

SECTION 1. PURPOSE

This revenue procedure supersedes Rev. Proc. 72-39, 1972-2 C.B. 818, and restates the extent to which contributors may rely on the listing of an organization in Publication No. 78, Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code, for purposes of deducting contributions under section 170 of the Code and for making grants under section 4945. It reflects changes in the procedure adopted as a result of the creation of the office of the Assistant Commissioner (Employee Plans and Exempt Organizations). In addition, it reflects the Service decision to revoke the procedures for suspending advance assurance of deductibility of contributions.

SEC. 2. BACKGROUND

.01 Section 170 of the Code, with certain limitations, allows deductions for federal income tax purposes of contributions or gifts made to or for the use of an organization that qualifies as an organization described in section 170(c). In order for contributions by donors to be deductible, the organization must qualify at the time of the contribution. Thus, it is the responsibility of an organization receiving contributions to ensure that its character, purposes, activities, and method of operation satisfy the qualification requirements of section 170(c) in order for contributors to have the assurance that their contributions at the time made are deductible.

.02 Section 1.509(a)-7(a) of the Income Tax Regulations sets forth general rules regarding reliance by contributors and grantors to organizations described in sections 509(a)(1), (2), and (3) of the Code. This regulation provides that once an organization has received a final ruling or determination letter classifying it as an organization described in section 509(a)(1), (2), or (3), the treatment of contributions and grants, and the status of contributors and grantors to such organization under sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, will not be affected by reason of a subsequent revocation by the Service of the organization's classification as described in section 509(a)(1), (2), or (3) until the date on which notice of change of status is made to the public.

.03 The Service issues and updates Publication No. 78. Generally, the listing of an organization in Publication No. 78 signifies that it has received a ruling or determination letter from the Service stating that contributions by donors to the organization (or to a parent organization and subordinate units covered by a group exemption letter) are deductible as provided in section 170 of the Code. Each such ruling or determination letter is based on a factual showing by the organization that its character, purposes, activities, and method of operation satisfy the statutory requirements for qualification at the time the ruling or determination letter is issued. If there is material change in the character, purposes, activities, or method of operation of an organization from those on which the ruling or determination letter was based and the change is such that the organization ceases, as a matter of law, to qualify under section 170(c), the ruling or

determination letter also immediately ceases to be applicable (see also Sec. 12.02 of Rev. Proc. 80-25, 1980-1 C.B. 667). Where this circumstance occurs, except for the validation provision of section 7428(c) (see Sec. 4.02), it is only by exercise of the authority under section 7805(b) that contributors to the organization may be allowed a deduction for contributions made after the organization ceases to qualify under section 170(c).

.04 Publication No. 78 also indicates the foundation classification under section 509(a) of the Code of the listed organizations to which this section applies. This classification is important to indicate appropriate limitations for deductibility purposes and to indicate whether private foundations making grants to particular organizations would be required to exercise expenditure responsibility.

SEC. 3. EFFECT ON PUBLICATION No. 78

.01 Where an organization listed in or covered by Publication No. 78 ceases to qualify as an organization contributions to which are deductible under section 170 of the Code and the Service subsequently revokes a ruling or a determination letter previously issued to it, contributions made to the organization by persons unaware of the change in the status of the organization generally will be considered allowable if made on or before the date of an appropriate public announcement, such as publication in the Internal Revenue Bulletin, stating that contributions are no longer deductible. Under certain circumstances, such as where a legally enforceable obligation under local law has been made to the organization prior to the date of publication, and the satisfaction of such pledge is on or after the date, the allowance period may be extended upon specific exercise of authority under section 7805(b). See, for example, Rev. Rul. 78-129, 1978-1 C.B. 67. However, the Service is not precluded from disallowing a deduction for any contribution made after an organization ceases to qualify under section 170, where the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for, or was aware of, the activities or deficiencies on the part of the organization that gave rise to the loss of qualification.

.02 With regard to an organization's public charity status under section 509(a)(1), (2), or (3) of the Code, donors may rely on the classification of an organization listed in or covered by Publication No. 78 for such purpose to the same extent as provided for section 170 purposes in .01 above. Private foundations may rely on an organization's listed public charity status for grant-making purposes under section 4945 except where the grantor (1) had knowledge of the revocation of the ruling or determination letter classifying the organization as one described in section 509(a)(1), (2), or (3); or (2) was in part responsible for, or was aware of, the act, the failure to act, or the 'substantial and material' change on the part of the organization that gave rise to the revocation of the ruling or determination letter classifying the organization as one described in section 509(a)(1), (2), or (3). For guidelines concerning 'substantial and material' changes, see Rev. Procs. 81-6, 1981-1 C.B. 620, and 81-7, 1981-1 C.B. 621.

.03 The advance assurance of deductibility and public charity status provided by paragraphs .01 and .02 above applies only to contributions or grants made to an organization listed in or covered by Publication No. 78 in the organization's official name, its recognized popular name, or a contraction of either of these names that is reasonably identifiable or widely known. Therefore, the advance assurance of deductibility and public charity status provided by paragraphs .01 and .02 does not apply to contributions or grants made nominally to an organization listed in or covered by Publication No. 78 but with the understanding or on a condition that they be made available to or for the use of an organization not listed in or covered by Publication No. 78.

.04 The provisions of paragraphs .01 and .02 above do not apply to an organization that is not listed in or covered by Publication No. 78. In such a case the effect of a ruling or determination letter concerning the deductibility of contributions to the organization or its public charity status is determined in the manner described in Rev. Proc. 80-24, 1980-1 C.B. 658.

SEC. 4. RELATIONSHIP WITH SECTION 7428 OF THE CODE

.01 Section 7428 of the Code creates a remedy under declaratory judgment procedures, in part, for cases involving a determination by the Service with respect to the continuing qualification of an organization as one described in section 170(c)(2) or 501(c)(3), or to the continuing classification of an organization under section 509(a). The remedy is available in these cases if the Service determines that revocation of exemption under section 501(c)(3), deductibility status under section 170(c)(2), or public charity status under section 509(a) is appropriate, the organization has exhausted its rights to file a protest and have a conference as set out in Rev. Proc. 80-25, and the Service has issued a final adverse determination letter to the organization.

.02 However, section 7428(c) of the Code provides for the 'validation of certain contributions' made during the pendency of a proceeding for declaratory judgment involving the revocation of a determination that the organization is described in section 170(c)(2). Under this provision, contributions from individuals (up to a maximum of \$1,000) and from other charitable organizations described in section 170(c)(2) may continue to be deductible. Statutory protection for such contributions, if declaratory judgment is sought on the revocation action, would begin on the date of publication of the revocation and end on the date on which the court first determines that the organization is not described in section 170(c)(2). This reliance, however, is not extended to any individual who was responsible, in whole or in part, for the activities (or failures to act) on the part of the organization that were the basis for the revocation.

SEC. 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 72-39 is superseded.

SEC. 6. EFFECTIVE DATE

This revenue procedure is effective July 6, 1982, the date of its publication in the Internal Revenue Bulletin.