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IRS Eases Rules for Tax-Exempt Organization Restructurings

The IRS released Revenue Procedure 2018-15, 2018-9 IRB (<https://www.irs.gov/pub/irs-drop/rp-18-15.pdf>), stating that effective for tax years beginning on or after Jan. 1, it generally will not require a new exemption application from a domestic Section 501(c) organization that changes its form or place of organization. (Section references are to the Internal Revenue Code of 1986, as amended.) The IRS's prior position (see Revenue Rulings 67-390, 1967-2 CB 179 (<https://www.irs.gov/pub/irs-tege/rr67-390.pdf>) and 77-469, 1977-2 CB 196 (<https://www.irs.gov/pub/irs-tege/rr77-469.pdf>), which are now obsolete by Revenue Procedure 2018-15) required a new exemption application if an exempt organization changed its legal structure, such as from a trust to a corporation, or if it dissolved in one state and incorporated in another. Other rules generally provide that in many of these circumstances, a new taxpayer identification number (TIN) is not required for federal tax purposes. For example, when one corporation merges with another corporation under state law and the latter corporation survives, a new TIN is not required for the surviving corporation. Also, under Revenue Ruling 73-526, 1973-2 CB 404, a new TIN is not required if a corporation incorporated under the laws of one state reincorporates as a corporation incorporated under the laws of another state.

The IRS has not previously issued published guidance on whether a new exemption application is required where (a) there is a continuation of a surviving corporation after a statutory merger of exempt organizations or (b) an exempt organization files articles of domestication in a state different from the state in which it was originally incorporated.

Revenue Procedure 2018-15 generally eliminates the requirement for domestic business entities classified as corporations for federal tax purposes to file a new exemption application after a corporate restructuring, if certain conditions are satisfied to better align the requirements for new exemption applications with the requirements for obtaining new TINs in restructuring transactions. The Revenue Procedure applies to corporate restructurings of domestic business entities that are classified as corporations and are recognized as exempt under Section 501(a) as organizations described in Section 501(c).

Subject to the requirements and limitations listed below, in the case of a corporate restructuring of a domestic business entity, the surviving organization will not be required to file a new exemption application to be exempt if the surviving organization is:

- a. a domestic business entity;
- b. classified as a corporation; and
- c. carrying out the same exempt purposes as the exempt organization that engaged in the corporate restructuring.

If the restructuring organization is a 501(c)(3) charitable organization, then the articles of organization of the surviving organization must continue to meet the organizational test of Treasury Regulations Section 1.501(c)(3)-1(b), including the part of the regulation dedicating the assets of the organization to exempt purposes.

The Revenue Procedure does not apply to any corporate restructuring in which (a) the restructuring organization or the surviving organization is a disregarded entity, limited

liability company, partnership or foreign business entity or (b) the surviving organization obtains a new TIN.

The Revenue Procedure requires the surviving organization to report the corporate restructuring on any required Form 990 for the applicable tax year. In the case of a domestication or reincorporation in a different state, the surviving organization must also report a change of address as prescribed by the IRS (Form 8822-B (Change of Address or Responsible Party – Business); Form 990 (<https://www.irs.gov/charities-non-profits/other-non-profits/change-of-address-exempt-organizations>)).

A surviving organization that does not meet the requirements of the Revenue Procedure but that wants to be recognized as exempt under Section 501(a) generally must apply to the IRS for a determination letter on exempt status.

IRS Releases Practice Unit on Shareholder Debt Owed by S Corp

The IRS released a practice unit (https://www.irs.gov/pub/irs-utl/sco_c_53_04_02_01_04.pdf) on valid shareholder debt owed by an S corporation, addressing what qualifies as bona fide debt and whether that debt is owed directly to the shareholder creating debt basis. The practice unit includes a list of key factors of bona fide indebtedness as well as examples.



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