



COUNCIL *on* FOUNDATIONS

Council on Foundations • 2121 Crystal Drive, Suite 700, Arlington, Va. 22202 • T: 703-879-0600 F: 703-879-0800 • www.cof.org

April 20, 2012

Via Overnight Delivery

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2010-43)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

RE: Keeping Updates to Revenue Procedure 92-94 on Treasury's 2012–2013 Guidance Priority List

Ladies and Gentlemen:

Pursuant to the request for comments published in Notice 2012–25,¹ I write to reiterate our support for continuing to include an update to Revenue Procedure 92–94² in the Guidance Priority List. Updating that Revenue Procedure was added to the list last year. Rev. Proc. 92-94 sets forth acceptable procedures for grantmakers to follow in making “equivalency determinations” that is, determinations that prospective foreign grantees would be public charities if they were organized and operated in the United States. It is critical that Revenue Procedure 92-94 be updated quickly in order to resolve potential controversy over its application given intervening changes in the law. Furthermore, in light of the burdensome duplication of efforts and other difficulties that U.S. international grantmakers currently experience as they make equivalency determinations, Revenue Procedure 92-94 should also be expanded to allow grantmakers to rely upon equivalency determinations and information maintained in centralized equivalency determination information repositories (“EDIRs”) meeting standards of accuracy and due diligence approved by the Service.

Guidance enabling such EDIRs and clarifying the substantive standards for equivalency determinations was a key recommendation of the Advisory Committee for Tax Exempt and Governmental Entities in 2009,³ and has been the subject of previous submissions by the Council on Foundations to the Office of Tax Policy (copies of which are enclosed). For the full argument in favor of making this guidance a priority, we refer you to those submissions.

Without restating those arguments in detail here, suffice it to say that we continue to see strong interest from a wide variety of grantmakers in the formation of one or more EDIRs. Such EDIRs have great potential to lessen the burdens of the large number of U.S. tax-exempt organizations engaging in international philanthropy, while simultaneously promoting sound tax administration by encouraging more uniformly rigorous review of foreign grantees' tax classifications. Accordingly, we strongly urge the Department of Treasury to add revisions to

¹ 2012-15 I.R.B. 789.

² 1992-1 C.B. 507.

³ Advisory Committee on Tax-Exempt and Government Entities, Exempt Organizations: Recommendations to Improve the Tax Rules Governing International Grantmaking 11-14 (2009).

Revenue Procedure 92-94, including guidance enabling the sector to rely on information and equivalency determinations provided by EDIRs, to its 2011–2012 Guidance Priority List.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "Janne Gallagher", followed by a horizontal flourish line.

Janne G. Gallagher
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Enclosures

cc: Ruth Madrigal