



changing the tax status of a charitable organization

MSK Client Alert

February 14, 2012

practice areas

nonprofit organizations

As the result of changes made by the Pension Protection Act of 2006, some tax-exempt organizations may benefit by converting to public charity status, provided they qualify as such, or by changing their status to another type of public charity, supporting organization or private foundation, to another. This Alert summarizes updated procedures contained in Revenue Procedure 2012-10 and the new IRS Form 8940 to request classification changes by public charities (including supporting organizations), private foundations, and private operating foundations.

By default, all tax-exempt organizations described in Internal Revenue Code §501(c)(3) are classified as private foundations unless the organization is excluded under §509(a). Tax-exempt organizations generally specify their classification (as a private foundation or public charity) on their applications for recognition of tax-exempt status. The determination of an organization's classification is reflected in the determination letter issued by the IRS. The IRS also issues determination letters in response to separate requests for determination of foundation status submitted on Form 8940, Request for Miscellaneous Determination, pursuant to Revenue Procedure 2012-10.

Depending on the type of status change, it may or may not be necessary for an organization to request a new determination letter by following the procedures set forth in the Revenue Procedure. For example, due to changes in its activities or operations, an organization's current qualification as a public charity may differ from the type of public charity specified in its determination letter. Although such an organization is not required to obtain a new determination letter to qualify for the new public charity status, it nevertheless must do so for the IRS to recognize any such change in status.

If, due to a change in an organization's activities, it loses its public charity status and becomes a private foundation, the organization simply notifies the IRS of this change by filing Form 990-PF and following the procedures specified in the form. Under those circumstances, the organization is not required to obtain a

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determination letter as to its new private foundation status, although it is permitted to do so under the Revenue Procedure. If its activities change again, the organization may seek to terminate its private foundation status and requalify as a public charity.

The Revenue Procedure also applies to organizations that may have been erroneously classified as private foundations rather than public charities. Pursuant to the Revenue Procedure, such an organization can request to be reclassified as a public charity by showing that it continuously met the public support tests during the relevant periods.

Tax-exempt organizations seeking to change their classification, including requests from public charities for private foundation status and requests from public charities to change from one public charity classification to another public charity classification, or seeking a determination or a change as to supporting organization type or functionally integrated status, or seeking operating foundation or exempt operating foundation status, must submit Form 8940, Request Miscellaneous Determination, along with all information, documentation, and other materials required by Form 8940 and its instructions, as well as the appropriate user fee.

For complete information about filing requirements and the submission process, please refer to Form 8940 and the Instructions for Form 8940.

For more information regarding this Alert, please contact any member of our Charitable Sector Practice Group.