



Lawyers Alliance
for New York

Connecting lawyers, nonprofits, and communities

IRS Eliminates Advance Ruling Process and Streamlines Application Process for New Tax-Exempt Organizations

Dear Nonprofit Managers and Pro Bono Counsel,

As a newly formed nonprofit organization or counsel to newly formed nonprofits, you should note that on September 8, 2008, the Internal Revenue Service (IRS) issued new regulations that eliminate the so-called advance ruling process. Previously, the IRS granted public charity status to newly formed organizations for an initial five-year period but required groups receiving an advanced ruling to show that they satisfy the public support test by filing a Form 8734 at the end of ruling period.

Under the new regulations, a section 501(c)(3) organization granted exempt status as a public charity will retain its public charity status for its first five years, regardless of the percentage of public support actually received during that time. Beginning with the organization's sixth taxable year, it must prove that it meets the public support test through reporting on its Schedule A to Form 990 (Return of Organization Exempt From Income Tax).

The following transition rules apply to organizations that have previously received advance rulings from the IRS:

- A section 501(c)(3) organization that received an advance ruling that expired or will expire on or after June 9, 2008 will be classified as a publicly supported charity and the organization and its donors may rely on the organizations' advance ruling determination. Such an organization no longer needs to file Form 8734 with the IRS.
- A section 501(c)(3) organization that received an advance ruling that expired before June 9, 2008, and did not submit Form 8734 to the IRS, will be reclassified as a private foundation unless the organization submits documentation to the IRS establishing that it met the public support test during the advance ruling period.
- The IRS will process Form 1023 exemption applications submitted before the effective date of the new regulations under the new rules, and will revise application forms and instructions to incorporate the new requirements.

Additional information and frequently asked questions are available at <http://www.irs.gov/charities/charitable/article/0,,id=185568,00.html>.

If you have questions about the new application process or transition rules, please contact the staff attorney assigned to your matter or the Lawyers Alliance Resource Call Hotline at (212) 219-1800 x 224.

Sincerely,
Elizabeth M. Guggenheimer, Deputy Executive Director
Linda S. Manley, Legal Director