

Priority Guidance

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On Oct. 20, 2017, the Treasury Department issued its [2017-2018 Priority Guidance Plan](#) (the Plan). The Plan sets forth guidance priorities for the Treasury and the IRS based on public input, and taking into account the burden-reducing policies of the administration.

All areas of the tax law are covered by the Plan and it is expected that the Plan will be updated throughout the year. In the Exempt Organization (EO) area, the Plan has 10 items including allocation of expenses between related and unrelated activities for dual use facilities; final regulations on supporting organizations and guidance under Internal Revenue Code (IRC or Code) section 4941 (self-dealing) when disqualified persons own partnership interests, among others. (See the full list below.)

Most of the items are from last year's Plan, and some items were dropped from last year. Most significantly, the Plan dropped the proposed guidance under IRC section 6033 that would have provided that an exempt organization collect information from donors, such as social security numbers, in order to report contributions. Another item dropped from the EO list was the revision of Revenue Ruling 67-390. This revenue ruling discusses four situations where an exempt organization changes its structure: An exempt trust was reorganized and adopted a corporate form; An exempt unincorporated association was incorporated; An exempt organization incorporated under state law was reincorporated by an Act of Congress to carry out the same purposes contained in the state charter; and an exempt organization incorporated under the laws of one state was reincorporated under the laws of another state. In all of these situations, even though neither the purposes nor operations was changed, the IRS concludes in the revenue ruling that a new application

for exemption is necessary, clearly additional paperwork. So instead of keeping this particular item in the EO priority list, the item has been moved to the "Burden Reduction" section where it may have a greater chance of getting addressed.

The Priority Guidance Plan has 10 items in the Exempt Organization area.

One item that remained on the list but has actually now already been addressed was an update to Revenue Procedure 92-94 that addresses private foundation reliance standards for making good faith determinations as to the equivalency of a foreign entity to a public charity. The rule in this area is that a private foundation can make

qualifying distributions to a foreign entity that is equivalent to a 501(c)(3) public charity without exercising expenditure responsibility. The item was dropped because it has been addressed by Revenue Procedure 2017-53 (released 9/14/17). If a private foundation makes a "good faith determination" that a foreign grantee qualifies as a qualifying public charity the grant will generally be a qualifying distribution that does not require expenditure responsibility in order to not be a taxable expenditure. The new revenue procedure provides guidance as to what is needed for an equivalency determination.

Complete EO List from The Plan:

1. Update revenue procedures on grantor and contributor reliance under §§170 and 509, including update to Revenue Procedure 2011-33 for EO Select Check.
2. Final regulations on §509(a)(3) supporting organizations. Proposed regulations were published on February 19, 2016.

3. Guidance under §512 regarding methods of allocating expenses relating to dual use facilities.
4. Guidance on §529(c)(3)(D) on the recontribution within 60 days of refunded qualified higher education expenses as added by section 302 of the Protecting Americans from Tax Hikes Act of 2015.
5. Final regulations under §529A on Qualified ABLE Programs as added by §102 of the ABLE Act of 2014. Proposed regulations were published on June 22, 2015.
6. Guidance under §4941 regarding a private foundation's investment in a partnership in which disqualified persons are also partners.
7. Update to Revenue Procedure 92-94 on §§4942 and 4945 (Reliance standards for making good faith determinations on whether a foreign entity is the equivalent to a US public charity.)
8. Guidance regarding the excise taxes on donor advised funds and fund management.
9. Final regulations under §6104(c). Proposed regulations were published on March 15, 2011.
10. Final regulations designating an appropriate high-level Treasury official under § 7611. Proposed regulations were published on August 5, 2009.

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