

or the plan administrator; the office of the primary recordkeeper serving the plan; or the office of an attorney, enrolled actuary, certified public accountant or other advisor retained by the plan or the employer at the time of the Terrorist Attack to determine the funding requirements described in section III.B above for the period described in such section. A plan will also be considered to be directly affected by the Terrorist Attack if the enrolled actuary for the plan was killed or injured or is missing as a result of the Terrorist Attack.

D. The following rule applies under Title IV of ERISA for purposes of determining a plan's unfunded vested benefits for a premium payment year or entitlement to the full funding limit exemption from the variable-rate premium for a premium payment year. For any plan for which this notice extends a date described in § 412(c)(10) of the Code and § 302(c)(10) of ERISA, contributions for any plan year before the premium payment year may be taken into account if they are made on or before the earlier of (1) the extended § 412(c)(10)/§ 302(c)(10) date under this notice or (2) the date of the plan's variable-rate premium filing (or, if applicable, amended variable-rate premium filing) for the premium payment year.

DRAFTING INFORMATION

The principal authors of this notice are James E. Holland, Jr. and Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500, between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll-free number). Mr. Holland may be reached at (202) 283-9699 (not a toll-free number).

Qualified 501(c)(3) Bonds

Notice 2002-10

PURPOSE

This notice clarifies the application of §§ 145(a)(2) and 514 of the Internal Revenue

Code to the investment of gross proceeds of qualified 501(c)(3) bonds described in § 145.

BACKGROUND

Section 103(a) provides that, with certain exceptions, gross income does not include interest on any state or local bond. One type of bond that is eligible for the exclusion under § 103(a) is a qualified 501(c)(3) bond described in § 145 that satisfies certain requirements, including the requirements contained in § 148.

In general, a qualified 501(c)(3) bond is a bond at least 95 percent of the net proceeds of which are to be used by no person other than an organization described in § 501(c)(3) (a "501(c)(3) organization") or a governmental unit. However, under § 145(a)(2), a bond is not a qualified 501(c)(3) bond if more than 5 percent of the net proceeds of the issue of which it is a part are to be used by a 501(c)(3) organization in an unrelated trade or business under § 513(a).

With certain exceptions, § 148 and the regulations thereunder prohibit the use of gross proceeds of an issue of qualified 501(c)(3) bonds to acquire investment property (as defined in § 148(b)) that produces a yield that materially exceeds the yield on the issue. Section 1.148-1(b) of the Income Tax Regulations defines "gross proceeds" to include, among other things, amounts received from the sale of the issue, amounts received from investing proceeds of the issue, and certain other amounts with a nexus to the issue.

Section 501(a) exempts 501(c)(3) organizations from federal income taxation. However, notwithstanding this general exemption, § 511(a) imposes a tax on the unrelated business taxable income, as defined in § 512, of 501(c)(3) organizations, including certain income from debt-financed property, as defined in § 514.

DISCUSSION

Questions have arisen regarding the application of §§ 145(a)(2) and 514 to the investment of gross proceeds of qualified 501(c)(3) bonds in a manner that complies with the requirements of § 148. This notice clarifies that the use of gross proceeds of an issue of qualified 501(c)(3) bonds to acquire investments (as defined in § 1.148-1) in a manner that complies

with § 148 does not constitute an unrelated trade or business for purposes of § 145(a)(2) and does not result in income from debt-financed property under § 514. This notice does not affect the determination of whether the use of property financed with expenditures of proceeds of bonds constitutes an unrelated trade or business for purposes of § 145(a)(2) or results in unrelated business taxable income under § 512.

DRAFTING INFORMATION

The principal authors of this notice are Charles P. Barrett of the Tax Exempt and Government Entities Division, Exempt Organizations, and Sunita Lough of the Tax Exempt and Government Entities Division, Tax Exempt Bonds. For further information regarding this notice, please contact Mr. Barrett at (202) 283-8944 (not a toll-free number) or Ms. Lough at (202) 283-9774 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters. (Also Part I, §§ 7701; 301.7701-1; 301.7701-2, 301.7701-3, 301.9100-1, 301.9100-3.)

Rev. Proc. 2002-15

SECTION 1. PURPOSE

This revenue procedure provides guidance under § 7701 of the Internal Revenue Code for a newly formed entity that requests relief for a late initial classification election filed within 6 months of the due date of the initial election.

SECTION 2. BACKGROUND

.01 Section 7701 provides definitions for business entities and their owners for federal tax purposes.

.02 Section 301.7701-1(a) of the Procedure and Administration Regulations provides general rules for the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law. Section 301.7701-1(b) provides that the classification of organizations that are recognized as separate

entities is determined under § 301.7701-2, § 301.7701-3, and § 301.7701-4 unless a provision of the Code provides for special treatment of that organization.

.03 Section 301.7701-2(a) provides that a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner) that is not properly classified as a trust or otherwise subject to special treatment under the Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded as an entity separate from its owner. Section 301.7701-2(b) sets forth those business entities that are considered corporations for federal tax purposes.

.04 Section 301.7701-3 provides that a business entity not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) is able to choose its classification for federal tax purposes. Under § 301.7701-3(b)(1) a domestic eligible entity is, in the absence of an election otherwise, a partnership if it has two or more members, and disregarded as an entity separate from its owner if it has a single owner. Section 301.7701-3(b)(2) provides generally that, in the absence of an election otherwise, a foreign eligible entity is (a) a partnership if it has two or more members and at least one member does not have limited liability, (b) an association if all its members have limited liability, or (c) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

.05 Section 301.7701-3(c)(1)(i) provides generally that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832, *Entity Classification Election*, with the service center designated on Form 8832. Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed. If an election

specifies an effective date more than 75 days prior to the date on which the election is filed, it will be effective 75 days prior to the date it was filed.

.06 Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election or certain statutory elections under all subtitles of the Code, except subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. An entity classification election made pursuant to § 301.7701-3(c) is a regulatory election.

.07 The Commissioner has authority under § 301.9100-1 and § 301.9100-3 to grant an extension of time if a taxpayer fails to file a timely election under § 301.7701-3(c). Section 301.9100-3 provides that the Commissioner will grant an extension of time when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

SECTION 3. SCOPE

This revenue procedure provides a simplified method to request relief for certain late initial classification elections. An initial classification election is an election by an eligible entity newly formed under local law to be classified effective on the date of its formation as other than the default classification provided under §§ 301.7701-3(b)(1) and (2). This procedure is in lieu of the private letter ruling procedure that is used to obtain relief for a late entity classification election under § 301.9100-1 through § 301.9100-3. Accordingly, user fees do not apply to corrective action under this revenue procedure. An entity that is not eligible for relief under this revenue procedure, or is denied relief by the service center, may request relief by applying for a private letter ruling. The procedural

requirements for requesting a private letter ruling are described in Rev. Proc. 2002-1 (2002-1 I.R.B. 1) (or its successor). This revenue procedure does not apply to a subsequent election to change the classification of an entity.

SECTION 4. RELIEF FOR LATE INITIAL CLASSIFICATION ELECTIONS

.01 *Eligibility for Relief.* An entity is eligible for relief under section 4.03 of this revenue procedure for a late initial classification election if the following requirements are met: (1) the entity failed to obtain its desired classification as of the date of its formation solely because Form 8832 was not filed timely under § 301.7701-3(c)(1); (2) the due date for the tax return of the entity's default classification (excluding extensions) for the taxable year beginning with the date of the entity's formation has not passed; and (3) the entity has reasonable cause for its failure to timely make the initial entity classification election.

.02 *Procedural Requirements for Requesting Relief.* Within 6 months of the original due date for the initial classification election (within 6 months and 75 days of the entity's formation), the newly formed entity must file with the applicable service center (determined in accordance with the instructions to Form 8832) a completed Form 8832, signed in accordance with § 301.7701-3(c)(2). The Form 8832 must state at the top of the document "FILED PURSUANT TO REV. PROC. 2002-15." Attached to the Form 8832 must be a statement explaining the reason for the failure to file a timely initial classification election.

.03 *Relief for Late Entity Classification Elections.* Upon receipt of a completed application requesting relief under this revenue procedure, the Internal Revenue Service will determine whether the requirements for granting additional time have been satisfied and will notify the entity of the result of its determination.

SECTION 5. EFFECTIVE DATE

This revenue procedure generally applies to all ruling requests pending in the national office on February 11, 2002, the date of publication of this revenue

procedure in the Internal Revenue Bulletin, and to requests for relief received thereafter.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1771.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in Section 4.01. This

information is required to be submitted to the applicable service center in order to obtain relief for late initial classification elections. This information will be used to determine whether the eligibility requirements for obtaining relief have been met. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 100 hours.

The estimated annual burden per respondent varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of respondents is 100.

The estimated annual frequency of responses is one.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue procedure are Beverly M. Katz of the Office of Associate Chief Counsel (Passthroughs and Special Industries) and David J. Sotos of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Ms. Katz at (202) 622-3050 (not a toll-free call).