

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also §§ 162, 501, and 6033)

Rev. Proc. 98-19, 1998-7 I.R.B. , (February 17, 1998)

SECTION 1. PURPOSE

This Revenue Procedure provides guidance to organizations exempt from taxation under § 501(a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of § 6033(e)(1) and the tax imposed by § 6033(e)(2). The revenue procedure updates and supersedes Rev. Proc. 95-35, 1995-2 C.B. 391, as modified by Rev. Proc. 95-35A, 1995-2 C.B. 392.

Rev. Proc. 95-35 and Rev. Proc. 95-35A were issued pursuant to the Secretary's authority to relieve tax-exempt organizations from the burden of meeting the reporting and notice requirements of § 6033(e)(1) or the tax imposed by § 6033(e)(2) where the organization establishes to the satisfaction of the Secretary that substantially all of the dues or other similar amounts paid by persons to such organization are not deductible without regard to § 162(e). Rev. Proc. 95-35 and Rev. Proc. 95-35A identify

certain tax-exempt organizations that are treated as satisfying the requirements of § 6033(e)(3) and are thus not subject to the reporting and notice requirements of § 6033(e)(1) or the tax imposed by § 6033(e)(2). Procedures for other exempt organizations to establish that they satisfy the requirements of § 6033(e)(3) are also provided.

In light of comments submitted in response to Rev. Proc. 95-35, the Service has determined that the requirements should be modified to further relieve the burden of § 6033(e)(1). This revenue procedure retains the requirements set out in Rev. Proc. 95-35, and Rev. Proc. 95-35A, with the modification that the amount of annual dues (or similar amounts) that may be received by organizations described in § 4.02 without becoming subject to the requirements of § 6033(e) is increased to \$75 or less.

SEC. 2. BACKGROUND

Section 6033(e) imposes reporting and notice requirements on tax-exempt organizations (other than § 501(c)(3) organizations) that incur lobbying and political expenditures to which § 162(e) applies ("nondeductible lobbying expenditures"). Section 162(e) denies a deduction, otherwise allowable under § 162(a) as an ordinary and necessary trade or business expense, for certain lobbying and political expenditures. Section 162(e)(3) denies a deduction for the dues (or other similar amounts) paid to certain tax-exempt organizations to the extent that the organization, at the time the dues are assessed or paid, notifies the dues payer

that the dues are allocable to nondeductible lobbying expenditures.

Section 6033(e)(1) requires a tax-exempt organization that pays or incurs nondeductible lobbying expenditures to notify its members, at the time the dues (or other similar amounts) are assessed or paid, of its reasonable estimate of the portion of the dues that is allocable to those expenditures. Section 6033(e)(1) does not, however, apply to tax-exempt organizations described in § 501(c)(3), or to organizations that establish to the satisfaction of the Secretary that substantially all the dues they receive are not deductible without regard to § 162(e). In addition, organizations whose lobbying and political expenditures consist solely of certain in-house expenditures for nondeductible lobbying and whose total such expenditures do not exceed \$2,000 in a taxable year are not subject to the reporting and notice requirements of § 6033(e)(1).

Section 6033(e)(2)(A) provides that if a tax-exempt organization fails to provide the notices required by § 6033(e)(1), or if the notices underestimate the actual amount of dues allocable to nondeductible lobbying expenditures, the organization is subject to tax (at the highest rate imposed by § 11) on the aggregate amount of dues allocable to nondeductible lobbying expenditures paid during the taxable year that was not reported on the notices. However, § 6033(e)(2)(B) provides that if a tax would be imposed on the organization because its estimate of the nondeductible portion of the dues was less than

the actual amount allocable to nondeductible lobbying expenditures, the Secretary may waive the tax if the organization agrees to increase the amount reasonably estimated to be nondeductible for the following taxable year by the amount of the underestimate.

Section 6033(e)(3) provides that § 6033(e)(1)(A) shall not apply to an exempt organization that establishes to the satisfaction of the Secretary that substantially all the dues or similar amounts paid by persons to the organization are not deductible without regard to § 162(e). The tax imposed by § 6033(e)(2)(A) only applies to organizations subject to the notice requirements of § 6033(e)(1)(A).

SEC. 3. SCOPE

This revenue procedure (i) sets forth specific circumstances in which certain tax-exempt organizations are treated as meeting the requirements of § 6033(e)(3), and (ii) provides guidance to other exempt organizations regarding how they may establish that they satisfy the requirements of § 6033(e)(3).

SEC. 4. APPLICATION

.01 Exempt Organizations Automatically Excepted Under Section 6033(e)(3). Organizations recognized by the Service as exempt from taxation under § 501(a), other than (i) social welfare organizations described in § 501(c)(4) that are not veterans organizations, (ii) agricultural and horticultural organizations described in § 501(c)(5), and (iii) organizations described in §

501(c)(6), are treated as satisfying the requirements of § 6033(e)(3).

.02 Section 501(c)(4) Social Welfare Organizations and Section 501(c)(5) Agricultural and Horticultural Organizations. Social welfare organizations recognized by the Service as exempt from taxation under § 501(c)(4) and agricultural and horticultural organizations recognized by the Service as exempt from taxation under § 501(c)(5) are treated as satisfying the requirements of § 6033(e)(3) if either (i) more than 90 percent of all annual dues (or similar amounts) are received from persons, families, or entities who each pay annual dues (or similar amounts) of \$75 or less, or (ii) more than 90 percent of all annual dues (or similar amounts) are received from organizations described in § 501(c)(3), state governments, local governments, entities whose income is exempt from tax under § 115, or organizations excepted under section 4.01 of this revenue procedure.

.03 Section 501(c)(6) Organizations. Organizations recognized by the Service as exempt from taxation under § 501(c)(6) shall be treated as meeting the requirements of § 6033(e)(3) if more than 90 percent of all annual dues (or similar amounts) are received from organizations described in § 501(c)(3), state governments, local governments, entities whose income is exempt from tax under § 115, or organizations excepted under section 4.01 of this revenue procedure.

SEC. 5. DEFINITIONS AND PROCEDURES

.01 Annual Dues (or Similar Amounts). For purposes of this revenue procedure, the term "annual dues" means the amount an organization requires a person, family, or entity to pay to be recognized by the organization as a member for an annual period. For purposes of this revenue procedure, "similar amounts" includes, but is not limited to, voluntary payments made by persons, families, or entities, assessments made by the organization to cover basic operating costs, and special assessments imposed by the organization to conduct lobbying activities.

.02 Member. For purposes of this revenue procedure, "member" is used in its broadest sense and is not limited to persons with voting rights in the organization.

.03 Treatment of Affiliated Organizations. For purposes of this revenue procedure, if more than one organization described in §§ 501(c)(4), 501(c)(5), or 501(c)(6) share a name, charter, historic affiliation or similar characteristics and coordinate their activities, all such organizations shall be treated as parts of a single organization. Only dues (or similar amounts) paid by persons other than the organizations treated as being parts of the single organization shall be considered for purposes of applying this revenue procedure. All annual dues payments made by each person outside the organizational structure to any organization within the single organization are considered for purposes of applying this revenue procedure to be paid to the single organization for a single membership. If, under this

revenue procedure, the single organization is considered to meet the requirements of § 6033(e)(3), then all the organizations that are treated as parts of the single organization are considered to meet the requirements of § 6033(e)(3). For purposes of this revenue procedure, if organizations within the affiliated structure are on different taxable years, the organizations may base their calculations of annual dues on any single reasonable taxable year.

.04 Example of An Affiliated Organization. A group of social welfare organizations, each of which is recognized by the Service as being described in § 501(c)(4), share a common name and work jointly to promote a single purpose. Each organization operates at either the national, state, or local level. Individuals and families that are interested in the purpose promoted by the organizations pay annual dues of \$75 to one of the local organizations. The total amount of dues collected from individuals and families is \$950x. Also, a number of corporations are members of the national organization and pay annual dues of \$500 directly to it. The total amount of dues received from corporations is \$50x. The organizations are linked by a structure that makes the local organizations members of the appropriate state organizations and of the national organization. Accordingly, each local organization transfers a portion of the dues it collects to the appropriate state organization and another portion to the national organization as dues. These transfer amounts are significantly greater than \$75. Because the

organizations share a name and coordinate their activities, they are treated as parts of a single organization for purposes of determining whether they satisfy the requirements of § 6033(e)(3). Therefore, only the dues (or similar amounts) paid by persons other than the organizations treated as being parts of the single organization are considered for purposes of applying this revenue procedure. The total amount of annual dues paid by individuals and families at the \$75 level is more than 90 percent of all annual dues paid to both the local affiliated organizations by individuals and families, and to the national organization by corporations. Therefore, the single organization satisfies the requirements of § 6033(e)(3), which means that all the affiliated local and state organizations, and the national organization, are each considered to have satisfied the requirements of § 6033(e)(3).

.05 Seventy-five Dollar Amount to be Indexed for Inflation.

The \$75 amount for annual dues in section 4.02 will be increased for taxable years beginning after December 31, 1998, by a cost-of-living adjustment under § 1(f)(3) of the Code, rounded to the next highest dollar.

.06 Establishing that an Organization is Described in § 6033(e)(3). Any exempt organization that is not treated as satisfying the requirements of § 6033(e)(3) under section 4 of this revenue procedure may still establish that it satisfies the requirements of § 6033(e)(3) by: (i) maintaining records establishing that 90 percent or more of the annual dues (or

similar amounts) paid to the organization are not deductible without regard to § 162(e), and (ii) notifying the Service that it is described in § 6033(e)(3) on any Form 990 (Return of Organization Exempt From Income Tax) that it is required to file. Unless an organization complies with both of the above requirements, it will not have established to the satisfaction of the Service that it meets the requirements of § 6033(e)(3). Additionally, an organization may request a private letter ruling that substantially all the annual dues (or similar amounts) paid to the organization are not deductible, either directly or indirectly, without regard to § 162(e). To receive a favorable private letter ruling, the organization must provide the Service with evidence establishing that 90 percent or more of all annual dues (or similar amounts) are not deductible, either directly or indirectly, without regard to § 162(e). If an organization receives a favorable private letter ruling, the Service will not contest the organization's entitlement to exemption under § 6033(e)(3) for a subsequent year so long as the character of the organization's membership is substantially similar to its membership at the time of the ruling. Ruling requests should be submitted to the Assistant Commissioner (Employee Plans and Exempt Organizations), Attention: CP:E:EO, Internal Revenue Service, P.O. Box 120, Ben Franklin Station, Washington, D.C. 20044, in accordance with Rev. Proc. 98-4, 1998-1 I.R.B. 113 (January 5, 1998) (or as revised).

SEC. 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 95-35, 1995-2 C.B. 391, and Rev. Proc. 95-35A, 1995-2 C.B. 392, are superseded.

PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1589.

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 information in this revenue procedure is in section 5.06. This revenue procedure provides guidance to organizations exempt from taxation under § 501(a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of § 6033(e)(1) and the tax imposed by § 6033(e)(2). It identifies certain tax-exempt organizations that are treated as satisfying the requirements of § 6033(e)(3) and are thus not subject to the reporting and notice requirements of § 6033(e)(1) or the tax imposed by § 6033(e)(2), and provides procedures for other exempt organizations to establish that they satisfy the requirements of § 6033(e)(3). The information maintained by exempt organizations will be used in determining whether they meet the exception provided under § 6033(e)(3). The record retention and annual reporting are required to assure compliance with the requirements of § 6033(e). The likely respondents are social welfare organizations exempt under §

501(c)(4), agricultural and horticultural organizations exempt under 501(c)(5), and business leagues exempt under § 501(c)(6) that wish to establish that they receive substantially dues from members who do not claim a deduction for their dues payments under § 162, without regard to § 162(e).

The estimated total annual recordkeeping burden is 150,000 hours.

The estimated annual burden per organization varies from 1 hour to 100 hours, depending on individual circumstances, with an estimated average of 10 hours. The estimated number of organizations required to maintain records is 15,000.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Thomas J. Miller of the Exempt Organizations Division. For further information regarding this revenue procedure contact Mr. Miller on (202) 622-7867 (not a toll-free call).