

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part 1, §§ 170, 501, 509, 4942, 4945, 1.170A-9, 1.509(a)-3, 53.4942(a)-3, 53.4945-5, 53.4945-6)

Rev. Proc. 2017-53

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SECTION 1. PURPOSE

Private foundations may wish to treat grants to foreign grantees as qualifying distributions that satisfy the distribution requirements imposed by § 4942 of the Internal Revenue Code (Code) and not as expenditures requiring expenditure responsibility in order to not be subject to the excise tax on taxable expenditures imposed by § 4945 of the Code. If a private foundation makes a “good faith determination” that a foreign grantee qualifies as a qualifying public charity (as defined in section 3.03(3) of this revenue

procedure), the grant will generally be a qualifying distribution that does not require expenditure responsibility in order to not be a taxable expenditure.

This revenue procedure modifies and supersedes Rev. Proc. 92-94, 1992-2 C.B. 507, which provided a simplified procedure that private foundations could follow in making good faith determinations (also known as equivalency determinations).¹ This revenue procedure reflects the changes to the equivalency determination final regulations published in 2015 (TD 9740; 80 FR 57709; 2015-42 IRB 573), including the elimination of the ability of a private foundation to rely on a grantee affidavit for purposes of the special rule. This revenue procedure also reflects the changes to the public support tests for § 170(b)(1)(A)(vi) and § 509(a)(2) organizations set forth in final regulations published in 2011 (TD 9549; 76 FR 55746; 2011-46 IRB 718), and applies these changes in the context of equivalency determinations. In addition, this revenue procedure includes other updates and changes in response to comments from the public.

SECTION 2. SCOPE

This revenue procedure provides guidelines that qualified tax practitioners may use for preparing written advice on which a domestic private foundation ordinarily may rely in making an equivalency determination that the grantee of a grant made for § 170(c)(2)(B) purposes (other than a grant described in sections 507(b)(2) and 1.507-3(c)) is a qualifying public charity. Until further guidance is issued, sponsoring organizations of donor advised funds may also use the guidelines in this revenue procedure for purposes of applying the

¹ This revenue procedure uses the term “equivalency determination” unless referring to regulatory provisions that use the term “good faith determination.”

exception under § 4966(c)(2)(A) of the Code to the excise tax imposed on taxable distributions under § 4966.

SECTION 3. BACKGROUND

.01 Favorable treatment of grants with equivalency determinations.

A private foundation may make an equivalency determination to demonstrate that the following three provisions under chapter 42 of the Code and the related regulations apply and thereby potentially prevent the imposition of excise taxes:

(1) Under §§ 4945(d)(5) and 53.4945-6(c)(2), a private foundation's grant to an organization described in § 501(c)(3) ordinarily need not be maintained in a separate charitable fund;

(2) Under §§ 4942(g)(1) and 53.4942(a)-3(a), a private foundation's grant to a qualifying public charity ordinarily is a qualifying distribution that counts toward its minimum charitable distribution requirement; and

(3) Under §§ 4945(d)(4) and 53.4945-5(a), a private foundation's grant to a qualifying public charity ordinarily is not a taxable expenditure and the foundation does not need to comply with a detailed set of grant procedures known as "expenditure responsibility" to ensure that the grant is used for charitable purposes.

As explained in sections 3.02 and 3.03 of this revenue procedure, under §§ 53.4942(a)-3(a)(6), 53.4945-5(a)(5), and 53.4945-6(c)(2)(ii), a private foundation may make an equivalency determination that a foreign grantee is an organization described in § 501(c)(3) and is a qualifying public charity even though the grantee lacks a determination letter from the Internal Revenue Service (IRS) recognizing it as tax-exempt. Thus, a grant

to such an organization would not need to be maintained in a separate fund and would ordinarily be treated as a qualifying distribution and not a taxable expenditure.

More specifically, a private foundation grantor that wishes to have a grant to a foreign organization grantee that lacks an IRS determination letter treated as made to a qualifying public charity generally must complete two steps in making an equivalency determination in compliance with §§ 53.4942(a)-3(a)(6), 53.4945-5(a)(5), and 53.4945-6(c)(2)(ii). First, the grantor (through one or more foundation managers) must make a good faith determination and a reasonable judgment that the grantee is a § 501(c)(3) organization (other than by reason of § 509(a)(4)). Second, the grantor must make a good faith determination that the grantee is a qualifying public charity for purposes of §§ 4942(g) and 4945(d)(4).

.02 Regulatory requirements for an equivalency determination under § 53.4945-6(c)(2)(ii).

Section 53.4945-6(c)(2)(ii) provides that a private foundation grantor may treat a foreign grantee as an organization described in § 501(c)(3) if:

(1) In the reasonable judgment of the foundation manager (as defined in § 4946(b)), the grantee is described in § 501(c)(3) (other than an organization that tests for public safety);

(2) The grant is made for purposes described in § 170(c)(2)(B) (charitable purposes); and

(3) The grant is not a transfer of assets pursuant to a liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization of the foundation under §§ 507(b)(2) and 1.507-3(c).

.03 Regulatory requirements for an equivalency determination under §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5).

In 2015, the Treasury Department and the IRS finalized the regulatory requirements for equivalency determinations under §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) (TD 9740; 80 FR 57709; 2015-42 IRB 573) for purposes of determining when a grant is a qualifying distribution and not a taxable expenditure. The regulations provide a general rule that the private foundation grantor may treat a foreign grantee as a qualifying public charity if the foundation has made a good faith determination to that effect. The regulations also include a special rule that a private foundation's determination ordinarily will be considered made in good faith if it is based on written advice that is "current" and received from a "qualified tax practitioner" concluding that the grantee is a "qualifying public charity," and if the foundation reasonably relied in good faith on the written advice in accordance with the requirements of § 1.6664-4(c)(1) in making the determination. Under this special rule, the written advice must give enough facts concerning the foreign grantee's operations and support to enable the IRS to determine that the grantee would likely qualify as a qualifying public charity as of the date of the written advice. This special rule reflects three significant changes from the equivalency determination process provided under the prior regulations: (1) a general broadening of the class of qualified tax practitioners that could prepare written advice; (2) elimination, under the special rule, of reliance by a private foundation on grantee affidavits without current written advice received from qualified tax practitioners (although such reliance is still permissible in appropriate circumstances under the general rule); and (3) the addition of a new definition of the period for reliance on written advice received from qualified tax

practitioners for purposes of the special rule.

The preamble to the final regulations stated that the Treasury Department and the IRS intended to publish an updated revenue procedure, revised to reflect the changes implemented in the 2015 final regulations as well as changes to the public support tests for § 170(b)(1)(A)(vi) and § 509(a)(2) organizations set forth in final regulations published in 2011 (TD 9549; 76 FR 55746; 2011-46 IRB 718), and to possibly provide additional guidance on foreign schools and foreign government support, with examples illustrating the application of these rules on the period of reliance on written advice.

(1) Written advice that is current. For purposes of the special rule in §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5), written advice is generally current if the relevant law on which the advice is based has not changed since the date of the written advice and the factual information on which the advice is based is from the grantee's current or prior taxable year (or the current or prior annual accounting period if the grantee does not have a taxable year for United States federal tax purposes). Thus, a grantor may rely on written advice for a period of up to two years after the advice is provided, depending on when within the grantee's taxable year (or annual accounting period) the advice was provided, and how recent the factual information is on which the advice was based. For example, written advice issued in January 2017, based on information dating from January 2017 for a grantee having a calendar taxable year, would generally remain current through December 2018. Written advice that a grantee met the public support test under § 170(b)(1)(A)(vi) or § 509(a)(2) for a test period of five years is current during the two taxable years of the grantee immediately following the end of the five-year test period.

(2) Qualified tax practitioner. A "qualified tax practitioner" is an attorney, certified

public accountant (CPA), or enrolled agent who is subject to the standards of practice before the IRS set forth in Circular 230 (31 CFR Part 10). To practice before the IRS, Circular 230 requires that an attorney or CPA be licensed in a state, territory, or possession of the United States (including the District of Columbia), and that an enrolled agent meet the eligibility requirements set forth in section 10.4 of Circular 230. A qualified tax practitioner may include an attorney, CPA, or enrolled agent serving as an employee of the grantor.

(3) Qualifying public charity. Section 501(c)(3) organizations are classified under § 509(a) as either public charities or private foundations. Public charities under § 509(a) include, but are not limited to, the following types of organizations:

- (a) A church or a convention or association of churches as described in §§ 509(a)(1) and 170(b)(1)(A)(i);
- (b) A school, as described in §§ 509(a)(1) and 170(b)(1)(A)(ii) and § 1.170A-9(c)(1);
- (c) A hospital or medical research organization, as described in §§ 509(a)(1) and 170(b)(1)(A)(iii) and § 1.170A-9(d)(1) or (d)(2);
- (d) A publicly supported organization described in §§ 509(a)(1) and 170(b)(1)(A)(vi) and § 1.170A-9(f);
- (e) A publicly supported organization described in §§ 509(a)(2) and 1.509(a)-3; and
- (f) A supporting organization described in §§ 509(a)(3) and 1.509(a)-4, whether Type I, Type II, functionally integrated Type III, or non-functionally integrated Type III.

For purposes of § 4945(d)(4) (which requires expenditure responsibility for grants from private foundations to organizations other than qualifying public charities), a qualifying

public charity is a public charity described in § 509(a)(1), 509(a)(2), or 509(a)(3) (other than a disqualified supporting organization, defined below in this section 3.03(3)), or an exempt operating foundation described in § 4940(d)(2).

For purposes of § 4942(g) (which treats distributions to qualifying public charities as qualifying distributions), a qualifying public charity includes a qualifying public charity under § 4945(d)(4) and also includes a disqualified supporting organization (if the grantor is an operating foundation) and a grantee that is an operating foundation under § 4942(j)(3) (whether or not it is an exempt operating foundation). See §§ 4942(g)(1) and (4).

For purposes of § 4966(c)(2)(A) (which requires expenditure responsibility for distributions from donor advised funds to organizations other than qualifying public charities), a qualifying public charity is a public charity described in § 509(a)(1), 509(a)(2), or 509(a)(3) (other than a disqualified supporting organization, defined below in this section 3.03(3)), an operating foundation under § 4942(j)(3), a private foundation described in § 170(b)(1)(F)(ii) that annually distributes all of its contributions, and a private foundation described in § 170(b)(1)(F)(iii) that maintains a common fund and annually distributes all of its income.

A disqualified supporting organization includes a non-functionally integrated Type III supporting organization under § 1.509(a)-4(i). A disqualified supporting organization also includes any other supporting organization if a disqualified person of the private foundation directly or indirectly controls the supporting organization or a supported organization (or, for grants from donor advised funds, if a donor or donor advisor (and any related parties) directly or indirectly controls a supported organization). See §§ 4942(g)(4)(A) and 4966(c)(4).

(4) Reasonable reliance in good faith under § 1.6664-4(c)(1). Under § 1.6664-4(c)(1), all pertinent facts and circumstances are taken into account in determining whether a private foundation has reasonably relied in good faith on written advice, such as the foundation managers' education, sophistication, and business experience. This standard is not met if the private foundation knows, or reasonably should know, that a qualified tax practitioner lacks knowledge of the U.S. tax law of charities. Moreover, a private foundation may not rely on written advice if it knows, or has reason to know, that relevant facts were not disclosed to the qualified tax practitioner or that the written advice is based on a representation or assumption that the foundation knows, or has reason to know, is unlikely to be true.

(5) General requirements imposed on qualified tax practitioners in preparing written advice.

(a) In general. Under 31 CFR 10.37(a)(2), in preparing written advice, a qualified tax practitioner must—

- (i) Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events);
- (ii) Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know;
- (iii) Use reasonable efforts to identify and ascertain the relevant facts;
- (iv) Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable, which is the case if the practitioner knows or reasonably should know that one or more representations or assumptions on which any

representation is based are incorrect, incomplete, or inconsistent;

(v) Relate applicable law and authorities to facts; and

(vi) Not base the advice on consideration of the possibility that a return will not be audited or that a matter will not be raised by the IRS on audit.

(b) Information regarding grantee. Under 31 CFR 10.34(d), a qualified tax practitioner generally, without verification, may rely in good faith upon information furnished by the private foundation regarding the grantee, but may not ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(c) Advice of another person. Also, under 31 CFR 10.37(b), a qualified tax practitioner may rely on the advice of another person (such as foreign counsel on a question of foreign law) if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances. Reliance is not reasonable when the practitioner knows or reasonably should know that —

(i) The opinion of the other person should not be relied upon;

(ii) The other person is not competent or lacks the necessary qualifications to provide the advice; or

(iii) The other person has a conflict of interest in violation of 31 CFR Part 10.

(6) Facts required in written advice. The equivalency determination regulations require that the written advice include enough facts concerning the foreign grantee's operations and support to enable the IRS to determine that the grantee would likely qualify as a qualifying public charity as of the date of the written advice, and include a conclusion

that the grantee is a qualifying public charity for purposes of the pertinent sections of the regulations.

SECTION 4. GUIDELINES FOR WRITTEN ADVICE

.01 In general.

Written advice that meets the guidelines of sections 4, 5, and 6 of this revenue procedure (preferred written advice) ordinarily will be considered to contain sufficient facts concerning the foreign grantee's operations and support to enable the IRS to determine that the grantee would likely qualify as a qualifying public charity as of the date of the written advice. Whether written advice that does not meet one or more of the guidelines of sections 4, 5, or 6 of this revenue procedure contains enough facts concerning the foreign grantee's operations and support to enable the IRS to determine that the grantee would likely qualify as a qualifying public charity as of the date of the written advice depends on all the facts and circumstances. In all cases, the private foundation still must meet the requirement to have reasonably relied in good faith on the written advice in accordance with the requirements of § 1.6664-4(c)(1). Furthermore, in order to rely on the special rule in §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5), the private foundation must retain the original written advice (or a copy) and make it available to the IRS upon request.

.02 Attachments in English.

For purposes of section 4.01 of this revenue procedure, preferred written advice and any attachments are written in or translated into English and contain the substantive information set out in sections 5 and 6 of this revenue procedure. An English translation that meets the requirements of section 7.01(2)(c) of Rev. Proc. 2017-1, 2017-1 I.R.B. 1, 24 (or the corresponding provision of the most recent annual update of that revenue

procedure), is an acceptable translation for any documents that are not written in English, but compliance with that revenue procedure is not required.

.03 Practitioner use of affidavits, and attestation.

Preferred written advice described in section 4.01 of this revenue procedure sets forth the qualified tax practitioner's own application of the law to the facts and own conclusion that the grantee is a qualifying public charity. The written advice may reference attached affidavits from the grantee providing factual information upon which the written advice is based. Any attached grantee affidavit is attested to by an officer or trustee of the grantee with personal knowledge of the facts.

.04 Reliance on translations of foreign laws.

The grantor and qualified tax practitioner may rely on translations of and public information concerning foreign laws that meet the requirements of section 7.01(2)(b) and (c) of Rev. Proc. 2017-1 (or the corresponding provisions of the most recent annual update of that revenue procedure), but compliance with that revenue procedure is not required.

SECTION 5. SUFFICIENT FACTS IN WRITTEN ADVICE REGARDING § 501(c)(3) STATUS

.01 Effect of written advice.

See section 4.01 of this revenue procedure for the effect of preferred written advice that meets the guidelines described in this section 5.

.02 Governing instruments.

Preferred written advice includes an attachment with an English translation of the grantee's articles of organization, bylaws, or other organizing or enabling document or

documents by which the grantee is formed and governed. Preferred written advice identifies the country in which the grantee was formed if not evident from such documents.

.03 Charitable purposes.

Preferred written advice identifies the tax-exempt purpose or purposes under § 501(c)(3) for which the grantee is organized. Tax-exempt purposes include charitable, religious, educational, literary, or scientific purposes, or purposes to foster national or international amateur sports competition or to prevent cruelty to children or animals, and are referred to collectively in this revenue procedure as “charitable purposes.” Preferred written advice also confirms that the grantee is not expressly permitted to engage in activities for non-charitable purposes, other than as an insubstantial part of its activities.

.04 Charitable distribution of assets on dissolution.

Preferred written advice confirms that if the grantee terminates, liquidates, or dissolves, then under the governing instrument or applicable law, all of the grantee’s assets will be distributed to another not-for-profit charitable organization for charitable purposes or to a governmental entity for a public purpose. An English translation of applicable statutory law is attached to preferred written advice.

.05 No private shareholders.

Preferred written advice confirms that the grantee has no shareholders or members who have an ownership interest in the income or assets of the grantee. It also confirms that the grantee does not distribute any of the grantee’s income or assets to a non-charitable organization or individual, or apply any of the grantee’s income or assets for

the benefit of a non-charitable organization or individual (and that the grantee's governing instruments do not expressly permit such activities), except pursuant to the conduct of the grantee's charitable activities, or as payment of reasonable compensation for services rendered or payment of the fair market value of property that the grantee has purchased.

.06 Insubstantial lobbying and no political intervention.

Preferred written advice confirms that the grantee does not attempt to influence legislation (except as an insubstantial part of its activities) and does not directly or indirectly participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office. Preferred written advice also confirms that the grantee's governing instruments do not expressly permit such activities.

.07 Affiliated organizations.

Preferred written advice discusses any organizations that control the grantee or are operated in connection with the grantee.

.08 Description of activities and analysis.

Preferred written advice or an attached affidavit describes the past, current, and anticipated (over the term of the grant) activities of the grantee, including details such as the manner of carrying out the activities, sources of receipts, and types of expenditures, sufficient to enable the IRS to determine that the grantee would likely qualify as a qualifying public charity as of the date of the written advice. Specific schedules in Forms 990 or 1023 may be used to provide relevant information for particular types of organizations. If the grantee previously provided an affidavit, the prior affidavit may be attached and supplemented with a new affidavit that describes any changes in facts or

affirms that the facts have not materially changed. Preferred written advice applies the applicable federal tax law and other relevant law to the facts in discussing whether the grantee is operated exclusively for charitable purposes. The grantee would not be considered operated exclusively for charitable purposes if, for example, it operated substantially for commercial purposes or for the benefit of private interests, or if it engaged in terrorist activities or support for terrorist organizations.

.09 Terrorist organizations and blocked persons.

An organization ineligible to apply for recognition of exemption pursuant to § 501(p) (relating to an organization designated or individually identified as a terrorist organization) cannot qualify for an equivalency determination. Preferred written advice includes verification that the grantee has not been designated or individually identified as a terrorist organization by the United States Government as described in § 501(p)(2). In addition, while not a requirement for preferred written advice, the private foundation should also confirm that the organization or its controlling officers, directors, or trustees are not foreign persons whose property and interests in property are blocked pursuant to an Executive Order or regulations administered by the Office of Foreign Assets Control.

.10 Hospitals and § 501(r).

A grantee that operates a hospital facility is not required to comply with § 501(r) with respect to the facility unless the facility is required by one of the 50 States of the United States (or the District of Columbia) to be licensed, registered, or similarly recognized as a hospital. See § 1.501(r)-1(b)(17). If the grantee operates a hospital facility in a foreign jurisdiction, the written advice does not need to address § 501(r).

.11 Schools and racial discrimination.

Private schools operating in the United States have long been required to comply with Rev. Proc. 75-50, 1975-2 C.B. 587, which sets forth guidelines and recordkeeping requirements for determining whether private schools recognized as exempt under § 501(c)(3) or applying for recognition have racially nondiscriminatory policies regarding students. The IRS published the guidelines in consequence of extensive litigation in federal courts in the 1970s arising from widespread racial discrimination in private schools in the United States.

Foreign schools also have long been required to comply with Rev. Proc. 75-50 for purposes of the Code. However, foreign jurisdictions may not have the same history of racial discrimination as the United States. Furthermore, compliance with all the provisions of Rev. Proc. 75-50 is sometimes impracticable in foreign jurisdictions. Nevertheless, racial nondiscrimination remains an important principle in determining whether an organization should be recognized as described in § 501(c)(3). Therefore, for purposes of equivalency determinations regarding foreign school grantees, preferred written advice or an attached affidavit pertaining to a grantee described in § 170(b)(1)(A)(ii) as a school is considered sufficient regarding the issue of racial discrimination regarding students if: (1) the written advice or attached affidavit states that the grantee has adopted a policy in its governing instrument, or in a resolution of its governing body, that the grantee does not discriminate against applicants and students on the basis of race, color, or national or ethnic origin, as required by section 4.01 of Rev. Proc. 75-50 (or any successor revenue procedure); and (2) the written advice or attached affidavit provides evidence that the grantee actually operates in a racially

nondiscriminatory manner as to students. Evidence of racial nondiscrimination regarding students can be shown by compliance with Rev. Proc. 75-50 (or any successor revenue procedure). Compliance with that revenue procedure with respect to a foreign school grantee is not required, however, in order to provide evidence that the grantee actually operates in a racially nondiscriminatory manner as to students.

SECTION 6. SUFFICIENT FACTS IN WRITTEN ADVICE REGARDING QUALIFYING PUBLIC CHARITY STATUS

.01 Effect of written advice.

See section 4.01 of the revenue procedure for the effect of preferred written advice that meets the guidelines described in this section 6.

.02 Financial and non-financial tests

The status of some qualifying public charities does not depend on a financial test (for example, schools and hospitals). Preferred written advice on whether a grantee is such a qualifying public charity includes the application of the relevant federal tax law to the particular facts and circumstances.

The status of some qualifying public charities may depend in whole or in part on a financial test. Preferred written advice regarding a grantee whose status as a qualifying public charity depends in whole or in part on a financial test includes an attached financial schedule with enough information to demonstrate that the grantee satisfies the applicable financial test or tests, in addition to showing that the grantee meets any other requirements. Financial data from the grantee's most recently completed taxable year is used in the preferred written advice if available.

An attached schedule or list need not be filled out completely if the information provided

is sufficient to establish the grantee's tax classification. For example, a § 509(a)(2) organization need not include a list of persons providing more than one percent of income from a related activity if the organization passes the one-third support test because the organization receives sufficient donations from governments or other permitted sources regardless of whether any other income counts as public support.

.03 Section 170(b)(1)(A)(vi) or 509(a)(2) organizations within first five years.

A grantee in existence less than five years is treated as described in § 170(b)(1)(A)(vi) or 509(a)(2) if the preferred written advice includes a determination that, as of the time of the determination, the grantee can reasonably be expected to meet the applicable test for § 170(b)(1)(A)(vi) or 509(a)(2) status applied to the grantee's first five years in existence, considering the factors set forth in § 1.170A-9(f)(3) and (f)(4)(v) or § 1.509(a)-3(d).

.04 Section 170(b)(1)(A)(vi) organizations after first five years.

For a grantee described in § 170(b)(1)(A)(vi) and in existence for more than five years, preferred written advice includes as an attachment the support schedule provided on Form 990, *Return of Organization Exempt From Income Tax*, or a similar schedule of information, for the applicable period, plus, if necessary, a schedule of donations from donors providing more than two percent of total support over the applicable period. A foreign grantee's public support includes, among other things, all contributions and grants from a domestic or foreign charitable organization described in § 170(b)(1)(A)(vi).

.05 Section 509(a)(2) organizations after first five years.

For a grantee described in § 509(a)(2) and in existence for more than five years, preferred written advice includes the following attachments if necessary to establish the grantee's tax classification:

(1) The support schedule provided on Form 990, *Return of Organization Exempt From Income Tax*, for the applicable period, or a similar schedule of information;

(2) A schedule of all amounts received from disqualified persons (other than from § 509(a)(1) organizations), whose support must be excluded. Disqualified persons are substantial contributors and foundation managers and certain persons related to them as described in § 4946(a). Substantial contributors are defined in § 507(d)(2) generally as persons that have contributed the greater of \$5,000 or two percent of the total contributions the grantee has ever received;

(3) A schedule of gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in any activity that is not an unrelated business, received from persons (or bureaus or agencies of governmental units) in any taxable year if receipts from any such person exceed the greater of \$5,000 or one percent of the grantee's total support; and

(4) A schedule of all donors whose support is included as public support solely because they are § 509(a)(1) organizations (including organizations treated as § 509(a)(1) organizations for these purposes under § 53.4945-5(a)(4) or (5)).

A foreign grantee's public support includes, among other things, all contributions and grants (as described in § 1.509(a)-3(f) and (g)) from a domestic or foreign charitable organization described in § 509(a)(1).

.06 Support from governments.

For purposes of making equivalency determinations only, a foreign grantee's public support includes, among other things, all contributions and grants as described in § 1.509(a)-3(f) and (g) (and for purposes of § 170(b)(1)(A)(vi), all support described in

§ 1.170A-9(f)(8)) from a domestic governmental unit (or agency or instrumentality), from a foreign government (or agency or instrumentality), or from an international organization designated as such by Executive Order under 22 U.S.C. 288. See § 53.4945-5(a)(4).

.07 Medical research organizations.

For a grantee that is a medical research organization described in § 170(b)(1)(A)(iii) that has been in existence beyond its organizational period, preferred written advice includes as an attachment a schedule showing that the grantee devotes more than half its assets, or spends at least 3.5 percent of the fair market value of its endowment, directly in conducting medical research (or an explanation as provided in § 1.170A-9(d)(2)(A) if the organization fails both tests). Either test can be met based on a computation period consisting of the immediately preceding taxable year or the immediately preceding four taxable years. See § 1.170A-9(d)(2)(ix) for a medical research organization operating during its organizational period (in no event in excess of three years following organization).

.08 Non-functionally integrated Type III supporting organizations.

For a grantee described in § 509(a)(3) that is a non-functionally integrated Type III supporting organization and has existed for more than one year, preferred written advice includes as an attachment the financial schedules and explanations for non-functionally integrated Type III supporting organizations as provided on Form 990, *Return of Organization Exempt From Income Tax*, or a similar schedule of information, for the applicable period, showing that the grantee met its distribution requirements. Under § 1.509(a)-4(i)(5)(ii)(D), such an organization has no distributable amount for its first taxable year.

.09 Operating and exempt operating foundations.

For a grantee that is an operating foundation under § 4942(j)(3) or exempt operating foundation under § 4940(d)(2) and has existed for more than one year, preferred written advice includes as an attachment the private operating foundation schedule provided on Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*, or a similar schedule of information, for the applicable period. See § 53.4942(b)-3(b) for an operating foundation in its first taxable year.

SECTION 7. EXAMPLES OF CURRENT WRITTEN ADVICE FOR PUBLICLY SUPPORTED ORGANIZATIONS

The following examples illustrate current written advice with regard to the reliance period for public support under §§ 170(b)(1)(A)(vi) or 509(a)(2). In each example, a private foundation grantor is making a determination whether a foreign organization grantee having a calendar taxable year is a § 170(b)(1)(A)(vi) organization; the determination is based on written advice that meets the definition of preferred written advice in section 4.01 of this revenue procedure; the relevant law does not change; the grantor has no information indicating that the written advice should not be relied upon; and the grantor's reliance on the written advice is otherwise reasonable under the standards of § 1.6664-4(c)(1).

Example 1. P, a grantor, intends to make grants in 2017 and 2018 to Q, a foreign charity organized in January 2017. P obtains written advice from a qualified tax practitioner in January 2017, based on an affidavit and the collection of information from Q, that Q can reasonably be expected to qualify under § 170(b)(1)(A)(vi) during Q's first five taxable years. P may use the written advice to make good faith determinations in 2017 and in 2018 that Q is described in § 170(b)(1)(A)(vi).

Example 2. Same facts as in the prior example except that P intends to make

grants to Q in 2019 and 2020. P may no longer use the written advice from 2017 to make a good faith determination that would ordinarily be considered a good faith determination. P obtains written advice from a qualified tax practitioner in May 2019, based on an affidavit from Q that updates the prior affidavit with changes in Q's operations and support through May 2019, that Q can reasonably be expected to qualify under § 170(b)(1)(A)(vi) during its first five taxable years. P may use the written advice to make good faith determinations in 2019 and in 2020 that Q is described in § 170(b)(1)(A)(vi).

Example 3. Same facts as in the prior example except that P intends to make grants to Q in 2021 (the last year in Q's first five taxable years) and 2022. P obtains written advice from a qualified tax practitioner in June 2021, based on an affidavit from Q that updates the prior affidavit with changes in Q's operations and support through June 2021, that Q can reasonably be expected to qualify under § 170(b)(1)(A)(vi) during its first five taxable years. P may use the written advice to make good faith determinations in 2021 and in 2022 that Q is described in § 170(b)(1)(A)(vi).

Example 4. Same facts as in the prior example except that P intends to make another grant to Q in 2023. P obtains written advice from a qualified tax practitioner in April 2023, based on an affidavit from Q providing information from 2022 and prior years regarding Q's operations and support, that Q failed the support tests (both the 33 $\frac{1}{3}$ percent support test and the facts and circumstances test) for the periods 2017-2021 and 2018-2022. Under these circumstances, P may not use the written advice to make a good faith determination in 2023 that Q is described in § 170(b)(1)(A)(vi) in 2023.

Example 5. R, a grantor, intends to make a grant to S, a foreign charity, for the first time in 2017, S's 6th year of operation. R obtains written advice from a qualified tax practitioner in March 2017, based on an affidavit from S providing information from 2017 and prior years regarding S's operations and support, that S failed the support tests for the period 2012-2016. Under these circumstances, R may not use the written advice to make a good faith determination in 2017 that Q is described in § 170(b)(1)(A)(vi) in 2017.

Example 6. T, a grantor, intends to make a grant in 2017 to U, a foreign charity operating since 1990. T obtains written advice from a qualified tax practitioner in February 2017, based on an affidavit from U providing information from 2017 and prior years regarding U's operations and support, that U met a support test for the period 2011-2015 but not for 2012-2016. U's support for the period 2011-2015 establishes that U is "publicly supported" under § 170(b)(1)(A)(vi) for the year 2015, and thus is treated (for purposes of the good faith determination regulations) as publicly supported for 2016 and 2017 as well. T may use the written advice to make a good faith determination in 2017 that U is described in § 170(b)(1)(A)(vi).

SECTION 8. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Proc. 92-94.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective September 14, 2017.

SECTION 10. PAPERWORK REDUCTION ACT

The collection of information in this revenue procedure is the affidavit of factual information. This collection of information is reflected in the collection of information for Form 990–PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*, that has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under control number 1545–0052. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law.

DRAFTING INFORMATION

The principal author of this revenue procedure is Ward L. Thomas of the Office of Associate Chief Counsel (Tax-Exempt and Government Entities). For further information regarding this revenue procedure, contact Mr. Thomas at (202) 317-6173 (not a toll-free call).