

May 24, 2018

New Revenue Procedure for Contributors Making Donation to Tax-Exempt Organizations

HIGHER EDUCATION, INTERNAL REVENUE SERVICE, NOT-FOR-PROFIT, TAX
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New Revenue Procedure 2018-32 modifies, consolidates and supersedes Rev. Proc. 81-6, Rev. Proc. 81-7, Rev. Proc. 89-23 and Rev. Proc. 2011-33 in providing more accessible guidance to grantors and contributors who make donations to tax-exempt organizations. Originally, these four Revenue Procedures offered the following guidance:

- Rev. Proc. 81-6 provided a safe harbor to grantors and contributors to determine if they could rely on an organization's classification as a public charity, and would be considered not to have knowledge of, be responsible for, or be aware of an organization's change in public charity status or revocation of a determination letter or a ruling classifying an organization as a public charity.
- Rev. Proc. 81-7 provided guidance for classifying a contribution as an "unusual grant." In these instances, a recipient organization would not include the unusual grant into the calculation of its public support test; therefore, its public charity status would not be affected.

A grantor or contributor who makes an unusual grant would not be responsible for an act that results in a revocation of public charity status and is entitled to rely on the organization's classification as a publicly supported organization.

- Rev. Proc. 89-23 provided an additional safe harbor to private foundation contributors to determine if they were entitled to rely on the classification of an organization as a public charity, and would be considered not to have knowledge of, be responsible for, or be aware of an organization's change in public charity status or revocation of a determination letter or a ruling classifying an organization as a public charity. Private foundations rely on an organization's status to avoid a liability for excise tax.
- Rev. Proc. 2011-33 set forth procedures for grantors and contributors to rely on the listing of organizations in Publication 78, Cumulative List of Organizations described in §170(c) for purposes of deducting contributions under §170(c) and making grants under §§4942, 4945, and 4966.

The IRS maintains and updates two publicly available compilations of information on organizations eligible to receive tax-deductible contributions under §170. The first lists organizations that are eligible to receive tax-deductible charitable contributions, while the second is an extract of certain information concerning tax-exempt organizations from the IRS electronic Business Master File (EO BMF).

Historically, the IRS has maintained an electronic database (Publication 78) of eligible organizations as a part of Exempt Organizations Select Check ("Select

Check”) on their website. Select Check had two more databases included; one was a list of organizations whose tax exempt status was revoked, while the other provided a list of organizations that have filed Form 990-N.

Recently, the IRS renamed Select Check to Tax Exempt Organization Search (“TEOS”) and added two more databases. The first additional database has images of the Form 990 series annual returns filed by tax-exempt organizations on or after January 1, 2018. The second includes favorable determination letters issued on or after January 1, 2014. The new tool allows users to search within all five databases.

If an organization listed in TEOS or E0 BMF ceases to qualify as an organization to which contributions are deductible under §170(c) and its determination letter is revoked, grantors and contributors may generally rely on the information provided by TEOS and E0 BMF until the date of a public announcement stating that the organization ceases to qualify as an organization to which contributions are deductible under §170(c).

To simplify compliance for grantors and contributors, this revenue procedure combines the safe harbors of Rev. Proc. 81-6, Rev. Proc. 81-7 and Rev. Proc. 81-23, and the reliance revenue procedure of Rev. Proc. 2011-33, replacing them with one revenue procedure on deductibility and reliance issues for grantors and contributors. The revenue procedure updates the language of safe harbor and unusual grants guidance to reflect the updated searchable database modified by the IRS.

This revenue procedure is effective May 16, 2018

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