

Private Foundations Bulletin

Grantmaking to Religious Organizations

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Grantmaking to places of worship (i.e. churches, mosques, synagogues, temples, etc.) continues to be a fairly common practice for many private foundations throughout the United States. We often receive questions on this topic from both newly formed foundations that are setting up their guidelines and policies for the first time and well-established foundations alike. Even with very strict due diligence procedures in place, questions arise when a first-time grant to a place of worship doesn't fit in nicely to a foundation's existing processes, checklists, etc.

This private foundation bulletin will focus on the requirements and the best practices to consider so that your foundation can make the right and practical decision for documenting grants to places of worship.

Determining a Potential Grantee's Status

At a minimum, federal tax law requires that a private foundation verify the public charity status of a grantee before making a grant payment. Some of the easiest ways to determine a grantee's status is through the Internal Revenue Service (IRS) *Tax Exempt Organization Search* site, one of the many third-party online databases, or via an add-in to a foundation's grants management system.

When on the IRS *Tax Exempt Organization Search* site, a foundation wants to make sure they have the proper EIN for the grantee they are trying to make a grant to since many exempt organizations have similar names.

On the IRS site, you will find an organization's Publication 78 Data and its deductibility code, which for the purposes of this bulletin should be "PC" (public charity). If the deductibility code is anything other than PC, then the foundation should speak to its accountants or attorneys on any necessary steps needed in order to make the grant. Furthermore, there are copies of the most recent returns on the IRS site. While in the past it would take quite some time for these returns to be included in the public forum site, they have been appearing more quickly as of late.

Many foundations, as a best practice, go well beyond this initial verification step and perform right-sized initial and ongoing due diligence of potential grantees. However, from time to time, we still see the verification step being missed or not done before each payment goes out, despite robust due diligence performed otherwise.

Often, a foundation thinks that having an IRS determination letter from years or even decades ago for a grantee is sufficient. It's possible, however, that the charity's status has changed or been revoked in recent years; thus, the need for real-time verification prior to payment is necessary.

Steps When Giving to Places of Worship

Unlike most other charities, places of worship are automatically considered tax exempt and are not required to obtain recognition of exemption from the IRS. Thus, they may not have an IRS determination letter and it would not be present on the IRS site. Some places of worship, especially newer ones, may have applied for status with the IRS and have such a letter, or they may fall under a group exemption ruling obtained by their

convention or denomination. If the grantmaking private foundation obtains or verifies either of these, then the verification steps are completed.

In the event a potential religious grantee does not have its own status, nor a group exemption, then it's the private foundation's responsibility to assess and document whether the potential grantee is, in fact, a place of worship and qualifies as a charitable organization. In order to determine if it qualifies, a foundation could document whether the activities of the organization follow the IRS charitable guidance that:

- The potential grantee must be organized and operated exclusively for religious, educational, scientific or other charitable purposes.
- Net earnings may not inure to the benefit of any private individual or shareholder.
- No substantial part of its activity may be attempting to influence legislation.
- The organization may not intervene in political campaigns; and
- The organization's purpose and activities may not be illegal or violate fundamental public policy.

Furthermore, the IRS has defined certain characteristics that are generally attributable to places of worship and these have been developed by the IRS and by decisions in the courts. While much of this guidance is truly for the IRS to determine whether an organization is considered a place of worship for federal tax purposes, it could help substantiate a lesser-known religion, etc. if they could document the following:

- Distinct legal existence;
- Recognized creed and form of worship;
- Definite and distinct ecclesiastical government;
- Formal code of doctrine and discipline;
- Distinct religious history;
- Membership not associated with any other church or denomination;
- Organization of ordained ministers;
- Ordained ministers selected after completing prescribed courses of study;
- Literature of its own;
- Established places of worship;
- Regular congregations;
- Regular religious services;
- Sunday schools for the religious instruction of the young; and
- Schools for the preparation of their ministers.

The IRS provides further clear guidance that unlike places of worship, other religious organizations that wish to be tax exempt generally must apply to the IRS for exempt status.

Ultimately, if a foundation is unable to document and ascertain that an organization would qualify as a place of worship, then it would have to exercise Expenditure Responsibility and/or Equivalency Determination depending on where the organization is located and how it is organized to protect the foundation from making a taxable expenditure.

Reporting on Form 990-PF

When it comes to Form 990-PF and the foundation's grant listing, places of worship should be listed just like any other grantee. Since the determination has been made that it has automatic status with the IRS, it should be listed as a "PC" in the "foundation status of recipient" column of the grant listing.

Takeaway

In conclusion, grantmaking to places of worship is not prohibited but may require additional practical steps to document the determination of the grantee's status.

Contact Us

We welcome the opportunity to answer any questions you may have related to this topic or any other accounting, audit, tax or advisory matters relative to private foundations. Please call 212.286.2600 or email any of the Private Foundation Services team members below:

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