

EOTS NewsFlash

Exempt Organizations Tax Services

September 25, 2012

IRS issues proposed regulations concerning private foundation foreign organization equivalency determinations

The IRS has issued proposed regulations regarding the standards for private foundations making a good faith determination that a foreign organization is a public charity or other specified charitable organization, grants to which may be qualifying distributions and not taxable expenditures.

The current regulations under sections 4942 and 4945 state that a determination is ordinarily considered as made in good faith if it is based on an affidavit of the foreign organization or an opinion of counsel of the grantor or the grantee. The proposed regulations would modify this rule to allow a private foundation to base a "good faith determination" on written advice from an attorney, CPA, or enrolled agent qualified to practice before the IRS. The IRS also is requesting comments on whether a foundation's ability to base a good faith determination on a foreign organization's affidavit should be retained, and if so, whether the use of affidavits should be restricted. The proposed regulations also would make certain conforming changes consistent with statutory amendments that have been made to sections 4942 and 4945.

The proposed regulations would apply for grants made after the date of publication of final regulations. However, a private foundation may rely on the proposed regulations for grants made on or after September 24, 2012.

Comments on the proposed regulations and requests for a public hearing must be received by the IRS by December 24, 2012.

Click [here](#) to access the proposed regulations.

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