

**Frequently Asked Questions  
About the Elimination of the Advance Ruling Process  
December 18, 2008**

On September 9, 2008, the IRS issued temporary Income Tax Regulations, which eliminate the advance ruling process for a section 501(c)(3) organization's foundation status.

Under the new regulations, effective immediately, the IRS will automatically classify a new 501(c)(3) organization as a public charity for its first five years if it can show in its application that it can reasonably be expected to be publicly supported.

After the first five years, the IRS will monitor the organization's public charity status using the public support information it reports annually on the [Schedule A](#) of its [Form 990](#), *Return of Organization Exempt From Income Tax*. Its public support test is based on a five-year computation period that consists of the current year and the four years immediately preceding the current year.

**Do the new rules eliminating the advance ruling process affect my organization's tax-exempt status?**

No, the new rules eliminating the advance ruling process do not affect your organization's tax-exempt status; they only affect an organization's classification as a [public charity](#) or private foundation. Your organization will remain a tax-exempt organization regardless of whether it is classified as a public charity or a private foundation.

**How do I know whether the new rules apply to my organization?**

The new rules only affect organizations whose advance ruling periods have not yet expired or that expired on or after June 9, 2008.

**How do I know if my organization's advance ruling period has expired?**

Your organization's advance ruling expiration date is on the determination letter you received from the Service recognizing its tax-exempt status. If you cannot locate the letter, contact Customer Account Services (toll-free) at 877-829-5500; one of our representatives can give you the expiration date.

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**How do the new rules affect my organization if its advance ruling has not expired (or expired after June 9, 2008)?**

Your organization will automatically be classified as a public charity for its first five years of existence regardless of the support actually received. It will no longer need to file [Form 8734](#) with the IRS at the end of its advance ruling period. It must file annual returns, and beginning with its sixth taxable year and all succeeding years, it must meet the public support test as shown on the revised [Schedule A](#) of [Form 990](#).

**My organization's advance ruling expired on June 30, 2008, and the organization has not filed Form 8734. What do I have to do?**

Because your organization's advance ruling period expired after June 9, the new rules apply to it. The organization will be classified as a public charity for its first five years of existence regardless of the support actually received. It need not file [Form 8734](#) with the Service. Beginning with the organization's sixth taxable year and all succeeding years, it must meet the public support test as shown on the revised [Schedule A](#).

**My organization's advance ruling period expired on June 30, 2008, and I've already submitted Form 8734 to the Service. Are there any steps I need to take?**

No. If you already submitted [Form 8734](#), the Service will issue a final letter, and you do not need to take any additional steps.

**Is my organization required to file an annual return during its first five years of existence when it is automatically classified as a public charity by the Service?**

Yes, the organization must still comply with the normal [annual return filing requirements](#), during its first five years of existence, unless it is otherwise [not required to file](#) a return.

**My organization is very small and files the e-postcard, Form 990-N. Must it file Form 990, 990-EZ or Schedule A?**

No. Because the organization's annual gross receipts are less than \$25,000, it may file [Form 990-N](#). However, if you believe that the organization has not met the public support test for two consecutive years and its status should be changed to a private foundation, you should complete [Schedule A](#) to verify that the organization did not meet the test and file [Form 990-PF](#), *Return of Private Foundation*.

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**When my organization applied for tax exemption, the IRS sent us an advance ruling determination letter stating that our public charity classification was good for five years. Can the organization continue to rely on its determination letter, and if so, for how long?**

Yes. With the issuance of the new rules, the IRS now considers the advance ruling letter to be your organization's final determination letter. The organization and its donors may rely on that letter with respect to the organization's public charity classification unless the organization no longer meets the public support test and the Service changes that status and publishes a notice of the change.

**What can I show donors to assure them that my organization is classified as a public charity?**

You may use your organization's advance ruling determination letter from the Service as its final determination letter to show donors that the organization is a public charity. You may also refer donors to [Publication 78](#), which provides a partial list of organizations recognized by the IRS as eligible to receive tax-deductible donations. Donors may also contact Customer Account Services toll-free at 877-829-5500 to verify the organization's status.

**My organization was required to file Form 8734 with the IRS but neglected to do so. Is it too late to file one now that the advance ruling process has been eliminated?**

If your organization did not file [Form 8734](#) and its advance ruling period has expired, the Service may have changed its status from a public charity to a private foundation. If you submit Form 8734, the Service will review the form and change the organization's status back to a public charity if the information establishes that it met the public support requirements.

**My organization's advance ruling period expired, and I submitted Form 8734. The Service issued a proposed adverse determination letter indicating that the organization does not meet the public support test. Will the new rules apply to my organization, making it a public charity?**

No, if the organization has already received a proposed adverse determination letter from the Service, the new rules will not apply to it. The organization will be reclassified as a private foundation unless it protests the initial decision as described in the determination letter.

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**I mailed my organization's Form 1023 application for exempt status to the IRS before the new regulations were issued. Will the new rules still apply to the organization? Do I need to submit a new application form?**

Yes, the new rules will apply to all organizations with applications pending before the Service regardless of when the organization submitted the Form 1023 application.

No, you do not need to submit a new application form. The Service will automatically apply the new procedures to the pending application.

**My organization recently received a definitive ruling after completing its advance ruling period. Do these new rules affect it?**

No, the new rules that pertain to the elimination of the advance ruling process do not apply to your organization because it completed its advance ruling process before the rules came into effect. The organization's public support information, however, must be reported annually on [Schedule A](#).

**What can I do to help ensure that my organization does not unexpectedly lose its public charity classification?**

An organization will lose its public charity status if it cannot pass the public support test for two consecutive years. If the organization cannot meet the public support test for two consecutive years, it will be reclassified as a private foundation as of the start of the second consecutive year. To avoid unexpectedly losing your public charity classification, you should keep careful track of your public support information through out the year instead of waiting until the end of the tax year when you are preparing your [Schedule A](#). For more information about record-keeping, see [Publication 4221-PC](#), *Compliance Guide for 501(c)(3) Public Charities*.

**My organization is currently classified as a private foundation. We notified the IRS that we would like to terminate our foundation and convert into a public charity. Do we still need to submit information to the IRS establishing that we met the requirements for public charity status for the 60-month termination period?**

Yes, the new regulations do not change this requirement. A private foundation that is [terminating by operating as a public charity](#) must still establish that it met a public charity test for the statutory 60-month period and submit the appropriate computation to the IRS.

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