

ruling or determination letter. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are tax-exempt organizations.

## DRAFTING INFORMATION

The principal authors of this revenue procedure are Mr. Dave Rifkin and Mr. Matt Perdoni of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information about this revenue procedure, contact Customer Account Services at 877-829-5500. Dave Rifkin or Matt Perdoni can be reached by e-mail at [tege.eo@irs.gov](mailto:tege.eo@irs.gov). Please include "Question about Rev. Proc. 2012-10" in the subject line.

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*26 CFR 601.601: Rules and regulations.  
(Also: 31 USC 330, 31 CFR 10.6, 31 CFR 10.9.)*

## Rev. Proc. 2012-12

### SECTION 1. PURPOSE

The purpose of this revenue procedure is to describe the procedures and standards that organizations must follow to be identified by the Internal Revenue Service as a qualifying organization that may accredit continuing education providers under section 10.9(a)(1)(iii) of Circular 230. This revenue procedure also describes the standards for a continuing education provider under section 10.9(a)(1) and the procedures that individuals and entities must follow to be approved by the Internal Revenue Service as a continuing education provider under section 10.9(a)(1)(iv).

### SECTION 2. BACKGROUND

.01 On June 3, 2011, the Treasury Department and the Internal Revenue Service published final regulations in the Federal Register (T.D. 9527, 2011-28 I.R.B. 38 [76 FR 32286]) under 31 CFR Part 10 (reprinted as Treasury Department Circular 230) that require registered tax return preparers to complete continuing education offered by qualified continuing education providers. Enrolled agents and enrolled retirement plan agents also are required to complete continuing education

under Circular 230. Section 10.9(a)(1) of Circular 230 provides that continuing education providers must be:

(i) An accredited educational institution;

(ii) Recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia;

(iii) Recognized and approved by a qualifying organization as a provider of continuing education on subject matters within section 10.6(f) of Circular 230; or

(iv) Recognized by the IRS as a professional organization, society, or business whose programs include offering continuing professional education opportunities in subject matters within section 10.6(f).

For purposes of this revenue procedure, an entity referred to as a "qualifying organization" in section 10.9(a)(1)(iii) will be referred to as an "accrediting organization" and an individual or entity approved by the IRS as a continuing education provider under section 10.9(a)(1)(iv) will be referred to as a "section iv CE provider."

.02 Section 10.9(a)(1)(iii) provides that the IRS, at its discretion, may identify the accrediting organizations that maintain minimum education standards comparable to those set forth in Circular 230 in appropriate forms, instructions, and other appropriate guidance.

.03 Section 10.9(a)(1)(iv) provides that the IRS, at its discretion, may require section iv CE providers to file an agreement and/or obtain IRS approval of each program as a qualified continuing education program in appropriate forms, instructions, or other appropriate guidance.

.04 Under section 10.9(a)(2), a continuing education provider must obtain a continuing education provider number and pay any applicable user fee. A continuing education provider also must maintain its status as a continuing education provider during each continuing education provider cycle by renewing its continuing education provider number as prescribed by forms, instructions, or other appropriate guidance and paying any applicable user fee.

.05 Sections 10.6(f) and 10.9(a)(3) provide initial criteria that continuing education programs must meet to qualify for continuing education credit for enrolled agents, enrolled retirement plan agents, and registered tax return preparers.

A qualifying continuing education program generally must enhance professional knowledge in Federal taxation or Federal tax related matters, including ethics, must be consistent with the Internal Revenue Code and effective tax administration, and must be conducted by a qualified instructor.

.06 On July 18, 2011, Treasury and the IRS published Notice 2011-61 soliciting the feedback of education providers, tax return preparers, the associated industry and consumer groups, and taxpayers on the procedures and standards that will govern the process for identifying accrediting organizations or for those individuals and entities seeking approval as section iv CE providers. Numerous comments were received and were taken into account in the development of the standards and procedures prescribed in this revenue procedure.

### SECTION 3. SCOPE

This revenue procedure applies to any organization seeking to be identified as an accrediting organization or any individual or entity seeking approval as a section iv CE provider; and applies to any continuing education provider seeking to obtain continuing education provider and program numbers under section 10.9. This revenue procedure supplements sections 10.6 and 10.9 by describing the specific standards and procedures that those organizations, individuals, and entities must follow to be identified as an accrediting organization or accepted as a continuing education provider.

### SECTION 4. ACCREDITING ORGANIZATIONS

.01 *Standards.* Any organization seeking to be identified as an accrediting organization that may approve individuals and entities as continuing education providers under section 10.9(a)(1)(iii) must:

(1) Have an established framework and effective means of review and approval for continuing education providers.

(2) Publish requirements for continuing education provider approval.

(3) Have written procedures sufficient to ensure that the continuing education providers it accredits comply with any standards set forth in Circular 230, the requirements described in section 5.02

below, and any other standards prescribed by the IRS in other appropriate guidance.

(4) Have experience evaluating continuing education providers in Federal taxation or Federal tax related matters, including ethics. The minimum level of experience required typically will be two years.

(5) Have an established process for annually auditing or reviewing selected programs of selected approved continuing education providers. Reviews of selected programs must be performed periodically, at least annually.

(6) Maintain records for each approved continuing education provider for four years and submit reports to the IRS periodically on the individuals and entities applying for continuing education provider status.

(7) Maintain an internet listing of all continuing education providers approved by the accrediting organization.

(8) Employ at least one full-time staff member with subject-matter expertise in Federal taxation or Federal tax related matters, including ethics. That staff member must be qualified to evaluate continuing education provider programs as outlined in Circular 230.

**.02 Requirements.** Any organization identified as an accrediting organization must:

(1) Comply with all IRS guidance and requirements, including Circular 230. The IRS may require an accrediting organization to provide additional information regarding such compliance. The IRS may revoke an organization's status as an accrediting organization if the organization fails to adequately and timely respond to the IRS's request for information.

(2) Have an established process for in-depth reviews of selected approved continuing education providers on an annual basis.

(3) Act only as an approver of continuing education providers, and not offer Federal tax related continuing education commercially.

(4) Respond to IRS requests for information regarding the individuals or entities approved or not approved as continuing education providers.

**.03 How to Apply.** An organization seeking to be identified as an accrediting organization authorized to approve individuals and entities as continuing education providers may apply by providing the

information set forth in section 4.04 below. The applicant must include all relevant information required by this revenue procedure, including how the organization meets the standards described in section 4.01 above, in the application. Completed applications must be sent to:

Internal Revenue Service  
Attention: RPO Continuing  
Education Program  
Rm. 7238 IR  
1111 Constitution Ave., NW  
Washington, DC 20224

Applicants will be notified, in writing, whether the application has been approved. Only after an applicant has received written notification of approval from the IRS may the accrediting organization begin accepting applications from individuals or entities seeking to become a continuing education provider under section 10.9(a)(1)(iii). Individuals or entities approved by the accrediting organization as a continuing education provider under section 10.9(a)(1)(iii) must obtain a provider number and program number(s) from the IRS by filing a completed Form 8498, *Continuing Education Provider Application and Request for Provider Number*, (and pay any applicable fee) online at [www.irs.gov/taxpros/ce](http://www.irs.gov/taxpros/ce) or they may request a paper application by calling the IRS Continuing Education Provider Processing Center at 1-855-296-3150 (toll-free) in the United States or 202-499-5606 (not a toll-free call) outside the United States. The processing time for a paper application will be six to eight weeks. Continuing education providers who have been approved by an accrediting organization may offer continuing education for purposes of section 10.6 only after they have received a continuing education provider number and program number(s) from the IRS, and followed all applicable procedures prescribed by the IRS.

An accrediting organization must renew its status as an accrediting organization every three calendar years as prescribed in forms, instructions, or other appropriate guidance. The renewal period will be from July through September of the applicable renewal year.

**.04 Required Information.** Any organization seeking to be identified as

an accrediting organization that may approve individuals and entities as continuing education providers under section 10.9(a)(1)(iii) must provide the following information, including any supporting documentation, in its application to be identified as an accrediting organization:

(1) Full name, mailing address, telephone number, and web address (URL) of the organization.

(2) Tax identification number of the organization.

(3) Name and contact information of the organization's point of contact, including mailing address, telephone number, and e-mail address.

(4) Description of the requirements an individual or entity must meet to obtain the organization's approval as a continuing education provider. Supporting documentation must be attached.

(5) Description of the organization's experience and qualifications evaluating continuing education providers.

(6) Description of the process the organization uses to review applications it receives from continuing education providers and to ensure that continuing education providers will comply with the standards set forth in Circular 230, requirements described in section 5.02 below, and any other standards prescribed by the IRS in other appropriate guidance. Supporting documentation must be attached.

(7) Statement that the organization will not directly or indirectly offer continuing education in Federal tax matters or ethics commercially during any period that the organization is operating as an accrediting organization.

(8) Statement that the organization agrees to comply with all IRS guidance and requirements, including Circular 230.

(9) Statement that the organization acknowledges that its status as an IRS accrediting organization is subject to review at any time by the IRS, including but not limited to, IRS requests for information about the organization's review and approval process, interviews, and site visitations (including site visitations of the organization's approved continuing education providers). Statement also must acknowledge that the organization's failure to provide any data or information requested by the IRS or its denial of an IRS site visitation may result in suspension or

revocation of its accrediting organization status.

(10) Signed and dated statement by the organization's point of contact (see section 4.04(3)) or an officer, partner, member, or owner of the organization providing that the individual has examined and read the application and all accompanying information and to the best of the individual's knowledge and belief, the information provided is true, correct, and complete. The statement must be made under penalties of perjury and acknowledge that any false or misleading information may result in criminal penalties and/or the denial or termination of the organization's status as an accrediting organization.

## SECTION 5. CONTINUING EDUCATION PROVIDERS

.01 *General.* Individuals or entities approved as a continuing education provider under section 10.9(a)(1)(i), (ii), or (iii) are required to obtain and renew annually a continuing education provider number. These continuing education providers also are required to obtain continuing education program numbers for each qualifying program they intend to offer. Continuing education providers may obtain and renew their continuing education provider numbers and program numbers by submitting a completed Form 8498, *Continuing Education Provider Application and Request for Provider Number*, online at [www.irs.gov/taxpros/ce](http://www.irs.gov/taxpros/ce) or they may request a paper application by calling the IRS Continuing Education Provider Processing Center at 1-855-296-3150 (toll-free) in the United States or 202-499-5606 (not a toll-free call) outside the United States. The processing time for a paper application will be six to eight weeks. Continuing education providers may be required to pay a reasonable annual fee to the third-party vendor who administers this program for the IRS. The third-party vendor will not charge an additional fee if a continuing education provider adds programs during a calendar year.

Individuals or entities approved as a continuing education provider may be required, as prescribed by the IRS and the third-party vendor, to provide identifying information of preparer tax identification number holders who successfully

complete programs with IRS program numbers.

Continuing education providers must have a current or otherwise valid continuing education provider number prior to advertising that programs offered by the provider may be used to meet any IRS continuing education requirements. Additionally, any program offered by a continuing education provider must have a current or otherwise valid program number before the continuing education provider advertises that the program meets IRS requirements for continuing education.

.02 *Requirements.* Any individual or organization approved as a continuing education provider must:

(1) Offer continuing education programs designed to enhance professional knowledge in Federal taxation or Federal tax related matters, including ethics, consistent with the Internal Revenue Code and principles of effective tax administration.

a) If the continuing education program will be offered for the purpose of qualifying for continuing education credit for registered tax return preparers, the program must directly relate to the preparation of Federal tax returns or Federal tax ethics.

b) If the continuing education program will be offered for the purpose of qualifying for continuing education credit for enrolled retirement plan agents, the program must enhance the participant's professional knowledge in qualified retirement plan matters, including ethics.

Continuing education programs focused primarily on state tax related matters generally will not be eligible for continuing education credit unless the instructional material demonstrates that the program is designed to illustrate the difference between state law and Federal law in the same tax related matter. Providers offering continuing education programs with only limited professional benefit not designed to improve skills related to Federal tax related matters will not be approved.

(2) Provide continuing education program content that is accurate, current, and effectively designed to communicate content through program materials, activities, and delivery systems, whether classroom-based, computer-based, or for self-study.

(3) Use continuing education program presenters, instructors, discussion leaders, and speakers who have subject-matter expertise in Federal taxation or Federal tax

related matters, including ethics, as well as demonstrable teaching and communication skills.

(4) Comply with any standards set forth in Circular 230 and any other standards prescribed by the IRS in other appropriate guidance.

(5) Ensure that all continuing education programs are developed and written by individual(s) with expertise in Federal tax related matters, or ethics in the case of an ethics program.

(6) Provide continuing education programs that utilize materials specifically developed for instructional use. General professional literature or IRS publications and reference manuals may be used only to supplement specific program materials.

(7) Review and update programs periodically, at least annually, to ensure accuracy and consistency with currently accepted standards relating to the program's subject matter. This review must be conducted by a qualified individual to ensure that the program is current, technically accurate, and addresses the stated learning objectives.

(8) Provide a means for evaluation of attendees' successful completion of the program. Providers must ensure that self-study programs include verification of completion of required material and demonstrated mastery of program content.

(9) Develop programs that meet the standards of Circular 230 for continuing education credit earned upon completion, based upon the standard of 50 minutes of contact time required for 1 continuing education credit earned. Credit is granted only for a full contact hour of 50 minutes, or multiples thereof; no credit will be awarded for partial continuing education consisting of less than 50 minutes of contact time.

(10) Collect and maintain reliable records to document participation and attendance, and issue certificates with IRS program numbers to students upon successful completion.

(11) Provide for voluntary program evaluations by individuals who have completed the program. The provider must ensure that participants have an opportunity to provide feedback concerning the quality and knowledge of the speaker/instructor, the quality of program materials, and whether the program met stated objectives. Any participant evaluations

received by the provider must be made available to the IRS on request.

.03 *How to Apply to Become a Section IV CE Provider.* Individuals or entities that do not meet the requirements of section 10.9(a)(1)(i), (ii), or (iii) may apply to the IRS for approval as a section iv CE provider. An applicant under section 10.9(a)(1)(iv) must apply for status as a section iv CE provider by submitting a completed Form 8498, *Continuing Education Provider Application and Request for Provider Number*, online at [www.irs.gov/taxpros/ce](http://www.irs.gov/taxpros/ce) or these individuals or entities may request a paper application by calling the IRS Continuing Education Provider Processing Center at 1-855-296-3150 (toll-free) in the United States or 202-499-5606 (not a toll-free call) outside the United States. The processing time for a paper application will be six to eight weeks. The applicant also must pay any applicable third-party vendor fee with the application and include all relevant information required in the application, including how the section iv CE provider meets the requirements described in section 5.02 above. Approved applicants will receive a continuing education provider number and program numbers and must renew their status annually in accordance with section 5.01 above.

## 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 of 1995 (44 U.S.C. 3507(d)) under control number 1545-1726.

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

The collection of information in this revenue procedure is in sections 4 and 5. This information is required in order for the IRS to ensure that individuals and organizations permitted to provide continuing education or accredit others to provide continuing education meet all of the appropriate procedures and standards for education in Federal tax practice. The likely respondents are individuals and organizations that want to provide continuing education or accredit others to provide continuing education.

The estimated total annual reporting or recordkeeping burden is 2,750 hours.

The estimated annual burden per respondent/recordkeeper varies from .6 hours to 1 hour, depending on individual

circumstances, with an estimated average of .75 hours. The estimated number of respondents or recordkeepers is 3,000.

The estimated frequency of responses (used for reporting requirements only) under section 4 is once every three years; the estimated frequency of responses under section 5 is twice annually.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law.

## SECTION 7. EFFECTIVE DATE

This revenue procedure is effective December 6, 2011.

## SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Janet Engel Kidd of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Janet Engel Kidd at (202) 622-4940 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking

### Application of the Segregation Rules to Small Shareholders

#### REG-149625-10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 382 of the Internal Revenue Code (Code). These proposed regulations provide guidance regarding the application of the segregation rules to public groups under section 382 of the Code. These regulations affect corporations.

DATE: Written or electronic comments and requests for a public hearing must be received by February 21, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-149625-10), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-149625-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-149625-10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephen R. Cleary, (202) 622-7750; concerning submission of comments or to request a public hearing, Oluwafunmilayo (Funmi) P. Taylor, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### 1. *Segregation and Aggregation — Statute, Legislative History, and Current Regulations*

Section 382 imposes a limitation on a corporation's use of net operating loss carryovers following a change in ownership. The legislative history explains that a limitation is necessary following a change in ownership because new shareholders otherwise would have an opportunity to contribute income-producing assets (or divert income opportunities) to the corporation, thus inappropriately accelerating the use of net operating loss carryovers. The section 382 limitation is intended to prevent a corporation from obtaining greater loss utilization than it could have achieved absent a change in ownership. S. Rep. No. 99-313 at 232 (1986).

A loss corporation has an ownership change if the percentage of stock of a loss corporation that is owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock of the loss corporation owned by such shareholders at any time during the testing period (generally, a three-year period). For purposes of section 382, the attribution rules of section 318(a)(2) apply, without limitation, to treat individuals as the owners of loss corporation stock. Pursuant to section 382(g)(4)(A), individual shareholders who own less than five percent of a loss corporation are aggregated and treated as a single 5-percent shareholder (a public group).

The regulations extend the public group concept to situations in which a loss corporation is owned by one or more entities, as defined in §1.382-3(a) (generally, partnerships, corporations, estates, and trusts). If an entity directly or indirectly owns five percent or more of the loss corporation, that entity has its own public group if its owners who are not 5-percent shareholders own, in the aggregate, five percent or more of the loss corporation. (Such an entity is referred to as a 5-Percent Entity in this preamble.)

The segregation rules, which are generally contained in §1.382-2T(j), and the exceptions thereto, which are generally contained in §1.382-3(j), apply to certain transactions affecting ownership by the loss corporation's direct public group and by the public groups of a 5-Percent Entity. The application of the segregation rules results in the creation of a new public group in addition to the one (or more) that existed previously. That new group is treated as a new 5-percent shareholder that increases its ownership interest in the loss corporation.

Section 382(g)(4)(B) mandates application of the segregation rules to transactions constituting equity structure shifts of the loss corporation. Generally, equity structure shifts are acquisitive asset reorganizations and recapitalizations under section 368. Section 382(g)(3)(B) provides regulatory authority to treat public offerings and similar transactions as equity structure shifts. Pursuant to that authority, the current segregation rules, subject to the cash issuance and small issuance exceptions (described in this preamble), treat issuances of stock under section 1032, redemptions, and redemption-like transactions as segregation events. The segregation rules also apply to transfers of loss corporation stock by an individual 5-percent shareholder to public shareholders and a 5-Percent Entity's transfer of loss corporation stock to public shareholders.

The small issuance and cash issuance exceptions exempt certain amounts of stock issuances from the segregation rules. Generally, the small issuance exception exempts the total amount of stock issued during a taxable year to the extent it does not exceed 10 percent of the total value of the corporation's outstanding stock at the beginning of the taxable year or 10 percent of the class of stock issued and outstanding at the beginning of the taxable year (the small issuance limitation). However, the small issuance exception does not apply to any issuance of stock that, by itself, exceeds the small issuance limitation. If stock is issued solely for cash, the cash issuance exception exempts a percentage of the total stock issued equal to 50 percent of the aggregate percentage ownership interest of the public groups of the cor-