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By hand delivery

CC:PA:LPD:PR (REG-102508-16)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations

To Whom It May Concern:

I. Introduction

The Church Alliance is submitting this letter as a public comment to the Notice of Proposed Rulemaking (“Proposed Rule”) published on September 10, 2019 at 26 FR 47447, by the Internal Revenue Service (“IRS”) and the Treasury Department (“Treasury”). The Church Alliance appreciates the opportunity to comment.

The Church Alliance is composed of the chief executives of thirty-seven church benefits organizations (“Church Alliance Organizations”), covering mainline and evangelical Protestant denominations, three Jewish entities, and Catholic schools and institutions. Church Alliance Organizations provide employee benefit plans, including retirement and/or health coverage, to approximately one million participants (clergy and lay workers), serving over 155,000 churches, parishes, synagogues and church-associated organizations. These plans are defined as “church plans” under section 3(33) of the Employee Retirement Income Security Act of 1974 and section 414(e) of the Internal Revenue Code of 1986, as amended (“IRC”).

II. Executive Summary

In the Proposed Rule, the IRS and Treasury (“the Departments”) have requested comments on the continued need for Rev. Proc. 96-10. Based on the information provided below, the Church Alliance urges that the exceptions in the Rev. Proc. continue, either by incorporating the

exceptions into the Treasury regulations under IRC Section 6033 or by allowing Rev. Proc. 96-10 to remain in full force and effect.

III. Background

Church Alliance Organizations are described in IRC Section 501(c)(3) and are operated, supervised, and/or controlled by one or more churches, integrated auxiliaries, or conventions or associations of churches. They maintain retirement programs primarily for organizations described in the prior sentence and meet at least one of the 50% tests¹ in Section 3.01(b) of Rev. Proc. 96-10. Each member of the Church Alliance qualifies as a public charity under IRC Section 509(a)(1) or (2). At least one Church Alliance Organization has a ruling to that effect. Thus, Church Alliance Organizations are excused from filing IRS Form 990 under Rev. Proc. 96-10.

IV. Importance of Rev. Proc. 96-10

The exceptions to the IRS Form 990 filing requirement contained in Rev. Proc. 96-10 remain important to the Church Alliance. Church benefits organizations and other church-associated organizations rely on that Revenue Procedure.

A. Church-benefits organizations are not 509(a)(3) organizations

In the Explanation of Provisions in the Proposed Rule, the following statement is made:

“[T]hese proposed regulations do not incorporate Rev. Proc. 96-10, 1996-1 C.B. 138, which relieves from a filing requirement under Section 6033(a) certain organizations that are operated, controlled or supervised by one or more churches, integrated auxiliaries, or conventions or associations of churches because it is unclear whether Rev. Proc. 96-10 currently has practical application. The relevant language provided indicates that these types of organizations are likely supporting organizations under Section 509(a)(3).”

Some church-associated organizations continue to qualify under Rev. Proc. 96-10 despite its narrowed² scope, because they are not supporting organizations. For example, an organization could be an IRC Section 509(a)(1) or (2) organization that fails to be a supporting organization

¹ One of the following conditions must be met: (1) more than 50% of the individuals covered by the retirement programs are directly employed by the churches, integrated auxiliaries or conventions or associations of churches; or (2) more than 50% of the retirement assets are held for the benefit of employees of those organizations.

² Grants of IRC Section 6033 related reporting relief, such as in Rev. Proc. 96-10, were made pursuant to past exercises of the Treasury Secretary’s (“Secretary’s) discretion. The Pension Protection Act of 2006 modified the Secretary’s general discretion under IRC Section 6033 so that the Secretary is no longer permitted to use his discretion to relieve a supporting organization (described in IRC Section 509(a)(3)) of its filing requirement.

because it does not meet a requirement of IRC Section 509(a)(3). IRC Section 509(a)(3) requires an organization to be organized and operated exclusively for the benefit of the supported organization(s). However, retirement plan assets must be held and used for the exclusive benefit of plan participants, so organizations maintaining retirement programs are unlikely to be organized and operated exclusively for the benefit of supported organizations.

Moreover, even if an organization satisfies all the other requirements to qualify as a supporting organization, if it also qualifies as a Section 509(a)(1) organization, it will be treated as an IRC Section 509(a)(1) organization, rather than a supporting organization.³

B. Some organizations may be relying on determination letters

Pursuant to Rev. Proc. 2019-05, and its predecessor rulings, determination letters will be issued by the IRS on whether an organization is exempt from filing annual information returns under IRC Section 6033 as provided in Rev. Proc. 96-10. Presumably, organizations have obtained such determinations upon which they now are relying.

C. Organizations described in Rev. Proc. 96-10 may not be integrated auxiliaries

Most, but likely not all, church benefits organizations also may be exempt as integrated auxiliaries under Treas. Reg. Section 1.6033-2(h). However, organizations undoubtedly exist that only are exempt from the IRS Form 990 filing requirement due to Rev. Proc. 96-10, because they are neither a) integrated auxiliaries nor b) otherwise exempt from that filing requirement.

To be an integrated auxiliary, an organization must meet three conditions. It must be a) described in IRC Section 501(c)(3) and 509(a)(1), (2) or (3), b) affiliated with a church or a convention or association of churches and c) internally supported.

1. Affiliation with a church. One example of an organization that is not an integrated auxiliary is an organization that is operated, supervised or controlled by one or more *integrated auxiliaries*. This organization likely would not be an integrated auxiliary because it likely would not be able to show affiliation with a church or a convention or association of churches, but could be described in Rev. Proc. 96-10.

2. Internal support. Another example of an organization that would not be an integrated auxiliary but could be described in Rev. Proc. 96-10 is an organization that offers services to persons or entities outside of the church, convention or association of churches (on more than an incidental basis). Such an organization would not be internally supported, so would not be an integrated auxiliary.

Rev. Proc. 96-10 is relied upon by organizations struggling with the uncertainty around the internal support test of Treas. Reg. Section 1.6033-2(h)(4)(i). This regulation generally does not allow the organization to offer its goods, services or facilities to the general public. We are not aware of any clear guidance on what constitutes “the general public”, so an organization unknowingly could fail to meet the internal support requirement and need to rely on Rev. Proc. 96-10.

³ Treas. Reg. Section 1.509(a)-6.

What constitutes an “offering” of goods, services or facilities also is unclear. It is possible that what an organization views as an offering of goods, services or facilities on an incidental basis could cause an organization to fail to meet the internal support test. Alternatively, the inadvertent offering of goods, services or facilities, perhaps even by a rogue employee and on a very limited basis, similarly could have the same result. At a minimum, there is uncertainty over the requirements to meet this test.

3. Determination of status. None of the organizations we have surveyed have obtained a determination or ruling that the organization is an integrated auxiliary. In contrast, the requirements of Rev. Proc. 96-10 are much more certain and a determination may be obtained on such.

V. Conclusion

We respectfully request that the provisions of Rev. Proc. 96-10 be incorporated in regulations under IRC Section 6033 or that Rev. Proc. 96-10 not be superseded and continue in full force and effect.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karishma Shah Page', with a long horizontal flourish extending to the right.

Karishma Shah Page
Partner
K&L Gates LLP
On behalf of the Church Alliance