

SECTION 1. PURPOSE

Private foundations generally want their grants to foreign grantees to be treated as qualifying distributions for purposes of section 4942 of the Internal Revenue Code rather than as taxable expenditures for purposes of section 4945 of the Code. This treatment is assured if the foreign grantee has a ruling or determination letter classifying it as a public charity within the meaning of section 509(a)(1), (2), or (3), or a private operating foundation under section 4942(j)(3) of the Code. If a foreign grantee does not have such a ruling or determination letter, the Foundation Excise Tax Regulations set forth requirements that must be satisfied in order to assure that the grant will be considered a qualifying distribution.

In response to requests from private foundations, this revenue procedure provides a simplified procedure that private foundations (including nonexempt charitable trusts) may follow in making "reasonable judgments" and "good faith determinations" under sections 53.4945-6(c)-(2)(ii), 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) of the Foundation Excise Tax Regulations. If the requirements of this revenue procedure are met, a grant to a foreign grantee will be treated as a grant to an organization that is described in section 501(c)(3) or section 4947(a)(1) of the Internal Revenue Code, and, that is either a public charity within the meaning of section 509(a)(1), (2), or (3), or a private operating foundation under section 4942(j)(3) of the Code.

SEC. 2. BACKGROUND

.01 Section 53.4945-6(c)(2)(ii) of the regulations applies to a private foundation (grantor) making a grant for certain purposes to a foreign organization (grantee) that does not have a ruling or determination letter recognizing it as an organization described in section 501(c)(3) of the Code. ("Certain purposes" are those described in section 170(c)(2)(B) except for any transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization described in section 507(b)-(2).) The grantor may treat such a grant as a grant to an organization described in section 501(c)(3) (other than section 509(a)(4)) if, in the reasonable judgment of the foundation manager, the grantee is an organization described in section 501(c)(3) (other than section 509(a)(4)).

.02 Sections 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) of the regulations apply to a distribution (or grant) for the purposes described in section 170(c)-(2)(B) of the Code to a foreign organization that has not received a ruling or determination letter that it is a public charity described in section 509(a)(1), (2), or (3), or an operating foundation described in section 4942(j)(3). In this case, the grant will be treated as a grant to a public charity (for purposes of both sections 4942 and 4945) or to an operating foundation (for purposes of section 4942 only) if the grantor has made a "good faith determination" that the grantee is described in section 509(a)-(1), (2), or (3), or section 4942(j)(3).

.03 Under sections 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) of the regulations, a "good faith determination" may be based on an affidavit of the grantee or an opinion of counsel of either the grantor or the grantee. The affidavit or opinion of counsel must give enough facts about the grantee's operations and support to enable the Internal Revenue Service to determine that the grantee would likely qualify as an organization described in section 509(a)(1), (2), or (3), or section 4942(j)(3) of the Code.

.04 Thus, under the regulations, a foundation that wishes to have a grant treated as a grant to a public charity must complete two steps. First, the foundation manager of the grantor must make a "reasonable judgment" that the grantee is an organization described in section 501(c)-(3) (other than section 509(a)(4)). Second, the grantor must make a good faith determination, based on an affidavit of the grantee or an opinion of counsel of either the grantor or the grantee, that the grantee is described in section 509(a)(1), (2), or (3), or section 4942(j)(3).

SEC. 3. SCOPE

This revenue procedure applies to a grant made for purposes set out in section 170(c)(2)(B) of the Code, (except for any transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization described in section 507(b)(2)), if the grant is made by a domestic private foundation to a foreign organization that does not have an Internal Revenue Service ruling letter recognizing its exemption under section 501(c)(3), or classifying it as a public charity under section 509(a)(1), (2), or (3), or as a private operating foundation under section 4942(j)(3).

SEC. 4. PROCEDURE

.01 A private foundation will be deemed to have satisfied the requirements of sections 53.4945-6(c)(2)(ii), 53.4942(a)-3(a)(6), and 53.4945-5(a)-(5) of the regulations if (1) a grant is not a transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization described in section 507(b)(2) of the Code, and (2) the grantor bases its "reasonable judgment" and "good faith determination" (as described in the regulations) on a "currently qualified" affidavit prepared by the grantee for the grantor or another grantor that contains the information set out in Sec. 5., below. The original affidavit, or a photocopy of the original affidavit, must be retained by the grantor and made available to the Service upon request. Whether an affidavit is "currently qualified" is discussed in .02 through .06, below. If, however, the grantor possesses information that suggests the affidavit may not be reliable, it must consider that information in determining whether the affidavit is currently qualified.

.02 An affidavit will be considered currently qualified as long as the facts it contains are up to date, as provided in either .03 or .04, below, and as long as the relevant substantive requirements of sections 501(c)(3) and 4947(a)(1) of the Code and sections 509(a)(1), (2), or (3) or section 4942(j)(3) remain unchanged.

.03 The facts in an affidavit will be considered up to date if those facts reflect the grantee organization's latest complete accounting year or the affidavit is updated to reflect the grantee organization's current data as described in .04 below.

.04 Where a grantee's status under sections 501(c)(3) and 4947(a)(1), 509(a)(1), (2), or (3) or section 4942(j)(3) of the Code does not depend on financial support, which can change from year to year, an affidavit need be updated only by asking the grantee to amend the description of any facts in the original affidavit that have changed. If the facts have not changed, an attested statement by the grantee to that effect is enough to update an affidavit. Where a grantee's status under section 509(a)(1), (2), or (3) or section 4942(j)(3) depends on financial support, the affidavit must be updated by asking the grantee to provide an attested statement containing enough financial data to establish that it continues to meet the requirements of the applicable Code section.

.05 The information required by .04, above, is not necessarily financial data from the grantee's latest accounting year. For example, financial data from years 1985, 1986, 1987, and 1988 are enough to establish that an organization is "publicly supported" within the meaning of section 509(a)(2) of the Code for years 1989 and 1990 if the granting foundation is not responsible for a substantial and material change in the grantee organization's sources of support in years 1989 and 1990. See section 1.509(a)-3(c)(1) of the regulations. A grantor will not be considered responsible for a substantial and material change in the grantee's sources of financial support as long as:

(1) The grantee's affidavit is "currently qualified" within the meaning of .04, above;

(2) The grantor neither has learned that the Internal Revenue Service is challenging the validity of the grantee's affidavit, nor has reason to doubt that the affidavit remains valid; and

(3) The grantee is not controlled directly or indirectly by the grantor. A grantee is controlled by the grantor if the grantor and disqualified persons (defined in section 4946(a)(1)(A) through (G) of the Code) with respect to the grantor, by aggregating their votes or positions of authority, may require the grantee to perform any act that significantly affects its operations or may prevent the grantee from performing such an act.

.06 Private foundations are permitted but not required to use the procedures described above in making grants to foreign organizations. The two-step procedure referred to in Section 2.04, above, is still the general mechanism for meeting the requirements of sections 53.4945-(c)(2)(ii) 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) of the regulations.

SEC. 5. AFFIDAVIT REQUIREMENTS

.01 An affidavit must be written in English and contain the substantive information

set out below. However, the affidavit need not strictly follow the form set forth below. An English translation must be provided for any supporting documents that are not written in English. The affidavit must be attested to by a principal officer of the grantee organization.

.02 Affidavits for grantee organizations described in section 170(b)(1)(A)(vi) of the Code must include a financial schedule as described in .04(11), below. Grantee organizations described in section 509(a)(2) must provide comparable information.

.03 Any grantee that claims to be a school described in section 170(b)(1)(A)(ii) of the Code must provide the statement set out in .03(12), concerning whether it operates pursuant to a racially nondiscriminatory policy as to students. Section 170(b)(1)(A)(ii) describes "an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on." In addition, the affidavit must explain any basis for the grantee school's failure to comply with one or more of the provisions of Rev.Proc. 75-50, 1975-2 C.B. 587.

.04 The affidavit must contain a declaration to the following effect: "The undersigned, to assist grant-making foundations in the United States of America determine whether [name of grantee organization] (the grantee organization) is the equivalent of a public charity described in section 509(a)(1), (2) or (3) of the United States Internal Revenue Code or a private operating foundation described in section 4942(j)(3) of the Code, makes the following statement:

"(1) I am the [title of principal officer] of the grantee organization.

"(2) The grantee organization was created by [identify statute, charter, or other document] in [year], and is operated exclusively for [check applicable box or boxes]:

charitable

religious

scientific

literary

educational

fostering national or international amateur sports competition, or

prevention of cruelty to children or animals purposes under the laws of [the country in which the grantee organization was formed].

"(3) The activities of the grantee organization have included [describe past and current activities and operations] and will include [describe future activities and operations].

"(4) Copies of the charter, by-laws, and other documents pursuant to which the grantee organization is governed are attached.

"(5) The laws and customs applicable to the grantee organization do not permit any of its income or assets to be distributed to, or applied for the benefit of, a private person or non-charitable organization other than pursuant to the conduct of the grantee organization's charitable activities, or as payment of reasonable compensation for services rendered or as payment representing the fair market value of property which the grantee organization has purchased.

"(6) The grantee organization has no shareholders or members who have a proprietary interest in the income or assets of the organization.

"(7) In the event that the grantee organization were to be liquidated or dissolved, under the laws and customs applicable, or under the governing instruments, all its assets would be distributed to another not-for-profit organization for charitable, religious, scientific, literary, or educational purposes, or to a government instrumentality. A copy of the relevant statutory law or provisions in the governing instruments controlling the distribution of the organization's assets on liquidation is attached.

"(8) The laws and customs applicable to the grantee organization do not permit the organization, other than as an insubstantial part of its activities,

(A) to engage in activities that are not for religious, charitable, scientific, literary, or educational purposes; or

(B) to attempt to influence legislation, by propaganda or otherwise.

"(9) The laws and customs applicable to the grantee organization do not permit the organization directly or indirectly to participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.

"(10) The grantee organization is not controlled by or operated in connection with any organization other than as follows [describe]:

"(11) (The following is required only if the grantee organization's status under sections 501(c)(3) and 4947(a)(1), 509(a)(1), (2), or (3) or section 4942(j)(3) of the Code depends on its financial support.) A schedule of support for the four most recently completed taxable years is attached showing (for each year and in total)

(A) Gifts, grants, and contributions received;

(B) Membership fees received;

(C) Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is not a business unrelated to the organization's exempt purposes;

(D) Gross income from interest, dividends, rents, and royalties;

(E) Net income from business activities that are unrelated to the organization's exempt purposes;

(F) The value of services or facilities furnished by a governmental unit without charge;

(G) The total of lines (A) through (F);

(H) Line (G) minus line (C);

(I) Two percent of line (H);

(J) A schedule of contributions for each donor whose support for the four-year period was greater than the amount on line (1) (a major donor), and showing the amount by which each major donor's total contributions exceeded the amount on line (1) (excess contributions);

(K) The sum of all major donors' excess contributions;

(L) The four-year total for line (H) minus the four-year totals of lines (D), (E), and (K) (the amount of public support);

(M) Line (L) divided by the four-year total for line (H) (the percentage of the organization's support that is public support).

"(12) (The following is required only if the grantee is not a public charity described in section 509(a)(1), (2), or (3) of the Code but claims to be an operating foundation described in section 4942(j)(3) of the Code.) A schedule showing that the organization satisfies (i) the income test of section 53.4942(b)-1(a) of the regulations and (ii) one of the alternative tests described in section 53.4942(b)-2.

"(13) (The following is required only if the grantee is a school described in section 170 of the Code.) The grantee organization is an organization described in section 170(b)(1)(A)(ii) of the Code that has adopted and operates pursuant to a racially nondiscriminatory policy as to students, as set forth in Rev.Rul. 71-447, 1971-2 C.B. 230, and Rev.Rul. 75-231, 1975-1 C.B. 158, and as implemented in Rev.Proc. 75-50, 1975-2 C.B. 587."

DRAFTING INFORMATION

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