



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Date: August 20, 2014

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Legend:

State1 =
State2 =
Date1 =
Date2 =

Dear :

We have considered your ruling request dated December 18, 2013, submitted by your authorized representative, regarding your tax-exempt status following your filing Articles of Domestication in State2, which will change your state of domicile from State1 to State2.

Facts

You are a nonprofit corporation formed on Date1 by a certificate of formation filed with the corporation governing agency of State1. On Date2, you received recognition of exemption under I.R.C. § 501(c)(3) retroactive to your date of formation. This recognition of exemption remains in effect.

You plan to file "Articles of Domestication" with the corporation governing agency of State2 and a Certificate of Conversion with the corporation governing agency of State1. The effect of these filings will be that your state of domicile will change from State1 to State2.

The governing law of State2 states that your filing Articles of Domestication will not affect your date of incorporation. That date will continue to be Date1. Further, the law of State2 states that you are the same corporation as the one that existed under the laws of the state in which you were previously domiciled. Similarly, the governing law of State1 states that following your filing a Certificate of Conversion you will continue to exist without interruption and you will maintain the same liabilities and obligations.

You are making this change because the laws of State2 will offer you more flexibility. This change will not affect your charitable purpose or operations.

Rulings Requested

1. That, the change in your state of domicile will not be considered a substantial change in your character, purposes, or methods operations under Treas. Reg. § 1.501(a)-(1)(a)(2).
2. That, the change in your state of domicile will not create a new legal entity which would require the filing of an application for exemption pursuant to Rev. Rul. 67-390.
3. That, after the change in your state of domicile, you may continue to rely on the determination of tax exempt status issued to you, and you will not be required to file a new application for exemption to establish that you qualify for exemption.

Law

I.R.C. § 501(c)(3) exempts from taxation "Corporations, and any community chest, fund, or foundation" that fit certain criteria.

I.R.C. § 508(a) states that "New organizations must notify secretary that they are applying for recognition of section 501(c)(3) status."

Treas. Reg. § 1.501(a)-1(a)(2) states that an organization is not exempt from tax merely because it is not organized and operated for profit. In order to establish its exemption, it is necessary that every such organization claiming exemption file an application form with the Internal Revenue Service.

Treas. Reg. § 1.501(a)-1(a)(3) provides that an organization claiming exemption under I.R.C. § 501(a) and described in any paragraph of I.R.C. § 501(c) shall file the form of application prescribed by the Commissioner.

Treas. Reg. § 1.508-1(a) states that "New organizations must notify the Commissioner that they are applying for recognition of section 501(c)(3) status."

Treas. Reg. § 1.508-1(a)(1) provides that in general an organization organized after October 9, 1969, will not be treated as described in I.R.C. § 501(c)(3) unless such organization has given the Commissioner notice.

American New Covenant Church v. Commissioner, 74 T.C. 293, 301 (T.C. 1980) considered the question of whether a new organization was formed during the following course of actions. An unincorporated association filed an application for exemption. While its application was pending, the unincorporated association stated that it had changed its name and also it presented articles of incorporation bearing this new name. The Service determined that a new entity had been formed by the filing of these articles of incorporation. It concluded that 1) the newly formed corporation was distinctive from the unincorporated association that had previously filed an application for exemption and 2) the newly formed corporation needed to file its own application. The Tax Court agreed, ruling "that the two organizations [should] be treated as separate, independent legal entities." It stated, that the Service, "was entirely justified in

insisting that [the newly formed corporation] submit a new application in order to determine whether it met the regulation requirements for tax-exempt status.”

Rev. Rul. 67-390; 1967-2 C.B. 179, considered four situations in which organizations previously ruled as exempt underwent structural changes.

Case 1. An exempt trust was reorganized and adopted a corporate form to carry out the same purposes for which the trust had been established. Its operations were not changed.

Case 2. An exempt unincorporated association was incorporated and continued the operations which had qualified it for exemption.

Case 3. 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.

Case 4. An exempt organization incorporated under the laws of one state was reincorporated under the laws of another state with no change in its purposes.

The ruling held that in all four situations, a new legal entity had been created and the new legal entity was required to apply for exemption. The old organization’s exemption would not suffice.

Rev. Rul. 77-469, 1977-2 C.B. 196, held that an organization that filed its application for exemption less than 15 months after its incorporation under state law was exempt as of the date of its incorporation even though it had operated as an unincorporated association for three years prior to its incorporation. The ruling highlighted that the corporation was a new legal entity from the unincorporated one.

Analysis

You originally incorporated under the laws of State1. You received recognition of exemption under I.R.C. 501(c)(3) while under the jurisdiction of State1. You will file “Articles of Domestication” with State2 and a Certificate of Conversion in State1, with the intent to change your state of domicile from State1 to State2. You wish to be recognized as exempt after these events.

Under Treas. Reg. 1.501(a)-1(a)(3), an organization is not entitled to recognition of exemption if it has not filed an application as prescribed by the Commissioner. Under I.R.C. § 508(a) and Treas. Reg. § 1.508-1(a), a new organization must notify the Service of its intent to seek recognition of exemption. If your submission of Articles of Domestication to change your state of domicile causes you to become a new organization, then you may not rely on your prior recognition. Conversely, if this change does not cause you to become a new organization, then you may rely on the recognition issued on Date2.

Your planned actions are not comparable to those of the organizations in Rev. Rul. 77-469, American New Covenant Church v. Commissioner, 74 T.C. 293, 301 (T.C. 1980), and Rev. Rul. 67-390, Cases 1 and 2. The organizations in those instances changed from an unincorporated

association to a corporation or from a trust to a corporation. In contrast, you were formed as a corporation and you will remain as a corporation. You are not altering your basic organizational form.

Your planned action to file articles of domestication in State2 is closer to the situation described in cases 3 and 4 of Rev. Rul. 67-390 in that there is no change as to entity type. Like those organizations in cases 3 and 4, you are keeping your organizational form but changing the jurisdiction that governs you. You are a corporation governed by the laws of State1, and following your filing Articles of Domestication and changing your state of domicile, you will be governed by the laws of State2.

Nevertheless, cases 3 and 4 are distinguishable in that each "reincorporation" involves the creation of a new legal entity. You are filing an amendment to your formation document, rather than filing a new one. The laws of State1 and State2 provide that you will maintain your original incorporation date and that you are the same corporation as you were before you filed Articles of Domestication. Further, following this change of your state of domicile, you will maintain the same liabilities to the Service and others that you had before. Thus, your conversion does not amount to the creation of a new organization for purposes of I.R.C. § 508(a) and Treas. Reg. § 1.508-1(a). The situation would be different if a new corporation were created in State2 and you merged into it or transferred your assets to it, as contemplated in cases 3 and 4.

The change in your state of domicile will not be considered a substantial change in your character, purposes, or methods of operation under Treas. Reg. § 1.501(a)-(1)(a)(2) for purposes of reliance on your prior determination of exempt status. However, the changes to your governing documents described in this ruling should be reported on Form 990 as significant changes.

Rulings

1. The change in your state of domicile will not be considered a substantial change in your character, purposes, or methods operations under Treas. Reg. § 1.501(a)-(1)(a)(2).
2. The change in your state of domicile will not create a new legal entity which would require the filing of an application for exemption pursuant to Rev. Rul. 67-390.
3. After the change in your state of domicile, you may continue to rely on the determination of tax exempt status issued to you, and you will not be required to file a new application for exemption to establish that you qualify for exemption.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Michael Seto
Manager, EO Technical

Enclosure
Notice 437