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NONPROFIT PLANNING

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**GETTING THE IRS TO BLESS STRUCTURAL CHANGES TO
SECTION 501(C)(3) NONPROFIT ORGANIZATIONS**

Can a tiger change its stripes and become a cheetah or a leopard? No, but a charity that is not a private foundation can change the basis of its exemption from private foundation status. And a *non-operating* private foundation can become a private *operating* foundation.

The status changes are effected by changes in the charity's operations, funding sources, or organizational documents. Notifying the IRS of the material change by a statement to the Form 990 or 990-PF is all that's required by the IRS.

But ... the IRS won't change its records based on a statement attached to the information return. So the charity might say in its grant application and on its Form 990 that the charity is one kind of organization. But the IRS would show online that the charity is an altogether different kind of organization. Donors and grant makers get cold feet in these situations. What to do?

This month the IRS announced procedures that charities can follow to change the IRS records and obtain an

IRS letter confirming the new tax status.

This will particularly help "supporting organizations." Since 2006 grant-making organizations can be penalized by the IRS for making grants to "bad" types of supporting organizations. Grant-makers that check the IRS records and find that a possible grantee is a "supporting organization" sometimes balk at making the grant until the IRS changes its records to show that the grantee is the "good" type of supporting organization.

Revenue Procedure 2011-10 also helps organizations that make other structural changes. For example, a school that becomes a medical research organization, or a publicly-supported organization that becomes self supported -- even a private foun-

dation that becomes a private *operating* foundation. The procedure will allow these organizations and those with other changes (1) to obtain an IRS letter confirming the change and (2) to conform the online records of the IRS to reflect the new status.

Sometimes an exempt organization changes its articles of incorporation or bylaws, or it narrows or broadens its operations, as compared to what it told the IRS in its exemption application. If material, these changes should be reported on the organization's annual return. However, major donors want to see a letter from the IRS confirming that the change did not affect the organization's tax-exempt status and that the organization is not a private foundation after the change. At one time the IRS would issue such confirming letters, which were very helpful. But the IRS stopped issuing these letters several years ago.

In the new announcement, the IRS explains how to get a letter from the IRS confirming that changes to the

organization after it applies for its tax exemption do not affect either its tax exemption or the basis for its exemption from private foundation status.

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I regularly organize new nonprofit organizations and obtain their tax exemptions, qualify nonprofit organizations to do business in other states, and dissolve nonprofit organizations. I can also apply the new procedure to have the IRS correct its records to show the new, correct tax status of the organization. Finally, I can ask the IRS to confirm that specific changes do not affect the tax-exempt status of an organization or its exemption from private foundation status.

I would be pleased to discuss how these new rules apply to your organization or its activities.

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