

Rev. Proc. 95-48, 1995-2 C.B. 418, 1995-47 I.R.B. 13.

INTERNAL REVENUE SERVICE Revenue Procedure

EXERCISE OF COMMISSIONER'S DISCRETIONARY AUTHORITY UNDER SECTION 6033

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26 CFR 601.602: Forms and instructions

Section 501.- Exemption from Tax on Corporations, Certain Trusts, Etc.

Section 6033.- Returns by Exempt Organizations

Exercise of Commissioner's discretionary authority under section 6033. This procedure exercises the Commissioner's discretionary authority under section 6033(a)(2)(B) of the Code, by specifying that two additional classes of organizations, governmental units and affiliates of governmental units, which are exempt from federal income tax under section 501(a), are not required to file annual information returns on Form 990, Return of Organization Exempt From Income Tax. Rev. Proc. 83-23 supplemented.

SECTION 1. PURPOSE

This revenue procedure specifies two additional classes of organizations that are not required to file annual information returns on Form 990, Return of Organization Exempt From Income Tax. As described in section 4, these two classes of organizations are: (1) governmental units, and (2) affiliates of governmental units that are exempt from federal income tax under section 501(a) of the Internal Revenue Code. This revenue procedure supplements Rev. Proc. 83-23, 1983-1 C.B. 687.

SECTION 2. BACKGROUND

.01 Section 6033(a)(1) of the Code generally requires the filing of annual information returns by exempt organizations.

.02 Section 6033(a)(2)(A) of the Code provides certain mandatory exceptions to this filing requirement.

.03 Section 6033(a)(2)(B) of the Code provides discretionary exceptions from filing such returns where the Secretary "determines that such filing is not necessary to the efficient administration of the internal revenue laws."

.04 Section 1.6033-2(g)(6) of the Income Tax Regulations delegates authority to the Commissioner to excuse organizations from the filing requirement. It provides that "[t]he Commissioner may relieve any organization or class of organizations from filing, in whole or in part, the annual return required by [section 6033] where [the Commissioner] determines that such returns are not necessary for the efficient administration of the internal revenue laws."

.05 Section 1.6033-2(g)(1) of the regulations provides a partial list of organizations that are not required to file annual returns either because they are excepted by statute or because the Commissioner has exercised the authority referred to in section 2.03. Rev. Proc. 83-23 provides a more complete list.

SECTION 3. ORGANIZATIONS EXCEPTED FROM FILING

.01 Pursuant to the authority of section 1.6033-2(g)(6) of the Income Tax Regulations, an organization that is either a "governmental unit" or an "affiliate of a governmental unit," within the meaning of section 4, is not required to file Form 990.

.02 The exception from filing provided in section 3.01 applies to all tax years beginning after December 31, 1969, for which no Form 990 has been filed by the date of publication of this revenue procedure.

.03 This revenue procedure does not affect an organization's obligation to file Form 990-T, Exempt Organization Business Income Tax Return. Thus, if an organization is required to file Form 990-T, it must continue to file that form, even though it is not required to file Form 990.

SECTION 4. "GOVERNMENTAL UNIT" AND "AFFILIATE OF A GOVERNMENTAL UNIT"

.01 For purposes of this revenue procedure, an organization is treated as a "governmental unit" if:

- (a) It is a state or local governmental unit as defined in section 1.103-1(b) of the regulations;
- (b) It is entitled to receive deductible charitable contributions as an organization described in section 170(c)(1) of the Code; or
- (c) It is an Indian tribal government, or a political subdivision thereof, under sections 7701(a)(40) and 7871 of the Code.

.02 For purposes of this revenue procedure, an organization is treated as an "affiliate of a governmental unit" if it is described in section 501(c) of the Code and it meets the requirements of either section 4.02(a) or (b):

- (a) It has a ruling or determination from the Service that:
 - (i) Its income, derived from activities constituting the basis for its exemption under section 501(c) of the Code, is excluded from gross income under section 115
 - (ii) It is entitled to receive deductible charitable contributions under section 170(c)(1) of the Code, on the basis that contributions to it are "for the use of" governmental units; or
 - (iii) It is a wholly owned instrumentality of a state or a political subdivision thereof, for employment tax purposes (see sections 3121(b)(7) and 3306(c)(7) of the Code); or
- (b) The organization does not have a ruling or determination described in section 4.02(a) but:
 - (i) It is either "operated, supervised, or controlled by" governmental units, or by organizations that are affiliates of governmental units, within the meaning of section 1.509(a)-4(g)(1)(i) of the regulations, or the members of the organization's governing body are elected by the public at large, pursuant to local statute or ordinance;
 - (ii) It possesses two or more of the affiliation factors listed in section 4.03 and
 - (iii) Its filing of Form 990 is not otherwise necessary to the efficient administration of the internal revenue laws.

.03 The following affiliation factors will be considered under paragraph (b)(ii) of section 4.02:

- (a) The organization was created by one or more governmental units, organizations that are affiliates of governmental units, or public officials acting in their official capacity.
- (b) The organization's support is received principally from taxes, tolls, fines, government appropriations, or fees collected pursuant to statutory authority. Amounts received as government grants or other contract payments are not qualifying support under this paragraph.
- (c) The organization is financially accountable to one or more governmental units. This factor is present if the organization is (i) required to report to governmental unit(s), at least annually, information comparable to that required by Form 990; and (ii) is subject to financial audit by the governmental unit(s) to which it reports. A report submitted voluntarily by the organization does not satisfy clause (i). Also, reports and audits pursuant to government grants or other contracts do not alone satisfy this paragraph (c).

(d) One or more governmental units, or organizations that are affiliates of governmental units, exercise control over, or oversee, some or all of the organization's expenditures (although it is not financially accountable to governmental units as described in paragraph (c) of this section).

(e) If the organization is dissolved, its assets will (by reason of a provision in its articles of organization or by operation of law) be distributed to one or more governmental units, or organizations that are affiliates of governmental units within the meaning of section 4 of this revenue procedure.

.04 In making a ruling or determination whether the organization's filing of Form 990 is otherwise necessary to the efficient administration of the internal revenue laws under section 4.02(b)(iii) all relevant facts and circumstances shall be considered.

Relevant facts and circumstances suggesting that filing is necessary for efficient tax administration include the extent to which the organization has taxable subsidiaries or participates in joint ventures with non-exempt entities; whether it engages in substantial public fund-raising efforts; and whether its activities provide significant benefits to private interests.

SECTION 5. RULINGS AND DETERMINATION LETTERS

.01 An organization may request a ruling described in section 4.02(a) pursuant to Rev. Proc. 95-1, 1995-1 I.R.B. 1. The appropriate user fee must be paid (currently, \$3,575, pursuant to Rev. Proc. 95-1, Appendix A, 53).

.02 An organization that has been recognized as exempt under section 501 of the Code may (but is not required to) request a ruling or determination that it meets the requirements to be excepted from filing Form 990 as a "governmental unit" or an "affiliate of a governmental unit." The request for a ruling or determination must be submitted under the procedures in Rev. Proc. 95-4, 1995-1 I.R.B. 97. The appropriate user fee must be paid (currently, \$100 for a ruling, pursuant to Rev. Proc. 95-8, § 6.11(4), 1995-1 I.R.B. 187, 194).

.03 An organization seeking recognition of exempt status under section 501 of the Code may request a determination that it meets the requirements to be excepted from filing Form 990 as a "governmental unit" or an "affiliate of a governmental unit," by submitting information required by line 9 of Part I of Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code or submitting a separate written request with its application for recognition of exemption. See Rev. Proc. 90-27, 1990-1 C.B. 514, for additional procedures with regard to applications for recognition of exemption.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 83-23 is hereby supplemented.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Joe O'Malley of the Exempt Organizations Division and Amy Henchey, formerly of the Exempt Organizations Division. For further information regarding this revenue procedure, contact Joe O'Malley on (202) 622-7247 (not a toll-free call).