

IRS Guidance Removes Obstacle to Restructuring Tax-Exempt Organizations

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Under newly issued guidance, *the IRS has made it easier for many tax-exempt organizations to restructure*. The IRS will now continue to recognize as exempt, those organizations that:

- change their structure from an unincorporated association to a corporation;
- reincorporate from one state to another;
- domesticate in a new state; or
- merge one corporation with or into another.

At least since the 1960s, exempt organizations could not carry over the benefit of IRS recognition to the newly organized entity. For much of that period, organizations also typically were not permitted to retain their EIN when engaged in restructuring activities. As a result, a 501(c)(3) that chose to reorganize was required to file a final Form 990 under the old EIN, obtain a new EIN, file a new application for recognition of tax-exempt status under the new EIN, and then file new returns under the new EIN. This was in addition to changing the EIN on all accounts, which complicated matters for organizations with significant investments. Over time, the IRS eased the rules to allow retention of the original EIN in most cases, while still requiring that these organizations submit new applications for recognition of tax-exempt status.

In Revenue Procedure 2018-15, the IRS has removed the exemption-related obstacles to corporate restructuring, as it now simply requires that organizations report these changes on their Form 990 and also provide notice of any change in address. With this guidance, the IRS has achieved a “near-term burden reduction” goal from its 2017-2018 Priority Guidance Plan, as part of an IRS-wide effort to remove or update guidance that created an excessive burden on taxpayers.

These new rules apply in specific situations. The reorganized entity must carry out the same exempt purposes under the same paragraph of 501(c) as the organization that engaged in the restructuring. Additionally, if the organization is a 501(c)(3) organization, the new articles of incorporation must continue to meet the organizational test, including the dedication of assets for charitable purposes.

The guidance also applies to reorganizing 501(c)(4) organizations by making clear that they do not have to provide an additional notice of intent to operate on Form 8976.

Most restructurings that involve non-corporate entities still face hurdles when it comes to exemption. The new guidance does not apply where the surviving organization is a disregarded entity, LLC, partnership, or foreign business entity. It does not apply to tax-exempt trusts that decide to incorporate or to organizations that merge into LLCs or disregarded entities.

Finally, if the surviving organization does obtain a new EIN, it will be required to submit a new application.

For more information, please contact a member of Caplin & Drysdale's Exempt Organizations practice group. Whether you are an established exempt organization or are seeking tax-exempt status for your entity, attorneys at Caplin & Drysdale have the experience you need to accomplish your goals.

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