(2) The final adverse determination letter or ruling will enclose Notice 437, *Notice of Intention to Disclose*, and redacted copies of the final and proposed adverse determination letters or rulings. Notice 437 provides instructions if the organization disagrees with the deletions proposed by the Service.

**Disclosure to State officials when the Service refuses to recognize exemption under § 501(c)(3)**

.03 The Service may notify the appropriate State officials of a refusal to recognize an organization as tax-exempt under § 501(c)(3). See § 6104(c) of the Code. The notice to the State officials may include a copy of a proposed or final adverse determination letter or ruling the Service issued to the organization. In addition, upon request by the appropriate State official, the Service may make available for inspection and copying the exemption application and other information relating to the Service's determination on exempt status.

**Disclosure to State officials of information about § 501(c)(3) applicants**

.04 The Service may disclose to State officials the name, address, and identification number of any organization that has applied for recognition of exemption under § 501(c)(3).

**SECTION 9. REVIEW OF DETERMINATION LETTERS BY EO TECHNICAL**

**Determination letters may be reviewed by EO Technical to assure uniformity**

.01 Determination letters issued by EO Determinations may be reviewed by EO Technical, or the Office of the Associate Chief Counsel (Passthroughs and Special Industries) (for cases under § 521), to assure uniform application of the statutes or regulations, or rulings, court opinions, or decisions published in the Internal Revenue Bulletin.

**Procedures for cases where EO Technical takes exception to a determination letter**

.02 If EO Technical takes exception to a determination letter issued by EO Determinations, the manager of EO Determinations will be advised. If EO Determinations notifies the organization of the exception taken, and the organization disagrees with the exception, the file will be returned to EO Technical. The referral to EO Technical will be treated as a request for technical advice, and the procedures in Rev. Proc. 2012-5 will be followed.

**SECTION 10. DECLARATORY  
JUDGMENT PROVISIONS OF  
§ 7428**

**Actual controversy involving  
certain issues**

.01 Generally, a declaratory judgment proceeding under § 7428 of the Code can be filed in the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia with respect to an actual controversy involving a determination by the Service or a failure of the Service to make a determination with respect to the initial or continuing qualification or classification of an organization under § 501(c)(3) (charitable, educational, etc.); § 170(c)(2) (deductibility of contributions); § 509(a) (private foundation status); § 4942(j)(3) (operating foundation status); or § 521 (farmers cooperatives).

**Exhaustion of administrative  
remedies**

.02 Before filing a declaratory judgment action, an organization must exhaust its administrative remedies by taking, in a timely manner, all reasonable steps to secure a determination from the Service. These include:

(1) the filing of a substantially completed application Form 1023 under § 501(c)(3) pursuant to section 3.08 of this revenue procedure, or the request for a determination of foundation status pursuant to Rev. Proc. 2012-10, this Bulletin, or its successor;

(2) in appropriate cases, requesting relief pursuant to Treas. Reg. § 301.9100-1 of the Procedure and Administration Regulations regarding the extension of time for making an election or application for relief from tax;

(3) the timely submission of all additional information requested by the Service to perfect an exemption application or request for determination of private foundation status; and

(4) exhaustion of all administrative appeals available within the Service pursuant to section 7 of this revenue procedure.

**Not earlier than 270 days after  
seeking determination**

.03 An organization will in no event be deemed to have exhausted its administrative remedies prior to the earlier of:

(1) the completion of the steps in section 10.02, and the sending by the Service by certified or registered mail of a final determination letter or ruling; or

(2) the expiration of the 270-day period described in § 7428(b)(2) in a case where the Service has not issued a final determination letter or ruling, and the organization has taken, in a timely manner, all reasonable steps to secure a determination letter or ruling.

**Service must have reasonable time  
to act on an appeal or protest**

.04 The steps described in section 10.02 will not be considered completed until the Service has had a reasonable time to act upon an appeal or protest, as the case may be.

**Final determination to which  
§ 7428 applies**

.05 A final determination to which § 7428 of the Code applies is a determination letter or ruling, sent by certified or registered mail, which holds that the organization is not described in § 501(c)(3) or § 170(c)(2), is a public charity described in a part of § 509 or § 170(b)(1)(A) other than the part under which the organization requested classification, is not a private foundation as defined in § 4942(j)(3), or is a private foundation and not a public charity described in a part of § 509 or § 170(b)(1)(A).

**SECTION 11. EFFECT OF  
DETERMINATION LETTER  
OR RULING RECOGNIZING  
EXEMPTION**

**Effective date of exemption**

.01 A determination letter or ruling recognizing exemption is usually effective as of the date of formation of an organization if its purposes and activities prior to the date of the determination letter or ruling were consistent with the requirements for exemption. However, special rules under § 508(a) of the Code may apply to an organization applying for exemption under § 501(c)(3), and special rules under § 505(c) may apply to an organization applying for exemption under § 501(c)(9), (17), or (20).

(1) If the Service requires the organization to alter its activities or make substantive amendments to its enabling instrument, the exemption will be effective as of the date specified in a determination letter or ruling.

(2) If the Service requires the organization to make a nonsubstantive amendment, exemption will ordinarily be recognized as of the date of formation. Examples of nonsubstantive amendments include correction of a clerical error in the enabling instrument or the addition of a dissolution clause where the activities of the organization prior to the determination letter or ruling are consistent with the requirements for exemption.

**Reliance on determination letter or ruling**

.02 A determination letter or ruling recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization, or a change in the applicable law. Also, a determination letter or ruling may not be relied upon if it was based on any inaccurate material factual representations. *See* section 12.01.

**SECTION 12. REVOCATION OR MODIFICATION OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION**

A determination letter or ruling recognizing exemption may be revoked or modified: (1) by a notice to the taxpayer to whom the determination letter or ruling was issued; (2) by enactment of legislation or ratification of a tax treaty; (3) by a decision of the Supreme Court of the United States; (4) by the issuance of temporary or final regulations; (5) by the issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin; or (6) automatically, pursuant to § 6033(j), for failure to file a required annual return or notice for three consecutive years.

**Revocation or modification of a determination letter or ruling may be retroactive**

.01 The revocation or modification of a determination letter or ruling recognizing exemption may be retroactive if there has been a change in the applicable law, the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which § 503 of the Code applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. In certain cases an organization may seek relief from retroactive revocation or modification of a determination letter or ruling under § 7805(b). Requests for § 7805(b) relief are subject to the procedures set forth in Rev. Proc. 2012-4.

(1) Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change.

(2) In the case where a determination letter or ruling is issued in error or is no longer in accord with the Service's position and § 7805(b) relief is granted (*see* sections 13 and 14 of Rev. Proc. 2012-4), ordinarily, the revocation or modification will be effective not earlier than the date when the Service modifies or revokes the original determination letter or ruling.

**Appeal and conference procedures in the case of revocation or modification of exempt status letter**

.02 In the case of a revocation or modification of a determination letter or ruling, the appeal and conference procedures are generally the same as set out in section 7 of this revenue procedure, including the right of the organization to request that EO Determinations or the Appeals Office seek technical advice from EO Technical. However, appeal and conference rights are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

(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. 2011-9 is superseded.

**SECTION 14. EFFECTIVE DATE**

This revenue procedure is effective January 9, 2012.

**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 authors of this revenue procedure are Mr. Dave Rifkin and Mr. Matt Perdoni 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), or send an e-mail to [tege.eo@irs.gov](mailto:tege.eo@irs.gov) and include "Question about Rev. Proc. 2012-9" in the subject line.

**Internal Revenue Service**  
P.O. Box 2508  
Cincinnati, OH 45201

**Department of the Treasury**

**Date:** \*

\*  
\*  
\*  
\*

**Employer Identification Number:**

XX-XXXXXXX

**Person to Contact – Group #:**

Specialist Name - XXXX

ID# XXXXXXXX

**Contact Telephone Numbers:**

XXX-XXX-XXXX Phone

XXX-XXX-XXXX Fax (859-669-3783 for TEDS)

Cases)

**Response Due Date:**

\*

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.*

If we approve your application for exemption, we will be required by law to make the application and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers, that could result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whose name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter and the enclosed Application Identification Sheet to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, please note the following important response submission information:

- Please don't fax and mail your response. Faxing and mailing your response will result in unnecessary delays in processing your application. Each piece of correspondence submitted (whether fax or mail) must be processed, assigned, and reviewed by an EO Determinations specialist.
- Please don't fax your response multiple times. Faxing your response multiple times will delay the processing of your application for the reasons noted above.

Name  
EIN

- Please don't call to verify receipt of your response without allowing for adequate processing time. It takes a minimum of three workdays to process your faxed or mailed response from the day it is received.

If we don't hear from you by the response due date shown above, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

\*\*\*\*\*DELETE IF NOT A 501(c)(3) APPLICATION\*\*\*\*\*

In addition, if you don't respond to the information request by the due date, we will conclude that you have not taken all reasonable steps to complete your application for exemption. Under Internal Revenue Code section 7428(b)(2), you must show that you have taken all the reasonable steps to obtain your exemption letter under IRS procedures in a timely manner and exhausted your administrative remedies before you can pursue a declaratory judgment. Accordingly, if you fail to timely provide the information we need to enable us to act on your application, you may lose your rights to a declaratory judgment under Code section 7428.

\*\*\*\*\*DELETE IF NO POWER OF ATTORNEY\*\*\*\*\*

We have sent a copy of this letter to your representative as indicated in Form 2848, Power of Attorney and Declaration of Representative.

\*\*\*\*\*

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Specialist Name  
Exempt Organizations Specialist

Enclosure: Information Request  
Application Identification Sheet

Additional Information Requested:

Name  
EIN

\*

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

Selective:

(EDS Cases)

US Mail:

Internal Revenue Service  
Exempt Organizations  
P. O. Box 2508  
Cincinnati, OH 45201  
ATT: Specialist Name  
Room XXXX  
Group XXXX

Street Address for Delivery Service:

Internal Revenue Service  
Exempt Organizations  
550 Main St, Federal Bldg.  
Cincinnati, OH 45202  
ATT: Specialist Name  
Room XXXX  
Group XXXX

(TEDS Cases)

US Mail:

Internal Revenue Service  
Exempt Organizations  
P. O. Box 12192  
Covington, KY 41012-0192

Street Address for Delivery Service:

Internal Revenue Service  
Exempt Organizations  
201 Rivercenter Blvd  
ATTN: Extracting Stop 312  
Covington, KY 41011