

Announcement 2010-19

PROCEDURES FOR CERTAIN TRUSTS THAT QUALIFY AS TYPE III SUPPORTING ORGANIZATIONS

This announcement applies to trusts that met the requirements to be classified as a Type III supporting organization through the end of the 2008 taxable year (including by meeting the significant voice responsiveness test for periods after August 16, 2007), but erroneously filed Form 990-PF and paid section 4940 tax for the 2008 taxable year. It provides procedures that such a trust may use to request a ruling that it was and continues to be a Type III supporting organization described in section 509(a)(3) and to obtain a refund of any section 4940 tax paid with respect to its 2008 taxable year.

This announcement also describes procedures for charitable trusts that became private foundations after August 16, 2007, and wish to terminate their private foundation status under section 507(b)(1)(B) by operating as Type III supporting organizations.

Background

Treas. Reg. § 1.509(a)-4(i) sets forth the requirements for an organization to qualify as a section 509(a)(3) supporting organization that is "operated in connection with" one or more publicly supported organizations (i.e., a "Type III supporting organization"). Type III supporting organizations are required to meet a "responsiveness test" and an "integral part test." See Treas. Reg. § 1.509(a)-4(i)(1)(i), (i)(2).

Prior to passage of the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006) ("PPA"), there were two alternative ways for a Type III supporting organization to meet the responsiveness test.

- (1) The significant voice test. Treas. Reg. § 1.509(a)-4(i)(2)(ii) provides that an organization meets the responsiveness test if, by virtue of certain governance relationships between the supporting organization and the supported organization, or a close and continuous working relationship between the supporting organization and supported organization, the officers, directors, or trustees of the publicly supported organization have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making them, and the selection of recipients of such supporting

organization, and in otherwise directing the use of the income or assets of the supporting organization.

- (2) The charitable trust test. Treas. Reg. § 1.509(a)-4(i)(2)(iii) provides that an organization meets the responsiveness test if it is a charitable trust under state law, each publicly supported organization is a named beneficiary under the trust's governing instrument, and each beneficiary organization has the power to enforce the trust and compel an accounting under state law.

Section 1241(c) of the PPA eliminated the charitable trust test, effective August 17, 2007. Consequently, as of August 17, 2007, a charitable trust can no longer qualify as a Type III supporting organization unless it meets the significant voice test.

Notice 2008-6, 2008-1 C.B. 275, provided that any charitable trust that became a private foundation because of the PPA elimination of the charitable trust test would not be required to file an information return on Form 990-PF or pay excise taxes on investment income under section 4940 until its first taxable year beginning on or after January 1, 2008.

On August 2, 2007, the Treasury Department ("Treasury") and the Internal Revenue Service ("IRS") published an advance notice of proposed rulemaking ("ANPRM") describing the rules Treasury and the IRS anticipated proposing regarding Type III supporting organizations. The ANPRM states that Treasury and the IRS expect that all Type III supporting organizations will be required to meet the significant voice responsiveness test under Treas. Reg. § 1.509(a)-4(i)(2)(ii).

On September 24, 2009, Treasury and the IRS published a notice of proposed rulemaking in the Federal Register (74 Fed. Reg. 48,672) addressing Type III supporting organizations ("proposed regulations"). The proposed regulations require that all Type III supporting organizations meet the significant voice responsiveness test, and provide two new examples illustrating the application of the significant voice test to charitable trusts.

Scope

A trust may request a ruling stating that it is a Type III supporting organization and obtain a refund of any tax paid under section 4940 by following the procedures set forth in this Announcement if it is either:

- (1) A charitable trust that:
 - a. received a determination recognizing its tax-exempt status under section 501(c)(3);

- b. was classified as a Type III supporting organization prior to enactment of the PPA;
- c. continued to meet the requirements to be classified as a Type III supporting organization through the end of its 2008 taxable year (including by meeting the significant voice responsiveness test for periods after August 16, 2007); and
- d. erroneously filed Form 990-PF for the 2008 taxable year and paid section 4940 tax for the 2008 taxable year;

or

- (2) A non-exempt charitable trust described in section 4947(a)(1) that:
 - a. is treated for certain purposes as an organization described in section 501(c)(3);
 - b. was classified as a Type III supporting organization prior to enactment of the PPA;
 - c. continued to meet the requirements to be classified as a Type III supporting organization through the end of its 2008 taxable year (including by meeting the significant voice responsiveness test for periods after August 16, 2007); and
 - d. erroneously filed Form 990-PF for the 2008 taxable year and paid section 4940 tax for the 2008 taxable year.

Procedures

A. Ruling that trust qualifies as Type III supporting organization for taxable years beginning on or after January 1, 2008

A trust may request a ruling that it qualified and continues to qualify as a Type III supporting organization for taxable years beginning on or after January 1, 2008, by submitting a written request for a ruling pursuant to Revenue Procedure 2010-4, 2010-1 I.R.B. 122.

The request for ruling should generally follow the format specified in Revenue Procedure 2010-4 and must include the following:

- (1) A subject line or other indicator on the first page of the request in bold, underlined, or all capitals font indicating "REQUEST FOR RULING – TYPE III SUPPORTING ORGANIZATION STATUS OF TRUST."
- (2) An explanation of how the trust satisfied the requirements to be classified as a Type III supporting organization through the end of its 2008 taxable year (including by meeting the significant voice responsiveness test for periods after August 16, 2007), and how it expects to continue to satisfy such requirements for subsequent years. For this purpose, the trust may rely on the proposed regulations.

- (3) With respect to the significant voice test, documentation that establishes that the trust satisfied the requirements of the test. For example, such documentation may include minutes or other documentation of meetings, telephone calls, conversations, e-mail exchanges, and policies that demonstrate a close and continuous working relationship between the supported organization(s) and the supporting organization based upon which the supported organization(s) has a significant voice.

Like all requests for a ruling, the request must be signed under penalties of perjury by the trust's officer, director, trustee, or other authorized official. The complete request should be mailed to:

Internal Revenue Service
Attention: EO Letter Rulings
P.O. Box 27720
McPherson Station
Washington, D.C. 20038

There is no user fee for this ruling request. No deletions statement is required because determinations regarding foundation status are public pursuant to section 6104. The Checklist in Appendix B of Revenue Procedure 2010-4 is not required.

B. Claims for refunds of tax paid under section 4940 for taxable years beginning on or after January 1, 2008

A trust may request a refund of tax paid under section 4940 for its first taxable year beginning on or after January 1, 2008, by filing a Form 843 that meets the following requirements:

- (1) The Form 843 must be accompanied by a copy of the ruling received from the IRS under the procedures set forth in this Announcement.
- (2) The Form 843 must be submitted by mail or delivered to:

Internal Revenue Service Center
P.O. Box 9941
MS: 6710
Ogden, Utah 84409-0074

- (3) The Form 843 must be completed as follows:
 - a. Write "Announcement 2010-19 status change" at the top of Form 843,

- b. On line 6, check the box for “990-PF,” and
- c. On line 7, write “Announcement 2010-19 status change by Type III supporting organization.”

C. 2008 Form 990

Any trust that receives a ruling that it is a Type III supporting organization under the procedures set forth in this Announcement must file a Form 990 for its first taxable year beginning on or after January 1, 2008, within 120 days of the date of the ruling letter. The top of page 1 of the Form 990 should bear the following legend in bold, underlined, or all capitals font: “ANNOUNCEMENT 2010-19.”

D. Section 507 terminations of private foundation status

Charitable trusts that became private foundations after August 16, 2007, may terminate their private foundation status under section 507(b)(1)(B) by operating as Type III supporting organizations. Under existing law and procedures, a private foundation may terminate its private foundation status under section 507(b)(1)(B) by: (1) operating as an organization described in paragraph (1), (2), or (3) of section 509(a) for a continuous period of at least 60 calendar months beginning with the first day of any taxable year that begins after December 31, 1969; (2) notifying the Secretary before the commencement of the 60-month period that it is terminating its private foundation status; and (3) establishing that it in fact operated as an organization described in section 509(a)(1), (2), or (3) to the satisfaction of the Secretary immediately after the expiration of the 60-month period.

Notifications of termination should be labeled “TERMINATION NOTIFICATION” at the top of the first page of the cover letter, and should be submitted to the Determinations office in Cincinnati. The letter and accompanying documentation should be mailed to —

Internal Revenue Service
P.O. Box 2508
Rm. 4024
Cincinnati, OH 45201

For further information regarding this Announcement, contact Mike Repass of the Exempt Organizations, Tax Exempt and Government Entities Division, at (202) 283-8924 (not a toll-free call).