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IRS Eliminates Advance Ruling Process September 2008

On September 9, 2008, the IRS issued temporary Income Tax Regulations which eliminate the advance ruling process for section 501(c)(3) organizations. Under the new regulations, a new 501(c)(3) organization will be classified as a publicly supported charity, and not a private foundation, if it can show that it reasonably can be expected to be publicly supported when it applies for tax-exempt status.

Under the old regulations, an organization that wanted to be recognized by the IRS as a publicly supported charity instead of a private foundation had to go through an extended two-step process. First, the organization had to declare that it expected to be publicly supported on an ongoing basis. Then, after five years, it had to file Form 8734, *Support Schedule for Advance Ruling Period*, showing the IRS that it actually met the public support test. If it didn't meet the test, it was designated a tax-exempt private foundation and would be subject to stricter rules.

The new rules no longer require the organization to file Form 8734 after completing its first five tax years. Moreover, the organization retains its public charity status for its first five years regardless of the public support actually received during that time. Instead, beginning with the organization's sixth taxable year, it must establish that it meets the public support test by showing that it is publicly supported on its Schedule A to Form 990, *Return of Organization Exempt from Income Tax*.

Transition rules apply to organizations that have previously received advance rulings.

Under the new regulations, section 501(c)(3) organizations that have received advance rulings that will expire on or after June 9, 2008 will be classified as publicly supported charities. These organizations and their donors may rely on the organizations' advance ruling determination, and the organizations no longer need to file Form 8734 with the IRS.

Organizations whose advance rulings had expired before June 9, 2008 and that did not submit Form 8734 to the IRS will be reclassified as private foundations unless they submit documentation to the IRS establishing that they met the public support test during the advance ruling period.

The IRS will process exemption applications submitted before the effective date of the new regulations under the new rules.

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