

26 CFR 1.501(a)-1: Exemption from taxation

(Also: 26 CFR 1.505(c)-1T: Notification requirement; 26 CFR 1.506-1T: Notification requirement; 26 CFR 1.508-1: Notices; 26 CFR 601.201: Rulings and determination letters)

Rev. Proc. 2018-15

The IRS generally will not require a new exemption application from a domestic section 501(c) organization that changes its form or place of organization. Rev. Rul. 67-390 and Rev. Rul. 77-469 are obsoleted.

## **SECTION 1. PURPOSE**

This revenue procedure reduces compliance burdens on certain exempt organizations by providing the circumstances under which the Internal Revenue Service (IRS) generally will not require domestic business entities to file a new exemption application when they change their form or state of organization. This revenue procedure obsoletes Rev. Rul. 67-390 and Rev. Rul. 77-469.

## **SECTION 2. BACKGROUND AND ANALYSIS**

Section 501(a) of the Internal Revenue Code (Code) provides that an organization described in section 501(c) shall be exempt from taxation under Subtitle A of the Code.

Section 1.501(a)-1(a)(2) of the Treasury Regulations provides that it is necessary for an organization to file an application in order to establish its exemption.

Section 1.501(a)-1(a)(3) of the Treasury Regulations provides that an organization claiming exemption under section 501(a) and described in section 501(c)

shall file the form of application prescribed by the Commissioner.

Section 505 of the Code generally provides that an organization shall not be treated as described in paragraph (9), (17), or (20) of section 501(c) unless it has given notice to the Secretary that it is applying for recognition of exemption.

Section 506 of the Code generally provides that an organization described in section 501(c)(4) shall, not less than 60 days after the organization is established, notify the Secretary that it is operating as such.

Section 508 of the Code generally provides that an organization organized after October 9, 1969 shall not be treated as described in section 501(c)(3) unless it has given notice to the Secretary that it is applying for recognition of exemption.

Section 1.508-1(a)(2) of the Treasury Regulations provides that an organization seeking exemption under section 501(c)(3) files the notice described in section 508(a) by submitting a properly completed and executed Form 1023 (or, if applicable, Form 1023-EZ) exemption application.

Section 6109(a) of the Code generally provides that any person required to make a return, statement or other document under subtitle A shall include its identifying number.

Section 6109(c) of the Code provides that the Secretary or his delegate is authorized to require such information as may be necessary to assign an identifying number to any person.

Section 301.6109-1(a)(1)(ii)(C) of the Treasury Regulations provides that any person other than an individual that is required to furnish a taxpayer identifying number

must use a federal Employer Identification Number (EIN). Section 301.6109-1(h)(1) of the Treasury Regulations generally provides that any entity with an EIN will retain that EIN if its federal tax classification changes under § 301.7701-3 of the Treasury Regulations. For special EIN rules, see § 301.6109-1(h)(2) of the Treasury Regulations (entities disregarded as separate from their owners) and (i) (qualified subchapter S subsidiaries).

Section 301.7701-2(a) of the Treasury Regulations 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 under § 301.7701-3 of the Treasury Regulations) that is not properly classified as a trust under § 301.7701-4 of the Treasury Regulations or otherwise subject to special treatment under the Code. It further provides that a business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership, and a business entity with only one owner is classified as a corporation or is disregarded.

Section 301.7701-2(b)(1) of the Treasury Regulations provides that a business entity organized under a federal or state statute is a corporation if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic.

Section 301.7701-2(b)(2) of the Treasury Regulations provides that an association as determined in § 301.7701-3 of the Treasury Regulations is a corporation.

Section 301.7701-3(a) of the Treasury Regulations provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6),

(7), or (8) (an “eligible entity”) can elect its classification for federal tax purposes. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2) of the Treasury Regulations) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Section 301.7701-3(c)(1)(v)(A) of the Treasury Regulations provides that an eligible entity that has been determined to be, or claims to be, exempt from taxation under section 501(a) is treated as having made an election to be classified as an association (and thus a corporation under § 301.7701-2(b)(2) of the Treasury Regulations).

Rev. Proc. 2018-5, 2018-1 I.R.B. 233, as modified by Rev. Proc. 2018-10, 2018-7 I.R.B. 355, sets forth procedures for issuing determination letters on exempt status (in response to applications for recognition of exemption from federal income tax under section 501) under the jurisdiction of the Director, Exempt Organizations (EO) Rulings and Agreements. Section 3.01 of Rev. Proc. 2018-5 provides that EO Determinations issues determination letters on initial qualification for exempt status of organizations described in section 501, and updated exempt status letters (affirmation letters) to reflect changes to an organization's name or address. Section 3.02 of Rev. Proc. 2018-5 provides that EO Determinations will not issue a determination letter if an organization currently recognized as exempt under section 501(c) seeks a new determination letter confirming that the organization is still recognized under the same Code section under the currently extant facts. Section 4 of Rev. Proc. 2018-5 provides that organizations seeking recognition of exemption under section 501(c)(3) must submit a completed

Form 1023 or Form 1023-EZ (if applicable), organizations seeking recognition of exemption under section 501(c)(4) must submit a completed Form 1024-A, organizations seeking recognition of exemption under sections 501(c)(2), (5), (6), (7), (8), (9), (10), (12), (13), (15), (17), (19), and (25) must submit a completed Form 1024, and organizations seeking recognition of exemption under sections 501(c)(11), (14), (16), (18), (21), (22), (23), (26), (27), (28), or (29), or under section 501(d) must submit a letter application. Section 11.02 of Rev. Proc. 2018-5 provides that an organization may not rely on its determination letter if there is a material change of facts, inconsistent with exemption, in the character, purpose, or method of operation of the organization.

Rev. Rul. 67-390, 1967-2 C.B. 179, holds that a new exemption application is required in four cases where an organization previously recognized as exempt from federal income tax under section 501(a) makes certain changes in its structure. The four structural changes are: (1) incorporation of a trust; (2) incorporation of an association; (3) reincorporation by an Act of Congress; and (4) reincorporation under the laws of another state. The ruling states that each of these cases creates a new legal entity and, accordingly, each new organization must file an application for exemption to establish that the new entity qualifies for exemption under the Code and applicable regulations.

Rev. Rul. 77-469, 1977-2 C.B. 196, holds that an unincorporated association which incorporated after the enactment of section 508 is a new legal entity and therefore is required to file an application to be recognized as exempt under section 501(c)(3).

Accordingly, the IRS in the past has specified in forms and publications that a new exemption application is required if an exempt organization changes its legal structure, such as from a trust to a corporation, or it dissolves in one state and incorporates in another. See, e.g., Publication 557, Tax Exempt Status for Your Organization (Rev. Jan. 2018) and 2017 Instructions for Form 990 Return of Organization Exempt from Income Tax (Jan. 18, 2018). These IRS forms and publications also specify that organizations are required to report new significant program services or significant changes in how they conduct program services, and significant changes to their organizational documents, on their Forms 990 rather than in letters to EO Determinations. *Id.*

However, other rules generally provide that in many of these circumstances a new EIN is not required for federal tax purposes. For example, when one corporation merges into another corporation under state law and the latter corporation survives, a new EIN is not required for the surviving corporation. Similarly, a new EIN is not required if a corporation incorporated under the laws of one state reincorporates as a corporation incorporated under the laws of another state. See Rev. Rul. 73-526, 1973-2 C.B. 404.

Publication 1635, Employer Identification Number, Understanding your EIN (February 2014), provides further instruction regarding when a new EIN is necessary. Specifically, Publication 1635 specifies that a new EIN is not required in the following cases:

- After a corporate merger, the surviving corporation uses its existing EIN.

- After a corporate reorganization, a corporation only changes its identity, form, or place of organization.

Publication 1635 also specifies that a new EIN is required in the following cases:

- A corporation creates a new corporation after a statutory merger.
- A trust changes to an estate or other non-trust.

In 2015, the Department of the Treasury (Treasury Department) and the IRS announced they are studying how to assign (or reassign) EINs to taxpayers following a reorganization under section 368(a)(1)(F) of the Code, including in cases in which the transferor corporation remains in existence as a disregarded entity, and requested public comments. T.D. 9739, 80 F.R. 56904, 56911 (Sept. 21, 2015).

The IRS rules for new exemption applications generally are more burdensome than the rules for new EINs described above. Specifically, Rev. Ruls. 67-390 and 77-469 require new exemption applications in the following cases in which IRS rules generally do not require a new EIN:

- Incorporation of an exempt association.
- Reincorporation under an Act of Congress.
- Reincorporation of an exempt corporation in a different state.

Moreover, the Treasury Department and the IRS have not published guidance on whether a new exemption application is required in the following circumstances in which the IRS may not require a new EIN:

- Continuation of a surviving corporation after a statutory merger of exempt organizations.

- Filing articles of domestication in a different state by an exempt organization.

Requiring a new exemption application after a corporate restructuring often is unnecessary and duplicative, because the IRS requires exempt organizations to report significant organizational changes on their annual Forms 990. Moreover, any possible exemption issues with a corporate restructuring are less burdensome for the IRS to administer when the surviving organization can continue to use the same EIN on its Form 990 as the restructuring organization. Accordingly, this revenue procedure 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 met, to better align the requirements for new exemption applications with the requirements for obtaining new EINs in common restructuring situations.

In light of the pending Treasury Department and IRS study on assigning and reassigning EINs in certain reorganizations under section 368(a)(1)(F), and the lack of published guidance explaining how exemption requirements apply to limited liability companies organized under various state laws, this revenue procedure does not apply to corporate restructuring transactions with limited liability companies or foreign business entities.

### **SECTION 3. SCOPE**

This revenue procedure applies to corporate restructurings of domestic business entities that are classified as corporations under § 301.7701-2(b)(1) or (2) of the



Treasury Regulations and are recognized as exempt under section 501(a) as organizations described in section 501(c).

#### **SECTION 4. DEFINITIONS.**

The following definitions apply for purposes of this revenue procedure.

**.01** *Business entity* has the meaning specified in § 301.7701-2(a) of the Treasury Regulations.

**.02** *Corporate restructuring* means incorporation under the laws of a state, reincorporation of a corporation incorporated under the laws of one state under the laws of a different state, filing articles of domestication for a corporation incorporated under the laws of one state under the laws of a different state, or a statutory merger of one corporation with and into another corporation.

**.03** *Disregarded Entity* is an entity that is disregarded as an entity separate from its owner described in § 301.7701-2(c)(2)(i) of the Treasury Regulations.

**.04** *Domestic business entity* is a business entity that is domestic under § 301.7701-5(a) of the Treasury Regulations.

**.05** *Domestic trust* is a trust that is domestic under § 301.7701-7(a)(1) of the Treasury Regulations.

**.06** *Eligible entity* has the meaning specified in § 301.7701-3(a) of the Treasury Regulations.

**.07** *Employer identification number* has the meaning specified in § 301.7701-12 of the Treasury Regulations.

**.08** *Exemption Application* means Form 1023, Form 1023-EZ, Form 1024, Form

1024-A, or letter application, as applicable.

**.09** *Foreign business entity* is a business entity that is foreign under § 301.7701-5(a) of the Treasury Regulations.

**.10** *Limited liability company* means an entity formed under a state limited liability company act.

**.11** *Restructuring organization* means any organization exempt under section 501(a) as an organization described in section 501(c) that enters into a corporate restructuring.

**.12** *Surviving organization* means a surviving or resulting entity of a corporate restructuring.

## **SECTION 5. EXEMPTION APPLICATION REQUIREMENTS FOR SURVIVING ORGANIZATIONS OF CORPORATE RESTRUCTURINGS**

### **.01 In general**

Subject to the requirements and limitations in section 5.02, 5.03 and 5.04 of this revenue procedure, in the case of a corporate restructuring of a domestic business entity that is classified as a corporation under § 301.7701-2(b)(1) or (2) of the Treasury Regulations and is recognized as exempt under section 501(a) as an organization described in section 501(c), the surviving organization will not be required to file a new exemption application to be exempt under section 501(a) as an organization described in the same paragraph of section 501(c) if such surviving organization is--

(1) a domestic business entity;

(2) classified as a corporation under § 301.7701-2(b)(1) or (2) of the Treasury

Regulations; and

(3) carrying out the same purposes as the exempt organization that engaged in the corporate restructuring.

**.02 Good standing requirement**

For purposes of this section 5, the restructuring organization (or all restructuring organizations in the case of a statutory merger) must be in good standing with the state in which it was incorporated (or formed in the case of unincorporated associations).

**.03 Additional requirement for section 501(c)(3) organizations**

For purposes of this section 5, if the restructuring organization is exempt under section 501(a) as an organization described in section 501(c)(3), the articles of organization of the surviving organization must continue to meet the organizational test of § 1.501(c)(3)-1(b) of the Treasury Regulations, including § 1.501(c)(3)-1(b)(4) (regarding dedication of assets to exempt purposes).

**.04 Excluded corporate restructurings**

Section 5 of this revenue procedure does not apply to any corporate restructuring in which (1) the restructuring organization or the surviving organization is a disregarded entity, limited liability company, partnership, or foreign business entity; or (2) the surviving organization obtains a new EIN.

**.05 Exemption application procedures for organizations not meeting requirements of section 5 of this revenue procedure.**

Surviving organizations that do not meet the requirements of section 5 of this revenue procedure and that want to be recognized as exempt under section 501(a)

should refer to Rev. Proc. 2018-5 for the procedures to apply for a determination letter.

## **SECTION 6. REPORTING REQUIREMENTS**

The surviving organization must report the corporate restructuring on any required Form 990 for the applicable taxable 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 Commissioner. See Form 8822-B; Form 990; <https://www.irs.gov/charities-non-profits/other-non-profits/change-of-address-exempt-organizations>.

## **SECTION 7. EXAMPLES**

The application of this revenue procedure is demonstrated in the following examples. In the examples, each restructuring organization is recognized as exempt under section 501(a) and is in good standing in its state of incorporation or formation, the surviving organization continues to carry out the same purposes as the restructuring organization, and (for section 501(c)(3) organizations) the articles of incorporation of the surviving organization continue to meet the organizational test of § 1.501(c)(3)-1(b) of the Treasury Regulations, including § 1.501(c)(3)-1(b)(4) (regarding dedication of assets to exempt purposes).

### **.01 Incorporation of an association**

A is an unincorporated nonprofit organization that was formed on Date 1 under the laws of State M. On Date 2, the IRS recognized A as exempt under section 501(c)(3). A is a domestic business entity and is treated under § 301.7701-3(c)(1)(v)(A) as having made an election to be classified as an association (and thus a corporation

under § 301.7701-2(b)(2)). On Date 3, A incorporates in State M, and is classified as a corporation under § 301.7701-2(b)(1). Because A, as both the restructuring organization and the surviving organization, is a domestic business entity classified as a corporation, pursuant to section 5.01 of this revenue procedure, A continues to be recognized as exempt under section 501(c)(3) and is not required to file a new Form 1023.

#### **.02 Incorporation of a trust**

B is a charitable trust that was formed on Date 1 under the laws of State N. B is a domestic trust. B is not a business entity. On Date 2, the IRS recognized B as exempt under section 501(c)(3). On Date 3, B incorporates in State N. Because the restructuring organization B is not a business entity, pursuant to section 5.01 of this revenue procedure, B is required to file a new Form 1023 to be recognized as exempt under section 501(c)(3). See Rev. Proc. 2018-5, § 3.01(1).

#### **.03 Reincorporation in a different state**

C is a corporation formed on Date 1 under the laws of State O. C is a domestic business entity classified as a corporation under § 301.7701-2(b)(1). On Date 2, the IRS recognized C as exempt under section 501(c)(4). On Date 3, C reincorporates in State P. Because C, as both the restructuring organization and the surviving organization, is a domestic business entity classified as a corporation, pursuant to section 5.01 of this revenue procedure, C continues to be recognized as exempt under section 501(c)(4) without filing a new application for recognition of exemption.

#### **.04 Domestication**

D is a corporation formed on Date 1 under the laws of State Q. D is a domestic business entity classified as a corporation under § 301.7701-2(b)(1). On Date 2, the IRS recognized D as exempt under section 501(c)(3). On Date 3, D files articles of domestication with the corporation governing agency of State R and a certificate of conversion with the corporation governing agency of State Q. Under the laws of State Q and State R, D continues to exist as the same corporation. Because D, as both the restructuring organization and the surviving organization, is a domestic business entity classified as a corporation, pursuant to section 5.01 of this revenue procedure, D continues to be recognized as exempt under section 501(c)(3) and is not required to file a new Form 1023.

#### **.05 Restructuring as a limited liability company**

E is a corporation formed on Date 1 under the laws of State S. E is a domestic business entity classified as a corporation under § 301.7701-2(b)(1). On Date 2, the IRS recognized E as exempt under section 501(c)(3). On Date 3, E converts into a limited liability company under the laws of State T. Because the surviving organization E is a limited liability company, pursuant to section 5.04 of this revenue procedure, E is required to file a new Form 1023 to be recognized as exempt under section 501(c)(3). See Rev. Proc. 2018-5, § 3.01(1).

#### **.06 Reincorporation of a foreign entity**

F is a corporation formed on Date 1 under the laws of Country U. F is a foreign business entity classified as a corporation under § 301.7701-2(b)(8). On Date 2, the

IRS recognized F as exempt under section 501(c)(3). On Date 3, F reincorporates in State V. Because the restructuring organization F is a foreign business entity, pursuant to section 5.04 of this revenue procedure, F is required to file a new Form 1023 to be recognized as exempt under section 501(c)(3). See Rev. Proc. 2018-5, § 3.01(1).

**.07 Merger into an existing corporation**

G is a corporation formed on Date 1 under the laws of State W. G is a domestic business entity classified as a corporation under § 301.7701-2(b)(1). On Date 2, the IRS recognized G as exempt under section 501(c)(3). H is a corporation formed on Date 1 under the laws of State X. H is a domestic business entity classified as a corporation under § 301.7701-2(b)(1). On Date 3, the IRS recognized H as exempt under section 501(c)(3). On Date 4, G merged into H in accordance with the applicable state merger statutes and H was the surviving organization. After the corporate restructuring, H carries out the same purposes that G and H carried out prior to the corporate restructuring. Because both G and H are domestic business entities classified as corporations, pursuant to section 5.01 of this revenue procedure, H continues to be recognized as exempt under section 501(c)(3) and is not required to file a new Form 1023.

**.08 Merger into a disregarded entity**

I is a corporation formed on Date 1 under the laws of State Y. I is a domestic business entity classified as a corporation under § 301.7701-2(b)(1). On Date 2, the IRS recognized I as exempt under section 501(c)(3). On Date 3, J is formed as a State Z corporation. J is a domestic business entity classified as a corporation under

§ 301.7701-2(b)(1). On Date 4, the IRS recognized J as exempt under section 501(c)(3). On Date 5, J forms a new State Z limited liability company K that is a disregarded entity. On Date 6, I merges into K under the applicable state laws. After the corporate restructuring, J, directly and through K, carries out the same purposes that I and J carried out prior to the corporate restructuring. Because K is a limited liability company, section 5 of this revenue procedure does not apply. K is required to file a new Form 1023 if it wants to be recognized as exempt under section 501(c)(3). See Rev. Proc. 2018-5, § 3.01(1). J should not file a new Form 1023. See Rev. Proc. 2018-5, § 3.02(6).

## **SECTION 8. APPLICABILITY**

**.01** This revenue procedure specifies the circumstances under which organizations recognized as exempt under section 501(c) are not required to file new exemption applications under the same subsection of section 501(c) for federal income tax purposes after a corporate restructuring.

**.02** For purposes of section 508, a surviving section 501(c)(3) organization that meets the requirements of sections 5.01 through 5.04 of this revenue procedure will not be treated as a new organization.

**.03** For purposes of section 506, a surviving section 501(c)(4) organization that meets the requirements of sections 5.01, 5.02, and 5.04 of this revenue procedure will not be treated as a newly established organization.

**.04** For purposes of section 505, a surviving section 501(c)(9), (17) or (20) organization that meets the requirements of sections 5.01, 5.02, and 5.04 of this



revenue procedure will not be treated as a new organization.

**.05** Even when the surviving organization of a corporate restructuring is not required to file a new exemption application pursuant to section 5 of this revenue procedure, the surviving organization may not rely on the determination letter of the restructuring organization if there has been a material change of facts, inconsistent with exemption, in the character, purpose, or method of operation of the restructuring organization. See Rev. Proc. 2018-5, section 11.02.

**.06** This revenue procedure does not apply to a corporate restructuring in which the surviving organization seeks a determination that it is exempt under a different paragraph of section 501(c) than its prior determination.

**.07** This revenue procedure does not affect or provide guidance on the rules for EINs under section 6109 or the requirements for a reorganization under section 368(a)(1)(F).

**.08** This revenue procedure does not affect any state law requirements, including any state law reporting, filing, or notice requirements for corporate restructurings.

## **SECTION 9. EFFECT ON OTHER DOCUMENTS**

Rev. Rul. 67-390, 1967-2 C.B. 179, and Rev. Rul. 77-469, 1977-2 C.B. 196, are obsoleted.

## **SECTION 10. EFFECTIVE DATE**

This revenue procedure is effective for tax years beginning on or after January 1, 2018.

## **SECTION 11. DRAFTING INFORMATION**

The principal authors of this revenue procedure are Obinna Chukwuanu and Don Spellmann of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure contact Obinna Chukwuanu or Don Spellmann on (202) 317-4086 (not a toll free call).